

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

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INSURANCE DEPARTMENT
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ADMIN HEARINGS OFFICE

IN RE: : VIOLATIONS:
: :
RICHARD A. SHADE : Sections 611-A(20), 647-A and
8530 Oliver Road : 696-A of Act 147 of 2002
Erie, PA 16509 : (40 P.S. §§ 310.11, 310.47 and
: 310-96)
: :
Respondent. : Docket No. CO07-10-024

CONSENT ORDER

AND NOW, this 26th day of November, 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. 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 or 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) Respondent is Richard A. Shade and maintains his address at 8530 Oliver Road, Erie, Pennsylvania 16509.

(b) Respondent is currently licensed with the Commonwealth of Pennsylvania as a resident producer.

(c) The Department received information that between December of 2006 and March of 2007, three of Respondent's clients had policies cancelled because of Respondent's failure to timely remit premiums to the affected insurers.

(d) Respondent had previously entered into a Consent Order in March of 2004 for failing to timely remit premiums. That Order required Respondent to cease and desist said violations and it imposed a five year period of supervision.

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) 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).
- (c) Respondent's activities described above in paragraphs 3(c) and 3(d) violate Section 611-A(20) of Act 147 of 2002.

(d) Section 696-A of Act 147 of 2002 requires every insurance producer to be responsible in a fiduciary capacity for all funds received or collected as an insurance agent or broker. 40 P.S. §310.96).

(e) Respondent's activities described above in paragraphs 3(c) and 3(d) constitutes a failure to act in a responsible fiduciary capacity when handling funds received or collected as a producer and violate Section 696-A of Act 147 of 2002 (40 P.S. §310.96).

(f) Respondent's violations of Sections 611-A(20), 647-A and 696-A of Act 147 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

(6) 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 licenses are hereby revoked.
- (c) Should Respondent ever become relicensed, Respondent's certificates and licenses may be immediately suspended by the Department following its investigation and determination that
 - (i) any of the 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 any such relicensure.
- (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 certificates and licenses 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 certificates and licenses 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, 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.

8. Alternatively, in the event the Deputy Commissioner 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 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.