

RECEIVED
INSURANCE DEPARTMENT
BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA
2008 DEC -3 PH 12: 22
ADMIN HEARINGS OFFICE

IN RE: : VIOLATIONS:
: :
DANIEL MACDONALD : 40 Purdons Statutes, Sections
1261 Sumneytown Pike : 310.11(11) and (20)
Lansdale, PA 19446 : :
: Title 31, Pennsylvania Code,
: Section 67a.2(c)
: :
: Pennsylvania Assigned Risk
: Plan, Sections 17.A.8.C.,
: 17.A.9.A, and 17.A.64
: :
Respondent. : Docket No. CO07-06-028

CONSENT ORDER

AND NOW, this *3rd* day of *December*, 2008, 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

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 Daniel MacDonald, and maintains his address at 1261 Sumneytown Pike, Lansdale, Pennsylvania 19446.
- (b) At all relevant times herein, Respondent has been an active resident producer individual license number 351325 that expires on August 30, 2010.
- (c) Between December 11, 2007 and March 11, 2008, on ten occasions, Respondent failed to submit applications, and/or failed to retract them in accordance with the Pennsylvania Assigned Risk Plan's (hereinafter, the Plan) Electronic Mail Binding Procedure (EASi), and Respondent subsequently submitted unmatched bindings to the Plan.
- (d) Between February 6, 2008 and March 11, 2008, on three occasions, Respondent submitted improper forms of payments that were not in accordance with the Plan's Rules, which require a bank or postal money

order, cashier's check, certified check, or an applicant's personal check made payable to the Plan. Cash is not an acceptable form of payment.

- (e) Of the above three occasions wherein improper forms of payment were accepted, the Plan alleged that two of those applicants, Sheri McConnell and William O'Reilly, provided cash to Respondent as deposit premium and are now alleging losses for which they are seeking coverage from the Plan.
- (f) Between December 11, 2007 and March 11, 2008, Respondent permitted two unlicensed individuals, Amber Munchback and Gabriel MacDonald, to act as producers for Plan business.
- (g) On September 5, 2008, Respondent authorized Amber Munchback, an unlicensed individual and not certified by the Plan, to conduct insurance business on behalf of Respondent.
- (h) On September 5, 2008, Respondent authorized his son, Gabriel MacDonald, an unlicensed individual and not certified by the Plan, to conduct insurance business on behalf of Respondent.

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 Purdons Statutes, Section 310.11(11) prohibits a licensee from knowingly accepting insurance business which was sold, solicited or negotiated by a person who is not licensed as an insurance producer.
- (c) Respondent's activities described above in paragraphs 3(f) through 3(h) violate 40 Purdons Statutes, Section 310.11(11).
- (d) 40 Purdons Statutes, Section 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.
- (e) Respondent's activities described above in paragraphs 3(c) through 3(h) violate 40 Purdons Statutes, Section 310.11(20) .

(f) Respondent's violations of Sections 310.11(11) and (20) are punishable by the following, under 40 Purdon's Statutes, Section 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 every violation of the Act;
- (iii) an order to cease and desist; and
- (iv) any other conditions as the Commissioner deems appropriate.

(g) Title 31, Pennsylvania Code, Section 67a.2.(c) requires that upon completion of the original application, premium money from the applicant to the producer of record shall be in the form of a money order, cashier's check, certified check, personal check or other method approved by the Insurance Commissioner, made payable to the "Pennsylvania Assigned Risk Plan." The producer of record may not accept cash.

(h) Respondent's activities described above in paragraphs 3(d) and 3(e) violate Title 31, Pennsylvania Code, Section 67a.2.(c).

(i) Pennsylvania Assigned Risk Plan Rules, Section 8.C., Deposit, Installment, or Additional Premium Payments, How to Apply to the Plan, prohibits the Plan from allowing premium monies from the applicant to be paid to the producer in

in the form of cash. Premium monies to the producer of record shall be in the form of a bank or postal money order, cashier's check, certified check, or an applicant's personal check made payable to the Plan.

- (j) Respondent's activities described above in paragraphs 3(d) and 3(e) violate Pennsylvania Assigned Risk Plan Rules, Section 8.C.

- (k) Pennsylvania Assigned Risk Plan Rules, Section 9.A., Application for Assignment, Designation of Company, Evidence of Insurance, and Effective Date of Coverage, Electronic Mailing Procedure (EASi), requires applications to be submitted to the Plan no later than one working day following the date of completion of the application.

- (l) Respondent's activities described above in paragraph 3(c) violate Pennsylvania Assigned Risk Plan Rules, Section 9.A.

- (m) Pennsylvania Assigned Risk Plan Rules, Section 64, Performance Standards for Producers Writing Pennsylvania Assigned Risk Plan Assignments, How to Apply to the Plan, Producer Certification Program, states the Pennsylvania Insurance Department prohibits any person, firm or corporation from acting as a producer or submitting applications to the Plan, unless such person is

certified by the Plan in accordance with Administrative Provisions, Section 64.

- (n) Respondent's activities described above in paragraphs 3(f) through 3(h) violate Pennsylvania Assigned Risk Plan Rules, Section 64.

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 insurance business are hereby revoked for a period of one (1) year from the date of this Consent Order.
- (c) If Respondent should ever become licensed in the future, his 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 Respondent 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 five (5) years from the date of issuance of such certificates and licenses.

(d) 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.

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

(f) In the event Respondent's certificates and licenses are suspended pursuant to paragraph 5(c) 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.

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,

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: *Daniel Macdonald*
DANIEL MACDONALD, Respondent

Ronald A. Gallagher, Jr.
COMMONWEALTH OF PENNSYLVANIA
By: Ronald A. Gallagher, Jr.
Deputy Insurance Commissioner