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INSURANCE DEPARTMENT

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ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE: : Pursuant to the Act of June 17, 1998,  
Appeal of: : P.L. 464, No. 68 § 1  
**Toncey and Ronald Vance** : (40 P.S. §§ 991.2001-991.2013)  
127 Ensminger Road :  
Mainesburg, PA 16932 :  
:  
File No: 13-188-155815 :  
:  
ATLANTIC STATES INSURANCE :  
COMPANY :  
Policy No. PAG302024808 : Docket No. P14-01-012

**ADJUDICATION AND ORDER**

Before the Commissioner is an appeal by Toncey and Ronald Vance from a determination issued by the Insurance Department of the Commonwealth of Pennsylvania on January 6, 2014 which held that Atlantic States Insurance Company's nonrenewal of automobile insurance policy No. PAG 3020248 08, did not violate the Act of June 17, 1998, P.L. 464, No. 68, § 1 (40 P.S. §§ 991.2001-991.2013) ("Act 68"). The insureds appealed this decision.

Upon receipt of the request for hearing, a Presiding Officer was appointed and a hearing was scheduled for March 5, 2014. Notice of the hearing was served by certified mail on both parties, as evidenced by the return receipts contained in the docket file. Thereafter, at the request of the insureds, the hearing was rescheduled to May 19, 2014 at 1:00 p.m. The notice was sent by first class mail to the insureds at the same address where they accepted service of the initial hearing order. The order was also served by first class mail addressed to  
DATE MAILED: June 2, 2014

counsel for the insurer. Neither notice was returned as undeliverable to the Administrative Hearings Office and it is presumed that both parties received notice of the hearing. Although the start of the hearing was delayed by at least 15 minutes, Atlantic States Insurance Company failed to have a representative appear for the scheduled hearing and failed to communicate with the hearings office concerning its nonappearance. The insureds also failed to appear for hearing. They did not communicate with the hearings office concerning their nonappearance.

In an Act 68 proceeding, the insurance company has the initial burden of establishing that the termination of the policy did not violate the Act. *McDonnell v. Ins. Dep't.*, 503 A.2d 1042 (Pa. Cmwlth. 1986). This burden includes establishing both procedural and substantive compliance with the statute. *McKenzie/Valley Forge Ins. Co.*, PI92-08-01 (1994); *Good/Allstate*, P02-11-006 (2003); *Heinbach/USAA*, PH02-07-021 (2003). When a company fails to appear for the hearing, it cannot meet its burden and the insured does not need to present any evidence. *Moshons/Hartford*, PH03-02-007 (2003). Additionally, the company will be found in violation of Act 68. [*Id.*].

A finding that a cancellation violates Act 68 also authorizes the Commissioner to reimburse an insured for the cost incurred in obtaining replacement coverage. 40 P.S. § 991.2009(i) (1) and (3). Reimbursement is limited to the cost which “exceeds the cost which would have been incurred had the policy under review remained in effect” and “on the difference of the cost of the policies to the extent that the coverage and limits of the replacement coverage does not exceed the original coverage.” 40 P.S. § 991.2009(i)(3). The Commissioner may also order reinstatement of the terminated policy. However, the insureds in this case did not appear for the hearing to present any testimony on this issue. Thus reimbursement will not be ordered.

However, an insurer which does not appear at the hearing and is found in violation of Act 68 may be subject to a fine. 40 P.S. § 991.2013; 40 P.S. § 991.2013; *Smeltzer/Progressive*, P10-07-019 (2010) (\$1,000 fine imposed); *Cannon/Trumbull*, P12-06-005 (2012) (\$1,000 fine imposed); *Hunt/Progressive Specialty*, P12-07-001 (2012) (\$2,000 fine imposed).

The Commissioner finds that Atlantic States Insurance Company has failed to meet its burden in proving that its termination of the subject policy was not in violation of Act 68, and finds that the imposition of a civil penalty is warranted.

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**ORDER**

**AND NOW**, this 2<sup>nd</sup> day of June 2014, considering the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The January 6, 2014 determination issued by the Insurance Department of the Commonwealth of Pennsylvania which held that Atlantic States Insurance Company's nonrenewal of Toncey and Ronald Vance's automobile insurance policy No. PAG 3020248 08 did not violate the Act of June 17, 1998, P.L. 464. No. 68, § 1 *et seq.* (40 P.S. §§ 991.2001.991.2013) ("Act 68") is **VACATED**.

2. Atlantic States Insurance Company's nonrenewal of automobile insurance policy No. PAG 3020248 08 **VIOLATED** the Act of June 17, 1998, P.L. 464, No. 68 § 1 (40 P.S. §§ 991.2001-991.2013).

3. Atlantic States Insurance Company shall cease and desist from terminating Toncey and Ronald Vance's automobile insurance policy No. PAG 3020248 08 on the basis of the December 12, 2013 Notice of Nonrenewal.

4. Within 30 days of the date of this order, Atlantic States Insurance Company shall offer to Toncey and Ronald Vance an automobile insurance policy with types and limits of coverage at least equal to those of the nonrenewed policy No. PAG 3020248 08. The offer shall include coverage without lapse from the effective date of policy termination to the date on which the insureds purchased their replacement policy.

5. Within 30 days of receipt of an offer of reinstatement, Toncey and Ronald Vance must notify Atlantic States Insurance Company in writing of their election to accept or reject said offer from Atlantic States Insurance Company. In the absence of a response the offer shall be deemed rejected.

6. Within 30 days of receipt of this order, Atlantic States Insurance Company must give notice of the rescission of its nonrenewal to all public and private agencies which it is aware that have record of its notice of nonrenewal or any resulting lapse in coverage. This shall be a continuing obligation for agencies which subsequently are discovered to have record of the nonrenewal or resulting lapse.

7. Atlantic States Insurance Company shall notify the Administrative Hearings Office at the time it complies with all the terms of this order.

8. **Within thirty (30) days from the date of this order, and pursuant to 40 P.S. § 991.2013, Atlantic States Insurance Company is directed to pay a civil penalty of \$1,000.00**

payable to the Commonwealth of Pennsylvania and directed to April Phelps, Bureau of Licensing and Enforcement, Pennsylvania Insurance Department, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120.

9. This Order is effective immediately.

A handwritten signature in cursive script, reading "Michael Consedine", is written over a horizontal line.

MICHAEL F. CONSEDINE  
Insurance Commissioner