

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

2007 SEP 25 AM 10:51  
ADMIN HEARINGS OFFICE

IN RE:	:	VIOLATIONS:
	:	
GARY M. SMITH	:	Sections 611-A(1), (2), (3), (8) and
2142 Bellewood Drive	:	(20), and 678-A(a) of Act 147 of
Merrick, NY 11566	:	2002 (40 P.S. §§ 310.11 and 310.78)
	:	
SCS AGENCY, INC.	:	
11 Grace Avenue, Box 493	:	
Great Neck, NY 11022	:	
	:	
Respondents.	:	Docket No. CO07-07-031

CONSENT ORDER

AND NOW, this *25<sup>th</sup>* day of *September*, 2007, 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. Respondents hereby admit and acknowledge that they have received proper notice of their rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S. § 101, et seq., or other applicable law.

2. Respondents hereby waive all rights to a formal administrative hearing in this matter, and agree 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 Gary M. Smith, and maintains his address at 2142 Bellewood Drive, Merrick, New York 11566.
- (b) Respondent is, and during all times relevant herein was, a licensed non-resident insurance producer with a Certificate Of Qualification No. 306979, that expires on November 27, 2007.
- (c) Since November 27, 2003, Respondent has been the Designated Licensee-Producer of Respondent SCS Agency, Incorporated, located at 11 Grace Avenue, Box 493, Great Neck, New York 11022.
- (d) Respondent SCS, at all times relevant herein, a licensed non-resident insurance agency with a Certificate Of Qualification No. 52828, that expires on June 17, 2009.

- (e) On July 27, 2004, Respondents entered into Consent Order No. E04-75, with the New Jersey Insurance Department, (hereinafter, New Jersey), stipulating that between April 30, 2000 and June 8, 2000, Respondents transacted the business of insurance after their license expired on April 30, 2000.
- (f) On July 27, 2004, the above New Jersey Consent Order further stipulated that Respondent SCS failed to maintain with the New Jersey Insurance Commissioner, the name of its current active officer and employee.
- (g) Respondents failed to report the above New Jersey action to the Department within thirty (30) days, as required.
- (h) On May 5, 2005, Respondent Smith submitted Respondent SCS's Non-Resident Producer Agency Renewal Application to the Department, wherein he failed to report the New Jersey action.
- (i) On November 10, 2005, Respondent Smith submitted his Non-Resident Producer Individual Renewal Application to the Department, wherein he failed to report the New Jersey action.
- (j) On January 9, 2006, Respondents submitted to the New Hampshire Insurance Department, (hereinafter, New Hampshire), their Non-Resident Producer

Renewal Applications, wherein they failed to report that above New Jersey action.

(k) On February 1, 2006, New Hampshire denied Respondents' Renewal Application due to Respondents' failure to report the above New Jersey action.

(l) Respondents failed to report the New Hampshire license denial to the Department with thirty (30) days.

(m) On October 2, 2006, Respondent Smith entered into Stipulation No. 2006-0212-S, with the New York Insurance Department (hereinafter, New York), for failing to report the above New Jersey action on his New York Resident Producer Renewal Application.

(n) Respondent Smith failed to notify the Department of the New York action within thirty (30) days.

#### 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) Respondents are subject to the jurisdiction of the Pennsylvania Insurance Department.
- (b) Section 611-A(1) of Act 147 of 2002 prohibits a licensee from providing incorrect, misleading, incomplete or false information to the Department in a license application (40 P.S. § 310.11(1)).
- (c) Section 611-A(2) of Act 147 of 2002 prohibits a licensee from violating the insurance laws or regulations of this Commonwealth or order of the commissioner of another state (40 P.S. § 310.11(2)).
- (d) Section 611-A(3) of Act 147 of 2002 prohibits a licensee from obtaining or attempting to obtain a license through misrepresentation or fraud (40 P.S. § 310.11(3)).
- (e) Section 611-A(8) of Act 147 of 2002 prohibits a licensee from having a producer license denied, suspended or revoked by a governmental entity (40 P.S. § 310.11(8)).
- (f) Section 611-A(20) of Act 147 of 2002 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 (40 P.S. § 310.11).

- (g) Respondents' activities described above in paragraphs 3(c) through 3(n) violate Sections 611-A(1), (2), (3), (8) and (20) of Act 147 of 2002.
- (h) Section 678-A(a) of Act 147 of 2002 (40 P.S. § 310.78) 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.
- (i) Respondents' activities described above in paragraphs 3(c) through 3(n) violates Section 678-A(a) of Act 147 of 2002.
- (j) Respondents' violations of Sections 611-A and 678-A(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.

ORDER

5. In accord with the above Findings of Fact and Conclusions of Law, the Insurance Department orders and Respondents consent to the following:

- (a) Respondents shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.
  
- (b) Respondents shall pay a civil penalty of Three Thousand Dollars (\$3,000.00) 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 Sharon L. Fraser, Office Manager, 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.
  
- (c) Respondents' certificates and licenses may be immediately suspended by the Department following its investigation and determination that (i) penalty payment has not been made, (ii) any terms of this Order have not been complied with, or (iii) any complaint against Respondents are 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) Respondents specifically waives the 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 Respondents 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 Respondents' written request.

(e) At the hearing referred to in paragraph 5(d) of this Order, Respondents shall have the burden of demonstrating that they are worthy of a license.

(f) In the event Respondents' certificates and licenses are suspended pursuant to paragraph 5(c) above, and Respondents either fail to request a hearing within thirty (30) days or at the hearing fail to demonstrate that they are worthy of a license, Respondents' 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, Respondents 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.

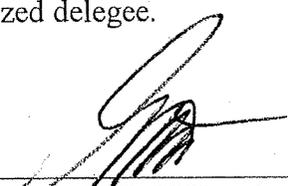
9. Respondents hereby expressly waive any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

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:

  
\_\_\_\_\_  
GARY M. SMITH, individually and on  
behalf of SCS AGENCY, INC., Respondents

  
\_\_\_\_\_  
COMMONWEALTH OF PENNSYLVANIA  
By: Randolph L. Rohrbaugh  
Deputy Insurance Commissioner