BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

2009 DEC 15 PM 2:22
ADMINISTRATIVE LAW OFFICE

IN RE:	:	VIOLATIONS:
	:	
PATRICIA LYNN MCNEAR 1703 17th Street Beaver Falls, Pennsylvania 15010	: : : :	40 P.S. §§ 310.11(4), (5), (7) (17) and (20)
Respondent.	:	Docket No. CO09-11-002

CONSENT ORDER

AND NOW, this 15th day of December, 2009, 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 she has received proper notice of her 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 Patricia Lynn McNear, and maintains her address at 1703 17th Street, Beaver Falls, Pennsylvania 15010

(b) Respondent is, and at all times relevant hereto has been a licensed insurance producer.

(c) Respondent accepted two cash payments from Hayes Dean; (1) $500 on June 1, 2007 and (2) $368 on August 26, 2008, both intended to buy Workman's Compensation Insurance for his business, Dean's Tree Pruning.

(d) Respondent issued signed receipts and Certificates of Liability Insurance for each transaction.

(e) Respondent did not deposit the funds in the business checking account, complete the required application forms, or properly secure the insurance for Dean.

(f) Respondent admitted to accepting the funds, issuing the receipts, issuing the Certificates of Liability Insurance, but she did not satisfactorily explain why the coverage applied for never went into effect.

(g) Hayes Dean has been made whole.

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(4) prohibits producers from improperly withholding, misappropriating, or converting money or property received in the course of doing business.

(c) Respondent's activities described above in paragraphs 3(c) through 3(e) 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).

(d) 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.

(e) Respondent's activities described above in paragraphs 3(c) through 3(f) violates 40 P.S. § 310.11(7).

(f) 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.

(g) Respondent's activities described above in paragraphs 3(c) through 3(e) violate 40 P.S. § 310.11(17).

(h) 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.

(i) Respondent's activities described above in paragraphs 3(c) through 3(f) violate 40 P.S. § 310.11(20).

(j) Respondent's violations of Sections 310.11 (4), (5), (7), (17) and (20) 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.

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) Respondent shall pay a civil penalty of Two Thousand Five Hundred Dollars ($ 2,500.00) to the Commonwealth of Pennsylvania. Payment of this penalty shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania. Payment should be directed to April Phelps, Bureau Secretary, Bureau of Licensing and Enforcement,

1227 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment may be enclosed with the Consent Order, but must be paid in any event no later than thirty (30) days after the date of the Consent Order.

(c) Respondent's 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 this Order.

(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 a 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 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: Patricia Lynn McNear
PATRICIA LYNN MCNEAR, Respondent

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