

RECEIVED
INSURANCE DEPARTMENT

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

2011 MAR 22 AM 11:20

ADMIN HEARINGS OFFICE

IN RE:	:	VIOLATIONS:
	:	
DELMAS R. BUTLER, JR.	:	40 P.S. §§ 310.11(5), (9) and (20)
1542 Cleveland Avenue	:	
Wyomissing, PA 19610	:	
	:	
Respondent.	:	Docket No. CO11-02-011

CONSENT ORDER

AND NOW, this *22nd* day of *March*, *2011*, 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.

FINDINGS OF FACT

3. The Insurance Department finds true and correct each of the following

Findings of Fact:

- (a) Respondent is Delmas R. Butler, Jr. and maintains his address at 1542 Cleveland Avenue, Wyomissing, PA 19610.
- (b) Respondent is, and at all times relevant hereto has been, a licensed insurance producer.
- (c) American Family Life Assurance Company of Columbus (AFLAC) reported that it terminated its relationship with Respondent after findings of an investigation, pertinent to two complaints from policyholders, revealed that Respondent made misrepresentations on the applications for insurance.
- (d) AFLAC policy No. PS865285, effective January, 30, 2009, was written by Respondent to provide disability insurance to a couple named Killian from Pottsville, Pennsylvania.
- (e) Upon reviewing the policy No. PS865285 and the application, the Killians noted that they contained misrepresentations that they owned a corporation,

Killian, Inc., and that they are employers of five people. In fact, there is no corporate entity registered as "Killian, Inc."

- (f) AFLAC policy No. PV766016, effective March 16, 2010, was written to provide disability insurance for a man named Adams from Blandon, Pennsylvania. Adams, an insurance producer, was considering selling AFLAC insurance and arranged for another agency producer named Byerly to coordinate the program with AFLAC through Respondent.
- (g) Byerly accepted a hand-written application from Adams, with Byerly being identified on the application as the producer, and gave it to the Respondent for submission to AFLAC.
- (h) After AFLAC issued policy No. PV766016, Byerly reviewed the policy, noting that the application was electronic, not hand-written, and that the signature attributed to Adams did not match his standard signature. Furthermore, the AFLAC's producer codes were changed from Byerly's to Respondent's.
- (i) Adams was interviewed and he affirmed the signature was non-genuine and not written by him.

- (j) Respondent was interviewed by AFLAC on May 17, 2010, and by the Pennsylvania Insurance Department on February 3, 2011, and he denied the allegations.

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) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.
- (b) 40 P.S. § 310.11(5) prohibits a licensee or an applicant from intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.
- (c) Respondent's activities described above in paragraphs 3(c) through 3(i) violate 40 P.S. § 310.11(5).
- (d) 40 P.S. § 310.11(9) prohibits a licensee or an applicant from forging another person's name on an insurance application or any document related to an insurance or financial service transaction.

- (e) Respondent's activities described above in paragraphs 3(c) through 3(i) violate 40 P.S. § 310.11(9).

- (f) 40 P.S. § 310.11(20) 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.

- (g) Respondent's activities described above in paragraphs 3(c) and 3(i) violate 40 P.S. § 310.11(20).

- (h) Respondent's violations of Sections 310.11(5), (9) and (20) are punishable by the following, under 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 every 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 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) All licenses/certificates of Respondent to do the business of insurance are hereby revoked.
- (c) If Respondent should ever become licensed in the future, his 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 ten (10) years from the date of issuance of such certificates and licenses.
- (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 5(d) of this Order, Respondent shall have the burden of demonstrating that he is worthy of an insurance certificate and license.

(f) In the event Respondent's certificates and licenses are suspended pursuant to paragraph 5(c) 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 certificate and license, Respondent's 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, 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.

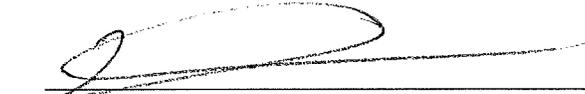
9. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

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.

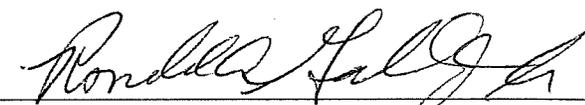
11. This Order shall be final upon execution by the Insurance Department. Only the Insurance Commissioner or a duly authorized delegee is authorized to bind the Insurance Department with respect to the settlement of the alleged violations of law

contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or a duly authorized delegee.

BY:



DELMAS R. BUTLER, JR. Respondent



COMMONWEALTH OF PENNSYLVANIA
By: RONALD A. GALLAGHER, JR.
Deputy Insurance Commissioner