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INSURANCE DEPARTMENT

BEFORE THE INSURANCE COMMISSIONER
OF THE COMMONWEALTH OF PENNSYLVANIA
ADMIN HEARINGS OFFICE

2014 APR -4 PM 1:36

IN RE:	:	VIOLATIONS:
	:	
DEREK A. SIEWERT	:	40 P.S. §§ 310.11(5) and (20),
4487 Cathys Club Lane	:	§310.71, and 40 P.S. § 512
Jacksonville, FL 32224-7663	:	
	:	
and	:	
	:	
ARX INSURANCE ADVISORS, LLC	:	
4776 Hodges Boulevard #105	:	
Jacksonville, FL 32224	:	
	:	
Respondents.	:	Docket No. CO14-02-003

CONSENT ORDER

AND NOW, this 4th day of April, 2014, 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. Respondents hereby admit and acknowledge that they have received proper notice of their rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S.A. §101, et seq., or other applicable law.

2. Respondents hereby waive all rights to a formal administrative hearing in this matter, and agree 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. Respondents deny that they violated Pennsylvania insurance laws.

FINDINGS OF FACT

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

- (a) Respondents are Derek A. Siewert and ARX Insurance Advisors, LLC. ARX Insurance Advisors, LLC maintains its business address at 4776 Hodges Boulevard #105, Jacksonville, Florida 32224 and Derek A. Siewert maintains his business address at 4487 Cathys Club Lane, Jacksonville, FL 32224-7663.
- (b) Respondents are, and at all times relevant hereto have been, licensed insurance producers.
- (c) Between October 2012 and February 2013, Respondent Siewert and his agency, Respondent ARX, entered into a program with non-resident producers William A. Kelly, Jr., Voluntary Employee Benefit Advisors, Nashville, Tennessee, and Thomas D. Cushman, Troy, New York, to sell life insurance policies against the lives of members/insureds of two Pennsylvania unions wherein the policies lacked insurable interest.

- (d) The program was named the Legacy Life Insurance Program and was organized so that Respondent Siewert and William Kelly would be appointed producers for Sagicor Life Insurance Company while Thomas Cushman represented the members/insureds of the two unions.
- (e) Respondent Siewert, coordinated arrangements for the Legacy Life Insurance Program with Sagicor Life Insurance Company.
- (f) Two trusts owned the policies under the Legacy Life Insurance Program. Both were irrevocable trusts established in Pennsylvania and effective on November 30, 2012.
- (g) The trusts were vehicles used by third party entities (i.e., investors unknown to the unions and their members) to pay premiums to Sagicor Life Insurance Company, fully funding coverage for union members at "no cost" and no risk of any cost to them.
- (h) The two trusts were established under Pennsylvania laws but wholly managed by trustees out of New York, New York, and Tenafly, New Jersey,
- (i) The identities of third party entities were never disclosed to the insureds.
- (j) The trust documents were used in association with a document titled "TOLI Agreement" [Trust Owned Life Insurance] that were electronically signed by the insureds and ceded to the respective trusts all authority over the policies, including the rights to designate beneficiaries and ownership of the policies.

- (k) Only the first page and signature pages of the trusts were provided to the insureds at the time of application, which precluded the insureds from understanding how the insurance policies could be managed.
- (l) William Kelly and Voluntary Employee Benefit Advisors mailed marketing materials to union members and accepted their applications, which were subsequently forwarded to Sagacor Life Insurance Company for underwriting and policy issue.
- (m) Between December 2012 and February 2013, Respondent Siewert and Thomas Cushman represented to the union leadership and its members that under the Legacy Life Insurance Program, and upon the death of a member/insured, his/her personally designated beneficiary would receive \$100,000, the union would receive \$25,000, and the trusts/third party entities would receive \$124,999.
- (n) However, applicants/insureds were not advised that \$124,999 of death benefits per insured would be paid to the unknown third party entities.
- (o) Sagacor Life Insurance Company affirmed that it never saw or approved the PowerPoint presentations or the mailings that represented the sale of its life insurance policies under the Legacy Life Insurance Program.
- (p) Sagacor Life Insurance Company reported that approximately 1,152 applications were taken by Voluntary Employee Benefit Advisors from union members starting in December 2012 and continuing into 2013.

- (q) Sagicor Life Insurance Company approved the applications and the process used by Voluntary Employee Benefit Advisors.
- (r) Approximately 800 life insurance policies were issued to members of the two unions under the Legacy Life Insurance Program.
- (s) Applications were taken by Voluntary Employee Benefit Advisors' office in Indiana from the union members over the telephone while the members were in Pittsburgh, Pennsylvania, and its environs.
- (t) The applications for the life insurance were pre-populated with certain information, including misrepresentations that the members were employees of their respective trusts; that the beneficiaries of the death proceeds were the trusts, in contravention to the beneficiaries designated by the members themselves; and that the situs of the policies was the home address of the trustee in Tenafly, New Jersey.
- (u) Although it was represented to the union members that their personally designated beneficiary would receive \$100,000.00 upon his/her death, no evidence was ever provided by Respondent Siewert, or the other associated licensees, that such a guaranty existed in the insurance documents or the respective trusts.
- (v) Respondent Siewert asserted that commissions were expected to be at 115% of the premiums for the first year, with the division of the commissions to be 25% for him, 25% for Thomas Cushman, 15% for William Kelly and 35% of the gross, plus interest, to an unlicensed entity named Annuity Funding, LLC. Respondents assert that though they received the first year's commissions, ultimately no commissions were distributed to, or received by, other parties.

- (w) Annuity Funding, which was to receive 35% of the commissions, possessed no Pennsylvania insurance licenses.
- (x) Respondent ARX was the entity through which commissions were to be received from Sagicor Life Insurance Company and subsequently disbursed.
- (y) Approximately \$1 million in premiums was remitted to Sagicor Life Insurance Company through Respondent ARX during early March 2013 with an additional \$3 million to be remitted by April 2013 although policy effective dates were in December 2012 and January 2013.
- (z) Sagicor Life Insurance Company affirmed that, as of, May 2013 it had received \$1,163,519.92 in premiums from Respondent Siewert through Respondent ARX.
- (aa) No insurance documents associated with the Legacy Life Insurance Program, including applications and policies, validated to the insureds that an insurable interest existed by nature of any relationship between the members and any parties (i.e. the unions, the trustees, the trusts, or the third party entities), that were engendered by love and affection, or by any lawful economic interest in having the life of the insured continue.
- (bb) William Kelly and Respondent Siewert were interviewed on April 16, 2013, and affirmed their respective roles in the Legacy Life Insurance Program.
- (cc) During the interview on April 16, 2013, Respondent Siewert affirmed that third party entities funded 100% of the premiums for the

insurance and agreed to secure the funding arrangements, as well as the role of Annuity Funding, LLC, for the premiums.

(dd) During August 2013, Legacy life Insurance Program was terminated and the 800 policies that had been issued were reversed and rescinded.

(ee) Respondents failed to perform adequate due diligence to ensure that

- (i) the Legacy Life Insurance Plan complied with Pennsylvania insurance laws;
- (ii) there was full and accurate disclosure to the member insureds as to the nature of the plan;
- (iii) there was the requisite insurable interest between the parties;
- (iv) the plan was marketed in compliance with Pennsylvania insurance laws; and
- (v) that funding was adequate, appropriate, timely and fully in place prior to inception of the Legacy plan.

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) Respondents are subject to the jurisdiction of the Pennsylvania Insurance Department.

(b) 40 P.S. § 310.11(5) prohibits a licensee or an applicant from intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

(c) Respondents' activities violate 40 P.S. § 310.11(5).

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

(e) Respondents' activities violate 40 P.S. § 310.11(20).

(f) 40 P.S. § 310.71(a) prohibits producers from acting on behalf of or as a representative of the insurer unless the insurance producer is appointed by the insurer. An insurance producer not acting as a representative of an insurer is not required to be appointed.

(g) Respondents' activities described above constitute transacting business within this Commonwealth without written appointment as required by the Act and violate 40 P.S. § 310.71(a).

(h) Respondents' violations of Sections 310.11(5), and (20) 310.71(a) are punishable by the following, under 40 Purdons Statutes, Section 310.91:

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

(i) 40 P.S. § 512 states that no policy of life insurance shall be delivered in this Commonwealth except upon the application of the person insured. The term "insurable interest" is defined as meaning, in the case of persons related by blood or law, an interest engendered by love and affection, and, in the case of other persons, a lawful economic interest in having the life of the insured continue, as distinguished from an interest which would arise only by the death of the insured.

(j) Respondent's activities described above violate 40 P.S. § 512.

ORDER

6. In accord with the above Findings of Fact and Conclusions of Law, the Insurance Department orders and Respondents consent 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) All licenses of Respondents to do the business of insurance are hereby revoked.
- (c) Respondents shall assist to the best of their ability the Pennsylvania Insurance Department in conducting investigations and prosecution of any licensed or unlicensed entity performing the business of insurance including, but not limited to, any public adjuster, insurance producer, company, etc., their employees and officers, including but not limited to testifying as a witness relative to any of the aforesaid entities, their employees and officers in any civil or administrative action involving same.

(d) Respondents shall pay a civil penalty of \$50,000 (Fifty Thousand Dollars) to the Commonwealth of Pennsylvania. Payment of this penalty shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania. Payment should be directed to April Phelps, Bureau Secretary, Bureau of Licensing and Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment may be enclosed with the Consent Order, but must be paid in any event no later than ten (10) days after the date of the Consent Order.

(e) If Respondents should ever become licensed in the future, their 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 Respondents 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 issuance of such licenses.

(f) Respondents specifically waive their right to prior notice of said suspension, 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 Respondents' written request.

(g) At the hearing referred to in paragraph 5(e) of this Order, Respondents shall have the burden of demonstrating that he is worthy of an insurance license.

(h) In the event Respondents' licenses are suspended pursuant to paragraph 5(e) above, and Respondents either fail to request a hearing within thirty (30) days or at the hearing fails to demonstrate that he is worthy of a license, Respondents' suspended 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, it may, in its discretion, 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.

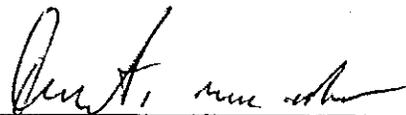
8. Alternatively, in the event the Insurance Department finds that there has been a breach of any of the provisions of this Order, the Department may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate action pursuant to the Administrative Agency Law, supra,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

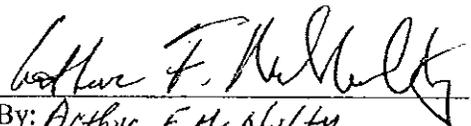
9. In any such enforcement proceeding, Respondents may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

10. Respondents hereby expressly waive 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 the 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 Department or a duly authorized delegee.

BY: 
DEREK A. SIEWERT, individually and on
behalf of ARX INSURANCE ADVISORS,
LLC, Respondents


By: Arthur F. McNulty
Deputy Insurance Commissioner
Commonwealth of Pennsylvania

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: The Act of April 9, 1929, P.L. 177, No. 175, known as The
Administrative Code of 1929

AND NOW, this 10 day of March, 2014, Arthur F. McNulty,
Deputy Insurance Commissioner, is hereby designated as the Commissioner's duly
authorized representative for purposes of entering in and executing Consent Orders. This
delegation of authority shall continue in effect until otherwise terminated by a later Order
of the Insurance Commissioner.



Michael F. Considine
Insurance Commissioner

