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By Admin Hearings, Ins Dept at 2:56 pm, Nov 16, 2022

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
BRIAN JUDE JOHNSON	:	40 P.S. § 310.11(2) and (20)
355 Bracken Avenue	:	31 Pa. Code § 81.4
Pittsburgh, PA 15227	:	
	:	
	:	
	:	
	:	
Respondent.	:	Docket No. CO22-11-011

CONSENT ORDER

AND NOW, this 16th day of November, 2022, 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 Pennsylvania Insurance Department (“Department”) finds true and correct each of the following Findings of Fact:
- (a) Respondent is Brian Jude Johnson and maintains a record of his address with the Pennsylvania Insurance Department as 355 Bracken Avenue, Pittsburgh, PA 15227.
  - (b) Respondent is, and at all times relevant hereto has been, a licensed Resident Producer.
  - (c) Respondent, on February 24, 2018, submitted an application for life insurance to an insurer on behalf of two (2) Pennsylvania consumers.
  - (d) Respondent, on the forms identified in finding 3(c), incorrectly answered "No" to the question that asks, "[w]ill this cause existing insurance or annuities to be replaced or changed?"
  - (e) Respondent, on March 22, 2018, submitted two (2) life insurance policy surrender requests for the two (2) Pennsylvania consumers identified in finding 3(c) to the previous insurer without completing the required state replacement forms.

- (f) Respondent, on the forms identified in finding 3(d), failed to correctly annotate that the surrender being made was in connection with the purchase of a replacement life insurance policy.
- (g) Respondent, on the forms identified in finding 3(d), failed to correctly annotate that the proceeds of the surrender were to be used to pay premiums on a new life insurance policy.

#### 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(2) prohibits a licensee or an applicant from violating the insurance laws or regulations of this Commonwealth or a subpoena or order of the commissioner or of another state's insurance commissioner.
- (c) Respondent's activities described above in paragraphs 3(d) through 3(g) violate 40 P.S. § 310.11(2).
- (d) 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.

(e) Respondent's activities described in paragraphs 3(c) through 3(g) violate 40 P.S. § 310.11(20).

(f) 40 P.S. § 310.11(2) prohibits a licensee or an applicant from violating the insurance laws or regulations of this Commonwealth or a subpoena or order of the commissioner or of another state's insurance commissioner.

(1) Pursuant to 31 Pa. Code § 81.4(a) the agent or broker who initiates a life insurance or annuity application shall submit to the insurer that is issuing the policy, with or as part of each application, "(1) a statement signed by the applicant as part of the each application as to whether replacement of existing life insurance or annuity is involved in the transaction [and] (2) a signed statement as to whether the agent or broker knows replacement is or may be involved in the transaction."

(2) Pursuant to 31 Pa. Code § 81.4(b), if a replacement of a life insurance or annuity policy is involved, the agent or broker shall "(1) [p]resent to the applicant, not later than at the time of taking the application, a Notice Regarding Replacement of Life Insurance and Annuities . . . [to] be signed by both the applicant and the agent or broker and left with the applicant [;] (2) [o]btain with or as part of each application a list of existing life insurance

or annuities, or both, to be replaced and properly identified by name of insurer, the insured and contract number. . . . [;] (3) [l]eave with the applicant the original or a copy of written or printed communications used for presentation to the applicant relative to policies or annuities associated with the replacement sale [; and] (4) [s]ubmit to the replacing insurer with the application a copy of the notice regarding replacement of life insurance and annuities provided under paragraph (1)”.

- (g) Respondent’s activities described above in paragraphs 3(d) through 3(g) violate 40 P.S. § 310.11(2) by violating the duties of agents and brokers pursuant to 31 Pa. Code § 81.4.
- (h) Respondent’s violations of 40 P.S. § 310.11(2) and (20) 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) Respondent shall pay a civil penalty of one thousand dollars (\$1,000.00) 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'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.
  
- (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 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 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: *Brian Johnson*  
Brian Johnson (Nov 14, 2022 11:41 EST)  
BRIAN JUDE JOHNSON, Respondent

*David J. Buono*  
COMMONWEALTH OF PENNSYLVANIA  
By: DAVID J. BUONO JR.  
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 \_\_31<sup>st</sup>\_\_ day of \_\_March\_\_\_\_, 2022, David J. Buono, Jr.,  
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.

  
\_\_\_\_\_  
Michael Humphreys  
Acting Insurance Commissioner

