

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

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ADMINISTRATIVE OFFICE

IN RE: : VIOLATIONS:
: :
: : Sections 611-A (11), (20), and 641.1-A of the
MARK BERLENBACH : Insurance Department Act of 1921,
618 Jaeger Court : Act of May 17, 1921, P.L. 789, No.
Sicklerville, NJ 08081 : 285, as amended (40 P.S. §§ 310.11(11),(20)
: and 40 P.S. §310.41a).
: :
: :
Respondent. : Docket No.: C010-07-008
: :

CONSENT ORDER

AND NOW, this 20th day of July, 2010, this Order is hereby issued by the Insurance Department of the Commonwealth of Pennsylvania pursuant to the statutes cited above and in disposition of the matter captioned above.

1. Respondent hereby admits and acknowledges that he has received proper notice of his rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S. § 101, et seq., or other applicable law.

2. Respondent hereby waives all rights to a formal administrative hearing in this matter, and agrees that this Consent Order, and the Findings of Fact and Conclusions of Law contained herein, shall have the full force and effect of an Order duly entered in accordance with the adjudicatory procedures set forth in the Administrative Agency Law, supra, or other applicable law.

3. Respondent does not admit the Findings of Fact or Conclusions of Law contained herein and Respondent expressly denies that he violated any Pennsylvania insurance laws.

FINDINGS OF FACT

4. The Insurance Department finds true and correct each of the following Findings of Fact:

- (a) Respondent is Mark Berlenbach, residing at 618 Jaeger Court, Sicklerville, NJ 08081
- (b) At all times relevant herein, Respondent was licensed as an Individual Non-Resident Producer license (#438569), which license expired on August 30, 2007.
- (c) At all times relevant herein, Respondent was licensed as a Non-Resident Viatical Settlement Broker license (#431685), which license expired on May 25, 2006.
- (d) In March of 2005, Respondent was hired by Samuel J. Mangel to cultivate the premium financing arm of Mangel's business enterprise known as "Rumson."
- (e) Specifically, Respondent's primary duty was to assist Samuel J. Mangel in finding insurance producers with wealthy clients to purchase high face-value life

insurance policies (which would eventually be viaticated), the premiums for which were to be financed pursuant to non-recourse loans.

- (f) Respondent's employee contract was signed by Candice Mangel, as "Sole Member" of Rumson Capital, LP.
- (g) Respondent worked at the offices "M&M Financial" a business entity licensed to sell insurance located at 261 Old York Road, Suite 810, Jenkintown, PA 19046.
- (h) Although Respondent's paychecks were issued by "Rumson Capital LP," Respondent worked directly for, and reported directly to, Samuel J. Mangel ("Mangel").
- (i) At no time relevant to this Consent Order was Samuel J. Mangel licensed as an insurance producer in Pennsylvania.
- (j) In August of 2005, Mangel presented Respondent with at least two blank applications to sign as the agent of record.
- (k) One of the applications was for \$10 million life insurance policy (# 1606047) for Mark G. Luber from ING, (the "ING policy").

- (l) The second application was for a \$8.5 million life insurance policy (policy #BU1142534) from United Mutual of Omaha ("UMO policy") purchased for Lincoln T. Griswold.
- (m) Neither of the policyholders ever met with or knew the Respondent.
- (n) Respondent signed both blank applications at the direction of Mangel.
- (o) At the time of the application for the policies, it was anticipated that they would be sold on the secondary life insurance market after the expiration of the policy's two year contestability period, hereinafter referred to as "Viatication Plan."
- (p) The "Insured's Disclosure Statement for Bedrock Funding LLC's Life Insurance Premium Finance Program," hereinafter "Bedrock Disclosure" reflected the arrangement set forth in paragraph (n) above.
- (q) In accordance with the Viatication Plan as outlined by the Bedrock Disclosure, Luber and Griswold executed a number of legal documents in 2005, the net effect of which caused the eventual viatication of the policies, described as follows:
- i. The policyholders each created a limited liability partnership in the state of Georgia.
 - ii. An irrevocable trust was also created in Georgia, naming the LLP as the beneficiary of the policy; the sole purpose of the trust was to own

the policy.

- iii. Luber and Griswold both executed the Bedrock Premium Financing Agreement, ("BPFA") which instructed Bedrock Funding LLC to pay the premiums on the policy directly to ING and Mutual of Omaha on behalf of the respective trust.
 - iv. The BPFA specified that the premium becomes due and payable by the LLP on the earlier of: (A) the death of the insured; or (B) the two year anniversary of the Financing Date of the Transaction, i.e., the "scheduled maturity date."
 - v. The amount of premium loaned by Bedrock Funding LLC was so substantial that it necessitated viatication of the policy.
 - vi. The BPFA gave Bedrock Funding LLC the exclusive right to appoint the agent of record to viaticate the policy, which Bedrock Funding LLC ultimately exercised and which resulted in excessive commissions being paid to third parties.
 - vii. As a result of the BPFA and associated documents, excessive compensation was paid to third parties.
- (r) The Viatication Plan was structured in an attempt to circumvent the "insurable interest" requirements of Pennsylvania law, 40 P.S. § 512.
- (s) Respondent obtained appointments with United Mutual of Omaha and ING.

- (t) Respondent was directed by Mangel to "sign over" his commission check that he received at his residence for being the agent of record on the Luber policy (\$157,500) around December 6th, 2005 as he was a salaried employee of Rumson Capital (?) by contract and not entitled to commission.
- (u) Respondent did so, at Mangel's direction.
- (v) Respondent was terminated in February of 2006 for "employee policy violations."
- (w) Respondent cooperated in the Department's investigation of this matter.

CONCLUSIONS OF LAW

5. In accord with the above Findings of Fact and applicable provisions of law, the Insurance Department concludes and finds the following Conclusions of Law:

- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department ("Department").
- (b) Section 641.1-A of the Insurance Department Act (40 P.S. §310.41a) prohibits a producer from securing any insurance business that was sold, solicited or negotiated by any person acting without an insurance producer license.

(c) Section 611-A(11) of the Insurance Department Act (40 P.S. §310.11(11)) prohibits a producer from knowingly accepting insurance business which was sold, solicited or negotiated by a person who is not licensed as an insurance producer.

(d) Section 611-A (20) of the Insurance Department Act (40 P.S. §310.11 (20)) prohibits a licensee from demonstrating a lack of general fitness, competence or reliability sufficient to satisfy the Department that the licensee is worthy of licensure.

(e) Respondent's acts described in paragraph 4 violate 40 P.S. §§ 310.11 (11), (20). and §310.41a

(f) Respondent's violations of Sections 611-A (11) and (20) and 641.1-A of the Insurance Department Act (40 P.S. §§ 310.11(11), (20) and §310.41a are punishable by the following, under Section 691-A of the Insurance Department Act (40 P.S. § 310.91):

- i. suspension, revocation or refusal to issue the certificate of qualification or license;
- ii. imposition of a civil penalty not to exceed five thousand dollars (\$5,000.00) for each violation of the Act;
- iii. an order to cease and desist; and
- iv. any other conditions as the Commissioner deems appropriate.

ORDER

6. In accordance with the above Findings of Fact and Conclusions of Law, the Insurance Department orders and Respondent consents to the following:

- (a) Respondent shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.
- (b) Respondent shall not apply for a producers license in the Commonwealth of Pennsylvania for a minimum of five (5) years.
- (c) Respondent shall cooperate fully with the Department and any other agency or law enforcement agency in any review, investigation or proceeding relating to matters addressed in this Order. This shall include, but is not limited to, submitting to interviews, providing written statements or affidavits and appearing and providing testimony at any administrative or other legal proceedings as required by the Department and any other agency or law enforcement agency.
- (d) If Respondent ever becomes re-licensed, Respondent's certificates and licenses may be immediately suspended by the Department following its investigation and determination that (i) any terms of this Order have not been complied with; or (ii) any complaint against Respondent is accurate and a statute or regulation has been

violated. The Department's right to act under this section is limited to a period of five (5) years from the date of re-licensure.

- (e) Respondent specifically waives his right to prior notice of said suspension as provided in paragraph 6(d) above, but will be entitled to a hearing upon written request received by the Department no later than thirty (30) days after the date the Department mailed to Respondent by certified mail, return receipt requested, notification of said suspension, which hearing shall be scheduled for a date within sixty (60) days of the Department's receipt of Respondent's written request.
- (f) At the hearing referred to in paragraph 6(e) of this Order, Respondent shall have the burden of demonstrating that he is worthy of licensure.
- (g) In the event Respondent's certificates and licenses are suspended pursuant to paragraph 6(d) above, and Respondent either fails to request a hearing within thirty (30) days or at the hearing fails to demonstrate that he is worthy of a certificate and license, Respondent's suspended certificates and licenses shall be revoked.

7. In the event the Insurance Department finds that there has been a breach of any of the provisions of this Order, based upon the Findings of Fact and Conclusions of Law contained herein, the Department may pursue any and all legal remedies available, including but not limited to the following: The Department may enforce the provisions of this Order in an

administrative action pursuant to the Administrative Agency Law, supra, or other relevant provision of law; or, if applicable, the Department may enforce the provisions of this Order in any other court of law or equity having jurisdiction.

8. Alternatively, in the event the Insurance Department finds that there has been a breach of any of the provisions of this Order, the Department may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

9. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

10. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

11. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

12. This Order shall be final upon execution by the Insurance Department. Only the Insurance Commissioner or a duly authorized delegee is authorized to bind the Insurance Department with respect to the settlement of the alleged violation of law contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or a duly authorized delegee.

BY:



MARK BERLENBACH

Respondent



COMMONWEALTH OF PENNSYLVANIA

By: RONALD A. GALLAGHER, JR.

Deputy Insurance Commissioner