

By Admin Hearings, Ins Dept at 9:31 am, Mar 19, 2021

IN RE:

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40 P.S. §§ 310.11(20), and
1171.5(a)(12)

:

AND NOW, this 19th day of March, 2021, 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 information contained in the Findings of Fact and the violations cited in the Conclusions of Law in this Consent Order.

FINDINGS OF FACT

4. The Insurance Department finds true and correct each of the following Findings of Fact:

- (a) Respondent is John P. Gibbons and maintains a record of his address with the Pennsylvania Insurance Department as 3 Terry Drive, Ste. 201A, Newtown, PA 18940.
- (b) Respondent is, and at all times relevant hereto has been, a licensed resident producer individual.
- (c) Respondent sold approximately 118 equity indexed annuities from 2012 through January 2016 under their business Allied Financial Consultants ("AFC") as determined by AFC's records.
- (d) Respondent was solely responsible for the sale of at least thirty-three (33) of the equity indexed annuities identified in finding 3(c). The accounting records belonging to AFC, and reviewed by the Department, identify five different Pennsylvania consumers.
- (e) Respondent had verbal authorization to sign another non-resident producer's name, John Hansbury, on the applications for the annuities identified in finding 3(c). Hansbury did confirm that he was aware and

consented in advance to Respondent utilizing his signature to complete these applications from 2012 through January 2016. Hansbury confirmed that he did not receive any commissions for these clients unless they had been referred from his office. Any commissions he received in error were returned to AFC with the issuance of a 1099 Form.

- (f) Respondent's annuity clients were interviewed by a Department Investigator in May 2020. None of the annuitants interviewed stated that they completed their annuity applications with John Hansbury. However, the Department determined that John Hansbury was listed as the agent of Record on these applications. All the annuitants interviewed had applications which bore the signature of John Hansbury.
- (g) Respondent, during his August 2020 Department interview, confirmed that John Hansbury is not an owner or employee of AFC. Respondent had verbal permission to sign applications utilizing John Hansbury's name to facilitate the servicing of the application for the annuities.
- (h) Respondent asserted that the purpose of using Hansbury as the agent of record was so that Hansbury could contact the insurance company to assist with the servicing of these clients. No evidence was able to be located to verify that Hansbury had provided any services to the clients in question. The Respondent confirmed that Hansbury did not retain any commissions for these services.
- (i) Respondent denied that John Hansbury's signature was used in order to apply for the annuities through a competing Field Marketing Organization.

("FMO") that was not the contracted organization for AFC. However, Respondent did admit that AFC utilized an FMO other than the contracted organization, but he stated that this was done to utilize the company that offered the best intellectual property and training that would benefit his annuity clients.

- (j) Respondent confirmed that he received a letter of education dated April 21, 2020 from AFC's broker/dealer as a result of the actions identified in finding 4(c-i).
- (k) Respondent claimed that he would have informed each insured as to why Hansbury was being listed as the agent of record even when he was the one completing the application. When confronted with the fact that multiple insureds claimed to have no knowledge of Hansbury, the Respondent responded by stating, that many of his clients are old and likely have memory issues.

CONCLUSIONS OF LAW

5. 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(20) prohibits a licensee or an applicant from demonstrating a lack of general fitness, competence or reliability sufficient to satisfy the Department that the licensee is worthy of licensure.
- (c) Respondent's activities described above in paragraphs 4(c) and 4(k) violate 40 P.S. § 310.11(20).
- (d) 40 P.S. § 1171.5(a)(12) prohibits agents from making false statements or representations on or relative to an application for an insurance policy.
- (e) Respondent's activities described in paragraphs 4(c) through 4(k) constitute making false statements or representations on or relative to an application for an insurance policy and violate 40 P.S. § 1171.5(a)(12).
- (f) Respondent's violations of §§ 310.11(20) and 1171.5(a)(12) are punishable by the following, under 40 P.S. § 310.91:
 - (i) suspension, revocation or refusal to issue the 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

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 shall pay a civil penalty of Five Thousand Dollars (\$5,000.00) 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 the Pennsylvania Insurance Department, Bureau of Licensing and 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 fourteen (14) days after the date of the Consent Order.
- (c) Respondent shall voluntarily surrender all licenses to conduct the business of insurance within the Commonwealth of Pennsylvania. Should Respondent reapply after a minimum period of 5 years he must do so in compliance with all of Act 147's provisions applicable to new producers, including, but not limited to pre-education, passing the requisite examinations, submitting fingerprints and demonstrating proof of tax compliance.
- (d) Respondent's 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 confirmed 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 this Order.

- (e) 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.
- (f) At the hearing referred to in paragraph 6(e) of this Order, Respondent shall have the burden of demonstrating that he is worthy of a license.
- (g) In the event Respondent's licenses are suspended pursuant to paragraph 6(d) 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 licenses shall be revoked.

7. 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 provisions 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 Insurance Department finds 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.

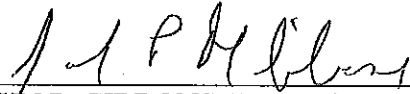
9. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

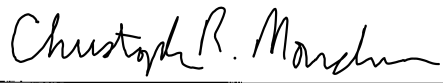
10. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

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 the parties hereto.

12. 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 duly authorized delegee.

BY: 
JOHN P. GIBBONS, Respondent


COMMONWEALTH OF PENNSYLVANIA
By: CHRISTOPHER R. MONAHAN
Deputy Insurance Commissioner