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INSURANCE DEPARTMENT
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ADMINISTRATIVE LAW OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
KURT E. MCMANUS 172 Lydia Lane West Chester, Pennsylvania 19382	: : :	40 P.S. §§ 310.11(5), (6), (7), (8) (17), (20) and 310.78(a) and 1171.5 (a)(2) and (a)(12)
	: : :	
Respondent.	:	Docket No. CO10-01-010

CONSENT ORDER

AND NOW, this 1st day of March, 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.

FINDINGS OF FACT

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

(a) Respondent is Kurt E. McManus, and maintains his address at 172 Lydia Lane, West Chester, Pennsylvania 19382.

(b) Respondent is and during all times relevant herein was a licensed insurance producer, license # 408473, which expires on July 20, 2010.

(c) Respondent, while appointed with Mid-Atlantic Insurance Company, used the good credit score of one consumer in place of the bad credit score of a second consumer in order to get a better rate quote for the second consumer and to make a sale.

(d) On December 1, 2009, the Maryland Insurance Department issued Consent Order No.MIA-2009-12-002, revoking Respondent's Maryland non-resident producer individual license as a result of similar actions as that described in (c) above.

(e) Respondent failed to notify the Department of the action described in 3(d) above.

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(5) prohibits a licensee or an applicant from intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

(c) Respondent's activities described above in paragraph 3(c) violate 40 P.S. § 310.11(5).

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

(e) Respondent's activities described above in paragraph 3(c) violate 40 P.S. § 310.11(6).

(f) 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.

(g) Respondent's activities described above in paragraph 3(c) violates 40 P.S. § 310.11(7).

(h) 40 P.S. § 310.11(8) prohibits a licensee or an applicant from having a producer license or other financial services license denied, suspended or revoked by a governmental entity.

(i) Respondent's activities described above in paragraph 3(d) violate 40 P.S. § 310.11(8).

(j) 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.

(k) Respondent's activities described above in paragraph 3(c) violate 40 P.S. § 310.11(17).

(l) 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.

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

(n) 40 P.S. § 310.78(a) requires a licensee to report any administrative action taken in another jurisdiction or by another governmental agency within 30 days of the final disposition, to include a copy of the order, consent order or other relevant legal documents.

(o) Respondent's activities described above in paragraph 3(e) violate 40 P.S. § 310.78(a).

(p) Respondent's violations of Sections 310.11 (5), (6), (7), (8), (17), (20) and 310.78(a) are punishable by the following, under 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 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 paragraph 3(c) 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 40 P.S. § 1171.5(a)(2).

(s) 40 P.S. § 5(a)(12) prohibits agents from making false or fraudulent statements or representations on or relative to an application for an insurance policy.

(t) Respondent's activities described above in paragraphs 3(c) and 3(d) constitute making false or fraudulent statements or representations on or relative to an application for an insurance policy and violate 40 P.S. § 5(a)(12).

(u) Respondent's violations of 40 Purdons Statutes, Sections 1171.5 (a)(2) and (a)(12) are punishable by the following, under 40 Purdons Statutes, Sections 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).

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/certificates of Respondent to do the business of insurance are hereby revoked.

(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 this section 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 5(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, 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: 2/22/10
KURT E. MCMANUS, Respondent

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