

BEFORE THE STATE AUDITOR
AND COMMISSIONER OF INSURANCE
HELENA, MONTANA

IN THE MATTER OF:) CASE NO. INS 2007-70
)
THE PROPOSED DISCIPLINARY) CONSENT AGREEMENT
TREATMENT OF JAMES JOHNSTON,) (Potter & Company and James Johnston)
POTTER & COMPANY, and FIRST)
AMERICAN TITLE INSURANCE)
COMPANY,)
Respondents.)

Consent Agreement dated this 27th day of June 2008, between the Montana Insurance Department ("Department"), acting pursuant to the authority of the Insurance Code, § 33-1-101 *et. seq.*, and § 2-4-603 Montana Code Annotated; and Respondents Potter & Company (Potter) and James Johnston (Johnston.)

RECITALS

WHEREAS, the Department issued a Notice of Proposed Agency Disciplinary Action and Opportunity for Hearing (Action) on or about December 18, 2007, alleging violations of the Montana Insurance Code (Action attached hereto as Exhibit A);

WHEREAS, the Department, Potter and Johnston agree that the parties' best interests would be served by dismissing the Action as it relates to Potter and Johnston and entering into the following specific agreement and undertakings:

NOW THEREFORE, in consideration of the mutual undertakings established herein, the Department, Potter and Johnston, as the parties hereto, enter into the following:

AGREEMENT

A. Without admitting the allegations and conclusions contained within the four corners of the Action, Potter and Johnston hereby stipulates and consents to the following:

1. Respondents Potter and Johnston shall pay a fine of \$60,000 to the State of Montana, via the Department, with \$30,000 suspended pursuant to the remaining stipulations and conditions. The remaining \$30,000 will be paid in 24 equal monthly payments of \$1,250, with the first payment due and payable on signing this agreement;
2. Potter and Johnston shall prepare Potter's assets for sale, including any reconciliation of the trust account;
3. Potter and Johnston shall get Potter properly registered by incorporation with the Montana Secretary of State and correct any and all errors and omissions in the insurance agency's records.
4. Potter shall sell its assets with a closing date on or near August 1, 2008. Once its assets are sold, Potter may be voluntarily dissolved pursuant to Montana law.
5. Johnston will refrain from applying for an insurance license of any kind for five years from the date of this consent agreement.
6. Johnston and Potter & Company shall comply with the Montana Insurance Code and any other applicable laws and regulations.

B. The Department agrees and stipulates to the following:

1. Upon signing this notarized Consent Agreement, the Department will file with the hearing examiner the Consent Agreement in regard to all matters now pending before him and

seek a dismissal of this case, with prejudice, with respect to the allegations against Johnston and Potter.

C. The parties agree and stipulate as follows:

1. The Statute of Limitation is tolled for two (2) years from the date of consummation of this Consent Agreement with regard to the allegations set forth in the Action. In the event Johnston violates the terms of this Consent Agreement or violates the Montana Insurance Code during the two year period, the Department shall seek a fine from Johnston in the amount of \$25,000.

2. Any complaints brought to the Department after the signing of this Agreement that contain allegations of illegal acts by Johnston or Potter of a similar or the same nature as the allegations set forth in the Action and that occurred prior to the consummation of this Agreement, shall not result in further administrative, civil or criminal action or referral by the Department.

3. This Consent Agreement constitutes the entire agreement between the parties, there being no other promises or agreements, either express or implied. Pursuant to statutory authority, the Department and its Commissioner hereby agree that the Department will not initiate any civil, administrative, or criminal action against Johnston or Potter regarding the allegations contained in the Action. Moreover, the Department and Commissioner will not refer the allegations or evidence underlying the allegations for criminal prosecution to any other agency. Johnston and Potter fully and forever releases and discharges the Office of the State Auditor, the elected State Auditor and all State Auditor employees from any and all actions, claims, causes of action, demands, or expenses for damages or injuries that may arise from the

allegations underlying this Agreement, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of the Action.

DATED this 30th day of June 2008.

MONTANA INSURANCE DEPARTMENT

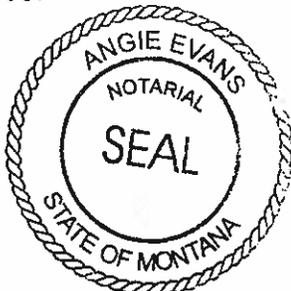
By: Janice S. VanRiper
Janice S. VanRiper
Deputy Insurance Commissioner

DATED this 27th day of June 2008.

POTTER & COMPANY

By: [Signature]
Authorized Representative

SUBSCRIBED AND SWORN to before me this 27th day of June, 2008.

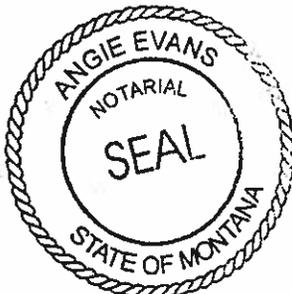


Angie Evans
Notary Public for the State of Montana
Angie Evans
(Printed name)
Residing at White Sulphur Springs, Montana
My commission expires April 19, 2009.

DATED this 27th day of June 2008.

[Signature]
James Johnston

SUBSCRIBED AND SWORN to before me this 27th day of June, 2008.



Angie Evans
Notary Public for the State of Montana
Angie Evans
(Printed name)
Residing at White Sulphur Springs, Montana
My commission expires April 19, 2009.