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PA INSURANCE DEPARTMENT

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BEFORE THE INSURANCE COMMISSIONER ADMIN HEARINGS OFFICE  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
JAMES E. DWYER, and	:	Section 208 of the Insurance
JAMES AND SON, INC.	:	Department Act, Act of May 17,
332 Sagamore Road	:	1921, P.L. 789, No. 285 (40 P.S.
Havertown, PA 19083	:	§ 46(a))
	:	
	:	Sections 611-A(5), (7), (9), (17)
	:	and 671-A of Act 147 of 2002
	:	(40 P.S. §§ 310.11 and 310.71)
	:	
	:	Section 5(a)(2) & (12) of the Unfair
	:	Insurance Practices Act, Act of
	:	July 22, 1974, P.L. 589, No. 205
	:	(40 P.S. § 1171.5)
	:	
Respondents	:	Docket No. CO06-03-013

CONSENT ORDER

AND NOW, this *27<sup>th</sup>* day of *April*, 2006, this Order is hereby issued by the Deputy Insurance Commissioner of the Commonwealth of Pennsylvania pursuant to the statutes cited above and in disposition of the matter captioned above.

1. James E. Dwyer ("Respondent Dwyer") and James & Son, Inc. ("Respondent James & Son, Inc.") (collectively referred to herein as "Respondents"), hereby admit and acknowledge that they have received proper notice of their rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S. § 101, et seq., or other applicable law.

2. Respondents hereby waive all rights to a formal administrative hearing in this matter, and agree that this Consent Order, and the Findings of Fact and Conclusions of Law contained herein, shall have the full force and effect of an Order duly entered in accordance with the adjudicatory procedures set forth in the Administrative Agency Law, supra, or other applicable law.

3. Without admitting the allegations of fact and conclusions of law contained herein, Respondents specifically deny that they violated any law or regulation of the Commonwealth.

#### FINDINGS OF FACT

4. The Deputy Insurance Commissioner finds true and correct each of the following Findings of Fact:

- (a) Respondents maintain a business address at 332 Sagamore Road, Havertown, Pennsylvania 19083.

- (b) Respondent Dwyer was licensed as an insurance producer between March 11, 1972 and October 14, 2004.
- (c) Respondent James & Son, Inc. was licensed as an insurance producer between November 27, 2001 and October 14, 2004.
- (d) An Adjudication and Order dated September 14, 2004, issued by M. Diane Koken, Insurance Commissioner, suspended Respondents' licenses for violations of the Insurance Department Act, Insurance Department regulations and the Unfair Insurance Practices Act, pertaining to activities involving Target Building Construction.
- (e) The Department has received information that Respondents, both before and after their licenses were suspended, represented themselves to various entities (beyond the scope of Target Building Construction) as licensed producers, provided these entities with bogus insurance policies and bonds with companies with whom Respondents were not appointed, invoiced clients for premiums associated with the bogus policies, collected the premiums and failed to remit the premiums to the named insurers.

5. Tracey Mechanical, Commercial Insurance

- (a) From April 2003 through 2005, Respondents provided more than 400 bogus insurance binders to Tracey Mechanical, Media, Pennsylvania, that falsely purported to provide commercial liability coverage with Federated Services Insurance Company.
- (b) Pertinent to the aforementioned binders for Tracey Mechanical, Respondents issued approximately 85 invoices to Tracey Mechanical requiring payment for the bogus insurance.
- (c) Pertinent to the aforementioned binders for Tracey Mechanical, Respondents accepted approximately 69 premium checks totaling more than \$700,000 from Tracey Mechanical and deposited the monies into a Respondent James & Son, Inc. Commerce Bank account.
- (d) Pertinent to the aforementioned binders issued to Tracey Mechanical, Respondents failed to remit the premiums to Federated Services Insurance Company.

- (e) Federated Services Insurance Company had no appointments or contractual relationships with Respondents, no knowledge of the binders issued by Respondents to Tracey Mechanical, and never received any premiums paid by Tracey Mechanical to Respondents.

6 Tracey Mechanical, Surety Bonds

- (a) Between January 5, 2004 and October 15, 2004, Respondents issued six surety bonds to Tracey Mechanical that purported to provide commercial insurance coverage totaling \$6,446,062 with Fidelity and Deposit Company of Maryland, an affiliate of Zurich American Insurance Company (collectively referred to herein as "Zurick").
- (b) Pertinent to the aforementioned surety bonds for Tracey Mechanical, Respondents issued invoices to Tracey Mechanical requiring payment.
- (c) Pertinent to four of the aforementioned surety bonds and invoices for Tracey Mechanical, Respondents accepted approximately \$32,350 in premiums from Tracey Mechanical,

with an undetermined amount paid by Tracey Mechanical for the other two bonds.

- (d) Surety bond #PFP9018177 was issued to Tracey Mechanical by Respondents after their producer license were suspended.
- (e) Zurich never received premiums from Respondents for the aforementioned surety bonds issued to Tracey Mechanical, nor did Respondents report to Zurich that bonds had been issued to Tracey Mechanical.

7 Midway Corporation, Commercial Insurance

- (a) Between March 2004 and November 2005, Respondents issued bogus surety bonds to Midway Corporation, Philadelphia, Pennsylvania, that purported to provide commercial insurance coverage totaling \$604,870 with West American Insurance Company, an affiliate of Ohio Casualty Group (collectively referred to herein as "Ohio Casualty").
- (b) Surety bond #3-722-384 and the binder attributed to policy #BKO52990601 were issued by Respondents after their producer license s were suspended.

- (c) Pertinent to the aforementioned bogus surety bonds for Midway Corporation, Respondents issued invoices to Midway Corporation requiring payments totaling \$9,092.
- (d) Pertinent to aforementioned surety bonds and binders, Respondents accepted approximately \$9,092 in premiums from Midway Corporation.
- (e) Ohio Casualty never had any appointments or contractual relationships with Respondents, no knowledge of the insurance binders issued by Respondents to Midway Corporation, and never received any premiums paid by Midway Corporation to Respondents.

8. Glaser-Miller Company, Workers Compensation Commercial Insurance

- (a) During 2003 and 2004, Respondents issued bogus workers compensation and commercial automobile insurance policies to Glaser-Miller Company, Exton, Pennsylvania, that purport to provide coverage with Northland Insurance Company.

- (b) Respondents provided Glaser-Miller Company with a bogus binder and policy for workers compensation insurance that was purportedly issued by Northland Insurance Company.
- (c) Respondents also provided Glaser-Miller Company with a bogus binder and policy for commercial automobile insurance that was purportedly issued by Northland Insurance Company.
- (d) Respondents provided Glaser-Miller Company with five bogus vehicle insurance identification cards.
- (e) Pertinent to the aforementioned documents for workers compensation and commercial automobile insurance, Respondents invoiced and Glaser-Miller Company paid \$12,476 in premiums.
- (f) Pertinent to the aforementioned policies issued to Glaser-Miller Company, Respondents failed to remit the premiums to Northland Insurance Company.
- (g) During March 2004, an employee of Glaser-Miller Company was involved in an automobile accident that incurred approximately \$3,900 in damage to the vehicle.

- (h) Glaser-Miller Company followed Respondents' established procedures and contacted them to process the claim against the damage to the vehicle.
- (i) Respondents paid Glaser-Miller Company's claim of approximately \$3,900.
- (j) Northland Insurance Company had no appointments or contractual relationships with Respondents, no knowledge of the policies issued by Respondents to Glaser-Miller Company, never received any premiums paid by Glaser-Miller Company to Respondents and was unaware of the auto accident claim in the amount of \$3,900.

CONCLUSIONS OF LAW

9 In accord with the above Findings of Fact and applicable provisions of law, the Deputy Insurance Commissioner concludes and finds the following Conclusions of Law:

- (a) Respondents are subject to the jurisdiction of the Pennsylvania Insurance Department.

- (b) Section 208 of The Insurance Department Act prohibits an insurance company, association, or exchange from another state or foreign government from doing insurance business within this Commonwealth without obtaining a certificate of authority (40 P.S. § 46).
  
- (c) Respondents' activities described above in paragraphs 8(g)-(j), constitute transacting insurance business within this Commonwealth without obtaining a certificate of authority.
  
- (d) Respondents' violation of Section 208 of the Insurance Department Act is punishable by the following, under Section 209 of the Insurance Department Act (40 P.S. § 47):
  - (i) imposition of a civil penalty of not less than one thousand dollars (\$1,000.00) nor more than ten thousand dollars (\$10,000.00) for each violation;
  - (ii) imposition of a cease and desist order.
  
- (e) Section 611-A(5) of Act 147 of 2002 (40 P.S. § 310.11), prohibits a licensee from intentionally misrepresenting the terms

of an actual or proposed insurance contract or application for insurance.

- (f) Respondents' activities described above in paragraphs 4(a)-8(j) violate Section 611-A(5) of Act 147 of 2002.
- (g) Section 611-A(7) of Act 147 of 2002 (40 P.S. § 310.11), prohibits a licensee from using fraudulent, coercive or dishonest practices or demonstrate incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business in this Commonwealth or elsewhere.
- (h) Respondents' activities described above in paragraphs 4(a)-8(j) violate Section 611-A(7) of Act 147 of 2002.
- (i) Section 611-A(17) of Act 147 of 2002 (40 P.S. § 310.11) prohibits a licensee from committing fraud, forgery, dishonest acts or an act involving a breach of fiduciary duty.
- (j) Respondents' activities described above in paragraphs 4(a)-8(j) violate Section 611-A(17) of Act 147 of 2002.

- (k) Section 671-A of Act 147 of 2002 (40 P.S. § 310.71) prohibits producers from transacting business within this Commonwealth without written appointment.
  
- (l) Respondents' activities described above in paragraphs 4(a)-8(j) constitute transacting business within this Commonwealth without written appointment as required by the Act and violate Section 671-A of Act 147 of 2002.
  
- (m) Respondents' violations of Sections 611-A(5), (7), (9), (17) and 671-A of Act 147 of 2002 are punishable by the following, under Section 691-A of Act 147 of 2002 (40 P.S. § 310.91):
  - (i) suspension, revocation or refusal to issue the certificate of qualification or license;
  - (ii) imposition of a civil penalty not to exceed five thousand dollars (\$5,000.00) for each violation of the Act;
  - (iii) an order to cease and desist; and
  - (iv) any other conditions as the Commissioner deems appropriate.

- (n) Section 5(a)(12) of the Unfair Insurance Practices Act prohibits producers from making false or fraudulent statements or representations on or relative to an application for an insurance policy (40 P.S. § 1171.5).
  
- (o) Respondents' activities described above in paragraphs 4(a)-8(j) constitute the making of false or fraudulent statements or representations on or relative to an application for an insurance policy and violate Section 5(a)(12) of the Unfair Insurance Practices Act (40 P.S. § 1171.5).
  
- (p) Section 5(a)(2) of the Unfair Insurance Practices Act prohibits agents from making, issuing, publishing or circulating in any manner an advertisement, announcement or statement containing any representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business which is untrue, deceptive or misleading (40 P.S. § 1171.5).
  
- (q) Respondents' activities described above in paragraphs 4(a)-8(j) constitute making, issuing, publishing or circulating an advertisement, announcement or statement containing a misrepresentation or statement relative to insurance and violates

Section 5(a)(12) of the Unfair Insurance Practices Act (40 P.S. § 1171.5).

(r) Respondents' violations of Section 5(a) (2) & (12) of the Unfair Insurance Practices Act are punishable by the following, under Sections 8, 9, and 11 of the Act (40 P.S. §§ 1171.8, 1171.9, and 1171.11):

(i) order requiring Respondent to cease and desist from engaging in such violation and/or, if such violation is a method of competition, act or practice defined in Section 5 of this Act, suspension or revocation of Respondent's license(s);

(ii) commencement of an action against Respondent for the following civil penalties:

(1) for each method of competition, act or practice defined in Section 5 and in violation of the Act which Respondent knew or reasonably should have known was such a violation, a penalty of not more than five thousand dollars (\$5,000.00) for each violation, not to exceed an aggregate

penalty of fifty thousand dollars (\$50,000.00) in any six month period;

(2) for each method of competition, act or practice defined in Section 5 and in violation of this Act which Respondent did not know nor reasonably should have known was such a violation, a penalty of not more than one thousand dollars (\$1,000.00) for each violation, not to exceed an aggregate penalty of ten thousand dollars (\$10,000.00) in any six month period;

(3) for each violation of an Order issued by the Commissioner pursuant to Section 9 of the Act, while such Order is in effect, a penalty of not more than ten thousand dollars (\$10,000.00).

#### ORDER

10. In accord with the above Findings of Fact and Conclusions of Law, the Deputy Insurance Commissioner orders and Respondents consent to the following:

- (a) Respondents shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.
- (b) All licenses/certificates of Respondents to do insurance business in the Commonwealth are hereby revoked.
- (c) If Respondents should ever become licensed in the future, their certificates and licenses may be immediately suspended by the Department following its investigation and determination that (i) any terms of this Order have not been complied with, or (ii) any complaint against Respondents is accurate and a statute or regulation has been violated. The Department's right to act under (ii) above is limited to a period of seven (7) years from the date of issuance of such certificates and licenses.
- (d) Respondents specifically waives the right to prior notice of said suspension, but will be entitled to a hearing upon written request received by the Department no later than thirty (30) days after the date the Department mailed to Respondent by certified mail, return receipt requested, notification of said suspension, which hearing shall be

scheduled for a date within sixty (60) days of the Department's receipt of Respondents' written request.

(e) At the hearing referred to in paragraph (d) of this Order, Respondents shall have the burden of demonstrating that they are worthy of an insurance certificate and license.

(f) In the event Respondents' certificates and licenses are suspended pursuant to paragraph 10(c) above, and Respondents either fail to request a hearing within thirty (30) days or at the hearing fail to demonstrate that they are worthy of a certificate and license, Respondent's suspended certificates and licenses shall be revoked.

11. In the event the Deputy Insurance Commissioner finds that there has been a breach of any of the provisions of this Order, based upon the Findings of Fact and Conclusions of Law contained herein, the Department may pursue any and all legal remedies available, including but not limited to the following: The Department may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, supra, or other relevant provision of law; or, if applicable, the Department may enforce the provisions of this Order in any other court of law or equity having jurisdiction.

12 Alternatively, in the event the Deputy Commissioner finds that there has been a breach of any of the provisions of this Order, the Deputy Commissioner may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

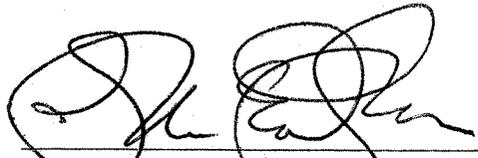
13 In any such enforcement proceeding, Respondents may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

14 Respondents hereby expressly waive any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

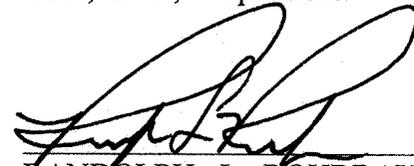
15 This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

16. This Order shall be final upon execution by the Deputy Insurance Commissioner. Only the Insurance Commissioner or the duly authorized Deputy Insurance Commissioner is authorized to bind the Insurance Department with respect to the settlement of the alleged violation of law contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or the duly authorized Deputy Insurance Commissioner.

BY:



JAMES E. DWYER, and JAMES AND  
SON, INC., Respondents



RANDOLPH L. ROHRBAUGH  
Deputy Insurance Commissioner  
Commonwealth of Pennsylvania