

RECEIVED
INSURANCE DEPARTMENT

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

ADMIN HEARINGS OFFICE

IN RE: : VIOLATIONS:
: :
GEORGE M. SMITLEY : 40 P.S. §§ 310.11(5), (7), (20)
620 Reed Street : and 625-3(a)
McKeesport, PA 15132 : :
Respondent. : Docket No. CO14-07-013

CONSENT ORDER

AND NOW, this 7th day of October, 2014, 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 George M. Smitley, and maintains his address at 620 Reed Street, McKeesport, PA 15132.
- (b) Respondent is, and at all times relevant hereto has been, a licensed insurance producer.
- (c) Respondent, between January 23, 2008 and March 8, 2011, failed to complete replacement forms in fourteen transactions in which new annuities were purchased and it was known by the Respondent that existing annuities were surrendered, thus causing financial harm to the policyholder.
- (d) Respondent between March 3, 2008 and November 22, 2010, held himself out as a financial broker or investment advisor to at least one policyholder by providing his business card which indicated he was a financial broker at a time when he was not a licensed financial broker or investment advisor.
- (e) Respondent, between March 3, 2008 and March 7, 2010, misrepresented the terms of eleven actual or proposed insurance contracts or applications for

insurance by including contract bonuses as part of replacement comparisons in order to offset surrender charges sustained by the policyholders.

- (f) Respondent, between March 2008 and June 2008, demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business in this Commonwealth, when he used handwritten comparisons containing contract bonuses to demonstrate to the policyholder the offset surrender charges sustained; using an incorrect and higher bonus percentage to calculate the bonus offset which caused financial harm to the policyholder.
- (g) Respondent, on applications for annuities dated June 2, 2008 and June 4, 2008, submitted two of the eleven replacement comparisons to Allianz Life Insurance Company of North America (Allianz) on Allianz forms.
- (h) Respondent was interviewed in July 2013 and affirmed he failed to complete replacement forms in fourteen transactions in which new annuities were purchased and had knowledge that existing annuities were surrendered.
- (i) Respondent explained in his interview on July 22, 2013 that someone at Roster Financial, LLC told him a surrender to a non-insurance payout did not require a replacement form.

- (j) Respondent affirmed in his interview on July 22, 2013 that he submitted two policies for customers as described in letter (g); Respondent added those policies were processed with and accepted by Allianz and no one at Allianz said there was a problem with the submissions.

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(5) prohibits a licensee or an applicant from intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.
- (c) Respondent's activities described above in paragraphs 3(e) and 3(f) violate 40 P.S. § 310.11(5).
- (d) 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.

- (e) Respondent's activities described above in paragraphs 3(c) through 3(h) violate 40 P.S. § 310.11(7).
- (f) 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.
- (g) Respondent's activities described above in paragraphs 3(c) through 3(h) violate 40 P.S. § 310.11(20).
- (h) Respondent's violations of Sections 310.11(5), (7) 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.

- (i) 40 P.S. § 625-3(a), prohibits producers from representing themselves, either directly or indirectly, to the public as a financial planner, investment adviser, consultant, financial counselor or other specialist engaged in the business of giving financial planning or advice relating to investments, insurance, real estate, tax matters or trust and estate matters when that person is engaged only in the sale of life or annuity insurance.

- (j) Respondent's activities described above in paragraph 3(d) violate 40 P.S. § 625-3(a).

- (k) Respondent's violation of 40 P.S. § 625-3(a), is punishable by the following, under Section 625-10:
 - (i) issue a cease and desist order, or suspend or revoke or refuse to issue the certificate of qualification or license of the offending party or parties.

 - (ii) impose a civil penalty of not more than five thousand dollars (\$5,000) for each violation.

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 Ten Thousand Dollars (\$10,000.00) to the Commonwealth of Pennsylvania. Payment of this penalty shall be made by certified check or money order, payable to the PA Insurance Department, Commonwealth of Pennsylvania. Payment should be directed to 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 thirty (30) 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 assist to the best of his ability the Pennsylvania Insurance Department in conducting investigations and prosecution of any licensed or unlicensed entity performing the business of insurance including, but not limited to, any public adjuster, insurance producer, company, etc., their employees and officers, including but not limited to testifying as a witness relative to any of the aforesaid entities, their employees and officers in any civil or administrative action involving same.

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 provision 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 that 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 a duly authorized delegee.

BY: George M. Smitley
GEORGE M. SMITLEY, Respondent

Arthur F. McNulty
COMMONWEALTH OF PENNSYLVANIA
By: ARTHUR F. MCNULTY
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 10 day of March, 2014, Arthur F. McNulty,
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 F. Consedine
Insurance Commissioner

