



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

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AND BUSINESS REGULATION

July 28, 2003

Mr. James Egan
Rocco Rose Insurance Agency, Inc.
544 River Street
Mattapan, MA 02126

Dear Mr. Egan:

This is in response to an unsigned letter from the above-captioned office dated May 14, 2003, to the Division of Banks (the "Division"), regarding certain statutory provisions applicable to premium finance agencies. Upon inquiry of the Rocco Rose Insurance Agency, the Division was informed that this response should be addressed to you.¹

Your letter expressed concern that certain notice provisions contained in General Laws chapter 255C, §21, relative to the cancellation of insurance policies financed through premium finance agencies, were unfair to the holders of such policies and conflicted with notice requirements provided under the insurance laws. Specifically, you asserted that section 21, which requires that any "notice of revocation" issued by a premium finance company be received by the insurance company no less than three days prior to the effective date of cancellation, is contrary to the notice requirements set forth in General Laws chapter 175, § 113A. Section 113A provides that a person insured under a motor vehicle liability policy has a minimum twenty days notice of cancellation, and may make payment on or prior to the date of cancellation. You advised that, because persons financing insurance policies should have the maximum amount of time to provide for payment, section 21 is unfair and should be "overturned."

Premium finance companies are licensed and regulated by the Division pursuant to General Laws chapter 255C. Section 21 of that chapter addresses the cancellation of financed policies and sets forth certain notice requirements including,

"[I]f a premium finance agency, or any holder of a premium finance agreement, acting under a power of attorney in connection with the cancellation of a motor vehicle liability policy.....gives notice of cancellation in accordance with section thirty-four K of said chapter ninety, and thereafter the insured pays the

¹ The Division's records indicate that Rock Acceptance Company, Inc., a premium finance agency licensed by the Division, also operates at that address.

full amount then due under the premium finance agreement, such agency or holder shall forthwith notify the insurer that it is revoking the notice of cancellation. Such notice of revocation shall not be binding upon the insurer, unless it is in writing and is received by the insurer not less than three days prior to the effective date of cancellation."

Section 34K of chapter 90 provides that,

"[n]o power of attorney in connection with the cancellation of a motor vehicle liability policy as defined in section thirty-four A shall be exercised until 10 days' notice has been given to the policyholder by registered or certified mail, return receipt requested, by the person or corporation exercising the power of attorney. Notice to the insurance company of the cancellation of such a policy by a person or corporation exercising the power of attorney shall be accompanied by a statement of compliance with this section, and the insurance company may rely upon such statement."

These provisions set forth the various notices required in order to effect cancellation of a motor vehicle liability policy financed by a premium finance company. Based on its review, it would appear to the Division that section 34K requires the premium finance company to give a policyholder ten days notice of its intent to cancel *prior* to issuing an instruction to the insurance company to cancel the financed policy. The above-quoted portion of section 21 sets forth the notice which the premium finance company must provide to the insurance company in order for it to revoke its prior instruction to cancel. Considering these provisions together and in the context of your specific concern, the Division is unable to conclude that the holders of financed policies have less time to make payment than the holders of policies which are not financed, or that section 21 necessarily shortens the twenty day period provided under section 113A. You should seek further clarification of this matter with the Division of Insurance, which has jurisdiction over chapters 90 and 175.

You should further note that the Division has no authority to overturn or otherwise invalidate a statutory provision. Any request of that nature should be addressed to your legislative representatives.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from those presented may result in a different position statement by the Division.

Sincerely,



Joseph A. Leonard, Jr.
Deputy Commissioner of Banks
and General Counsel

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