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By Admin Hearings, Ins Dept at 10:09 am, Sep 03, 2021

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
OPTIONS INSURANCE AGENCY	:	40 P.S. §§ 310.11(2), (20) and 310.74
PO Box 592	:	
Hershey, PA 17033	:	
	:	
	:	
	:	
	:	
Respondent.	:	Docket No. CO21-09-001

CONSENT ORDER

AND NOW, this 3rd day of September, 2021, 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 it has received proper notice of its 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 Options Insurance Agency, and maintains a record of its address with the Pennsylvania Insurance Department as PO Box 592 Hershey, PA 17033.
- (b) Respondent is, and at all times relevant hereto has been, a licensed resident producer agency.
- (c) Respondent and the Department were engaged in a dispute, beginning in 2016 pertaining to the imposition of certain additional fees in connection with the issuance of personal automobile insurance policies.
- (d) An Adjudication and Order was issued on June 21, 2018, in which the Insurance Commissioner directed that such additional fees not be charged going forward.
- (e) Respondent, as a result filed, an appeal to the Pennsylvania Commonwealth Court challenging the Adjudication and Order of the Commissioner and requested a stay of proceedings. The Commonwealth

Court granted a stay of the proceedings during the pendency of the appeal before it.

- (f) The Commonwealth Court thereafter affirmed in part and reversed in part the Adjudication and Order on January 4, 2019, acknowledging that whether the fee in question could be charged was a “matter of first impression”; Respondent then filed an Application for Reargument with the Commonwealth Court on January 18, 2019, which was denied on February 15, 2019.
- (g) Respondent subsequently sought discretionary review by the Pennsylvania Supreme Court and requested a stay on March 15, 2019.
- (h) On August 13, 2019, the Pennsylvania Supreme Court accepted the case for discretionary review and denied the stay sought by the Respondent.
- (i) On December 22, 2020, after briefs and argument, the Pennsylvania Supreme Court concluded that 40 P.S. § 310.74 “prohibits a licensed insurance producer from charging fees in addition to commissions in non-commercial, *i.e.* personal, insurance transactions.”
- (j) Respondent, between the February 15, 2019 denial of re-argument and the December 22, 2020 Supreme Court decision, continued to collect the additional fee identified in finding 4(c). Respondent from December 22, 2020 until December 31, 2020, collected a \$70.00 additional fee from

103 insureds in violation of the Adjudication and Order that was upheld by the Supreme and Commonwealth Courts.

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(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 paragraph 4(j) 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 paragraph 4(j) violate 40 P.S. § 310.11(20).

- (f) 40 P.S. § 310.74 prohibits a licensee from charging a fee in addition to a commission to a person for the sale, solicitation, or negotiation of a contract for personal insurance.
- (g) Respondent's activities described above in paragraph 4(j) violate 40 P.S. § 301.74.
- (h) Respondent's violations of 40 P.S. §§ 310.11(2), (20), and 310.74 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 eighty thousand dollars (\$80,000.00) 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 make restitution of \$70.00 to each of the 103 individuals identified by the Department for a total amount of \$7,210.00 on or before October 31, 2021. Proof of restitution payments shall be provided to the Insurance Department by Respondent by October 31, 2021.

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.

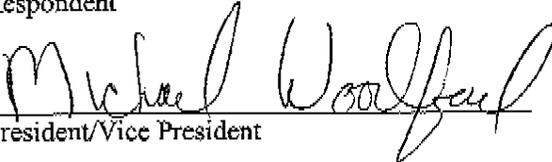
9. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

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: OPTIONS INSURANCE AGENCY,  
Respondent

  
\_\_\_\_\_  
President/Vice President

\_\_\_\_\_  
Secretary/Treasurer

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