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PA INSURANCE DEPARTMENT

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BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE: : VIOLATIONS:  
: :  
DENIS J. McCARTAN : Section 611-A(1) of Act 147 of 2002  
221 Musket Circle : (40 P.S. § 310.11)  
Lansdale, PA 19446 : :  
: Title 31, Pennsylvania Code,  
: Section 37.46(4) and 37.47  
: :  
Respondent. : Docket No. CO04-04-033

CONSENT ORDER

AND NOW, this 4<sup>th</sup> day of May, 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 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.

### FINDINGS OF FACT

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

- (a) Respondent is Denis J. McCartan, and maintains his address at 221 Musket Circle, Lansdale, Pennsylvania 19446.
- (b) Respondent does not currently possess Pennsylvania insurance licensing.
- (c) On January 29, 2004, Respondent submitted an Insurance Producer License Application (IPL-01), indicating he did not have a criminal history.
- (d) Investigation disclosed he had been arrested in 1993 for Simple Assault, a misdemeanor, in Wildwood, New Jersey, was found guilty and paid a \$593.00 fine.

- (e) Subsequently, Respondent was arrested for Driving Under the Influence (alcohol-related), on January 23, 2002. He was accepted into the Montgomery County Accelerated Rehabilitative Disposition (A.R.D.) program, which he successfully completed on October 15, 2003.
  
- (f) Applicant is currently employed with Metropolitan Life Insurance Company in the Lansdale, Pennsylvania office facility.

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 611-A(1) of Act 147 of 2002 prohibits a licensee or applicant for an insurance producer license from providing incorrect, misleading, incomplete or false information to the Department in a license application (40 P.S. § 310.11).
  
- (c) Respondent's activities described above in paragraphs 3(c) through 3(e)

(d) Respondent's violations of Sections 611-A(1) 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.

(e) Title 31, Pennsylvania Code, Section 37.46(4) and 37.47 state that the Department may deny or revoke an application for a license upon finding that the applicant provided incorrect, misleading or incomplete answers to interrogatories on forms incident to the application for a license.

(f) Respondent's activities described above in paragraphs 3(c) through 3(e) constitute failure to provide correct and complete information on his application for licensure, in violation of Title 31, Pennsylvania Code, Sections 37.46(4) and 37.47.

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's 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 this section is limited to a period of five (5) years from the date of this Order.
  
- (c) 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.

(d) At the hearing referred to in paragraph 5(c) of this Order, Respondent shall have the burden of demonstrating that he is worthy of a license.

(e) In the event Respondent's certificates and licenses are suspended pursuant to paragraph 5(b) 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, 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 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, 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.

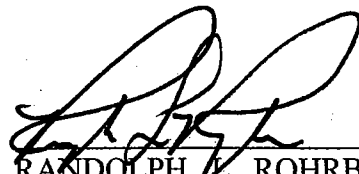
9. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

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 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:

  
DENIS J. McCARTAN, Respondent

  
RANDOLPH E. ROHRBAUGH  
Deputy Insurance Commissioner  
Commonwealth of Pennsylvania