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By Admin Hearings, Ins Dept at 7:56 am, Oct 27, 2023

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
ELMORE G. SMITH III	:	63 P.S. § 856(1), (2) and (6)
3212 Whiteman Road	:	
Wilmington, DE 19808	:	
	:	
	:	
	:	
	:	
Respondent.	:	Docket No. CO23-10-011

CONSENT ORDER

AND NOW, this 27th day of October, 2023, 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 Elmore G. Smith III and maintains a record of his address with the Pennsylvania Insurance Department as 3212 Whiteman Road, Wilmington, DE 19808.
 - (b) Respondent is, and at all times relevant hereto has been, a licensed Motor Vehicle Physical Damage Appraiser.
 - (c) Respondent, on May 2, 2023, was charged by the Kennett Township Police Department (Chester, PA) with one (1) count of Theft By Unlawful Taking-Moveable Property, one (1) count of Receiving Stolen Property, one (1) count of Theft By Failure to Make Required Disposition of Funds, one (1) count of Theft By Deception-Prevent Acquisition of Information, and one (1) count of Theft By Deception-Fail To Correct, all felonies.
 - (d) Respondent, on May 31, 2023, submitted a license renewal application and incorrectly answered "No" to the question[s] that asks, “[s]ince the last renewal or initial application in this state, have you been convicted of or pled nolo contendere (no contest) to any misdemeanor or felony or currently have pending misdemeanor or felony charges filed against you?”

- (e) Respondent's charges identified in finding 3(c) are pending final disposition in the Court of Common Pleas of Chester County.

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) 63 P.S. § 856(1) states the Commissioner may deny initial issuance of, suspend, revoke or refuse to renew any appraiser's license for any cause, if the issuance of the license could have been refused had that cause been existent and been known to the commissioner.
- (c) Respondent's activities described in paragraph 3(d) violate 63 P.S. § 856(1).
- (d) 63 P.S. § 856(2) states the Commissioner may deny initial issuance of, suspend, revoke or refuse to renew any appraiser's license for any cause, if the licensee willfully violates or fails to comply with or knowingly participates in the violation of or failure to comply with any provisions of this act or any rule or regulation promulgated thereunder.

- (e) Respondent's activities described in paragraph 3(d) violate 63 P.S. § 856(2).

- (f) 63 P.S. § 856(6) states the Commissioner may deny initial issuance of, suspend, revoke or refuse to renew any appraiser's license if the licensee has shown himself to be incompetent, untrustworthy, or a source of injury and loss to the public.

- (g) Respondent's activities described in paragraphs 3(c) through 3(e) show him to be incompetent, untrustworthy, or a source of injury and loss to the public.

- (h) Respondent's violations of 63 P.S. § 856(1), (2) and (6) are punishable by the following, under 63 P.S. § 1606:
 - (i) suspension, revocation or refusal to issue the license;

 - (ii) imposition of a civil penalty not to exceed one thousand dollars (\$1,000.00) 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 five hundred dollars (\$500.00) 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.
- (g) Respondent shall report the disposition of the charges to the Department within thirty (30) days thereof. Notice of said disposition shall be sent by first class mail and directed to: The PA Insurance Department, Bureau of Licensing and Enforcement, Attn: Enforcement Unit, 1227 Strawberry Square, Harrisburg, PA 17120, or by email to: ra-in-roa@pa.gov.
- (h) If Respondent is convicted of, or pleads guilty or nolo contendere to, any of the charges, set forth in paragraph 3c, or any other Theft related charges, Respondent will immediately surrender all license(s) to the Department.

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: 
ELMORE G. SMITH III, Respondent


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 __31st__ 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

