

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
DUSTIN MICHAEL GRAHAM	:	40 P.S. §§ 310.3, 310.11(6), (7),
12830 N 145th Avenue	:	(11), (20), 1171.5(a)(1)(i) and
Surprise, AZ 85379-4492	:	1171.5(a)(12)
	:	
	:	
Respondent.	:	Docket No. CO22-02-024

## CONSENT ORDER

AND NOW, this 10th day of March, 2022, this Order is hereby issued by the Insurance Department of 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 Dustin Michael Graham and maintains a record of his address with the Pennsylvania Insurance Department as 12830 North 145th Avenue, Surprise, AZ 85379.
- (b) Respondent is, and at all times relevant hereto has been, a licensed Non-Resident Producer.
- (c) Respondent confirmed that he did allow his former business partner, Mark Douglas McMahon to sell, solicit, and negotiate with clients on his behalf.
- (d) Respondent's partner Mark Douglas McMahon [McMahon] was a licensed Resident Producer until he failed to renew his license on November 30, 2018.
- (e) Respondent on October 30, 2019, allowed McMahon to complete an application for an individual annuity for customer 1. Respondent then signed and submitted the application utilizing his appointment.

- (f) Respondent on February 29, 2020, allowed McMahon to complete an application for an individual annuity for customer 2. Respondent then signed and submitted the application utilizing his appointment.
- (g) Respondent's partner McMahon passed away August 26, 2020.
- (h) Respondent's customer identified in finding (e) on September 10, 2020 filed a complaint with the Pennsylvania Insurance Department Bureau of Consumer Services. The consumer felt that McMahon had misrepresented the benefits of the annuity she was sold as well as the fact that the Respondent was listed as her agent without her knowledge as she had only ever met with McMahon.
- (i) Respondent's customer identified in finding (f) on September 16, 2020 filed a complaint with the Pennsylvania Insurance Department Bureau of Consumer Services. The consumer claimed that McMahon had made multiple misrepresentations on his annuity application. This consumer also stated that he had only met with McMahon to complete his annuity application.
- (j) Respondent's customers identified in findings (e-f) were both able to cancel their annuities upon agreement with the annuity company.

## 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. § 310.3(a) prohibits a person from acting as a producer unless the person is licensed as an insurance producer for the line of authority under which the contract is issued.
- (c) Respondent's activities described in paragraphs 3(c) through 3(f) constitute acting as an insurance producer without a certificate of qualification, in violation of 40 P.S. § 310.3(a).
- (d) 40 P.S. § 310.11(6) prohibits a licensee or an applicant from committing any unfair insurance practice or fraud.
- (e) Respondent's activities described in paragraphs 3(c), 3(d), 3(e), 3(f), 3(h) and 3(i) violate 40 P.S. § 310.11(6).
- (f) 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.

- (g) Respondent's activities described in paragraphs 3(c), 3(d), 3(e), 3(f), 3(h) and 3(i) violate 40 P.S. § 310.11(7).
- (h) 40 P.S. § 310.11(11) prohibits a licensee or an applicant from knowingly accepting insurance business which was sold, solicited or negotiated by a person who is not licensed as an insurance producer.
- (i) Respondent's activities described in paragraphs 3(c) through 3(f) violate 40 P.S. § 310.11(11).
- (j) 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.
- (k) Respondent's activities described in paragraphs 3(c), 3(d), 3(e), 3(f), 3(h) and 3(i) violate 40 P.S. § 310.11(20).
- (l) 40 P.S. § 1171.5(a)(1)(i) prohibits persons from misrepresenting the benefits, advantages, conditions or terms of any insurance policy.
- (m) Respondent's activities described in paragraph 3(h) constitute misrepresenting the benefits, advantages, conditions or terms of any insurance policy and violate 40 P.S. § 1171.5(a)(1)(i).

- (n) 40 P.S. § 1171.5(a)(12) prohibits agents from making false or fraudulent statements or representations on or relative to an application for an insurance policy.
- (o) Respondent's activities described in paragraph 3(i) constitute making false or fraudulent statements or representations on or relative to an application for an insurance policy and violate 40 P.S. § 1171.5(a)(12).
- (p) Respondent's violations of 40 P.S. §§ 310.3, 310.11(6), (7), (11), (20), 1171.5(a)(1)(i) 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

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 of Respondent to do the business of insurance are hereby revoked.
- (c) If Respondent should ever become licensed in the future, his 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 five (5) years from the date of issuance of such 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 license.



- (f) In the event Respondent's 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 licenses shall be revoked.

6. In the event the Insurance Department find 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.

7. 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.

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 delegate 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 delegate.

BY:

  
DUSTIN MICHAEL GRAHAM, Respondent

  
COMMONWEALTH OF PENNSYLVANIA  
By: DAVID J. BUONO JR.  
Deputy Insurance Commissioner