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# BEFORE THE INSURANCE COMMISSIONER OF THE COMMONWEALTH OF PENNSYLVANIA

IN RE:

**VIOLATIONS:** 

BRIAN L. JOHNSON

Section 11(f)(1) of the Motor

300 Stumpstown Road

Vehicle Physical Damage Appraiser

Mechanicsburg, PA 17055

Act (63 P.S. § 861)

Respondent.

Docket No. CO05-11-034

## CONSENT ORDER

AND NOW, this 19th day of January, 2006, this Order is hereby issued by the Deputy Insurance Commissioner 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 Deputy Insurance Commissioner finds true and correct each of the following Findings of Fact:
  - (a) Respondent is Brian L. Johnson, and maintains his address at 300 Stumpstown road, Mechanicsburg, Pennsylvania 17055.
  - (b) Respondent has been a licensed Motor Vehicle Physical Damage
    Appraiser since 2003.
  - (c) On July 3, 1982, Respondent was arrested for misdemeanor Driving Under the Influence of Alcohol in Montgomery County, Pennsylvania, and was convicted and sentenced on November 10, 1982 to one year probation and a \$400.00 fine.

- (d) On July 20, 1996, Respondent was arrested by the Pennsylvania State Police in Tionesta, Pennsylvania, for misdemeanor Driving Under the Influence of Alcohol, to which he pleaded guilty on February 12, 1997 and was subsequently sentenced to 48 hours to 12 months in jail, a \$500.00 fine plus costs, and 20 hours of community service.
- (e) On October 16, 2003, when filling out his initial Motor Vehicle Physical Damage Appraiser Application, Respondent placed "No" on the background information question number 3, indicating that he did not have a prior criminal record.
- (f) On April 30, 2005, Respondent was arrested by the Carroll Township Police Department in York County, Pennsylvania, for misdemeanor Driving Under the Influence of Alcohol.
- (g) On October 12, 2005, Respondent pleaded guilty to the Driving Under the Influence charge, was sentenced to four days in jail, 90 days intermediate punishment, a \$1,500.00 fine and one year license suspension.
- (h) On June 16, 2005, on a license renewal application, Respondent checked answer number 78 "No", indicating he did not have a prior criminal record.

(i) On November 1, 2005, Respondent indicated he was not aware he had to report the incidents to the Department and did not do so.

## **CONCLUSIONS OF LAW**

- 4. In accord with the above Findings of Fact and applicable provisions of law, the Deputy Insurance Commissioner concludes and finds the following Conclusions of Law:
- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance

  Department.
- (b) Section 11(f)(1) of the Motor Vehicle Physical Damage Appraisers Act(63 P.S. § 861) requires an appraiser to conduct himself in such a manner asto inspire public confidence by fair and honorable dealings.
- (c) Respondent's activities described above in paragraphs 3(e) through 3(i) are in violation of Section 11(f)(1) of the Motor Vehicle Physical Damage Appraisers Act.
- (d) Respondent's violations of Section 11(f)(1) of the Motor Vehicle Physical

  Damage Appraisers Act are punishable by the following, under Section 6 of
  the Motor Vehicle Physical Damage Appraisers Act (63 P.S. § 856):

- (i) The commissioner may suspend or revoke any appraiser's license for any of the following causes:
  - (1) If the licensee willfully violates, fails to comply with, or knowingly participates in the violation of or failure to comply with any provision of this act or regulation promulgated thereunder.
  - (2) If the licensee has materially misrepresented the terms of any insurance contract or has engaged in any fraudulent transaction.
  - (3) If the licensee has shown himself to be incompetent or untrustworthy.

#### **ORDER**

- 5. In accord with the above Findings of Fact and Conclusions of Law, the Deputy Insurance Commissioner 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 Two Thousand Dollars (\$2,000.00) 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. Harbert, Administrative Assistant, Bureau of 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 certificates and licenses may be immediately suspended by the Department following its investigation and determination that (i) penalty payment has not been made, (ii) any terms of this Order have not been complied with, or (iii) 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 certificates and 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 certificates and licenses shall be revoked.
- 6. In the event the Deputy Insurance Commissioner 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, <a href="supra">supra</a>, 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 Deputy Commissioner finds that there has been a breach of any of the provisions of this Order, the Deputy Commissioner 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 Deputy Insurance
Commissioner. Only the Insurance Commissioner or the duly authorized Deputy
Insurance Commissioner is authorized to bind the Insurance Department with respect
to the settlement of the alleged violation of law contained herein, and this Consent
Order is not effective until executed by the Insurance Commissioner or the duly
authorized Deputy Insurance Commissioner.

BY:

BRIAN L. JOHNSON, Respondent

RANDOLPH L. ROHRBAUGH Deputy Insurance Commissioner Commonwealth of Pennsylvania