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PA INSURANCE DEPARTMENT

BEFORE THE INSURANCE COMMISSION FMAR -9 PM 2: 13 OF THE COMMONWEALTH OF PENNSYLVANIA HEARINGS OF FIGE

In Re:

Violations:

David L. Ellis

Section 604 of the Insurance Department

3350 North Third Street

Act, Act of May 17, 1921, P.L. 789, No. 285

Harrisburg, PA 17110

(40 P.S. §234)

Respondent

Docket No: CO04-03-011

CONSENT ORDER

AND NOW, this day of MARCH, 2004, 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 right to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.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, <a href="suppraction-

FINDINGS OF FACT

- 3. The Deputy Insurance Commissioner finds true and correct each of the following Findings of Fact:
 - (a) Respondent is David L. Ellis and maintains his address at 3350 North Third Street, Harrisburg, Pennsylvania 19131.
 - (b) At all relevant times herein, Respondent has been a licensed Pennsylvania resident insurance agent, broker or producer.
 - (c) In August of 2002, Respondent was contacted by Willis of Pennsylvania Inc. ("Willis"), a commercial insurance broker, to obtain umbrella coverage for Wheels of Wellness, Inc. ("Wheels").

- (d) Respondent subsequently advised Willis that coverage was bound on August 3, 2002, with National Casualty Company.
- (e) On or about April 9, 2003, Respondent issued an invoice to Wheels for net premiums due on the policy in the amount of \$92,500.
- (f) On or about June 17, 2003, Respondent issued a binder on the above policy in the name of National Casualty Company ("National Casualty"), indicating the coverage was effective for the period of August 3, 2002 to September 1, 2003.
- (g) On or about July 3, 2003, Willis sent a premium check to Respondent for the above policy in the amount of \$92,500 payable to the David L. Ellis Agency, Inc. and National Casualty, which was subsequently deposited by Respondent into his agency account.
- (h) The umbrella policy was never issued by National Casualty to Wheels, and Respondent never forwarded the premium money to National Casualty.

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 604 of The Insurance Department Act (40 P.S. § 234) prohibits the grant of a license/certificate except to an applicant worthy of licensure.
- (c) Respondent's activities described above in paragraphs 3(c) through 3(h) violate Section 604 of the Insurance Department Act (40 P.S. § 234) and render him unworthy of licensure.
- (d) Respondent's violations of Sections 604 of the Insurance Department Act (40 P.S. § 234) are punishable by the following, under Section 639 of the Insurance Department Act (40 P.S. § 279):
 - (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 every violation of the Act;
 - (iii) issuance of a cease and desist order; and
 - (iv) imposition of such other conditions as the Insurance Commissioner may deem appropriate.

ORDER

- 5. In accordance 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. Further, Respondent shall comply with all Pennsylvania insurance laws and regulations.
 - (b) Respondent shall make restitution to Wheels in the amount of \$92,500 within thirty (30) days of the date of this Order.
 - (c) All licenses/certificates of Respondent to do insurance business are hereby revoked.
 - (d) If Respondent should ever become licensed in the future, his 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 license.

- (e) 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.
- (f) At the hearing referred to in paragraph (e) of this Order, Respondent shall have the burden of demonstrating that he is worthy of an insurance license or certificate.
- (g) In the event Respondent's certificates or licenses are suspended pursuant to paragraph 5(d) 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 license or certificate 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, he may, in his discretion, pursue any and all legal remedies available to him, including but not limited to the following: The Deputy Insurance Commissioner may enforce the provisions of this Order in the Commonwealth Court of Pennsylvania or in any other court of law or equity having jurisdiction; or the Deputy Insurance Commissioner 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.

- 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 provisions 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 or 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 Consett Order is not effective until executed by the Insurance Commissioner or the duly authorized Deputy Insurance Commissioner.

BY:

DAVIDAL ELLIS, Respondent

RANDOLPH'L. ROHRBAUGH Deputy Insurance Commissioner Commonwealth of Pennsylvania