

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF CONSUMER AFFAIRS
AND BUSINESS REGULATION
DIVISION OF INSURANCE

SUFFOLK, SS

Docket No.: E2012-06

DIVISION OF INSURANCE)
)
Petitioner,)
)
v.)
)
KILGORE INSURANCE AGENCY;)
CYRUS A. KILGORE;)
JEFFREY B. KILGORE;)
KATHLEEN J. BURKE; and)
ANDREW W. CROWTHER)
)
Respondents.)

CONSENT AGREEMENT AND ORDER

This Consent Agreement and Order (“Consent Agreement and Order” or “Consent Agreement”) is made by and among the Massachusetts Division of Insurance (“Division”), with offices at 1000 Washington Street, Suite 810, Boston, Massachusetts 02118, and Respondents Cyrus A. Kilgore and Jeffrey B. Kilgore (the “Kilgores”), licensed resident insurance producers with business addresses at 5 Centennial Drive, Peabody, Massachusetts 01960, and Kilgore Insurance Agency (the “Agency”), a licensed business entity insurance producer with a business address at 5 Centennial Drive, Peabody, Massachusetts 01960

1. On August 16, 2012, after an investigation, the Division filed an Order to Show Cause against the Agency, the Kilgores, Kathleen J. Burke, and Andrew W. Crowther in the above-captioned matter. A substituted amended Order to Show Cause was filed on Sept. 20, 2012, and approved by the Presiding Officer on September 28, 2012 (“OTSC”). The OTSC is on file with the Division and incorporated by reference herein.

2. The OTSC alleges, in part, that by signing insurance documents on behalf of clients without authority, the Kilgores used dishonest practices in the conduct of business in the Commonwealth.

Specifically, the OTSC alleges that the Agency, and in some instances one or both of the Kilgores, engaged in conduct in the business of insurance in violation of M.G.L. c. 175, §§ 162R(a)(5), 162R(a)(7), 162R(a)(8), 162R(a)(10) and M.G.L. c. 176D, § 2. It further alleges that the Kilgores, as designated/responsible licensed producers for the Agency are, pursuant to M.G.L. c. 175, § 173, personally liable for the alleged misconduct by the Agency. In its claim for relief the Division requested, in part, that the Commissioner of Insurance find the pertinent allegations set forth in the OTSC as fact. If after a public hearing the Commissioner of Insurance (“Commissioner”) found sufficient evidence to determine that the Kilgores and the Agency did commit the alleged violations, the Commissioner may order the revocation of the Agency’s business entity insurance producer license and the Kilgores’ insurance producer licenses, as well as impose fines pursuant to M.G.L. c. 175 and 176D.

3. The Commonwealth initiated a civil action against the Kilgores and the Agency (and others) captioned as *Commonwealth of Massachusetts v. Andrew W. Crowther Jr., et al.* Suffolk Superior Court, Civil Action No. 2009-5416 (the “Civil Action”) based on certain of the same acts and conduct alleged by the Division in the OTSC. Because of the ongoing Civil Action, a stay of the administrative hearing at the Division was issued on September 28, 2012 and periodically renewed. On April 29, 2015, an amended final judgment was entered in the Civil Action against the Kilgores and the Agency in the amount of \$2,183,637.30 plus statutory prejudgment interest at 12% per annum from December 22, 2009.

4. The Kilgores and the Agency filed Answers to the OTSC on February 1, 2016 denying the allegations in the OTSC and they are on file with the Division.

5. The execution of this Consent Agreement and Order by the Kilgores and the Agency is not an admission of wrongdoing, of liability, or the truth of any of the disputed factual and legal allegations and claims asserted by the Division in this Consent Agreement or in the OTSC.

6. The Kilgores and the Agency have been represented by counsel throughout this proceeding. The Kilgores and the Agency have been afforded the opportunity for an adjudicatory hearing in this matter and hereby waive that right and all rights of appeal in return for the settlement of this proceeding. This Consent Agreement and Order is a voluntary settlement and compromise of disputed claims in order to avoid the risks, burdens, and expense of further litigation.

7. Without admitting any wrongdoing or violation of the Massachusetts insurance laws, the Kilgores and the Agency agree to abide by all orders of the Courts of the Commonwealth of Massachusetts entered in the matter of *Commonwealth of Massachusetts v. Crowther et al.*, (the “Civil Action”), which obligations are set forth in ¶ 9 of this Consent Agreement and Order, and has paid to the Division Twenty-Thousand Dollars (\$20,000.00) as follows:

- (a) Cyrus A. Kilgore has paid to the Division Five Thousand Dollars (\$5,000.00);
- (b) Jeffrey B. Kilgore has paid to the Division Five Thousand Dollars (\$5,000.00); and
- (c) Kilgore Insurance Agency has paid to the Division Ten Thousand Dollars (\$10,000.00)

Such payments have been remitted to the Division and made payable to the Commonwealth of Massachusetts.

8. If the Kilgores or the Agency fail to adhere to the orders outstanding in the matter of *Commonwealth v. Crowther et al.* (the "Civil Action"), they may be subject to disciplinary action and fines under M.G.L. c. 175, § 162R(a), M.G.L. c. 176D, and any other applicable sections of the Massachusetts General Laws.

9. The Kilgores and the Agency further agree to make restitution according to the terms and conditions set by a court of competent jurisdiction relating to the final judgment entered in the Civil Action, as it may be amended or modified on appeal, or pursuant to a written agreement among the Kilgores, the Agency and the Commonwealth, or otherwise (the "Restitution"). Failure to make the Restitution is a violation of this Consent Agreement and constitutes a basis for the Division to impose license revocation, fines and any and all penalties pursuant to M.G.L. c. 175, § 162R(a), M.G.L. c. 176D, § 7 and M.G.L. c. 175, § 173. The Kilgores and the Agency further agree to notify the Division within 30 days of any changes to the terms and conditions of the Restitution, including, without limitation, as to the amount or time for payment, and whether as the result of an appeal or written agreement with the Commonwealth, or otherwise. To confirm compliance with this paragraph, upon the Division's request, the Kilgores and the Agency, or any of them, agree to provide verification of the payment of the Restitution and a copy of any order, modified judgment, or written agreement with the Commonwealth relating to the Restitution. Notwithstanding the provisions of this paragraph, the Kilgores may avail themselves of any and all judicial and legal avenues available to them in regard to the final judgment entered in the Civil Action and future judicial proceedings and related orders or judgments, without being in violation of this Consent Agreement and Order.

10. Except as expressly set forth in this Consent Agreement and Order, the failure of the Division at any time to require strict performance by the Kilgores or the Agency of any terms, provisions, or conditions hereof shall in no way affect the Division's right thereafter to enforce the same, nor shall the waiver by the Division of any breach of any of the terms, provisions, and conditions hereof be construed or deemed a waiver of any succeeding breach of any term, provision, or condition thereof.

11. The Kilgores and the Agency acknowledge that they have had the opportunity to review this Consent Agreement and Order and to present this Consent Agreement for review by an attorney of their choosing at their own expense and an attorney has reviewed this Consent Agreement and Order with them and explained all of its terms and conditions to them to their satisfaction. The Kilgores and the Agency enter into this Consent Agreement and Order freely and voluntarily, understand all of the terms and conditions contained herein, and hereby assent to entry of this Consent Agreement and Order.

12. The provisions of this Consent Agreement and Order may be amended, modified, or expanded solely in writing by joint consent of the Division, on the one hand, and the Kilgores and/or the Agency, on the other hand, with the approval of the Commissioner.

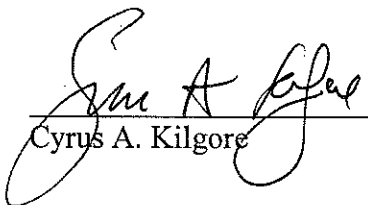
13. This Consent Agreement and Order shall be construed under and governed by the laws of the Commonwealth of Massachusetts without giving effect to its conflict of laws principles. This Consent Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one original.

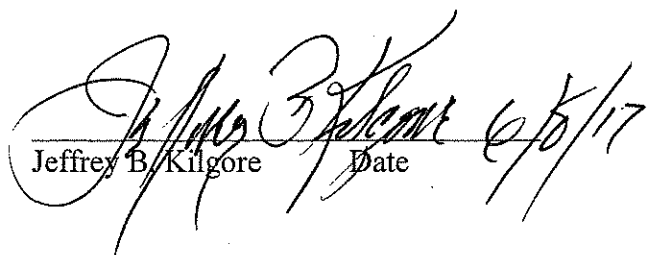
14. The Kilgores and the Agency understand that the entry of this Consent Agreement and Order constitutes a reportable administrative action that must be disclosed to the Division in future insurance license applications and may be required to be disclosed in other jurisdictions.

15. It is, therefore, ORDERED and DECREED as follows:

- a. From the effective date of this Consent Agreement and Order, the Kilgores and the Agency shall cease and desist from the conduct alleged in the Amended Order to Show cause on file with the Division.
- b. Without admitting to the facts alleged in the Amended Order to Show Cause, the Kilgores and the Agency agree to the entry of this Consent Agreement and Order.
- c. Cyrus A. Kilgore has paid to the Division Five Thousand Dollars (\$5,000.00); Jeffrey B. Kilgore has paid to the Division Five Thousand Dollars (\$5,000.00); and Kilgore Insurance Agency has paid to the Division Ten Thousand Dollars (\$10,000.00).
- d. Cyrus A. Kilgore, Jeffrey B. Kilgore, and Kilgore Insurance Agency shall comply with their obligations to make restitution pursuant to any orders entered by a court of competent jurisdiction in connection with or relating to the final judgment issued in *Commonwealth of Massachusetts v. Andrew W. Crowther, Jr., et al.*, Suffolk Superior Court, Civil Action No. 2009-5416 (the "Civil Action"), or any written agreement relating to the payment of restitution arising from the Civil Action, which obligations are set forth in ¶ 9 of this Consent Agreement and Order.
- e. In the event that the Division finds that there has been a breach of any provision of this Consent Agreement and Order or if the Kilgores or the Agency fail to comply with the provisions of this Consent Agreement, it may in its discretion, pursue any and all legal remedies permitted by the Massachusetts insurance laws as well as any other appropriate law of the Commonwealth.
- f. The Kilgores and the Agency understand and agree that they have until the close of business on June 7, 2017, to execute and deliver this Consent Agreement and Order to the Division at Massachusetts Division of Insurance 1000 Washington Street, Suite 810 Boston, MA 02118, and that the Consent Agreement and Order is subject to final approval by the Presiding Officer. Failure to execute the Consent Agreement by June 7, 2017, shall invalidate the entire agreement herein, and the Division will proceed accordingly.

Agreed to by the undersigned on the dates listed below.


Cyrus A. Kilgore 6/8/17
Date


Jeffrey B. Kilgore 6/8/17
Date

KILGORE INSURANCE AGENCY

Cyrus A. Kilgore
Cyrus A. Kilgore, Partner
Authorized Representative

6/8/17
Date

Jeffrey B. Kilgore
Jeffrey B. Kilgore, Partner
Authorized Representative

6/8/17
Date

Robert J. Kelly
Robert J. Kelly
Counsel to the Commissioner
Commonwealth of Massachusetts
Division of Insurance

6/8/17
Date

Michael D. Powers
Michael D. Powers
Counsel to the Commissioner
Commonwealth of Massachusetts
Division of Insurance

June 8/2017
Date

ORDERED this 15th day of June 2017, at the office of the Commissioner of Insurance.

Jean F. Farrington
Jean F. Farrington, Esq.
Presiding Officer