RECEIVED
GENERAL COUNSEL
SEP 5 2000 3
STATE OF SOUTH CAROLINA
DEPARTMENT OF INSURANCE

Before the State of South Carolina
Department of Insurance

In the matter of:	)	
	)	SCDI File Number 2000-102922
Ray A. Earnhardt	)	
	)	Consent Order
159 Earnhardt Drive	)	Imposing Administrative Penalty
Roebuck, South Carolina 29376	)	
	)	

This matter comes before me pursuant to an agreement entered into between the State of South Carolina Department of Insurance and Ray Earnhardt, a licensed South Carolina resident insurance agent.

Upon review of this matter, I hereby find as fact, that Earnhardt failed to timely pay the year 1999-2000 continuing education fee (the CE fee) required by S.C. Code Ann. § 38-43-106(D) (Supp.1999) and Reg. 69-50 § VIII. Earnhardt acknowledges that he did not pay the required fee on or before the May 1, 2000 deadline. Further, it appears that his failure to timely pay the CE fee resulted from his failure to notify the Department of a change of address as required by law. Earnhardt contends that he attempted to pay the fee before the Department initiated any administrative action against him. Nevertheless, Earnhardt's failure to provide his change of address and to meet the administrative deadline for payment of the CE fee are acts which can ultimately lead to the revocation of his license to transact the business of insurance as an agent in South Carolina following a public hearing at the Administrative Law Judge Division pursuant to S.C. Code Ann. § 38-43-130 (Supp.1999).

Prior to the initiation of any administrative proceedings by the Department against him, Earnhardt and the Department agreed to submit the entire matter to me, along with their specific recommendation, for my summary decision, rather than to proceed toward a formal public hearing. The consensual recommendation was that, in lieu of the Department seeking to revoke Earnhardt's resident insurance agent license, he would waive his right to a public hearing and immediately pay an administrative fine in the total amount of $250.

Section 38-43-106(D) of the South Carolina Code makes insurance agents "responsible for payment to the continuing education administrator of a reasonable annual fee for operation of the continuing education program." Section 38-43-107 requires insurance agents to notify the Department of Insurance within 30 days of any change in address. Section § 38-43-130 states, in pertinent part, that the Director of Insurance may revoke an agent's license "when it appears that an agent…has violated this title or any regulation promulgated by the Department, or has willfully deceived or dealt unjustly with the citizens of this State."

RE Ray Earnhardt

After a thorough review of the record, and pursuant to my findings of fact, I hereby conclude as a matter of law that Earnhardt has not complied with S.C. Code Ann. §§ 38-43-107 and 38-43-106(D) and 25A S.C. Code Ann. Reg. 69-50 §VIII (Supp. 1999). As a result, I can now take administrative disciplinary action against his resident insurance agent license. However, under the discretionary authority provided to me within S.C. Code Ann. § 38-43-130 (Supp. 1999), and after carefully considering the recommendations of the parties, I hereby impose against Earnhardt an administrative fine in the total amount of $250. Earnhardt must pay that fine within ten days of the date of my signature upon this consent order. If he does not timely pay that total fine amount, or if he does not provide proof of his having timely paid the CE fee, his resident insurance agent license will be immediately revoked without any further disciplinary proceedings.

The parties have reached this agreement in consideration of the Department having never taken any administrative disciplinary action against Earnhardt before, of Earnhardt's good faith attempt to comply with the CE fee payment provisions after the due date and before regulatory notice of noncompliance, and of his assurance that in the future he will comply with the state's insurance laws, particularly that of timely providing address change information and paying the CE fee. The parties expressly agree and understand Earnhardt's payment of the agreed-upon penalty constitutes full accord and satisfaction of this matter.

By his signature upon this consent order, Earnhardt acknowledges that he understands that this administrative order is a public record subject to the disclosure requirements of the State of South Carolina's *Freedom of Information Act*, S.C. Code Ann. §§ 30-4-10, *et seq*. (1991 and Supp. 1999). Nothing contained within this administrative order should be construed to limit, or to deprive any person of, any private right of action under the law. Nothing contained within this administrative order should be construed to limit, in any manner, the criminal jurisdiction of any law enforcement officer or judicial officer. Nothing contained within this administrative order should be construed to limit the statutory duty, pursuant to S.C. Code Ann. § 38-3-110 (Supp. 1999), of the Director of Insurance, exercised either directly or through the Department of Insurance, to "report to the Attorney General or other appropriate law enforcement officials criminal violations of the laws relative to the business of insurance or the provisions of this title which he considers necessary to report."

It is, therefore, ordered that Ray Earnhardt shall, within ten days of the date of my signature on this consent order, pay through the Department an administrative fine in the total amount of $250.

It is further ordered that a copy of this consent order be immediately transmitted to the National Association of Insurance Commissioners for distribution to its member states and a copy be placed in Earnhardt's licensing file.

This consent order becomes effective as of the date of my signature below.

_____, 2000, at
Columbia, South Carolina

Ernst N. Csiszar
Director

RE Ray Earnhardt

I CONSENT:

Ray Earnhardt
159 Earnhardt Drive
Roebuck, South Carolina 29376

Dated this 31 day of August, 2000