

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

2007 MAR 16 AM 11:03  
ADMIN HEARINGS OFFICE

IN RE:	:	VIOLATIONS:
	:	
STEVEN KIEL	:	Sections 605-A(b) and (20)
6 Gwen Circle	:	of Act 147 of 2002 (40 P.S.
Ware, MA 01082, and	:	§§ 310.5 and 310.11)
	:	
KIEL INSURANCE BROKERS, INC.	:	Section 5(a)(2) of the Unfair
1 Woodland Road	:	Insurance Practices Act, Act of
Cherry Valley, MA 01611	:	July 22, 1974, P.L. 589, No. 205
	:	(40 P.S. § 1171.5)
	:	
	:	Title 31, Pennsylvania Code,
	:	Sections 51.21(a), (b), and 51.35(a)
	:	
Respondents.	:	Docket No. CO07-01-010

CONSENT ORDER

AND NOW, this *16th* day of *March*, 2007, 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. 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.

### FINDINGS OF FACT

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

- (a) Respondents are Steven Kiel who maintains his address at 6 Gwen Circle, Ware, Massachusetts 01082, and Kiel Insurance Brokers, Incorporated, which maintains its address at 1 Woodland Road, Cherry Valley, Massachusetts 01611.
- (b) Respondent Kiel, at all relevant times herein, has been a licensed non-resident insurance producer.
- (c) Respondent Kiel is the owner of Kiel Insurance Brokers, Incorporated, which became licensed as a non-resident producer in Pennsylvania effective October 3, 2006.

- (d) From February 26, 2004 through November 1, 2006, Respondents sent 95,300 deceptive and misleading solicitation mailers to Pennsylvania residents for the sale of home mortgage protection insurance.
- (e) In order to settle this matter, Respondent Kiel has agreed to the revocation of his non-resident producer license and the non-resident business license of Respondent Kiel Insurance Brokers, Incorporated.
- (f) Respondent Kiel has been cooperative throughout the course of this investigation.

#### CONCLUSIONS OF LAW

4. 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 605-A(b) of Act 147 of 2002 requires a business entity with an office in this Commonwealth to apply for a resident insurance producer license.

- (c) Respondents' activities described above in paragraph 3(d) violate Section 605-A(b) of Act 147 of 2002.
  
- (d) Section 611-A(20) of Act 147 of 2002 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 (40 P.S. § 310.11).
  
- (e) Respondents' activities described above in paragraph 3(d) violate Section 611-A(20) of Act 147 of 2002.
  
- (f) Respondent's violations of Sections 605-A(b) and 611-A(20) 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.

(g) Section 5(a)(2) of the Unfair Insurance Practices Act 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 (40 P.S. § 1171.5).

(h) Respondents' activities described above in paragraph 3(d) constitute 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 and violate Section 5(a)(2) of the Unfair Insurance Practices Act.

(i) Respondents' violations of Section 5(a)(2) 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).

- (j) Title 31, Pennsylvania Code, Section 51.21(a) requires the format and content of an advertisement to be sufficiently complete and clear to avoid deception, or the tendency to mislead or deceive.
- (k) Title 31, Pennsylvania Code, Section 51.21(b) requires advertisements to be truthful and not misleading in fact or implication.
- (l) Title 31, Pennsylvania Code, Section 51.35(a) requires the name of the actual insuring company to be clearly identified in all of its advertisements.
- (m) Respondents' activities described above in paragraph 3(d) violate Title 31, Pennsylvania Code, Sections 51.21(a), (b), and 51.35(a).

ORDER

5. 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 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 are accurate and a statute or regulation has been violated. The Department's right to act under (ii) above is limited to a period of five (5) years from the date of issuance of such certificates and licenses.
- (d) Respondents specifically waive their rights 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.
- (e) At the hearing referred to in paragraph 5(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 5(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, Respondents' suspended certificates and licenses shall be revoked.

6. 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.

7. 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.

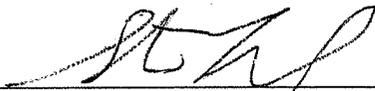
8. In any such enforcement proceeding, Respondents may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

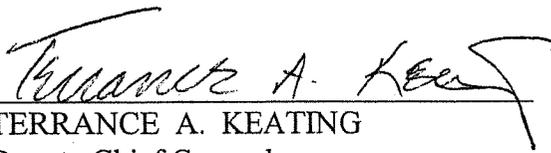
9. Respondents hereby expressly waive any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

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 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:

  
\_\_\_\_\_  
STEVEN KIEL, Owner of KIEL  
INSURANCE BROKERS, INC.,  
Respondents

  
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TERRANCE A. KEATING  
Deputy Chief Counsel  
Commonwealth of Pennsylvania