

BEFORE THE INSURANCE COMMISSIONER
OF THE 2011 MAR 22 AM 11:20
COMMONWEALTH OF PENNSYLVANIA
ADMIN HEARINGS OFFICE

IN RE: : VIOLATIONS:
: :
JEAN MARIE MILLER : 40 P.S. §§ 310.11(20) and 1171.5(a)(7)(ii)
35 Stony Run Way :
York, PA 17406 :
Respondent. : Docket No. CO10-12-019

CONSENT ORDER

AND NOW, this 22nd day of March, 2011, 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 she has received proper
notice of her 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 she violated any law or regulation of the Commonwealth.

FINDINGS OF FACT

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

- (a) Respondent is Jean Marie Miller and maintains her address at 35 Stony Run Way, York, PA 17406.
- (b) Respondent is, and at all times relevant hereto has been, a licensed insurance producer.
- (c) While employed as a captive producer for First Acceptance Insurance Company, Respondent relied on instructions from her superiors that allowed her to provide homeowner discounts, transfer of insurance without a lapse in coverage discounts, and senior safe driver discounts to new clients at her complete discretion without requiring any documentation or that any specified conditions be met. Respondent was told by her supervisors that such undocumented discounts were permissible because the Insurer was new in Pennsylvania.

- (d) Respondent began her employment with First Acceptance Insurance Company on February 12, 2007, and remains employed as a licensed producer.
- (e) Between February 12, 2007 and early 2009, numerous automobile policies were accredited to Respondent's sales records, and many of them contained more than one undocumented discount.
- (f) The company records indicate Respondent continued providing the undocumented discretionary discounts permitted by her employer until June 2008 when she received from the company underwriting guidelines for the homeowners discount and transfer of insurance without lapse discount, at which time the guidelines were followed, and until she was instructed to cease applying the undocumented senior safe driving discounts by company officials in early 2009.
- (g) Respondent has been cooperative and has taken corrective action to ensure the above-referenced violations will not reoccur.

CONCLUSIONS OF LAW

5. 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) 40 P.S. § 310.11(20) 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.
- (c) Respondent's activities described above in paragraphs 4(c) through 4(f) violate 40 P.S. § 310.11(20).
- (d) Respondent's violations of Section 310.11(20) are punishable by the following, under 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 every violation of the Act;

- (iii) an order to cease and desist; and
 - (iv) any other conditions as the Commissioner deems appropriate.
- (e) 40 P.S. §1171.5(a)(7)(ii) states making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy, fees or rates charged for any policy or contract of insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever, constitutes an unfair method of competition, and unfair or deceptive act or practice.
- (f) Respondent's activities described above in paragraphs 4(c) through 4(f) violate 40 P.S. § 1171.(a)(7)(ii).
- (g) Respondent's violations of 40 P.S. §1171.5(a)(7)(ii) are punishable by the following, under 40 P.S. §1171.9:
 - (i) cease and desist from engaging in the prohibited activity;
 - (ii) suspension or revocation of the license(s) of Respondent.
- (h) In addition to any penalties imposed by the Commissioner for Respondent's violations of the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 - 1171.5), the Commissioner may, under Sections 10 and 11 of the Unfair Insurance

Practices Act (40 P.S. § § 1171.10, 1171.11) file an action in which the Commonwealth Court may impose the following civil penalties:

- (i) for each method of competition, act or practice which the person knew or should have known was in violation of the law, a penalty of not more than five thousand dollars (\$5,000.00);
- (ii) for each method of competition, act or practice which the person did not know nor reasonably should have known was in violation of the law, a penalty of not more than one thousand dollars (\$1,000.00).

ORDER

6. 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) Respondent will assist to the best of her ability the Pennsylvania Insurance Department in conducting investigations and prosecution of any licensed or unlicensed entity performing the business of insurance including, but not

limited to, any public adjuster, insurance producer, company, etc., their employees and officers, including but not limited to testifying as a witness relative to any of the aforesaid entities, their employees and officers in any civil or administrative action involving same.

7. 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.

8. 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.

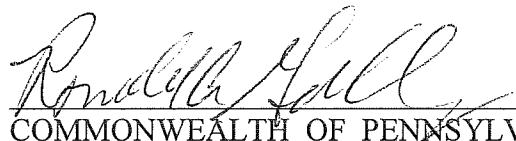
9. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

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

11. 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.

12. This Order shall be final upon execution by the Insurance Department. Only the Insurance Commissioner or a duly authorized delegate 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 delegate.

BY: 
JEAN MARIE MILLER, Respondent


COMMONWEALTH OF PENNSYLVANIA
By: RONALD A. GALLAGHER, JR.
Deputy Insurance Commissioner