

JAN 13 2012

DEPT OF INSURANCE
BY *CB*

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:)
)
POMEROY, THOMAS ROBERT,)
(dba) POMEROY & POMEROY)
(Arizona License Number 92091))
(National Producer Number 578091))
)
Respondent.)
)
)
_____)

No. 12A- 005- INS

CONSENT ORDER

The State of Arizona Department of Insurance ("Department") has received evidence that **Thomas Robert Pomeroy dba Pomeroy & Pomeroy** violated provisions of Title 20, Arizona Revised Statutes. Respondent wishes to resolve this matter without the commencement of formal proceedings, and admits the following Findings of Fact are true and consents to entry of the following Conclusions of Law and Order.

FINDINGS OF FACT

1. Thomas Robert Pomeroy dba Pomeroy & Pomeroy ("Pomeroy", "P&P" or "Respondent") is, and was at all material times licensed as an Arizona resident accident/health and life insurance producer, Arizona license number 92091, which expires on September 30, 2015.

2. In or around March 2009, P&P negotiated excess medical indemnity insurance coverage (also known as employer stop loss coverage) for Dawson Employee Benefits, LLC ("Dawson") through Alternative Risk Solutions, LLC ("ARS"). Westport Insurance Corporation ("Westport") underwrote and issued the policy for a one year term with an effective date of April 1, 2009. David Lunt ("Lunt") is the Vice President / CFO and authorized representative of Dawson. ARS is a wholesale broker authorized to procure business on behalf of Westport.

1 3. ARS mailed an original Engagement Agreement to P&P to obtain Lunt's
2 signature. The original Engagement Agreement contains the proposed coverage and
3 premium rate information.

4 4. On or about March 26, 2009, P&P returned the original Engagement Agreement
5 to ARS without Lunt's knowledge.

6 5. P&P presented an altered version of the original Engagement Agreement
7 representing inflated premium rates to Lunt and provided him a copy of the executed altered
8 Engagement Agreement for his records.

9 6. P&P has no authority to bind Westport to a contract of insurance other than to
10 the terms prescribed in the original Engagement Agreement and Schedule of Insurance issued
11 by Westport.

12 7. Upon issuance of the policy, Westport mailed an original Schedule of Insurance
13 to P&P to forward to Dawson. P&P failed to provide a copy of the original Schedule of
14 Insurance to Dawson but presented it with an altered version of the Schedule of Insurance
15 reflecting the inflated premium rates.

16 8. Trident Plan Administrators ("Trident") is the third party administrator contracted
17 with Dawson to process its self-funded medical and dental employee benefit plans.

18 9. P&P created and forwarded a rate sheet to Trident reflecting the higher rates to
19 be billed to Dawson matching those as described on the altered Engagement Agreement and
20 Schedule of Insurance.

21 10. As a result of P&P's actions, Dawson overpaid P&P \$41,379.00 in additional
22 premium for the 2009-2010 policy year.

1 11. P&P repeated the same behavior for the 2010-2011 and 2011-2012 renewal
2 policies resulting in \$41,083.00 (2010-2011 policy year) and \$14,830.00 (2011-2012 policy
3 year) in overcharges to Dawson..

4 12. In or around August 2011, Dawson discovered the series of altered documents.

5 13. On August 30, 2011, P&P sent an e-mail to Dawson offering to lower their
6 premium rates. P&P does not have any authority to reduce premium rates on behalf of
7 Westport or ARS. P&P created and forwarded a revised rate sheet to Trident reflecting the
8 correct rates to bill Dawson.

9 14. Pomeroy denies any knowledge of how the Dawson documents were altered and
10 voluntarily refunded the \$97,292.00 of overcharges to Dawson.

11 **CONCLUSIONS OF LAW**

12 1. The Director has jurisdiction over this matter.

13 2. Respondent's conduct, as described above, constitutes intentionally
14 misrepresenting the terms of an actual or proposed insurance contract or application for
15 insurance, within the meaning of A.R.S. §20-295(A)(5).

16 3. Respondent's conduct, as described above constitutes using fraudulent, coercive
17 or dishonest practices, or demonstrating incompetence, untrustworthiness or financial
18 irresponsibility in the conduct of business in this state or elsewhere, within the meaning of
19 A.R.S. §20-295(A)(8).

20 4. Grounds exist for the Director to suspend, revoke, or refuse to renew
21 Respondent's insurance license, impose a civil penalty and/or order restitution pursuant to
22 A.R.S. §§20-295(A) and (F).

23 . . .

1 **ORDER**

2 IT IS HEREBY ORDERED THAT:

3 1. Respondent's license is suspended for sixty (60) days effective immediately
4 upon entry of this Order during which time Respondent may not sell, solicit, negotiate any new
5 insurance business within the meaning of A.R.S. §§ 20-281(10), (14) and (15).

6 2. Respondent shall pay a civil penalty in the amount of \$15,000.00 immediately
7 upon entry of this Order for deposit into the State General Fund.

8 DATED AND EFFECTIVE this 11th day of January, 2012.

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CHRISTINA URIAS
Director of Insurance

12 **CONSENT TO ORDER**

13 1. Respondent has reviewed the foregoing Findings of Fact, Conclusions of Law
14 and Order.

15 2. Respondent admits the jurisdiction of the Director of Insurance, State of Arizona,
16 and admits the foregoing Findings of Fact and consents to the entry of the foregoing
17 Conclusions of Law and Order.

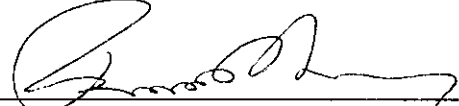
18 3. Respondent is aware of his right to notice and a hearing at which he may be
19 represented by counsel, present evidence and examine witnesses. Respondent irrevocably
20 waives his right to such notice and hearing and to any court appeals relating to this Consent
21 Order.

1 4. Respondent states that no promise of any kind or nature whatsoever, except as
2 expressly contained in this Consent Order, was made to him to induce him to enter into this
3 Consent Order and that he has entered into this Consent Order voluntarily.

4 5. Respondent acknowledges that the acceptance of this Consent Order by the
5 Director is solely to settle this matter against him and that a violation of this order is grounds
6 for the Director to revoke his license and to institute criminal proceedings pursuant to A.R.S.
7 §13-3714.

8 6. Respondent acknowledges that this Consent Order is an administrative action
9 that the Department will report to the National Association of Insurance Commissioners (NAIC)
10 and that he will have to report this administrative action on any future licensing applications
11 either to the Department or other states' Departments of Insurance.

12 1/10/2012
13 Date

12 
13 _____
14 Thomas Robert Pomeroy dba Pomeroy & Pomeroy,
15 License No. 92091

15 COPIES of the foregoing mailed/delivered
16 this 13th day of January, 2012, to:

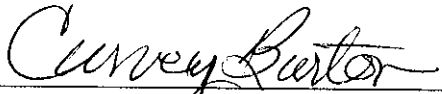
17 Thomas Robert Pomeroy
18 3134 N. 7th Street
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20 (Respondent)

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25 (Attorney for Respondent)

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4 Mary Kosinski, Executive Assistant for Regulatory Affairs
Catherine M. O'Neil, Consumer Legal Affairs Officer
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9 Curvey Walters Burton

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