BEFORE THE INSURANCE COMMISSIONER OF THE COMMONWEALTH OF PENNSYLVANIA

IN RE:

VIOLATIONS:

BRUCE H. GARDNER 283 Second Street Pike, Suite 10 South Hampton, PA 18966 Sections 611-A(2), (4), (5), (7), (9), (17), (20) and 642-A(b) of Act 147 of 2002 (40 P.S. §§ 310.11 and 310.42)

Respondent.

Docket No. CO06-12-022

CONSENT ORDER

AND NOW, this 12 had ay of Famurate Y 2007, 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.

3. Respondent does not admit the Findings of Fact or Conclusions of Law contained herein and Respondent expressly denies that he engaged in any wrongdoing or illegality or violated Pennsylvania insurance laws.

FINDINGS OF FACT

- 4. The Deputy Insurance Commissioner finds true and correct each of the following Findings of Fact:
- (a) Respondent is Bruce H. Gardner, and maintains his address at 283 Second Street Pike, Suite 10, South Hampton, Pennsylvania 18966.
 - (b) Respondent is, and at all times relevant hereto has been, a licensed insurance producer.

- (c) Respondent, from 2004 through 2006, accepted premium financing for at least 16 clients for commercial liability insurance policies and failed to remit those funds to the insurance carriers involved.
- (d) Once the old policies were cancelled for non-payment as a result of Respondent's failure to remit premium, Respondent then placed, or caused to be placed, the non-genuine signatures of the insureds to new applications without their knowledge or consent.
- (e) Respondent unlawfully converted and failed to remit approximately \$826,000 in premium.

CONCLUSIONS OF LAW

- 5. 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 611-A(2) of Act 147 of 2002 prohibits a licensee 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 (40 P.S. § 310.11).

- (c) Respondent's activities described above in paragraphs 4(c) through 3(e) violate Section 611-A(2) of Act 147 of 2002.
- (d) Section 611-A(4) of Act 147 of 2002 prohibits a licensee from improperly withholding, misappropriating or converting money or property received in the course of doing business (40 P.S. § 310.11).
- (e) Respondent's activities described above in paragraphs 4(c) through 3(e) violate Section 611-A(4) of Act 147 of 2002.
- (f) Section 611-A(5) of Act 147 of 2002 prohibits a licensee from intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance (40 P.S. § 310.11).
- (g) Respondent's activities described above in paragraphs 4(c) through 3(e) violate Section 611-A(5) of Act 147 of 2002.
- (h) Section 611-A(7) of Act 147 of 2002 prohibits a licensee from using fraudulent, coercive or dishonest practices or demonstrating incompetence,

untrustworthiness or financial irresponsibility in the conduct of doing business in this Commonwealth or elsewhere (40 P.S. § 310.11).

- (i) Respondent's activities described above in paragraphs 4(c) through 3(e) violate Section 611-A(7) of Act 147 of 2002.
- (j) Section 611-A(9) of Act 147 of 2002 prohibits a licensee from forging another person's name on an application for insurance or on any document related to an insurance or financial service transaction (40 P.S. 310.11).
- (k) Respondent's activities described above in paragraphs 4(c) through 3(e) violate Section 611-A(9) of Act 147 of 2002.
- (l) Section 611-A(17) of Act 147 of 2002 prohibits a licensee from committing fraud, forgery, dishonest acts or an act involving a breach of fiduciary duty (40 P.S. § 310.11).
- (m) Respondent's activities described above in paragraphs 4(c) through 3(e) violate Section 611-A(17) of Act 147 of 2002.
- (n) Section 611-A(20) of Act 147 of 2002 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 (40 P.S. § 310.11).

- (o) Respondent's activities described above in paragraphs 4(c) through 3(e) violate Section 611-A(20) of Act 147 of 2002.
- (p) Section 642-A(b) of Act 147 of 2002 states any person that violates this section commits a theft punishable in accordance with 18 Pa.C.S. Ch. 39 (relating to theft and related offenses) (40 P.S. § 310.42).
- (q) Respondent's activities described above in paragraphs 4(c) through 3(e) violates Section 642-A(b) of Act 147 of 2002.
- (r) Respondent's violations of Sections 611-A(2), (4), (5), (7), (9), (17), (20) and 642-A(b) of Act 147 of 2002 are punishable by the following, under Section 691-A of Act 147 of 2002 (40 P.S. § 310.91):
 - (i) suspension, revocation or refusal to issue the certificate of qualification or license;
 - (ii) imposition of a civil penalty not to exceed five thousand dollars (\$5,000.00) for each violation of the Act;
 - (iii) an order to cease and desist; and
 - (iv) any other conditions as the Commissioner deems appropriate.

<u>ORDER</u>

- 6. 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) All licenses/certificates of Respondent to do insurance business are hereby revoked for a period of five (5) years.
 - (c) If Respondent should ever become licensed in the future, his certificates and 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 (ii) above is limited to a period of five (5) years from the date of issuance of such certificates and licenses.
 - (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 6(d) of this Order, Respondent shall have the burden of demonstrating that he is worthy of an insurance certificate and license.
- (f) In the event Respondent's certificates and licenses are suspended pursuant to paragraph 6(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 certificate and 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, <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 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.

RANDOLPH L. ROMRBAUGH Deputy Insurance Commissioner Commonwealth of Pennsylvania