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GENERAL COUNSEL

APR 20 2001

STATE OF SOUTH CAROLINA
DEPARTMENT OF INSURANCE

Before the State of South Carolina
Department of Insurance

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| In the matter of: | ) | |
| | ) | SCDI File Number 107565 |
| Henry M. Herlong, | ) | |
| | ) | Consent Order |
| 43 Cobblestone Court | ) | Imposing Administrative Penalty |
| Hilton Head Island, S.C. 29828 | ) | And Reinstating License |
| | ) | |

This matter comes before me pursuant to an agreement entered into between the State of South Carolina Department of Insurance and Henry M. Herlong, a former South Carolina resident insurance agent.

Upon review of this matter, I hereby find as fact, that Herlong 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.2000) and Reg. 69-50 § VIII. Herlong acknowledges that he did not pay the required fee on or before the May 1, 2000 deadline. However, Herlong contends his failure to pay the fee resulted from inadvertence and oversight and not from any intent to avoid the requirements of the law. He further contends that he attempted to pay the fee before the Department initiated any administrative action against him. Nevertheless, Herlong's failure to meet the administrative deadline has led to the cancellation of his license to transact the business of insurance as an agent in South Carolina.

Since then, Herlong has expressed a desire to reinstate his license. He and the Department agreed to submit the entire matter to me, along with their specific recommendation, for my summary decision. The consensual recommendation was that the Department would reinstate Herlong's resident insurance agent license upon proof of his payment of the CE fee to the CE Administrator and an administrative penalty in the total amount of $250 to the Department.

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 § 38-43-130 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."

After a thorough review of the record, and pursuant to my findings of fact, I hereby conclude as a matter of law, that Herlong has not complied with S.C. Code Ann. § 38-43-106(D) and 25A S.C. Code Ann. Reg. 69-50 §VIII (Supp. 2000). As a result, the administrative action previously taken against his resident insurance agent license was proper. However, under the discretionary authority provided to me within S.C. Code Ann. § 38-43-130 (Supp. 2000), and after carefully considering the recommendation of the parties, I hereby impose against Herlong an administrative penalty in the total

HMH Henry M. Herlong

amount of $250. If Herlong pays that penalty within ten days of the date of my signature upon this consent order, and if he also provides proof of his having paid the CE fee, the Department will reinstate his resident insurance agent license.

The parties have reached this agreement in consideration of the Department having never taken any administrative disciplinary action against Herlong before, of Herlong'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 paying the CE fee. The parties expressly agree and understand Herlong's payment of the agreed-upon penalty constitutes full accord and satisfaction of this matter.

By her signature upon this consent order, Herlong 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. 2000). 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. 2000), 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 Henry M. Herlong shall, within ten days of the date of my signature on this consent order, pay to the Department an administrative penalty 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 Herlong's licensing file.

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

Ernst N. Csiszar
Director

April 20, 2001, at
Columbia, South Carolina

Henry M. Herlong

I CONSENT:

Henry Michael Herlong III

Henry M. Herlong
43 Cobblestone Court
Hilton Head Island, S.C. 29928

Dated this 17 day of April, 2001