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BEFORE THE INSURANCE COMMISSIONER OF THE COMMONWEALTH OF PENNSYLVANIA

IN RE:

ALLEGED VIOLATIONS:

Howard Pindell 6768 Marshall Rd. Upper Darby, PA 19082 Sections 602, 604, 605, 633.1 and 639 of the Insurance Department Act of 1921, P.L. 789, No. 285, as amended (40 P.S.

§§ 232, 234, 235 273.1 and 279).

Respondent

Sections 37.17, 37.46 and 37.47 of the Insurance Department Regulations (31 Pa.

Code §§ 37.17, 37.46 and 37.47)

Docket No. SC03-02-011

ADJUDICATION AND ORDER

AND NOW, this 12th day of September, 2003, M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania ("Commissioner"), makes the following Adjudication and Order.

HISTORY

This case began when the Pennsylvania Insurance Department ("Department") filed an order to show cause on February 14, 2003 directed to Howard Pindell ("Pindell" or "the respondent"). An amended order to show cause ("OTSC") was filed on March 6, 2003. The OTSC alleged that Pindell violated the Insurance Department Act¹ and Department regulations.² Specifically, the OTSC alleged that Pindell, a licensed

DATE MAILED: September 12, 2003

Act of May 17, 1921, P.L. 789, No 285, 40 P.S. § 232, 234, 235, 273.1 and 279. These sections were repealed and largely reenacted by the Act of December 3, 2002, P.L. 1183, No. 147, 40 P.S. §§ 310.3, 310.6, 310.71, 310.96 and 310.91. The repealed sections were in effect at the time relevant to the allegations against Pindell.

³¹ Pa. Code §§ 37.17, 37.46 and 37.47.

insurance agent, wrote property and casualty insurance without being licensed to do so, failed to remit a premium for a homeowners insurance policy, acted as an agent without an appointment from the insurance company, transacted insurance business through an unlicensed agency and made misrepresentations to a policy applicant.

The OTSC advised Pindell to file an answer in accordance with applicable regulations (1 Pa. Code § 35.37), and further advised him that the answer must specifically admit or deny each of the factual allegations made in the OTSC. The respondent was advised to set forth the facts and state concisely the matters of law upon which he relies. He further was advised of the consequences of failing to answer the OTSC. Following the filing of the OTSC, a presiding officer was appointed and the appointment order was served on Pindell by first class mail. However, that mailing was returned by the postal service as undeliverable. The appointment order subsequently was served by certified mail to the respondent's business address as contained in the OTSC. Pindell signed for the mailing on April 21, 2003, and the address was used for all subsequent mailings, none of which were returned by the postal service.

On April 9, 2003, Pindell filed an answer to the OTSC, in which he did not dispute the facts alleged therein, but provided some additional explanation in narrative form. On April 16, 2003, the presiding officer issued an order setting the date and time for a prehearing conference and hearing in the matter as well as establishing a date by which prehearing statements were due. The order also required the respondent by April 25, 2003 to file a further answer to the OTSC, specifically admitting or denying facts in each numbered paragraph together with explanation of each answer, if appropriate. The order warned the respondent that failure to specifically deny any fact would result in that fact being deemed admitted for the purpose of these proceedings. When no further answer had been filed by May 2, 2003, the presiding officer ordered that the allegations in the OTSC were deemed admitted and taken as true for these proceedings.

On May 14, 2003, the Department filed a prehearing statement as ordered, but the respondent did not. On May 29, 2003, the date set for the prehearing conference, the Department appeared but the respondent did not. An order was issued on that date canceling the scheduled hearing and establishing a briefing schedule to allow the parties to brief the issues based upon the deemed admissions and exhibits contained in the OTSC. The Department filed its brief but Pindell has filed nothing. The last contact by the respondent with the Administrative Hearings Office was the narrative answer filed on April 9, 2003.

This case is now ready for adjudication. Factual findings are not separately set forth herein. Relevant facts deemed to be admitted and inferences from those facts are set forth in the Discussion section, as are applicable legal conclusions.

DISCUSSION

This adjudication is issued without an evidentiary hearing, since no facts are disputed and the respondent has declined to participate in such a hearing. Under general rules of administrative procedure, a final order may be entered without hearing for an insufficient answer to the OTSC unless otherwise provided by statute. See 1 Pa. Code § 35.37 ("Mere general denials . . . will not be considered as complying with this section and may be deemed a basis for entry of a final order without hearing, unless otherwise required by statute, on the ground that the response has raised no issues requiring a hearing or further proceedings."). Despite being given an additional chance by the presiding officer to file a specific answer, Pindell failed to do so. The respondent also failed to file a prehearing statement, attend the scheduled prehearing conference or file a

In the present case, the respondent's answer can better be characterized a general admission, since he did not dispute any of the Department's allegations.

brief.

In order for an adjudication by a Commonwealth agency to be valid, a party must have a "reasonable notice of a hearing and an opportunity to be heard." 2 Pa.C.S. § 504 (Administrative Agency Law). Similarly, the statute specifically applicable to the present matter⁴ provides for a hearing procedure prior to certain penalties being imposed by the Commissioner. See 40 P.S. § 279.⁵ However, given the respondent's abandonment of his right to an evidentiary hearing, these hearing procedures are inapplicable.⁶ The Commissioner adjudicates the present case based upon the undisputed, admitted facts as alleged in the OTSC.

The facts include that Pindell was an insurance agent licensed to write accident, health, life and fixed annuities lines of insurance. [OTSC ¶¶ 3-4]. He had been licensed to write property and casualty insurance, including homeowners coverage, until April 1, 2001 when his authorization to write these lines was suspended for failure to meet mandatory continuing education requirements. [OTSC ¶ 5]. Accordingly, in November 2001, Pindell was not licensed to sell homeowners insurance nor was he appointed as an agent for any particular company. [OTSC ¶ 6].

Insurance Department Act, Act of May 17, 1921, P.L. 789 as amended (40 P.S. §§ 1-321).

The Insurance Department Act section mandates written notice of the nature of the alleged violations and requires that a hearing be fixed at least ten (10) days thereafter, and further provides that:

After such hearing or failure of the accused to appear at such hearing, the Insurance Commissioner shall impose such of the above penalties as he deems advisable.

⁴⁰ P.S. § 279(b).

When the respondent fails to properly answer an order to show cause, judgment without an evidentiary hearing is appropriate. United Healthcare Benefits Trust v. Insurance Commissioner, 620 A.2d 81 (Pa. Cmwlth. 1993); Zimmerman v. Foster, 618 A.2d 1105 (Pa. Cmwlth. 1992); Kinniry v. Professional Standards and Practices Commission, 678 A.2d 1230 (Pa. Cmwlth. 1996); In re Kozubal, P93-08-13 (1997); In re Taylor, SC96-11-034 (1997); In re Crimboli, SC99-04-015 (1999); In re Young, SC98-08-027 (2000); In re Jennings, SC99-10-001 (2001); In re Warner, SC01-08-001 (2002). Further, since the factual allegations of the OTSC are deemed admitted, the determination by the Commissioner is a legal rather than a factual one. A hearing is not necessary for this type of determination. See Mellinger v. Department of Community Affairs, 533 A.2d 1119 (Pa. Cmwlth. 1987); United Healthcare, supra.

On November 6, 2001, Ann and Johnnie Gaines believed they were purchasing a homeowners policy through Pindell when he accepted \$381 in cash purportedly as premium for such a policy. [OTSC ¶ 7]. Pindell represented to Mr. and Ms. Gaines that he had the authority to sell homeowners insurance. [OTSC ¶ 8, 11, 13, 20]. He also represented that he was affiliated with "The All Agency" and that the agency wrote homeowners insurance. [OTSC ¶ 9-11, 13; Exhibit A]. However, the entity in fact was not licensed to sell insurance in Pennsylvania. [OTSC ¶ 13]. Pindell did not remit the premium to a licensed insurance company, and as a result Mr. and Ms. Gaines did not receive a homeowners insurance policy. [OTSC ¶ 14, 19].

Pindell was charged with five distinct violations of the Insurance Department Act:

1) demonstrated lack of worthiness to be an insurance agent pursuant to 40 P.S. § 234 (Purdons 1999); ⁷ 2) violation of his fiduciary capacity by failing to remit the premiums in violation of 40 P.S. § 273.1; 3) acting as an agent writing a particular line of insurance without the authority to do so in violation of 40 P.S. § 232; 4) purportedly acting as an agent for a company without an appointment from that company in violation of 40 P.S. § 235; and 5) fraudulent unlicensed activity in violation of 40 P.S. 271.

For each of these five charges, the Commissioner has authority to impose remedial action against the respondent, including suspension or revocation of his certificate of qualification. Section 639 of the Insurance Department Act (40 P.S. § 279) provides for the imposition of these remedial actions for violation of fiduciary duty, for acting as an agent without proper authority, for acting without an appointment and for fraudulent unlicensed activity. The Act also provides for the imposition of remedial actions "upon satisfactory evidence of such conduct that would disqualify the agent or broker from

This section and the other applicable sections were repealed by the Act of December 3, 2002, P.L. 1183, No. 147, but are applicable to the present proceedings. See note 1, *supra*. Although these provisions were repealed effective June 1, 2003, the old Purdon's citations are used in this adjudication for ease of reference.

initial issuance of a certificate of qualification under section 604 " 40 P.S. § 279(a). Section 604⁸ authorizes the issuance of a certificate of qualification for an insurance agent when the Insurance Department "is satisfied that the applicant is worthy" of such certification. Furthermore, "[o]nce a certificate is issued, the certificate holder is presumed worthy to secure additional specific lines of authority under the certificate unless the department files an action to suspend or revoke or refuse to renew the certificate pursuant to section 639." 40 P.S. § 234.

In other words, penalties not only may be imposed for violating specific provisions such as the fiduciary duty provisions; they may be imposed if the agent or broker is determined to be untrustworthy or professionally unfit. In the present case, the admitted facts support sanctions for four of the five counts, but not for doing business without an appointment.

The Department argues that the uncontested facts demonstrate that Pindell acted as an agent, and that no time did he have, nor could he possibly have, an appointment with a licensed entity. Indeed, one of the undisputed facts is that the respondent has not held an appointment to write automobile or homeowners insurance since April 1, 2001. [OTSC ¶ 6]. The Department argues that section 605 of the Insurance Department Act "prohibits an agent from doing the business of insurance without a written appointment from a licensed insurance company." [Brief of Insurance Department at 15]. However, the statute provides that "[no] agent shall do business on behalf of any entity without a written appointment from that entity. 40 P.S. § 235(a) (emphasis added). The Department established that Pindell offered or promised to obtain homeowners insurance for Mr. and Ms. Gaines and accepted a premium payment from them, and thus acted as

³ 40 P.S. § 234.

an agent as defined by the Insurance Department Act. However, the Department did not allege, and thus did not prove, the existence of an insurance company from which the insurance was to be obtained, let alone that Pindell was acting on behalf of such entity. The Department has the burden of proving each element in a statutory section to establish violation of that section. Commonwealth, Insurance Department v. Ciervo, 353 A.2d 900 (Pa. Cmwlth. 1976); In re Sapp, SC01-09-020 (2002). Count four of the OTSC will be dismissed.

However, Pindell's conduct satisfies the elements in the other three specific counts and also demonstrates unworthiness. He is liable for: 1) violating his fiduciary duty; 2) acting without a certificate of authority; 3) engaging in fraudulent unlicensed activity; and 4) conduct demonstrating unfitness to engage in the business of insurance.

Pindell is liable for violating the fiduciary capacity in which he received the premium monies from Mr. and Ms. Gaines. The funds did not belong to him, but rather were received from prospective policyholders to be transmitted to an insurance company in exchange for issuance of a homeowners policy. By receiving the premium payments, Pindell assumed the responsibility to properly transmit the funds. Although the disposition of the funds is unknown, it is known that Pindell never forwarded the payment to an insurance company. [OTSC ¶ 29]. Since the funds did not reach their intended destination, the only reasonable inference from the facts of record is that he kept the funds or placed them in an account over which he had control. He thus disregarded his role as a fiduciary and violated 40 P.S. § 273.1. He is liable under the second count.

The respondent is also liable under the third count, acting as an agent without a certificate of authority to write a homeowner's policy. As correctly asserted by the

An "agent" includes a person who offers or assumes to act in the negotiation of insurance. 40 P.S. § 231. Department regulations provide that a person who is responsible for the collection and forwarding of premiums shall be deemed to be performing as an agent. 31 Pa. Code § 37.17.

Department, Pindell acted as an agent when he offered to obtain a homeowners policy for Mr. and Ms. Gaines and received a premium from them for that intended purpose. However, the respondent did not possess a certificate of authority to transact the business of homeowners insurance. A person may not act as an agent without an appropriate certificate of authority for the line of insurance business to be conducted. 40 P.S. § 232(a)(1). The respondent did just that and is liable under count three.

The same conduct also violated 40 P.S. § 271, which defines such conduct as fraudulent unlicensed activity and as a third degree felony. Although the present proceedings are not criminal in nature, violation of this section also subjects the actor to penalties in these administrative proceedings. 40 P.S. § 279(a). Pindell is liable under the fifth count.

Finally, Pindell is liable for remedial action under count one (worthiness). As discussed above, penalties are available under 40 P.S. § 279 if the agent's conduct demonstrates that the agent does not possess the professional competence and general fitness required to engage in the business of insurance. Several aspects of Pindell's conduct demonstrates that he is not worthy of licensure. By falsely representing that he was licensed to sell homeowners insurance, he not only demonstrated dishonesty but caused actual harm when he could not deliver upon his promise to obtain a homeowners policy. By falsely representing that he would obtain a homeowners policy, he lulled the applicants into not seeking insurance elsewhere. Similarly, his conduct in collecting a premium payment without forwarding it to a company as promised demonstrated a lack of trustworthiness and honesty necessary in the profession, and also caused actual harm to the prospective policyholders. Pindell further demonstrated his unworthiness by transacting his business through All Agency, an unlicensed entity. The respondent is therefore unfit to hold an insurance license, and also subject to sanctions under 40 P.S. §

See note 9, supra.

279.

Liability under each of the four counts results from Pindell's course of conduct relative to Mr. and Ms. Gaines. However, he is separately liable under at least three of the counts because each statutory section proscribes certain separate aspects of the course of conduct with the exception of the two counts involving lack of proper certification. Those counts (three and five) both involve the same conduct: acting as an agent without being certified to sell homeowners insurance. However, this conduct is distinct from the actions proscribed by the fiduciary duty section requiring that an agent be responsible in a fiduciary capacity for funds of others received by the agent. Pindell would have been liable under this section even had he been licensed to sell homeowners insurance. Finally, although this conduct violating these specific sections evidences unworthiness, Pindell committed additional acts which independently establish unfitness. The respondent's misrepresentations and his use of an unlicensed entity presented a danger to specific consumers, evidenced dishonesty and demonstrated a disregard for the profession.

With Pindell liable for remedial action under four of the five counts, the appropriate action must be established for each count.

PENALTIES

The Commissioner may suspend or revoke a license for conduct violating certain provisions of the Insurance Department Act, including those provisions violated by Pindell's conduct. 40 P.S. § 279(a)(1). Each action violating a provision specified in section 279 subjects the actor to a maximum five thousand dollar civil penalty. 40 P.S. § 279(a)(2).

A Commissioner is given broad discretion in imposing penalties. Termini v. Department of Insurance, 612 A.2d 1094 (Pa. Cmwlth. 1992); Judson v. Insurance Department, 665 A.2d at 523, 528 (Pa. Cmwlth. 1995). The underlying course of conduct in the present case, while involving a single transaction, is of the most serious nature. Mr. and Ms. Gaines entrusted not only their money to the respondent, but also entrusted their security and peace of mind to him by relying upon him to protect their household from potentially catastrophic loss. Breach of fiduciary duty always has been considered one of the more serious violations of the Insurance Department Act. See In re Crimboli, SC99-04-015 (1999); In re Jennings, SC99-10-001 (2001); In re Green, SC02-08-004 (2002). Further, all of the violations are directly connected to Pindell's duties as an insurance agent. Conduct which places insurance consumers in danger is more serious than conduct outside the business of insurance. Finally, licensure is the bulwark between honest and professionally competent activity and activity which is not. The Commissioner has consistently found unlicensed activity to be among the most serious of See In re Abate, P92-12-18 (1999); In re Kozubal, P93-08-13 (1997). violations. Pindell's misconduct relative to Mr. and Mrs. Gaines was of the most serious nature.

Although the respondent's misconduct was serious, the Commissioner has the discretion under 40 P.S. § 279 to consider mitigating factors in fashioning remedial action. The statute "expressly provides for the consideration of mitigating

circumstances" even if a prima facie case of unfitness has been established. In re Friedman, 457 A.2d 983, 989 (Pa. Cmwlth. 1983); See also Romano v. Pennsylvania Insurance Commissioner, 404 A.2d 758, 759-60 (Pa. Cmwlth. 1979) ("[40 P.S. § 279] does permit the Commissioner discretion" to consider her responsibilities as well as the agent's circumstances.). Although the respondent in the present case elected not to present any evidence in mitigation, factors are evident from the circumstances.

Without minimizing the seriousness of even a single course of conduct in the nature of Pindell's, in his favor is the fact that the Gaines transaction is the only one brought to light in these proceedings. When an isolated circumstance, even if serious, apparently is the only stain coming to light in otherwise unblemished tenure in the profession, the seriousness of the offense is mitigated somewhat. *In re Sapp*, SC01-09-020 (2002). While this factor is considered, it would carry more weight had Pindell presented evidence that it truly was an aberration. All that can be considered is that only one course of conduct was alleged in the present proceedings.

Of minimal weight, but in mitigation nonetheless, is the fact that Pindell had property and casualty certification a few months before the Gaines transaction. The Department in essence argues that lapse of the license for want of continuing education should be an aggravating factor:

Respondent obviously did not care if he was licensed or not. Respondent's authorization to sell homeowners insurance expired because he could not even be bothered to take the continuing education courses necessary to maintain competence to sell homeowners insurance.

[Brief of Department at 18]. This is a valid argument, as is the fact that licensure is the Department's mechanism for regulating insurance agents and protecting the public. Nonetheless, a recent lapse of certification for a particular line of insurance can be viewed as less dangerous than conducting business in which the agent has absolutely no training, experience or testing. However, because current licensure is such an important

mechanism for protecting the public, and because Pindell showed a special disregard for the importance of licensure by conducting business soon after the certification lapsed, this factor is given almost no weight.

Of greater weight is the respondent's acceptance of responsibility. In his favor, he admitted the factual averments against him in his narrative response to the OTSC. While his inactivity thereafter in these proceedings may have been a tacit acceptance of his actions and potential consequences, active cooperation and participation in these proceedings would have signaled a greater regard for the enforcement process and demonstrated better his acceptance of responsibility.

Pindell also explicitly accepted responsibility in his narrative answer to the OTSC:¹¹

I would like to acknowledge my understanding of the seriousness of the docket I received recently from you regarding the Gaines family. It was a major error in judgment to jeopardize my livelyhood [sic] and Licensure privileges! What a foolish mistake.

. . . I am truly and deeply sorry for this error in judgment and blatant stupidity on my part and the trouble I caused you and the Gaines family. Please advise me how to proceed and provide me with the necessary address so that I may refund their money.

Thank you for bringing my attention to this matter.

[Howard F. Pindell's April 9, 2003 submission]. Unlike some respondents who remain defiant, combative and in denial of responsibility until the end, Pindell at once demonstrates remorse, acceptance and a willingness to provide restitution. While this does not negate the seriousness of his actions, it is taken into account in fashioning

While the narrative is not part of the factual record in this case, the recognition of responsibility therein is more in the nature of legal argument, insofar as it characterizes the significance of the admitted facts. Characterization of admitted conduct in legal arguments may constitute acceptance of responsibility or the lack thereof. See In re Sapp, SC01-09-020 (2002) (Characterization of actions as "harmless error" demonstrates less than full acceptance of responsibility).

appropriate remedial action.

The Department seeks the maximum penalties available under the Insurance Department Act. In both the OTSC and its brief, the Department requests: 1) that a civil penalty in the total amount of \$40,000¹² be imposed; 2) that the respondent's certificates of qualification be revoked under each of the five counts; 3) that he be prohibited from applying for a certificate of qualification and from applying to renew a certificate; 4) that he be ordered to pay restitution of all remitted premiums and damages plus interest; and 5) such other relief as may be deemed appropriate by the Commissioner. In support of its requests, the Department emphasizes the seriousness of the violations. It also asserts that in addition to violating the protective insurance statutes, the respondent did so for personal gain by stealing the premium monies advanced by Mr. and Ms. Gaines. The Department also emphasizes that the applicants were unknowingly without insurance coverage for their household.

This seriousness of the conduct and the consequences to consumers from this type of conduct is reflected in the penalties imposed. Pindell's infliction of financial harm on others is antithetical to the trustworthiness required in the profession. By definition, agents and brokers have extensive personal contact with applicants and insureds. The applicants and insureds entrust financial and personal matters to the agent, and rely upon the agent's integrity. An agent who has recently inflicted financial harm upon clients is incapable of the trust necessary in the profession. Pindell at this time cannot be trusted with the pocketbooks, bank accounts and personal information of his customers. Further, his actions bring discredit to the profession and agents who practice lawfully, and lessen the feeling of security which consumers expect when purchasing insurance.

^{\$5,000} for each of the actions demonstrating unworthiness and \$5,000 for each of the remaining four counts. The maximum civil penalty for each action in violation of the Insurance Department Act is \$5,000. 40 P.S. \$279(a)(2).

However, to impose the maximum penalties would be to ignore the mitigating circumstances present in this case. The result also would be considerably out of proportion to other similar cases involving conduct even worse than Pindell's. Also, the facts in this case do not include that Pindell converted the premium payment to his own use as alleged by the Department as an aggravating factor, but rather simply that the money was not applied to an insurance policy. The resulting lapse in insurance coverage is very serious as discussed above, but failure to properly apply the money is not aggravated by evidence that Pindell was motivated by greed. The only substantial aggravating factor in the facts of this case other than the seriousness of the transgressions is that consumers were unknowingly left without insurance coverage. The mitigating factors and the weight accorded them are discussed above.

Penalties will not be separately imposed for each of the four aspects of the respondent's conduct demonstrating unworthiness. Failing to forward the premium to a licensed insurance company is the same conduct for which penalties are imposed as a breach of the respondent's fiduciary duty in violation of 40 P.S. § 273.1. On the other hand, Pindell's misrepresentations and implied use of an unlicensed agency to conduct business are distinct acts which independently demonstrate unworthiness and are not sanctioned separately under specific statutory sections. The misrepresentations (concerning Pindell's licensure and his representation that he could obtain homeowners coverage), while separate misrepresentations, are intertwined and will be treated as one act. Sanctions will also be imposed separately for purporting to use an agency in the transaction which was unlicensed, since this conduct is not otherwise penalized.

Considering the facts in this matter, the applicable law, the seriousness of the

Pindell alludes in his answer to the OTSC to the alleged fact that an associate, since deceased, was involved in the transaction. While this allegation is not part of the factual record, it does represent one possible scenario other than conversion which is possible given the established facts in this case, and it would be improper to speculate what happened to the money. It should be noted that the Department did not charge Pindell with larceny (40 P.S. § 273) or otherwise allege in the OTSC that Pindell took the money for himself.

conduct and all aggravating and mitigating circumstances, penalties are imposed as set forth in the accompanying order.

BEFORE THE INSURANCE COMMISSIONER OF THE COMMONWEALTH OF PENNSYLVANIA

IN RE:

ALLEGED VIOLATIONS:

Howard Pindell

Sections 602, 604, 605, 633.1 and 639of the Insurance Department Act of 1921,

5035 Chestnut Street

P.L. 789, No. 285, as amended, (40 P.S.

Philadelphia, PA 19139

§§ 232, 234, 235 273.1 and 279).

Respondent

Sections 37.17, 37.46 and 37.47 of the

: Insurance Department Regulations (31 Pa.

: Code §§ 37.17, 37.46 and 37.47)

Docket No. SC03-02-011

<u>ORDER</u>

AND NOW, based upon the foregoing findings of fact, discussion and conclusions of law, it is **ORDERED** as follows:

- 1. Howard Pindell shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication.
- 2. Count IV of the Pennsylvania Insurance Department's Amended Order to Show Cause, acting as agent without an appointment, is **DISMISSED**.
- 3. All of the insurance licenses or certificates of qualification of Howard Pindell ARE REVOKED for a minimum of three (3) years pursuant to 40 P.S. § 279 for each of Counts II, III and V, and for five (5) years for Count I, with the minimum periods under Counts III and V to run concurrently with each other but consecutively to Count II, and with the minimum period under Count I to run concurrently with the others for a

total minimum period of revocation of six (6) years. Additionally, Howard Pindell is prohibited from applying for a certificate of qualification to act as an agent, broker or producer in this Commonwealth for a minimum of six (6) years. Howard Pindell also is prohibited from applying to renew any certificate of qualification previously held by him in this Commonwealth for a minimum of six (6) years.

4. Howard Pindell shall pay a civil penalty to the Commonwealth of Pennsylvania as within thirty (30) days of this order as follows:

a. Count I: \$4,000.00 for misrepresentations

\$2,000.00 for using an unlicensed agency

b. Count II: \$5,000.00

c. Counts III and V: \$4,000.00

for a total of Fifteen Thousand Dollars (\$15,000). Payment shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania, directed to: Sharon Harbert, Administrative Assistant, Bureau of Enforcement, 1321 Strawberry Square, Harrisburg, Pennsylvania 17120. In addition to the above restrictions, no certificate of qualification or other insurance license may be issued or renewed until the said civil penalty is paid in full.

5. Within thirty (30) days from the date of this order, Howard Pindell shall pay restitution for all premium payments and other monies received by him in his capacity as insurance agent which he failed to apply to the intended purpose. Restitution shall be in the amount of Three Hundred Eighty-One Dollars (\$381.00), plus One Dollar Ninety-One Cents (\$1.91) for each first day of the calendar months falling between December 1, 2001 and the date he makes payment, inclusive. If Howard Pindell supplies evidence satisfactory to the Department that he already made restitution of any portion,

the payment may be reduced accordingly. Payment shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania, directed to: Sharon Harbert, Administrative Assistant, Bureau of Enforcement, 1321 Strawberry Square, Harrisburg, Pennsylvania 17120, and the Insurance Department shall make appropriate distribution. In addition to the above restrictions, no certificate of qualification or other insurance license may be issued or renewed until all restitution is paid in full.

6. This order is effective immediately.

M. Dane Koken

Insurance Commissioner