

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

RECEIVED
INSURANCE DEPARTMENT
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ADMIN HEARINGS OFFICE

In Re:

RICHARD T. NIGHTLINGER
4533 Remo Crescent Drive
Bensalem, Pennsylvania 19020

Respondent.

Violations:

Sections 611-A(6), (7), (17)
and (20) of Act 147 of 2002
(40 P.S. §§310.11)

Docket No. CO06-04-016

CONSENT ORDER

AND NOW, this *27th* day of *April*, 2006, 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. 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.

3. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law contained herein.

FINDINGS OF FACT

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

- (a) Richard T. Nightlinger ("Respondent") is a Pennsylvania licensed producer, individual producer license number 341957, expiration date of March 16, 2007.
- (b) Respondent misrepresented the terms and conditions of the Allianz Life, Powerhouse Index Annuity by indicating that Allianz Life policies offered a guaranteed interest rate of 8% when they only guaranteed an interest rate of 3%.
- (c) On at least two occasions, Respondent added the following bogus information to the Contract Summary pages of policies after they were issued by Allianz Life: "five-year guaranteed interest 8% no penalty or tax while a dependent attends a post-secondary institution full-time."

- (d) Respondent also misrepresented that Allianz Life provided a bonus of 5% for amounts under \$50,000 and a 10% bonus for amounts over \$50,000.
- (e) Also, based on the above misrepresentations, Respondent solicited and sold at least two annuities to Pennsylvania consumers.
- (f) Over approximately twelve months, two Pennsylvania consumers requested account statements from Respondent relating to their annuities. Respondent would not provide the insureds with the statements and misrepresented the status of the Allianz Life's issuance of the statements.
- (g) Allianz Life made the insureds whole, and Respondent is making restitution to Allianz Life.
- (h) The Department received information that Respondent committed said misrepresentations on numerous occasions relating to the sale of Allianz Life annuities.
- (i) Respondent surrendered his license effective March 24, 2006.

CONCLUSIONS OF LAW

5. 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) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.

- (b) Respondent's activities, above, constitute violations of Pennsylvania Insurance laws, specifically:
 - (i) Admitting to or having been found to have committed an unfair insurance practice or fraud. 40 P.S. §310.11(6).

 - (iii) Using fraudulent, coercive or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business in this Commonwealth or elsewhere. 40 P.S. §310-11(7).

 - (iv) Committing fraud, forgery, or dishonest acts or an act involving a breach of fiduciary duty. 40 P.S. §310.11(17).

 - (v) 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(20).

- (c) Respondent's violations subject him to the following penalties under 40 P.S. §310.91:

- (1) Denial, suspension, refusal to renew or revocation of Respondent's license.
- (2) A civil penalty of up to \$5,000 per violation.
- (3) A cease and desist order.
- (4) Any other conditions as the Commissioner deems appropriate.

ORDER

6. In accord with the above Findings of Fact and Conclusions of Law, the Deputy Insurance Commissioner 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 licenses/certificates to conduct the business of insurance within the Commonwealth of Pennsylvania are surrendered effective March 24, 2006.
- (c) Should Respondent ever become licensed in the future, Respondent's license(s) may be immediately suspended by the Department following its investigation and determination that (a) a penalty payment has not been made, and/or (b) any other terms of this Order have not been complied with, and/or (c) any complaint against Respondent is accurate

and a statute or regulation has been violated. The Department's right to act under (c) above 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 6(d) of this Order, Respondent shall have the burden of demonstrating that he is worthy of an insurance license.

(f) In the event Respondent's license(s) are suspended pursuant to paragraph 6(c) above, and the 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 license(s) shall be revoked.

7. 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, he may, in his discretion, pursue any and all legal remedies available to him, including but not limited to the following: The Deputy Insurance Commissioner may enforce the provisions of this Order in the Commonwealth Court of Pennsylvania or in any other court of law or equity having jurisdiction; or the Deputy Insurance Commissioner may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

8. 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 provisions of law.

9. 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.

10. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

11. 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 parties hereto.

12. This Order shall be final upon execution by the Deputy Insurance Commissioner. Only the Insurance Commissioner or her 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 her duly authorized Deputy Insurance Commissioner. The penalties, if any, imposed by this Order are not effective until execution by the Insurance Commissioner or her duly authorized Deputy Insurance Commissioner.

BY:


RICHARD T. NIGHTLINGER, Respondent


RANDOLPH L. KOHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania