# BEFORE THE INSURANCE COMMISSIONER

# COMMONWEALTH OF PENNSYLVANIA PR 25 AM II: 37

**ADMIN HEARINGS OFFICE** 

IN RE:

VIOLATIONS:

TIMOTHY J. HOFFMAN, JR.

40 P.S. §§ 310.5(b) and 310.11(7), (20)

439 Grape Street

and 310.96

439 Grape Silect

and 510.50

Warminster, PA 18974

Title 31, Pa. Code, § 37.81

Respondent.

Docket No. CO11-03-025

#### CONSENT ORDER

AND NOW, this 25th day of april ,2011, 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, <u>supra</u> 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 Timothy J. Hoffman, and he maintains his address at 439 Grape Street, Warminster, PA 18974.
  - (b) Respondent trades under the name: Hoffman Insurance Services, Inc. and the entity maintains a business address at 979 W. County Line Road, Hatboro, PA 19040, and is not licensed with the Pennsylvania Insurance Department.
  - (c) Respondent has an active resident producer individual license No. 465557 that expires on November 20, 2012.
  - (d) In the spring of 2010, Respondent hired Ganna Mislivets, producer No. 580901, to work part time for Hoffman Insurance Services, Inc.
  - (e) Respondent gave produce Ganna Mislivets access to Safeco, OCAS (Ohio
     Casualty Corporation), Farmers, Travelers, The Hartford and American

    Modern databases, knowing she did not have appointments with said carriers.

- (f) Between August and September 2010, Ganna Mislivets, with the Respondent's knowledge, accessed the databases for five (5) consumers, wrote policy applications, accepted premiums and gave said applications, along with premiums to Respondent for submission to insurance carriers.
  - (g) Respondent deposited these checks into a business account for the Hoffman Insurance Services, Inc., which is the only checking account for the Agency; and Respondent failed to send said monies to the insurance carriers causing the consumers to receive Notices of Cancellation.
    - (h) All consumers have been made whole by the Respondent.

## 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. § 310.5(b) of Act 147 of 2002 requires a business entity with an office in this Commonwealth to apply for a resident insurance producer license.
- (c) Respondent's activities described above in paragraphs 3(b) violate 40 P.S. § 310.5(b).
- (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(e) through 3(g) violate 40 P.S. § 310.11(7).
- (f) 40 P.S. § 310.11(20) prohibits a licensee 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(e) through 3(g) violate 40 P.S. § 310.11(20).
- (h) 40 P.S. § 310.96 and Title 31, Pa. Code, Section 37.81, the Regulations of the Insurance Department, prohibit producers from, without the express

consent of the insurance entity on whose behalf the funds were received, mingle the funds with the producer's own funds or with funds held by the producer in any other capacity. The funds of each insurance entity must be reasonably ascertainable from the books of accounts and records of the insurance producer.

- (i) Respondent's activities described above in paragraph 3(g) constitute a violation of 40 P.S. § 310.96, and Title 31, Pa. Code, Section 37.81.
- (j) Respondent's violations of Sections 310.5(b), 310.11(7), (20) and 310.96 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 Sharon L. Fraser, Manager, 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 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, <u>supra</u>, 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, <u>supra</u>, 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:

TIMOTHY J. HOFFMAN, JR., Respondent

COMMONWEALTH OF PENNSYLVANIA

By: RONALD A. GALLAGHER, JR. Deputy Insurance Commissioner