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ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
THOMAS E. HARBAUGH	:	40 P.S. §§310.11(4), (5), (7), (17)
612 S. York Road	:	and (20)
Hatboro, PA 19040	:	
	:	
	:	
	:	
	:	
	:	
Respondent.	:	Docket No. CO17-04-009

CONSENT ORDER

AND NOW, this 27th day of June, 2017, 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 Thomas E. Harbaugh, and maintains his address at 612 S. York Road, Hatboro, PA 19040.
- (b) Respondent is, and at all times relevant hereto has been, a licensed Pennsylvania resident producer.
- (c) Respondent admits that between 2011 and 2016, he altered policy limits on at least six commercial insurance policies, misappropriated the premiums for the false increased limits, misled the customer about coverage limits and premiums, and provided certificates of insurance with policy limits greater than the actual policy limits.
- (d) Respondent created fictitious invoices for the aforementioned six policies and overbilled and overcollected approximately \$94,943 in premiums from the insured.
- (e) Respondent, as an example of his altering policies between 2001 and 2016, admitted that in 2014, he altered an invoice for the same insured

which indicated policy limits were \$5,000,000 and premium of \$16,842 when the actual policy limits issued by the insurer were \$2,000,000 and the premium was \$10,042.00.

- (f) Respondent, on October 21, 2014, per the request of the same insured, issued an endorsement to the insured indicating higher policy limits, but never obtained the increased limits; collected \$1078 for the endorsement and misappropriated the premiums.
- (g) Respondent, in 2015, again indicated to the same insured that the policy limits were \$5,000,000 with premiums of \$16,842.00 when the actual policy limits were \$3,000,000 with premiums of \$11,992.00.
- (h) Respondent, while servicing another insured who requested increased liability limits, created invoices for bogus liability policy endorsements indicating the liability limits had been raised, when they had not, and overbilled and overcharged the insured premiums of \$1,450.
- (i) Respondent, then issued false certificates of insurance for the insured bearing the false increased limits based upon the bogus endorsement indicated above.
- (j) Respondent admits he created a fictitious policy for an insured who was engaged in a short term project, billed the insured \$300 in premium and misappropriated the funds.

- (k) On March 1, 2017, Respondent admitted the aforementioned actions to the Department, and stated he used the overbilled and overcollected premium for personal expenses.

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(4) prohibits producers from improperly withholding, misappropriating, or converting money or property received in the course of doing business.
- (c) Respondent's activities described above in paragraphs 3(c) through 3(h), 3(j) and 3(k) constitute improperly withholding, misappropriating, or converting money or property received in the course of doing business, in violation of 40 P.S. §310.11(4).

- (d) 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.
- (e) Respondent's activities described above in paragraphs 3(c) through 3(k) violate 40 P.S. §310.11(5).
- (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 above in paragraphs 3(c) through 3(k) violate 40 P.S. §310.11(7).
- (h) 40 P.S. §310.11(17) prohibits a licensee or an applicant from committing fraud, forgery, dishonest acts or an act involving a breach of fiduciary duty.
- (i) Respondent's activities described above in paragraphs 3(c) through 3(k) violate 40 P.S. §310.11(17).

- (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 above in paragraphs 3(c) through 3(k) violate 40 P.S. §310.11(20).

- (l) Respondent's violations of Sections 310.11(4), (5), (7), (17) and (20) are punishable by the following, under 40 Purdons Statutes, Section 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) Respondent shall enter into a restitution agreement with Tokio Marine North America, Inc., on behalf of Philadelphia Insurance Company, in the amount of \$83,293 within six (6) months from the date of this Order. Proof of restitution agreement shall be provided to the Insurance Department by Respondent. Future license applications will not be considered until full restitution has been made.
- (d) 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 ten (10) years from the date of issuance of such licenses.
- (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 5(e) of this Order, Respondent shall have the burden of demonstrating that he is worthy of an insurance license.

(g) In the event Respondent's licenses are suspended pursuant to paragraph 5(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.

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 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.

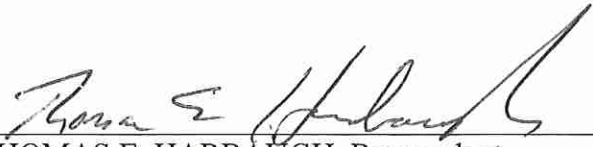
9. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

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 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:



THOMAS E. HARBAUGH, Respondent

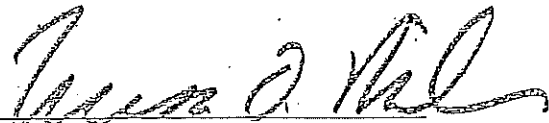


COMMONWEALTH OF PENNSYLVANIA
By: CHRISTOPHER R. MONAHAN
Deputy Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: The Act of April 9, 1929, P.L. 177, No. 175, known as The
Administrative Code of 1929

AND NOW, this 13th day of November, 2015, Christopher R. Monahan,
Deputy Insurance Commissioner, is hereby designated as the Commissioner's duly
authorized representative for purposes of entering in and executing Consent Orders. This
delegation of authority shall continue in effect until otherwise terminated by a later Order
of the Insurance Commissioner.



Teresa D. Miller
Insurance Commissioner

