

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

RECEIVED
INSURANCE DEPARTMENT

2008 JUL 14 PM 1:39

ADMIN HEARINGS OFFICE

IN RE: : ALLEGED VIOLATIONS:
:
Nassau Employees Benefits Trust : Sections 4 and 5 of the Unfair
("NEBT") : Insurance Practices Act, Act of July
:
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:
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Respondent : Act (40 P.S. §46, §47)
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:
:
Docket No. CO08-07-017

CONSENT ORDER

AND NOW, this 14th day of July 2008, this Order is hereby

issued by the Deputy Insurance Commissioner 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 it received proper notice of the 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.

FINDINGS OF FACT

3. The Deputy Insurance Commissioner finds true and correct each of the following Findings of Fact:

(a) Respondent, Nassau Employees Benefits Trust (the "Plan"), was a multiple employer welfare arrangement ("MEWA") that self-insured its participating employers' accident and health insurance plan. This included AllStaffing Inc. ("ASI"), a professional employer organization (PEO) which participated in the Plan's illegal, self-insured health plan. See, In re: Stanley Costello and AllStaffing, Inc. C006-10-003.

(b) At no time was the Plan licensed to transact insurance in the Commonwealth, or any other state, as an insurer, a producer, or in any other capacity.

(c) ASI provided administrative services for various unrelated Pennsylvania employers ("participating employers"), such as payroll services and collecting contributions for health plan coverage.

- (d) ASI's participating employers consisted of unrelated and diverse businesses, such as landscaping, dry cleaning, metal fabricating, medical services, and any other business entities.
- (e) ASI did not exercise common law control over its participating employers, i.e., it did not exercise day-to-day control over their activities, nor did it have the right to hire, fire, transfer, suspend, lay off or discipline employees of participating employers.
- (f) As part of its services, ASI solicited and enrolled participating employers into the Plan's group accident and health plan.
- (g) Effective July 1, 2003, the Plan group health plan issued coverage to ASI's participating employers, and collected contributions to fund the Plan.
- (h) At no time was the Plan ever licensed to transact insurance in the Commonwealth as insurers, or in any other capacity.
- (i) In 2005, the Plan and its claims administrator, Health Choice, Inc., had insufficient funds to cover ASI's participating employers' claims liabilities.
- (j) As a result of Respondent's illegal, unlicensed insurance operation, Pennsylvania consumers incurred approximately \$2 million in unpaid claims.

These claims were eventually paid by Gerber Life Insurance Company ("Gerber") as NEBT's stop-loss insurer, under the terms of the Consent Order with Gerber and Elite Brokerage Services, Inc. ("Elite"), docketed at In re: Gerber Life Insurance Company, CO07-03-012 dated March 16, 2007.

- (k) By Resolution dated February 19, 2007 an Independent Fiduciary ("IF") was appointed for Respondent to assist in the payment of any remaining claims or liabilities of Respondent, and a successor IF was subsequently appointed.

CONCLUSIONS OF LAW

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

- (a) Respondent is subject to the jurisdiction of the Insurance Department.
- (b) By collecting premium and issuing coverage to employers in ASI's employers, Respondent operated as an unlicensed insurer in violation of 40 P.S. §§46 and 47.
- (c) By soliciting and enrolling ASI's participating employers in, and collecting and forwarding contributions to, Respondent acted as an unlicensed insurer and

violated 40 P.S. §47 which prohibits a person from negotiating or soliciting any policy of insurance or suretyship in this Commonwealth, collecting or forwarding premium or delivering policies for any company to which a certificate of authority has not been granted.

- (d) For each violation of 40 P.S. §310.11, Respondent is subject to the following penalties under 40 P.S. §310.91(d): a civil penalty of \$5,000 for each violation, an order to cease and desist and any other conditions as the commissioner deems appropriate.
- (e) For each violation of 40 P.S. §§46, 47, Respondent is subject to a \$10,000 penalty under 40 P.S. §47.
- (f) Respondent's activities described above constituted engaging in this Commonwealth in a trade practice which is defined or determined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance in violation of Sections 4 and 5 of the Unfair Insurance Practices ("UIPA") (40 P.S. §§1171.4, 1171.5).
- (g) Respondent's violations of Sections 4 and 5 of the UIPA (40 P.S. §§1171.4, and 1171.5) are punishable under 40 P.S. §§1171.9, and 1171.11 by the following:
 - 1) an order requiring Respondent to cease and desist from engaging in such violation and/or, if such violation is a method of competition, act or

practice defined in Section 5 of the UIPA;

2) commencement of an action against Respondent for the following civil penalties:

- (i) for each method of competition, act or practice defined in Section 5 and in violation of the UIPA which Respondent knew or reasonably should have known was such a violation, a penalty of not more than five thousand dollars (\$5,000.00) for each violation, not to exceed an aggregate penalty of fifty thousand dollars (\$50,000.00) in any six month period;
- (ii) for each method of competition, act or practice defined in Section 5 and in violation of the UIPA which Respondent did not know nor reasonably should have known was such a violation, a penalty of not more than one thousand dollars (\$1,000.00) for each violation, not to exceed an aggregate penalty of ten thousand dollars (\$10,000.00) in any six month period.

ORDER

In accord with the above Findings of Fact and Conclusions of Law, the Deputy Insurance Commissioner orders and Respondent consent to the following:

4. Respondent has desisted and shall cease and desist from any further activities and violations described above and any further violations of Pennsylvania

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: 22, 1974, P.L. 589 (40 P.S. §§ 1171.4,
: 1171.5); Section 611-A of Act 147 of
: 2002 (40 P.S. § 310.11); Sections 208
: and 209 of the Insurance Department
Respondent : Act (40 P.S. §46, §47)
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: Docket No. CO08-07-017

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ORDER

In accord with the above Findings of Fact and Conclusions of Law, the Deputy Insurance Commissioner orders and Respondent consent to the following:

4. Respondent has desisted and shall cease and desist from any further activities and violations described above and any further violations of Pennsylvania

insurance laws.

5. After completion of payment of remaining claims and payment of all fees and expenses of the Plan, any monies remaining in the escrow account established for the Plan by the IF shall be paid to the Insurance Department as a monetary penalty in full and complete satisfaction of any and all penalties of the Insurance Department against the Plan, the said escrow account, their trustees, heirs, administrators, successors or assigns, including the IF and his predecessor.

6. In the event the Deputy Insurance Commissioner 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.

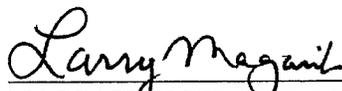
7. Alternatively, in the event the Deputy Commissioner finds that there has been a breach of any of the provisions of this Order, the Deputy Commissioner may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate action pursuant to the Administrative Agency Law,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

8. 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.

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

10. This Order shall be final upon execution by the Deputy Insurance Commissioner. Only the Insurance Commissioner or her duly authorized Deputy Insurance Commissioner 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 her duly authorized Deputy Insurance Commissioner. The penalties, if any, imposed by this Order are not effective until execution by the Insurance Commissioner or her duly authorized Deputy Insurance Commissioner.

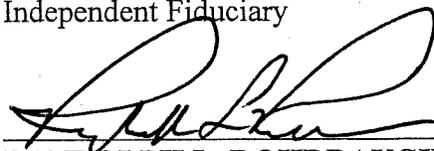
11. The parties to this agreement warrant that they have full authority to execute this Consent Order on behalf of, and to bind, the respective parties listed below.



NASSAU EMPLOYEE BENEFIT TRUST

By: Larry Magarik, Esq., Kennedy Jennik & Murray, P.C.

Independent Fiduciary



RANDOLPH L. ROHRBAUGH

Deputy Insurance Commissioner
Commonwealth of Pennsylvania