

**STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE**

IN RE:

DANA A. CUNNINGHAM

Docket No. INS 04 - 800

Maine License #ADR102335

**CONSENT AGREEMENT
AND ORDER**

NIPR # 8034840

INTRODUCTION

1) This matter is before the Superintendent of Insurance as a Consent Agreement and Order in connection with a Petition which has been filed concerning the resident insurance adjuster license of Dana A. Cunningham.

2) The Maine Insurance Code regulates persons who offer or sell insurance products and services in the State of Maine, including adjusters. The Superintendent of Insurance has jurisdiction over this matter pursuant to the Insurance Code generally, Title 24-A Maine Revised Statutes Annotated, and in particular, 24-A M.R.S.A. §§211, 220, 1417, 1420-K and 1472. This matter is also entered into as a consent agreement under the authority of 10 M.R.S.A. §8003 (5), to resolve, in lieu of an adjudicatory proceeding, the matters covered by the Petition. The parties to this Consent Agreement and Order are Dana A. Cunningham; the Maine Superintendent of Insurance; and the Maine Office of the Attorney General.

FINDINGS OF FACT

3) Dana A. Cunningham is licensed in Maine as a resident insurance Adjuster. His license number in Bureau records is ADR 102335. His National "NIPR" Number is 8034840.

4) Mr. Cunningham's address of record, as specified in his application for licensing dated March 4, 2004 and reflected in Bureau records, is:

26 Nicholas Court
Portland, ME 04104

NONDISCLOSURE OF PENDING MATTER IN APPLICATION

5) The Bureau of Insurance received Mr. Cunningham's application for Adjuster licensing on March 5, 2004, which license application was approved by the Superintendent after review and in reliance upon the statements made in it.

6) Item “K” on the application form for Adjuster license which Mr. Cunningham filed with the Superintendent required an answer to the following question: “Have you ever been convicted of, or pled nolo contendere (no contest) to any misdemeanor or felony, or do you currently have pending against you any misdemeanor or felony charges?”

7) Mr. Cunningham answered “No” to Item K on his application for Adjuster license.

8) The application included Mr. Cunningham’s signature, dated “3-4-04,” under the following text:

“I hereby authorize and request, every person, firm, organization, corporation, governmental agency, court or any other entity having control of any documents, records, or other information pertaining to myself, to furnish copies, or reports of same to the Superintendent of Insurance or State Police of the State of Maine, or to the designee of either of them. ...

“I hereby state the above answers are complete and true.”

9) The Bureau later learned that Mr. Cunningham had been arrested on March 16, 2002 for assault in Boston, Massachusetts.

10) In Boston Municipal Court, Docket #0201CR001074, Mr. Cunningham was criminally charged with assault in connection with the above incident, under Massachusetts statute G.L. c. 265, §13A. That statute provided for a maximum penalty of 2 ½ years imprisonment, rendering the charged offense a felony.

11) Mr. Cunningham pleaded not guilty to the charge. Continuing the matter without making a finding of guilty, the Court placed Mr. Cunningham under the supervision of the Boston Municipal Court Probation Department until April 28, 2004. The “Terms of Supervision” document, dated May 1, 2002, included the following statement: “If you fail to comply with any of the following terms of supervision or bail release, you may be ordered, after due notice, to appear again in court. At that time, the terms of your supervision may be changed; the period of supervision may be extended or sentence may be imposed. Additionally, non compliance may cause the issuance of warrant for your arrest or your arrest by the probation officer without a warrant.”

12) On March 28, 2002, the Court set a review date of April 28, 2004.

13) The Court ultimately dismissed the matter on April 29, 2004.

NONDISCLOSURE OF OTHER PROFESSIONAL LICENSE ACTION

14) Item “L” on the application form for Adjuster license which Mr. Cunningham filed with the Superintendent required an answer to the following question: “Have you, or a business entity

with which you were associated, ever been the subject of an action by an insurance regulatory official, or any other professional licensing organization?"

15) Mr. Cunningham answered "No" to Item L on his application for Adjuster license.

16) The application included Mr. Cunningham's signature, dated "3-4-04," under the following text:

"I hereby authorize and request, every person, firm, organization, corporation, governmental agency, court or any other entity having control of any documents, records, or other information pertaining to myself, to furnish copies, or reports of same to the Superintendent of Insurance or State Police of the State of Maine, or to the designee of either of them. ...

"I hereby state the above answers are complete and true."

17) Mr. Cunningham, who had been licensed as a Private Investigator by the Maine Commissioner of Public Safety pursuant to 32 M.R.S.A. Chapter 89, had applied for renewal of his Private Investigator license in May 2003.

18) The renewal application form dated May 13, 2003, which Mr. Cunningham filed with the Maine Department of Public Safety concerning his Private Investigator license, required a response to the following question: "Are you currently under indictment or information for a crime for which the penalty is imprisonment for in excess of one year?"

19) Mr. Cunningham answered "Yes" to the above question in his application for renewal of his Private Investigator license, and included a written statement referencing the Massachusetts matter, pointing out that it had been continued without a finding until 4/28/04.

20) Upon review of the matter, the Maine Department of Public Safety provided Mr. Cunningham with a Notice of Denial and Opportunity for Hearing, dated June 30, 2003.

21) Mr. Cunningham requested a hearing concerning the denial of his Private Investigator license renewal.

22) After negotiations between the Department of Public Safety, the Office of the Attorney General, and Mr. Cunningham and his attorney, a "Final Denial" settlement was reached, and finalized by Order of the Maine Commissioner of Public Safety, dated March 22, 2004.

BUREAU MATTER

23) On November 29, 2004, Bureau of Insurance staff filed a Petition to revoke the adjuster license of Dana Cunningham, based upon the above facts.

24) Mr. Cunningham and Bureau staff have engaged in further communications and negotiations as a result of which this Consent Agreement and Order is entered into in order to resolve the issues upon which the filing of the Petition was based.

CONCLUSIONS OF LAW

INCORRECT, MISLEADING, INCOMPLETE OR MATERIALLY UNTRUE INFORMATION

25) The Superintendent may, after notice and opportunity for hearing, revoke an Adjuster's license under 24-A M.R.S.A. §1417 and §1420-K(1)(A), based upon "providing incorrect, misleading, incomplete or materially untrue information in the license application."

26) Mr. Cunningham provided incorrect, misleading, incomplete or materially untrue information in his Adjuster license application by failing to disclose the pending Massachusetts criminal matter in response to Item "K" on the application, and by signing the application under the statement: "I hereby state the above answers are complete and true," constituting statutory grounds for revoking Mr. Cunningham's Adjuster license under 24-A M.R.S.A. §1420-K(1)(A) or taking other appropriate action.

27) Mr. Cunningham also provided incorrect, misleading, incomplete or materially untrue information in his Adjuster license application by failing to disclose the action concerning the renewal of his Maine Private Investigator license in response to Item "L" on the application, and by signing the application under the statement: "I hereby state the above answers are complete and true," constituting statutory grounds for revoking Mr. Cunningham's Adjuster license under 24-A M.R.S.A. §1420-K(1)(A) or taking other appropriate action.

DECISION AND ORDER SUSPENDING LICENSE and IMPOSING CONDITIONS and CIVIL PENALTY

The Superintendent of Insurance hereby finds that Dana A. Cunningham violated the Maine Insurance Code, as specifically stated in the above Findings of Fact and Conclusions of Law. This Order of Suspension is being entered by consent; notice and opportunity for hearing being waived. In lieu of revoking Mr. Cunningham's Adjuster license, this Consent Agreement and Order suspends the license for a specific period, requires the payment of a penalty, and imposes certain conditions upon the license.

LICENSE SUSPENSION

The insurance adjuster license of **Dana A. Cunningham**, # ADR 102335, is hereby **SUSPENDED for a period of sixty (60) calendar days commencing upon the effective date of this Order**, pursuant to 24-A M.R.S.A. §§1417 and 1420-K.

The effective date of this Order is the date of the Superintendent of Insurance's signature, below. The period of suspension shall run from the effective date through the calendar day 60 days after the effective date. During the period of suspension, Mr. Cunningham may not engage in insurance adjuster activities as defined in the Maine Insurance Code, Title 24-A Maine Revised Statutes Annotated.

Mr. Cunningham shall be able to resume activities as a licensed insurance adjuster as of the 61st day following the effective date.

PENALTY

As an aspect of this settlement in lieu of revocation, Mr. Cunningham will, at the time of executing this Consent Agreement, remit to the Maine Bureau of Insurance a civil penalty in the amount of \$1,000.00, payable to the Treasurer of the State of Maine.

LICENSE CONDITIONS

As an additional aspect of this settlement in lieu of revocation, Mr. Cunningham agrees to the following conditions:

- A) Mr. Cunningham will comply promptly with any request from the Superintendent for information pertaining to his business activities, including any request for access to records, or request that Mr. Cunningham provide copies to the Bureau of any such records, documentation and related information.
- B) Mr. Cunningham will promptly report to the Superintendent all investigations, proceedings, and customer complaints of any type, written or oral, concerning his activities in the insurance industry.
- C) Mr. Cunningham's business letterhead, cards, and similar preprinted documents will not state or imply that he is licensed as a private investigator in Maine. This does not prohibit the continued use of the statement, on his current business letterhead and related documents, that references "Workers' Compensation, Auto Liability, and Medical Malpractice," provided that any activity in Maine is solely within the definition of adjuster under the Insurance Code at 24-A M.R.S.A. §1402.

**CONSENT AGREEMENT
and
EXECUTION OF ORDER**

This Consent Agreement and Order is a final agency action of the Superintendent of Insurance and is entered into in lieu of further pursuing the revocation of this license based upon the facts stated above. It is reportable as a public record and contains specific legal findings, and will be reported to the NAIC "RIRS" database. The entry of this Order is specifically consented to, and it is a consent agreement within the meaning of 10 M.R.S.A. §8003(5)(B). This Consent Agreement and Order is enforceable by an action in Superior Court, is not subject to review or appeal, and may be modified only by a written document executed by all parties. Nothing in this Consent Agreement and Order shall affect the rights or interests of any person who is not a party to this Agreement.

Dated: _____, 2005

Dana A. Cunningham

State of Maine, _____, ss
Subscribed and Sworn to before me
this _____ day of _____, _____.

Notary Public

(printed name)

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

Dated: _____, 2005

ALESSANDRO A. IUPPA
Superintendent, Maine Bureau of Insurance

FOR THE OFFICE OF THE ATTORNEY GENERAL

Dated: _____, 2005

Assistant Attorney General

(printed name)