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INSURANCE DEPARTMENT

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ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
JANICE M. KIMMEL	:	40 P.S. §§ 310.11(2), (17), (20),
485 Brickell Avenue, Suite 3407	:	310.42, 310.45 and 310.96
Miami, FL 33131	:	
	:	
and	:	
	:	
PROTECTION ADVISORS, LLC	:	
485 Brickell Avenue, Suite 3407	:	
Miami, FL 33131	:	
	:	
Respondents.	:	Docket No. CO14-04 -020

CONSENT ORDER

AND NOW, this 30<sup>th</sup> day of July, 2014, 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. 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.A. §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, Respondent specifically denies that it violated any law or regulation of the Commonwealth.

#### FINDINGS OF FACT

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

- (a) Respondent is Janice M. Kimmel, and maintains her address at 485 Brickell Avenue, Suite 3407, Miami, FL 33131
- (b) Co-Respondent is Protection Advisors, LLC, and maintains its address at 485 Brickell Avenue, Suite 3407, Miami, FL 33131.
- (c) Respondent and Co-Respondent at all times relevant hereto have been, respectively, a licensed resident producer and licensed resident agency.

- (d) Respondent from December 2012 through September 2013 improperly withheld premium funds that were entrusted to her as a licensed producer and in her capacity as President/Owner of Protection Advisors, LLC.
- (e) Respondent from approximately December 2012 through September 2013 did front premium monies for insureds/policyholders as an inducement/rebate in order to secure business from them.
- (f) Respondent on or about May 11, 2013 through July 30, 2013 breached her fiduciary responsibility in that she did front premium monies in the amount of \$13,502.00 for policyholder #1.
- (g) Respondent on or about June 1, 2013 breached her fiduciary responsibility for policyholder #2 in that she did front the premium monies in the amount of \$1,305.00 and \$1,877.00. She further failed to remit premium monies in the amount of \$5,752.00.
- (h) Respondent on or about June 6, 2013 breached her fiduciary responsibility in that she did pay an endorsement in the amount of \$455.00 for policyholder #3 in order to keep the policy in force.

- (i) Respondent on or about June 4, 2013 breached her fiduciary responsibility in that she did front premium monies in the amounts of \$1,059.00 and \$595.00 respectively for policyholder #4.
- (j) Respondent on or about May 6, 2013 breached her fiduciary responsibility and in that she did receive financed premium monies in the amount of \$51,425.00 and failed to remit said monies.
- (k) On June 6, 2014, Respondent made restitution of \$51,425.00.

#### 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) Respondents are subject to the jurisdiction of the Pennsylvania Insurance Department.
- (b) 40 P.S. § 310.11(2) prohibits a licensee or an applicant from violating the insurance laws or regulations of this Commonwealth or a subpoena or order of the commissioner or of another state's insurance commissioner.

- (c) Respondents' activities described above in paragraphs 3(d) through 3(j) violate 40 P.S. § 310.11(2).
- (d) 40 P.S. § 310.11(17) prohibits a licensee or an applicant from committing fraud, forgery, dishonest acts or an act involving a breach of fiduciary duty.
- (e) Respondents' activities described above in paragraphs 3(d) through 3(j) violate 40 P.S. § 310.11(17).
- (f) 40 P.S. § 310.11(20) prohibits a licensee or an applicant from demonstrating a lack of general fitness, competence or reliability sufficient to satisfy the Department that the licensee is worthy of licensure.
- (g) Respondents' activities described above in paragraphs 3(d) through 3(j) violate 40 P.S. § 310.11(20).
- (h) 40 P.S. § 310.42 prohibits any producer from fraudulently appropriating, taking, disposing of, withholding, lending, investing or otherwise using any money received in the capacity of an insurance producer without the consent of the insurer.

- (i) Respondents' activities described above in paragraphs 3(d) through 3(j) constitute theft, in violation of 40 P.S. § 310.42.
  
- (j) 40 P.S. § 310.45 prohibits producers from offering rebates for insurance on any risk in this Commonwealth.
  
- (k) Respondents' activities described above in paragraphs 3(e), (f), (g) and (i) constitute offering rebates for insurance on a risk in this Commonwealth and violate 40 P.S. § 310.45.
  
- (l) 40 P.S. § 310.96 and Title 31, Pa. Code, Section 37.81, the Regulations of the Insurance Department, prohibit producers from, without the express consent of the insurance entity on whose behalf the funds were received, mingle the funds with the producer's own funds or with funds held by the producer in any other capacity. The funds of each insurance entity must be reasonably ascertainable from the books of accounts and records of the insurance producer.
  
- (m) Respondents' activities described above in paragraphs 3(d) through 3(j) constitute a violation of 40 P.S. § 310.96, and Title 31, Pa. Code, Section 37.81.

(n) Respondent's violations of Sections 310.11(2), (17), (20), 310.42, 310.45 and 310.96 are punishable by the following, under 40 Purdons Statutes, Section 310.91:

- (i) suspension, revocation or refusal to issue the license;
- (ii) imposition of a civil penalty not to exceed five thousand dollars (\$5,000.00) for every violation of the Act;
- (iii) an order to cease and desist; and
- (iv) any other conditions as the Commissioner deems appropriate.

ORDER

6. In accord with the above Findings of Fact and Conclusions of Law, the Insurance Department 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 of Respondents to do the business of insurance are hereby revoked.

- (c) If Respondents should ever become licensed in the future, their 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 this section is limited to a period of five (5) years from the date of issuance of such licenses.
- (d) Respondents specifically waives their 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 6(d) of this Order, Respondents shall have the burden of demonstrating that they are worthy of an insurance license.
- (f) In the event Respondents' licenses are suspended pursuant to paragraph 6(c) above, and Respondents either fails to request a hearing within thirty (30) days or at the hearing fails to demonstrate that they are worthy of a license, Respondents' suspended 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, it may, in its discretion, pursue any and all legal remedies available, including but not limited to the following: The Insurance Department may enforce the provisions of this Order in the Commonwealth Court of Pennsylvania or in any other court of law or equity having jurisdiction; or 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.

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.

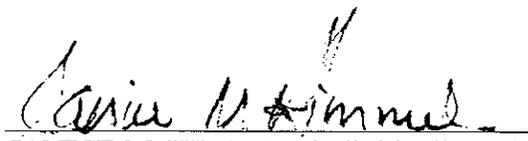
9. In any such enforcement proceeding, Respondents may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

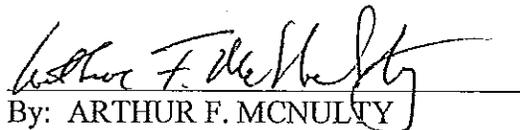
10. Respondents hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

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 the 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 Department or a duly authorized delegee.

BY:

  
\_\_\_\_\_  
JANICE M. KIMMEL, individually and on  
behalf of PROTECTION ADISORS, LLC,  
Respondents

  
\_\_\_\_\_  
By: ARTHUR F. MCNULTY  
Deputy Insurance Commissioner  
Commonwealth of Pennsylvania

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE: The Act of April 9, 1929, P.L. 177, No. 175, known as The  
Administrative Code of 1929

AND NOW, this 10 day of March, 2014, Arthur F. McNulty,  
Deputy Insurance Commissioner, is hereby designated as the Commissioner's duly  
authorized representative for purposes of entering in and executing Consent Orders. This  
delegation of authority shall continue in effect until otherwise terminated by a later Order  
of the Insurance Commissioner.



Michael F. Consedine  
Insurance Commissioner

