

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

RECEIVED
INSURANCE DEPARTMENT
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ADMIN HEARINGS OFFICE

IN RE:

LORENA MIERAU
2136 East Cumberland Street
Philadelphia, Pennsylvania 19125

VIOLATIONS:

Section 611-A(7), (20) and 647-A
of Act 147 of 2002 (40 P.S. §§
310.7, 310.20 and 310.47)

Section 5(a)(12) of the Unfair
Insurance Practices Act 147 of
2002 (40 P.S. § 1171.5)

Title 31, Pennsylvania Code,
Section 81.4

Respondent.

Docket No. CO08-07-001

CONSENT ORDER

AND NOW, this *3rd* day of *September*, 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 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 Lorena Mierau, and maintains her address at 2136 East Cumberland Street, Philadelphia, Pennsylvania 19125.
- (b) At all relevant times herein, Respondent has held an Individual Resident Producer License #333871 to conduct the business of insurance in Pennsylvania, which expired on April 21, 2008.
- (c) Between July 27, 2004 and April 3, 2007, Respondent was employed by Allianz Life Insurance Company of North America.
- (d) Between August 31, 2004 and May 30, 2006, Respondent sold five separate annuity contracts to insureds in Pennsylvania, but indicated on the annuity contract applications that the products were sold in the state of Delaware.

- (e) Respondent knowingly misrepresented the terms of the policy on three annuity contracts by indicating that a 'Replacement' for annuity contracts did not occur, when, in fact, 'Replacement' had occurred.
- (f) Respondent knew that the annuity products sold were not authorized to be offered or sold in Pennsylvania.

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) Section 611-A(7) of Act 147 of 2002 (40 P.S. § 310.11) prohibits a licensee from using fraudulent, coercive or dishonest practice or demonstrate incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business.
- (c) Respondent's activities described above in paragraphs 3(c) through 3(f) violate Section 611-A(7) of Act 147 of 2002.

- (d) Section 611-A(20) of Act 147 of 2002 (40 P.S. § 310.11) 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(f) violate Section 611-A(20) of Act 147 of 2002.
- (f) Section 647-A of Act 147 of 2002 (40 P.S. § 310.47) prohibits producers from misrepresenting the terms of policies and future dividends.
- (g) Respondent's activities described above in paragraphs 3(c) through 3(f) constitute misrepresenting the terms of policies and future dividends and violate Section 647-A of Act 147 of 2002 (40 P.S. § 310.47).
- (h) Respondent's violations of Section 611-A(7), (20) and 647-A 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.
- (i) Respondent's violations of Section 5(a)(12) of the Unfair Insurance Practices Act 147 of 2002 (40 P.S. § 1171.5) making false or fraudulent statements or representations on or relative to an application for an insurance policy.
- (j) Respondent's activities described above in paragraphs 3(d) through 3(f) constitute making false or fraudulent statements or representations on or relative to an application for an insurance policy and violate Section 5(a)(12) of the Unfair Insurance Practices Act.
- (k) Respondent's violations of Section 5(a)(12) 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).

(1) Title 31, Pennsylvania Code, Section 81.4 requires an agent to submit to the insurer as part of the application, a statement signed by the applicant whether replacement was involved, and a statement signed by the agent whether replacement was involved. The agent shall present to the applicant, at the time

of taking the application, a Notice Regarding Replacement of Life Insurance and Annuities, signed by both parties and a copy must be left with the applicant.

- (m) Respondent's activities described above in paragraph 3(e) constitute the failure to submit a statement to the insurer, signed by the applicant whether replacement was involved, and a statement signed by the agent whether replacement was involved, and the failure to execute a Notice Regarding Replacement of Life Insurance and Annuities, in violation of Title 31, Pennsylvania Code, Section 81.4.

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'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.

- (c) Respondent shall pay a civil penalty of Eight Thousand Dollars (\$ 8000.00) 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 Ginny Baker, Administrative Assistant, Bureau of 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.

- (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.

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

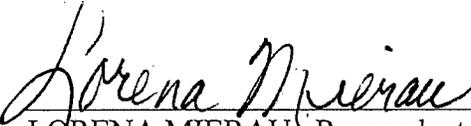
7. Alternatively, in the event the Insurance Department finds that there has been a breach of any of the provisions of this Order, the Department may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate action pursuant to the Administrative Agency Law, supra, 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: 
LORENA MIERAU, Respondent


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