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ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
BARRY NORMAN LANDSPERGER 41 Boggs Avenue, Apt. #3 Pittsburgh, PA 15211	: : :	40 P.S. §§ 310.11(2), (4), (6), (7), (9), (17), (20), 1171.5(a)(2), 1171.5(a)(5) and 1171.5(a)(12)
	:	
Respondent.	:	Docket No. CO11-12-009

CONSENT ORDER

AND NOW, this 1st day of March, 2012, 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.

FINDINGS OF FACT

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

(a) Respondent is Barry Norman Landsperger, and maintains his address at 41 Boggs Avenue, Apt. #3, Pittsburgh, PA 15211.

(b) Respondent is, and at all times relevant herein has been, a licensed insurance producer with individual license #531974, which expires on May 31, 2013.

(c) Respondent, between December 23, 2008 and December 8, 2009, produced and remitted to the American Family Life Assurance Company of Columbus, 136 fictitious insurance applications for 42 fictitious policyholders.

(d) Respondent, as a result of the fictitious policies referred to in 3(c) above, collected $38,183.54 in commission.

CONCLUSIONS OF LAW

4. 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.

(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) Respondent's activities described above in paragraphs 3(c) and 3(d) violate 40 P.S. § 310.11(2).

(d) 40 P.S. § 310.11(4) prohibits producers from improperly withholding, misappropriating, or converting money or property received in the course of doing business.

(e) Respondent's activities described above in paragraphs 3(c) and 3(d) constitute improperly withholding, misappropriating, or converting money or property received in the course of doing business, in violation of 40 P.S. § 310.11(4).

(f) 40 P.S. § 310.11(6) prohibits a licensee or an applicant from committing any unfair insurance practice or fraud.

(g) Respondent's activities described above in paragraphs 3(c) and 3(d) violate 40 P.S. § 310.11(6).

(h) 40 P.S. § 310.11(7) prohibits a licensee or an applicant from using fraudulent, coercive or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business.

(i) Respondent's activities described above in paragraphs 3(c) and 3(d) violate 40 P.S. § 310.11(7).

(j) 40 P.S. § 310.11(9) prohibits a licensee or an applicant from forging another person's name on an insurance application or any document related to an insurance or financial service transaction.

(k) Respondent's activities described above in paragraphs 3(c) and 3(d) violate 40 P.S. § 310.11(9).

(l) 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.

(m) Respondent's activities described above in paragraphs 3(c) and 3(d) violate 40 P.S. §310.11(17).

(n) 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.

(o) Respondent's activities described above in paragraphs 3(c) and 3(d) violate 40 P.S. § 310.11(20).

(p) Respondent's violations of Sections 310.11(2), (4), (6), (7), (9), (17) and (20) are punishable by the following, under 40 P.S. § 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.

(q) 40 P.S. § 1171.5(a)(2) prohibits persons 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.

(r) Respondent's activities described above in paragraphs 3(c) and 3(d) violate 40 P.S. §1171.5(a)(2).

(s) 40 P.S. §1171.5(a)(5) prohibits persons from knowingly making, issuing, publishing or circulating any false material statement of fact.

(t) Respondent's activities described above in paragraphs 3(c) and 3(d) violate 40 P.S. §1171.5(a)(5).

(u) 40 P.S. § 1171.5(a)(12) prohibits agents from making false or fraudulent statements or representations on or relative to an application for an insurance policy.

(v) Respondent's activities described above in paragraphs 3(c) and 3(d) violate 40 P.S. § 1171.5(a)(12).

(w) Respondent's violations of 40 P. S. §§ 1171.5(a)(2), 1171.5(a)(5) and 1171.5(a)(12), are punishable by the following, under 40 P.S. Sections 1171.8, 1171.9, and 1171.11:

(i) an 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

5. In accord 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) All licenses of Respondent to do the business of insurance are hereby revoked.

(c) Proof of restitution to the American Family Life Assurance Company of Columbus shall be provided to the Insurance Department by Respondent prior to any future licensing consideration.

(d) If Respondent should ever become licensed in the future, his 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 Respondent 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.

(e) Respondent specifically waives his 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 Respondent's written request.

(f) At the hearing referred to in paragraph 5(e) of this Order, Respondent shall have the burden of demonstrating that he is worthy of an insurance license.

(g) In the event Respondent's licenses are suspended pursuant to paragraph 5(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 license, Respondent's suspended licenses shall be revoked.

6. 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.

7. 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.

8. 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.

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

10. 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.

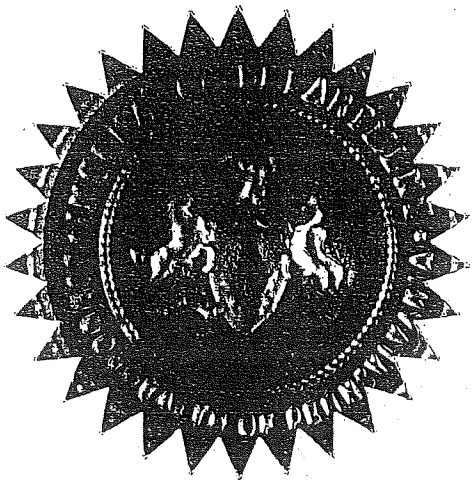
11. This Order shall be final upon execution by the Insurance Department. Only the Insurance Commissioner or a duly authorized delegee is authorized to bind the Insurance Department with respect to the settlement of the alleged violations of law contained herein, and this Consent Order is not effective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

BY: _____
BARRY NORMAN LANDSPERGER,
Respondent

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

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 27th day of April, 2011, Ronald A. Gallagher, 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