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COMMON HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
WILLIAM D. RHOADS	:	Sections 611-A(20) and 696-A of
803 Brighton Avenue	:	Act 147 of 2002
P.O. Box 4603	:	(40 P.S. §§ 310.(20) and 696-A)
Reading, PA 19606	:	
	:	
Respondent.	:	Docket No. CO04-01-035

CONSENT ORDER

AND NOW, this *11th* 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 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 William D. Rhoads, and maintains his address at 803 Brighton Avenue, Post Office Box 4603, Reading, Pennsylvania 19606.
- (b) At all relevant times herein, Respondent has been a licensed producer.
- (c) On February 3, 1988, Respondent sold Carol Levensgood a flexible premium adjustable policy with Kentucky Central Life Insurance Company, which was assumed by Jefferson Pilot Life Insurance Company as a flexible premium adjustable policy when Kentucky Central was liquidated in 1995.
- (d) Levensgood stated she paid Respondent \$40.00 a month for the policy since its inception.

- (e) In April of 2003, Levengood received correspondence from Jefferson Pilot inquiring about premium payment, at which time she called and informed them she had been paying the premium to Respondent.
- (f) Jefferson Pilot indicated to Levengood that Respondent had been employed as an agent/independent contractor from August 1, 1995 to April 4, 1997.
- (g) Respondent made regular scheduled quarterly premiums from the policy effective date of February 17, 1988 to July 16, 1993, and partial quarterly premium payments from July 16, 1993 to January 13, 2004.
- (h) Respondent did not have access to Jefferson Pilot's client records since the end of his employment there in 1997.
- (i) On December 8, 2003, it was determined that between 1993 and 2002, Respondent failed to remit premium to Jefferson Pilot for Levengood's policy of \$960.00.
- (j) In December, 2003, Respondent was made aware of the remaining balance owed on Levengood's policy, and fully cooperated with the Department.
- (k) On January 13, 2004, Respondent paid the \$960.00 premium shortage to Jefferson Pilot on behalf of Levengood's policy.

- (l) Respondent asserted every check he received from Levensgood was placed into a business account and thereafter, was forwarded to Jefferson Pilot in the form of money orders on a quarterly basis. Respondent further asserted that no premium monies were misappropriated, however he "let the account go".

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(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).
- (c) Respondent's activities described above in paragraphs 3(c) through 3(l) violate Section 611-A(20) of Act 147 of 2002.

- (d) Section 696-A of Act 147 of 2002 requires every insurance producer to be responsible in a fiduciary capacity for all funds received or collected as an insurance agent or broker (40 P.S. § 310.96).

- (e) Respondent's activities described above in paragraphs 3(c) through 3(l) constitute a violation of acting in a responsible fiduciary capacity when handling funds received or collected as a producer and violates Section 696-A of Act 147 of 2002 (40 P.S. § 310.96).

- (f) Respondent's violations of Sections 611-A(20) and 696-A 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.

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 three (3) 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: William D. Rhoads 3-8-04
WILLIAM D. RHOADS, Respondent

R. L. Rohrbaugh
RANDOLPH L. ROHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: The Act of April 9, 1929, P.L. 177, No. 175, known as The
Administrative Code of 1929

AND NOW, this 29 day of April, 2002, Randolph L.

Rohrbaugh, Deputy Insurance Commissioner, is hereby designated as the
Commissioner's duly authorized representative for purposes of entering in and executing
Consent Orders. This delegation of authority shall continue in effect until otherwise
terminated by a later Order of the Insurance Commissioner.




M. Diane Koken
Insurance Commissioner