

2010 JUL 20 AM 11:28
ADMINISTRATIVE OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

<p>IN RE:</p> <p>Blair G. Johnson 65 Cabot Drive Wayne, PA 19087</p> <p>Respondent.</p>	<p>: VIOLATIONS:</p> <p>:</p>	<p>Section 611-A (20) of the Insurance Department Act of 1921, Act of May 17, 1921, P.L. 789, No. 285, <u>as amended</u> (40 P.S. § 310.11).</p> <p>Docket No.: <i>C010-07-009</i></p>
--	--	---

CONSENT ORDER

AND NOW, this *20th* day of *July*, 2010, this Order is hereby issued by the Insurance Department of the Commonwealth of Pennsylvania pursuant to the statutes cited above and in disposition of the matter captioned above.

1. Respondent hereby admits and acknowledges that he has received proper notice of his rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S. § 101, et seq., or other applicable law.

2. Respondent hereby waives all rights to a formal administrative hearing in this matter, and agrees 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. Respondent does not admit the Findings of Fact or Conclusions of Law contained herein and Respondent expressly denies that he violated any Pennsylvania insurance laws.

FINDINGS OF FACT

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

- (a) Respondent is Blair G. Johnson, residing at 65 Cabot Drive, Wayne, Pennsylvania 19087.
- (b) Respondent is, and during all relevant times herein, was a resident licensed producer, with an individual producer license number 359411, since August 23, 1994, which expires on February 28, 2011.
- (c) During all relevant times herein, Respondent was a resident viatical settlement broker, with a viatical settlement broker's license number 444145, which expired on November 14, 2009.
- (d) In May of 2005, Mark Luber engaged the services of Respondent to provide professional advice regarding insurance matters.

- (e) Luber purchased several insurance policies, one of which was an ING life insurance policy # 1606047 ("ING policy").
- (f) Pursuant to Mr. Luber's requests, the premiums for the ING policy were to be "financed" and were in fact done so in accordance with the Premium Finance Agreement issued by Bedrock Funding LLC.
- (g) Respondent did not deal directly with ING. Rather, Respondent's primary point of contact was Samuel J. Mangel, who coordinated the placement/procurement of the same by or through Rumson Capital LP and/or M & M Financial Services, L.P.
- (h) At the time of the application of the ING policy, it was anticipated that the ING policy would be sold on the secondary life insurance market after the expiration of the policy's two year contestability period, hereinafter referred to as "Viatication Plan."
- (i) The "Insured's Disclosure Statement for Bedrock Funding LLC's Life Insurance Premium Finance Program," hereinafter "Bedrock Disclosure" reflected the arrangement set forth in paragraph 4(h), above.

(j) In accordance with the Viatication Plan as outlined by the Bedrock Disclosure, Luber executed a number of legal documents in 2005, the net effect of which caused the eventual viatication of the policy, described as follows:

- i. Luber and his wife created a limited liability partnership, Luber LLP, in the state of Georgia.
- ii. An irrevocable trust was also created in Georgia, naming Luber LLP as the beneficiary of the policy; the sole purpose of the trust was to own the ING policy.
- iii. Luber LLP executed the Bedrock Premium Financing Agreement, ("BPFA") which instructed Bedrock Funding LLC to pay the premiums on the policy directly to ING on behalf of the trust.
- iv. The BPFA specified that the premium becomes due and payable by the Luber LLP on the earlier of: (A) the death of the insured; or (B) the two year anniversary of the Financing Date of the Transaction, i.e., the "scheduled maturity date."
- v. The amount of premium loaned by Bedrock Funding LLC was so substantial that it necessitated viatication of the policy.
- vi. The BPFA gave Bedrock Funding LLC the exclusive right to appoint the agent of record to viaticate the policy, which

Bedrock Funding LLC ultimately exercised and which resulted in excessive commissions being paid to third parties other than Respondent.

vii. Respondent was not involved in the design of the Viatication Plan or the subsequent viatication of the ING policy.

(k) The Viatication Plan was structured in an attempt to circumvent the "insurable interest" requirements of Pennsylvania law, 40 P.S. § 512.

(l) Respondent did not review the application for the ING policy or any other documents associated with the ING policy or premium financing thereof.

(m) Respondent believed that he had no obligation to review the application for the ING policy or any other documents associated with the ING policy or premium financing thereof.

(n) Respondent did not perform sufficient oversight to ensure that the transaction complied with Pennsylvania insurance laws.

(o) Respondent received a referral fee from Rumson Capital LP, as a result of the sale of the ING policy to Luber.

- (p) As a result of the BPFA and associated documents, excessive compensation was paid to third parties other than Respondent.
- (q) Respondent cooperated in the Department's investigation of this matter.

CONCLUSIONS OF LAW

5. In accord with the above Findings of Fact and applicable provisions of law, the Insurance Department concludes and finds the following Conclusions of Law:

- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department ("Department").
- (b) Section 611-A (20) of the Insurance Department Act (40 P.S. § 310.11 (20)) prohibits a licensee from demonstrating a lack of general fitness, competence or reliability sufficient to satisfy the Department that the licensee is worthy of licensure.
- (c) Respondent's acts described in paragraph 4 violate 40 P.S. § 310.11 (20).

- (d) Respondent's violation of Section 611-A (20) of the Insurance Department Act (40 P.S. § 310.11 (20)) is punishable by the following, under Section 691-A of the Insurance Department Act (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.

ORDER

6. In accordance with the above Findings of Fact and Conclusions of Law, the Insurance Department orders and Respondent consents to the following:

- (a) Respondent shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.
- (b) Respondent shall pay a civil penalty of \$15,000.00 to the Commonwealth of Pennsylvania. Payment of this penalty shall be made by certified check or money order, payable to the Commonwealth

of Pennsylvania. Payment should be directed to Sharon Fraser, Bureau of Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment may be enclosed with the Consent Order, but must be paid in any event no later than thirty (30) days after the date of the Consent Order.

- (c) Respondent shall cooperate fully with the Department and any other agency or law enforcement agency in any review, investigation or proceeding relating to matters addressed in this Order. This shall include, but is not limited to submitting to interviews, providing written statements or affidavits and appearing and providing testimony at any administrative or other legal proceedings as required by the Department and any other agency or law enforcement agency.

- (d) Respondent's 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; (ii) any complaint against Respondent is accurate and a statute or regulation has been violated; or (iii) any payment, or filing, due herein is not fully and timely made. The Department's right to act under this section is limited to a period of five (5) years from the date of this Order.

- (e) Respondent specifically waives his right to prior notice of said suspension as provided in paragraph 6(d) above, 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 Respondent's written request.
- (f) At the hearing referred to in paragraph 6(e) of this Order, Respondent shall have the burden of demonstrating that he is worthy of licensure.
- (g) In the event Respondent's certificates and licenses are suspended pursuant to paragraph 6(d) above, and Respondent either fails to request a hearing within thirty (30) days or at the hearing fails to demonstrate that he is worthy of a certificate and license, Respondent's suspended certificates and licenses shall be revoked.

7. In the event the Insurance Department 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.

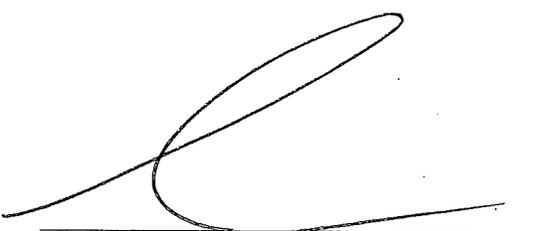
8. Alternatively, in the event the Insurance Department finds that there has been a breach of any of the provisions of this Order, the Department may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate action pursuant to the Administrative Agency Law, supra,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

9. In any such enforcement proceeding, Respondent 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.

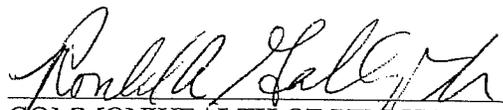
10. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

11. 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.

12. This Order shall be final upon execution by the Insurance Department. Only the Insurance Commissioner or a duly authorized delegee 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 a duly authorized delegee.

BY: 

BLAIR G. JOHNSON
Respondent


COMMONWEALTH OF PENNSYLVANIA
By: RONALD A. GALLAGHER, JR.
Deputy Insurance Commissioner