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INSURANCE DEPARTMENT
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BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
TROY D. POCKY	:	Section 11(f)(1) of the Motor
504 Underwood Avenue	:	Vehicle Physical Damage
P.O. Box 429	:	Appraisers Act (63 P.S. § 861)
Roscoe, PA 15477	:	
	:	31 Pa. Code, Section 62.4(a)(3)
	:	
Respondent.	:	Docket No. CO05-10-017

CONSENT ORDER

AND NOW, this *18th* day of *November*, 2005, 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.

FINDINGS OF FACT

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

- (a) Respondent is Troy D. Pocky, and maintains his address at 504 Underwood Avenue, Post Office Box 429, Roscoe, Pennsylvania 15477.
- (b) At all times herein, Respondent has been a licensed motor vehicle physical damage appraiser.
- (c) On August 10, 2001, the Department granted Respondent a Federal Title 18 U.S.C. § 1033 waiver to engage in the business of insurance , under Docket No. CW01-07-013.

- (d) In June, 2004, Respondent was arrested and convicted for a misdemeanor assault charge, was granted access to the Washington County A.R.D. program, and Respondent successfully completed the program.
- (e) In May, 2005, Respondent provided an incorrect answer on a Department license renewal application, which indicated he did not have a criminal history.
- (f) Respondent admitted to the above facts and has agreed to settle this matter via a Consent Order.

CONCLUSIONS OF LAW

4. 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) Section 11(f)(1) of the Motor Vehicle Physical Damage Appraisers Act (63 P.S. § 861) requires an appraiser to conduct himself in such a manner as to inspire public confidence by fair and honorable dealings.

- (c) Respondent's activities described above in paragraphs 3(d) and (e) are in violation of Section 11(f)(1) of the Motor Vehicle Physical Damage Appraisers Act (63 P.S. § 861).

- (d) Respondent's violations of Sections 11(b) and 11(c) of the Motor Vehicle Physical Damage Appraisers Act are punishable by the following, under Section 6 of the Motor Vehicle Physical Damage Appraisers Act (63 P.S. § 856):
 - (i) The commissioner may suspend or revoke any appraiser's license for any of the following causes:
 - (1) If the licensee willfully violates, fails to comply with, or knowingly participates in the violation of or failure to comply with any provision of this act or regulation promulgated thereunder.
 - (2) If the licensee has materially misrepresented the terms of any insurance contract or has engaged in any fraudulent transaction.
 - (3) If the licensee has shown himself to be incompetent or untrustworthy.

- (e) 31 Pennsylvania Code, Section 62.4(a)(3) states the Commissioner may deny issuance of, suspend, revoke or refuse to renew any appraiser's license if the licensee has obtained or attempted to obtain any such license through willful misrepresentation or fraud.
- (f) Respondent's activities described above in paragraphs 3(d) and (e) are in violation of 31 Pennsylvania Code, Section 62.4(a)(3).

ORDER

5. 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 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. This period of supervision is to run concurrently with Respondent's supervision under Docket No. CW01-07-013.

- (c) 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.
- (d) At the hearing referred to in paragraph 5(c) 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 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, 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 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 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 Deputy Insurance Commissioner. Only the Insurance Commissioner or the 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 the duly authorized Deputy Insurance Commissioner.

BY:



TROY D. POCKY, Respondent



RANDOLPH L. ROHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania