



**COMMONWEALTH OF PENNSYLVANIA  
INSURANCE DEPARTMENT**

**MARKET CONDUCT  
EXAMINATION REPORT**

**OF**

**SAGICOR LIFE  
INSURANCE COMPANY**  
Scottsdale, AZ

As of: April 2, 2015  
Issued: April 2, 2015

**BUREAU OF MARKET ACTIONS  
LIFE AND HEALTH DIVISION**



April 2, 2015

**UPS OVERNIGHT DELIVERY**

Mr. Jim Golembiewski  
General Counsel & Vice President Compliance  
Sagicor Life Insurance Company  
4343 N. Scottsdale Rd. Suite 300  
Scottsdale, AZ 85251

In Re: Market Conduct Examination    Warrant No. 13-M26-027    Docket No. MC15-04-002

Dear Mr. Golembiewski :

As recently discussed, enclosed herewith is your copy of the executed Consent Order for your Company's file. The terms of the Consent Order are in accord with those discussed.

This Consent Order has been executed and is effective, April 2, 2015.

A check or money order for One Hundred Thousand dollars (\$100,000.00) made payable to the Commonwealth of Pennsylvania should be received within fourteen (14) days of execution of this document and a signed Directors affidavit should be sent within thirty (30) days of execution of this document by the Insurance Department. These documents should be addressed to Lori Magaro, Bureau of Market Actions, Insurance Department, 1321 Strawberry Square, Harrisburg, Pennsylvania 17120.

Your prompt attention to this matter is appreciated.

Sincerely,

A handwritten signature in black ink that reads "Deborah Lee".

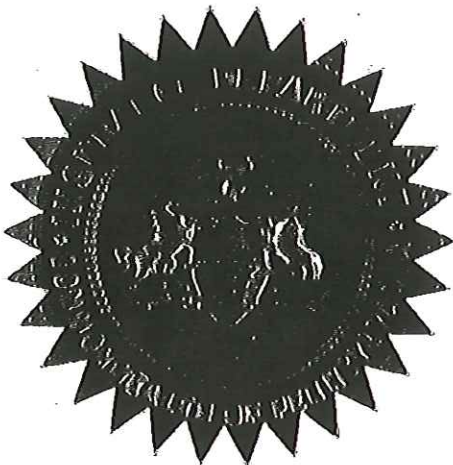
Deborah Lee  
Life & Health Division Chief

Enclosure

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

ORDER

AND NOW, this 7<sup>th</sup> day of April, 2015, in accordance with Section 905(c) of the Pennsylvania Insurance Department Act, Act of May 17, 1921, P.L. 789, as amended, P.S. § 323.5, I hereby designate Christopher R. Monahan, Acting Deputy Insurance Commissioner, to consider and review all documents relating to the market conduct examination of any company and person who is the subject of a market conduct examination and to have all powers set forth in said statute including the power to enter an Order based on the review of said documents. This designation of authority shall continue in effect until otherwise terminated by a later Order of the Insurance Commissioner.



  
Teresa D. Miller  
Acting Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE: : VIOLATIONS:  
: :  
SAGICOR LIFE INSURANCE : Sections \_\_\_\_\_ of the Insurance Department  
COMPANY, : Act of 1921, Act of May 17, 1921, P.L. 789,  
901 Congress Ave. : No. 285, as amended (40 P.S. §§ 310.71, 477b,  
Austin, TX 78701 : 1171.4 and 1171.5(a)(12)).  
: :  
: :  
: :  
Respondent. : Docket No.: MC 15-04-002

CONSENT ORDER

AND NOW, this 2<sup>nd</sup> day of April, 2015, this Order is hereby issued by the Insurance Department of the Commonwealth of Pennsylvania (“Department”) pursuant to the statutes cited above and in disposition of the matter captioned above.

1. Respondent hereby admits and acknowledges that it has received proper notice of its 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 shall have the full force and effect, other than *res judicata*, 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 neither admits nor denies the Findings of Fact or Conclusions of Law contained herein, and Respondent expressly denies that it 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 Sagicor Life Insurance Company, which maintains its home address at 901 Congress Avenue; Austin, Texas 78701.
- (b) By letter dated January 18, 2013 (the "1/18/2013 Letter"), the Insurance Department advised Respondent that it was investigating programs under which Respondent offered, underwrote and issued life insurance on the lives of dues-paying members of two Pennsylvania unions (the "FOP Programs"). The 1/18/2013 Letter indicated that the investigation was based upon consumer complaints by insureds that the life insurance policies lack insurable interest, and that full disclosure of contract terms were not provided to insureds.
- (c) The investigation was conducted during the period of January through August of 2013 and, throughout the investigation, Respondent cooperated with the Department.
- (d) The Department found the following with regard to FOP Programs:

i. The FOP Programs were initiated and designed by Derek A. Siewert (“Siewert”) and his company, ARX Insurance Advisors (“ARX”), who approached Respondent in September 2012 to determine Respondent’s willingness to offer, underwrite and issue life policies under a program to be offered to either municipalities to insure the lives of their employees or unions to insure the lives of their members. Respondents assert that the following structure was described to them by Siewert:

A. Each municipality or union would establish an irrevocable trust to be funded by the municipality or union. The purpose of the trust was: (i) to pay for life insurance on the life of each municipal employee or union member who elected to apply and was accepted for the life policy and under which the trust would be the sole owner and beneficiary; and (ii) from which the trust would use the life insurance proceeds to fund a \$100,000 death benefit to a beneficiary selected by each municipal employee or union member upon whose life a policy was issued, with the remainder, after deduction of expenses of the trust, to be available to the municipality or union to fund additional benefits for the general employee or membership population of the municipality or union. Further, each municipality or union would communicate the nature and structure of the program to its respective employees or members and the method for electing municipal employees or union members to indicate consent to the

structure of the program and to participate in the program, to apply for the life insurance and, if accepted for policy issuance, to name their selected beneficiary for the \$100,000 death benefit payable from the trust.

- B. Respondent would establish the application process for municipal employees or union members who elected to apply for life insurance and for the trusts as owners of the policies as well as the process for policy issuance. In addition, Respondent would appoint Siewert and ARX as insurance agents of Respondent for the program and, as recommended by Siewert, would appoint William A. Kelly, Jr. ("Kelly") as an insurance agent of Respondent and utilize Kelly's company, Voluntary Employee Benefit Advisors, to administer the application process.
- ii. Respondent agreed that it could underwrite and issue universal life coverage for such a program under its Simplified Issue program, which can provide up to and including \$249,999 of coverage and which did not require full underwriting, subject to its review and approval of all proposed program documents, including trust documents, employee or member consent forms, and, as set forth in its standard producer agreements, any materials utilized by the producers that referenced Respondent or its products or use of Respondent's logo.
- iii. Respondent asserts that Siewert then provided to Respondent for its review and approval copies of proposed trust documents and member consent forms that were

to be used with programs to be offered to two Pennsylvania unions that Siewert had identified as interested in his program. As part of that review, Respondent verified that the trusts were irrevocable and indicated the proper intended purpose (i.e. to pay the premium on and hold life insurance policies on the lives of persons in whom the union has an insurable interest; to receive amounts payable under such life insurance policies; and to pay death benefit proceeds to qualified members of the union as directed by the union and the remainder to the union to provide additional benefits for the general union membership population). Respondent identified references to "employees" and required that both the trust documents and member consent forms change such references to "member" or "participant." In addition, Respondent advised that the trustee (indicated as located in New York state) would have to be located in a state in which Respondent was licensed so that Respondent could accept owner/applicant signatures from the trustee and issue the policies to the trustee in the state in compliance with its license status.

- iv. Upon receipt from Siewert of copies of letters provided by each union indicating its consent to initiate the FOP Programs with Respondent as the issuing insurer, as well as the executed irrevocable trust documents and copies of member consent forms, both of which included the revisions required by Respondent, Respondent agreed to proceed with the application process.



(e) Upon review of the documents provided by Respondent during the investigation, the Department identified the following concerns:

- i. That, although Respondent had required revisions to the trust documents and member consent forms to change references from employee to member or participant, it used an application form for the FOP Programs that referenced “employee,” “employer,” and “employee benefit.”
- ii. That, although Respondent had entered into a producer agreement with ARX, it had not submitted to the Department notices of appointment of either ARX or its owner, Siewert.
- iii. That there were references to “loans” and “loan documents” in the executed trust documents when the completed application forms indicated that there was no premium financing and that Respondent will not issue any policy for which the premium will be financed.
- iv. That Respondent had permitted application forms to be pre-populated with responses required of trustee, as policy owner and payor, with respect to the existence of insurable interest and the lack of premium financing.
- v. That, although all materials distributed by producers to the unions and the union members accurately represented the FOP Programs as understood by and agreed to

by Respondent, certain of these materials were distributed to the union and union members on behalf of the unions by the producers that referenced Respondent without its prior review and approval in contravention of the provisions of Respondent's producer agreements with ARX (including Siewert) and Kelly.

- (f) The Department then expanded its investigation of the FOP Programs to the producers (Siewert, ARX and Kelly) and, in May 2013, requested that Respondent communicate with the producers to obtain their cooperation with the Department in its investigation. This expanded investigation and requests for information by Respondent revealed that the producers had initiated or allowed the following pertinent changes to the FOP Programs without the consent of Respondent:
- i. That the executed irrevocable trusts provided to Respondent had been replaced with executed revocable trusts and, among other changes, that the trustee's address for receiving trust agreement notices and communications was changed to a location in the state of New York; and
  - ii. That the source of funds for the deposit for the purchase of annuities used to pay the premiums for the life insurance policies purchased by the trust was from third parties (i.e. the deposit was paid via a loan from a financial entity (Legacy Point Capital) and was then refinanced by client banks of another financial entity (Cobalt Management, LLC) under a 7 – 10 year note with a 3% fixed interest rate). As a consequence of such funding for the annuities, while the beneficiary

designated by each union member on whose life insurance was placed would still receive a \$100,000 death benefit from the trust, each union would receive only \$25,000 of the death benefit, with the remainder to be utilized to repay the loans on the purchased annuities.

- (g) As a result of the Department's investigation, the Department indicated its concerns about the FOP Programs to the respective unions who then, through their trustees, requested termination via rescission of all policies issued by Respondent. Upon receipt of the requests, Respondent promptly rescinded all policies issued and fully refunded all premium received under the FOP Programs, and reported to the Department the dates of all such actions.
- (h) On June 14, 2013, the Insurance Department initiated a targeted market conduct examination of Respondent under examination warrant number 13-M26-027 pursuant to the Department's authority under 40 P.S. §§ 323.3 and 323.4.
- (i) The examination included a review of insurance company records, files and practices to determine compliance with Pennsylvania statutes and regulations relating to Respondent's activities relating to underwriting, producer licensing, marketing and sales (including advertising materials), policy forms and filing.
- (j) The market conduct examination of Respondent indicated the following:

- i. Respondent's internal procedures did not require revisions to its application forms to accurately indicate that the union members were applying for coverage as members of a union and not as employees of the union.
- ii. Respondent's procedures did not ensure an adequate understanding of all aspects of the FOP Programs relevant to its decision to proceed as the underwriter and issuer of insurance under the Programs, or to ensure that changes to the Programs could not be made without its prior review and approval.
- iii. The use of pre-populated responses by the trustees, as owners and premium payers for the life insurance policies, and by the signing producer, allowed for possible inaccurate representations by the trustees and producer in applications completed by and provided to union members if any pre-populated response became inaccurate due to changes to documents or program structure without Respondent's knowledge or consent.
- iv. Respondent did not maintain complete control over the content, form and method of dissemination of all materials distributed by the producers to both the unions and union members that referenced insurance to be issued by Respondent.
- v. Respondent failed to properly provide notice of appointment to the Department for ARX and Siewert.

- vi. Respondent paid commissions to a producer that was not properly appointed and was involved in the marketing and sale of life insurance policies to Commonwealth residents under the FOP Program.
- vii. Respondent issued life insurance policies to FOP Program participants residing in Pennsylvania based upon incomplete applications that indicated such participants were “employees,” and that the applications were signed in New Jersey.
- viii. Respondent issued life insurance policies to FOP Program participants based upon prepopulated insurable interest questions on the application.
- ix. Respondent failed to submit to the Department for prior approval the following forms utilized with the FOP Programs: 1) the Accelerated Death Benefit Insurance Rider Disclosure Statement as required under 31 Pa. Code § 83.3; and 2) a general amendatory endorsement used to amend information from the application which is either determined to be incorrect or which has subsequent changes as required under 31 Pa. Code § 89b.3.
- x. Respondent failed to notify the Department regarding the use of an illustration as required under 40 P.S. § 625-8 and 31 Pa. Code § 83.3).

(e) Based upon the above findings, the market conduct examination of Respondent asserted violations of the following laws of the Commonwealth:

- i. 40 P.S. § 310.71, which requires that an insurance producer shall not act on behalf of or as a representative of an insurer unless the insurance producer is appointed by the insurer.
- ii. 40 P.S. § 477b, which prohibits the use of forms and contracts without first obtaining the approval of such forms and contracts from the Department.
- iii. 40 P.S. § 1171.4, which prohibits any person from engaging in any trade practice that is defined or determined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.
- iv. 40 P.S. § 1171.5(a)(12), which prohibits making false or fraudulent statements or representations on or relative to an application for insurance for the purpose of obtaining a fee, commission, money or other benefit from any individual.
- iv. Chapter 51 of Title 31, Pennsylvania Code, which sets forth certain requirements for insurance advertising.

#### CONCLUSIONS OF LAW

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

(a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.

(b) Respondent's violation of 40 P.S. § 310.71 is punishable under 40 P.S. § 310.91 as follows:

- i. denial, suspension, refusal to renew or revocation of the license, if any, of any person;
- ii. a civil penalty of not more than \$5,000.00 for each violation;
- iii. an order to cease and desist; and
- iv. any other conditions deemed appropriate.

(c) Respondent's violations of 40 P.S. §§ 1171.4 and 1171.5(a)(12) are punishable under 40 P.S. § 1171.9 as follows:

- i. cease and desist from engaging in the prohibited activity; and
- ii. suspension or revocation of the license(s) of Respondent.

(d) In addition to any penalties imposed by the Commissioner for Respondent's violation of the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 et seq.), the Commissioner may, under Sections 10 and 11 of the Unfair Insurance Practices Act (40 P.S. §§ 1171.10, 1171.11) file an action in which the Commonwealth Court may impose the following civil penalties:

- i. for each method of competition, act or practice which the company knew or should have known was in violation of the law, a penalty of not more than five thousand dollars (\$5,000.00);

- ii. for each method of competition, act or practice which the company did not know nor reasonably should have known was in violation of the law, a penalty of not more than one thousand dollars (\$1,000.00).

(e) Respondent's violations of Chapter 51 of Title 31, Pennsylvania Code, are subject to legal sanctions as if the company refused to produce or maintain documents as required by the Department.

ORDER

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

- (a) Respondents shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.
- (b) In settlement of the violations identified during the examination, Respondent shall pay to the Department \$100,000.00.
- (c) Payment of this matter shall be made by check payable to the Pennsylvania Insurance Department. Payment should be directed to Christopher Monahan, 1321 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment must be made no later than thirty (30) days after the date of this Order.



(d) Respondent shall comply with all sections of statute and regulation referenced in this Order.

(e) After a period of 12 months from the date of this Order, the Department may, at its sole discretion, conduct a re-examination of Respondent to verify that all corrective actions have been implemented and to otherwise review any and all issues that the Department, within its sole discretion, deems appropriate. The cost of the re-examination shall be paid by Respondent and otherwise be conducted pursuant to Pennsylvania's Examination Law. Further, Respondent shall file any periodic report or reports that the Department, in its sole discretion deems necessary, and in a manner, time, form and content that the Department designates.

7. In the event the Insurance Department finds that there has been a breach of any of the provisions set forth in paragraph 6 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 Insurance Department may enforce the provisions of this Order in the Commonwealth Court of Pennsylvania or in any other court of law or equity having jurisdiction; or 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.

8. Alternatively, in the event the Insurance Department finds that there has been a breach of any of the provisions of paragraph 6 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.

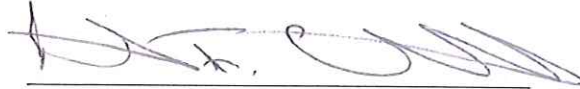
10. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

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 violations of law contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or a duly authorized delegee.

[signature page to follow]

BY: SAGICOR LIFE INSURANCE COMPANY,



President

  
Secretary

BY: PENNSYLVANIA INSURANCE DEPARTMENT



ARTHUR F. McNULTY  
Deputy Insurance Commissioner  
Commonwealth of Pennsylvania