

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

RECEIVED
INSURANCE DEPARTMENT

2008 AUG 12 PM 12:4

ADMIN HEARINGS OFFICE

IN RE: : VIOLATIONS:
: :
THOMAS B. SERFASS : Sections 611-A(2), (4), (5), (7)
4581 Jasmine Drive : (14), (15), (17), (20) and 678-A(b)
Center Valley, Pennsylvania 18034 : of Act 147 of 2002 (40 P.S.
: §§ 310.11 and 310.78)
: :
: Sections 5(a)(1)(i) and 5(a)(2) of
: The Unfair Insurance Practices
: Act, Act of July 22, 1974, P.L. 589,
: No. 205 (40 P.S. §§1171.5)
: :
Respondent. : Docket No. CO08-04-031

CONSENT ORDER

AND NOW, this *12th* day of *August*, 2008, 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.

3. Without admitting the allegations of fact and conclusions of law contained herein, Respondent specifically denies that he violated any law or regulation of the Commonwealth.

FINDINGS OF FACT

3. The Insurance Department finds true and correct each of the following Findings of Fact:

- (a) Respondent is Thomas B. Serfass, and maintains his address at 4581 Jasmine Drive, Center Valley, Pennsylvania 18034
- (b) Respondent is, and during all times relevant, was a licensed insurance producer with a Certificate of Qualification No. 365836, that expires on October 31, 2008.

- (c) Respondent has been trading as Thomas Serfass and Associates.
- (d) Thomas Serfass and Associates is not licensed to transact the business of insurance in the Commonwealth of Pennsylvania.
- (e) On December 7, 2007, Respondent was arrested by the Matamoras Police Department and charged with violating Title 18 §§ 3922 (a)(1) - Theft by deception, a felony, 4117 (a) (4) Pennsylvania Insurance fraud, a felony, Title 40 P.S. §§ 310.42 – Theft by insurance producers, a felony, 310.47 – Misrepresentation of terms of policy and future dividends by insurance producers, a misdemeanor and 310.44 – solicitation for nonexistent insurance entity, a misdemeanor.
- (f) Respondent failed to report his arrest to the Department within the required thirty (30) days.
- (g) Respondent, between July 1999 and June 2007, collected approximately \$390,000 in funds from four insureds.
- (h) The matters referenced in (g) above, are not related to the Respondent's arrest referenced in (e) above.

- (i) The above referenced insureds believed they were purchasing annuities, health insurance, life insurance or other undisclosed investments.
- (j) None of the funds received by Respondent were ever forwarded to an insurer(s).
- (k) None of the insureds have been made whole.

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) Section 611-A(2) of Act 147 of 2002 (40 P.S. § 310.11) prohibits a licensee from violating the insurance laws of this Commonwealth.
- (c) Respondent's activities described above in paragraphs 3(c) through 3(l) violate Section 611-A(2) of Act 147 of 2002.
- (d) Section 611-A(4) of Act 147 of 2002 (40 P.S. § 310.11) prohibits a

licensee from improperly withholding, misappropriating or converting money or property received in the course of doing business.

- (e) Respondent's activities described above in paragraphs 3(c) through 3(l) violate Section 611-A(4) of Act 147 of 2002.
- (f) Section 611-A(5) of Act 147 of 2002 (40 P.S. § 310.11) prohibits a licensee from intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.
- (g) Respondent's activities described above in paragraphs 3(c) through 3(l) violate Section 611-A(5) of Act 147 of 2002.
- (h) Section 611-A(7) of Act 147 of 2002 (40 P.S. § 310.11) prohibits a licensee from using fraudulent, coercive or dishonest practice or demonstrate incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business.
- (i) Respondent's activities described above in paragraphs 3(c) through 3(l) violate Section 611-A(7) of Act 147 of 2002.
- (j) Section 611-A(14) of Act 147 of 2002 (40 P.S. § 310.11) prohibits a licensee from committing a felony or its equivalent.

- (k) Respondent's activities described above in paragraphs 3(c) through 3(l) violate Section 611-A(14) of Act 147 of 2002.
- (l) Section 611-A(15) of Act 147 of 2002 (40 P.S. § 310.11) prohibits a licensee from committing a misdemeanor that involves the misuse or theft of money or property belonging to another person.
- (m) Respondent's activities described above in paragraphs 3(c) through 3(l) violate Section 611-A(15) of Act 147 of 2002.
- (n) Section 611-A(17) of Act 147 of 2002 (40 P.S. § 310.11) prohibits a licensee from committing fraud, forgery, dishonest acts or an act involving a breach of fiduciary duty.
- (o) Respondent's activities described above in paragraphs 3(c) through 3(l) violate Section 611-A(17) of Act 147 of 2002.
- (p) Section 611-A(20) of Act 147 of 2002 (40 P.S. § 310.11) 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.
- (q) Respondent's activities described above in paragraphs 3(c) through 3(l) violate Section 611-A(20) of Act 147 of 2002.
- (r) Section 678-A(b) of Act 147 of 2002 requires a licensee, within 30 days of

being charged with criminal conduct, to report the charges to the Department and provide a copy of the criminal complaint, information or indictment, a copy of the order resulting from a pretrial hearing, and a report of the final disposition of the charges (40 P.S. § 310.78).

- (s) Respondent's activities described above in paragraphs 3(c) through 3(l) violates Section 678-A(b) of Act 147 of 2002.
- (t) Section 5(a)(1)(i) of the Unfair Insurance Practices Act prohibits persons from misrepresenting the benefits, advantages, conditions or terms of any insurance policy.
- (u) Respondent's activities described above in paragraphs 3(c) through 3(l) constitute misrepresenting the benefits, advantages, conditions or terms of any insurance policy and violate Section 5(a)(1)(i) of the Unfair Insurance Practices Act.
- (v) Section 5(a)(2) of the Unfair Insurance Practices Act prohibits persons from making, issuing, publishing or circulating in any manner an advertisement, announcement or statement containing any representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business which is untrue, deceptive or misleading.

(w) Respondent's activities described above in paragraphs 3(c) through 3(l) constitute making, issuing, publishing or circulating in any manner an advertisement, announcement or statement containing any representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business which is untrue, deceptive or misleading and violate Section 5(a)(2) of the Unfair Insurance Practices Act.

(x) Respondent's violations of Sections and of the Unfair Insurance Practices Act are punishable by the following, under Sections 8, 9, and 11 of the Act (40 P.S. §§ 1171.8, 1171.9, and 1171.11):

(i) order requiring Respondent to cease and desist from engaging in such violation and/or, if such violation is a method of competition, act or practice defined in Section 5 of this Act, suspension or revocation of Respondent's license(s);

(ii) commencement of an action against Respondent for the following civil penalties:

(1) for each method of competition, act or practice defined in Section 5 and in violation of the Act which Respondent knew or reasonably should have known was such a violation, a penalty of not more than five thousand dollars (\$5,000.00) for each

violation, not to exceed an aggregate penalty of fifty thousand dollars (\$50,000.00) in any six month period;

(2) for each method of competition, act or practice defined in Section 5 and in violation of this Act which Respondent did not know nor reasonably should have known was such a violation, a penalty of not more than one thousand dollars (\$1,000.00) for each violation, not to exceed an aggregate penalty of ten thousand dollars (\$10,000.00) in any six month period;

(3) for each violation of an Order issued by the Commissioner pursuant to Section 9 of the Act, while such Order is in effect, a penalty of not more than ten thousand dollars (\$10,000.00).

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) All licenses/certificates of Respondent to do insurance business are hereby revoked.
- (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 5(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 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 certificate and license, Respondent's suspended certificates and 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, 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.

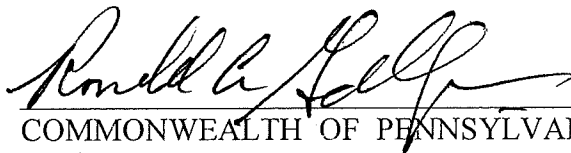
8. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

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: 
THOMAS B. SERFASS, Respondent


COMMONWEALTH OF PENNSYLVANIA
By: Ronald A. Gallagher, Jr.
Deputy Insurance Commissioner