

RECEIVED
INSURANCE DEPARTMENT

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

2011 MAR 17 PM 1:51

ADMIN HEARINGS OFFICE

IN RE: : VIOLATIONS:
: :
JOSEPH A. COX : 40 P.S. §§ 310.11(6), (7), (20) and
102 Lynne Drive : 310.95
Beaver Falls, PA 15010 :
: :
Respondent. : Docket No. CO11-01-011

CONSENT ORDER

AND NOW, this *17th* 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 Joseph A. Cox and maintains his address at 102 Lynne Drive, Beaver Falls, PA 15010.
- (b) Respondent has an active resident individual producer license #433770 that expires on January 31, 2012.
- (c) Respondent is an independent contractor of Health Benefit Services, LLC, 993 Broadhead Road, Suite 201, Coraopolis, PA 15108.
- (d) Respondent received health plan literature, supporting documentation and marketing leads from AIM and CEO Clubs, however failed to show due diligence to determine if the health plan was a bona fide group, and if coverage actually existed.
- (e) In order for an association to be bona fide under the United States Department of Labor's guidelines within the meaning of Section 3(5), it is supposed to be organized as a trade group or similar organization, not solely for the purpose of supplying health benefits. AIM was organized for the

purpose of providing health insurance. Therefore, AIM has never been recognized as a bona fide group by the federal or state governments.

- (f) In March of 2010, Respondent, as an independent contractor for Health Benefit Services, contacted two PA consumers and sold these individuals the CEO Club Association coverage.
- (g) On May 18, 2010, Joseph Mancuso, President, CEO Clubs, Inc., sent out a form letter notifying independent organizations that were marketing for Phoenix Insurance Company (unlicensed) and Star/Phoenix (unlicensed) that effective March 18, 2010, they could no longer market their products to CEO Club members or represent them as "CEO Club-sponsored".
- (h) On or about April 1, 2010, one of the above-referenced PA consumers received a dec page from Phoenix Insurance Company, reflecting a Group Limited Benefits Health Insurance Certificate Schedule, naming National Association of Business Leadership as the Association, certificate number: NABL013, Group policy number: 123740-SK, effective January 1, 2010.
- (i) On or about April 1, 2010, the PA consumer received a CEO Club's Cover for Group Limited Benefits Health Insurance Certificate Schedule Cover with a Plan Name: HealthMax Plus, Subscriber ID: 47736, Group Policy #

123740-SK (same as the policy listed in paragraph 3(h)), with an effective date of April 1, 2010.

- (j) On June 2, 2010, the PA consumer filed a complaint with the PA Insurance Department regarding the alleged insurance coverage, and his out-of-pocket expenses of \$800.00.
- (k) On January 4, 2011, Respondent agreed to make restitution in the amount of \$800.00.

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(6) prohibits a licensee or an applicant from committing any unfair insurance practice or fraud.
- (c) Respondent's activities described above in paragraphs 3(d) through 3(j) violate 40 P.S. § 310.11(6).

- (d) 40 P.S. § 310.11(7) prohibits a licensee or an applicant from using fraudulent, coercive or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business.

- (e) Respondent's activities described above in paragraphs 3(d) through 3(j) violate 40 P.S. § 310.11(7).

- (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(d) through 3(j) violate 40 P.S. § 310.11(20).

- (h) Respondent's violations of Sections 310.11(6), (7) 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.
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- (i) 40 P.S. § 310.95 holds an insurance agent personally liable on all contracts of insurance made through any company not authorized to do business in this Commonwealth.
 - (j) Respondent's activities described above in paragraphs 3(d) through 3(j) constitute transacting insurance business within this Commonwealth through a company not authorized to do business and violate 40 P.S. § 310.95.
 - (k) Respondent's violation of 40 P.S. § 310.95 makes the insurance producer personally liable for all contracts issued through the unauthorized company.

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) Respondent shall make restitution to Ralph and Carol Scott of Beaver Falls, PA, in the amount of \$800.00, within thirty (30) days from the date of this Order. Respondent shall make restitution to persons other than the Scotts if the Deputy Commissioner identifies such persons and determines that restitution is owed to them by Respondent. Proof of restitution payment shall be provided to the Insurance Department by Respondent.
- (c) 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 three (3) years from the date of this Order.
- (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 a 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 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:



JOSEPH A. COX, Respondent



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