

RECEIVED  
INSURANCE DEPARTMENT

BEFORE THE INSURANCE COMMISSION  
OF THE  
COMMONWEALTH OF PENNSYLVANIA  
FEB 11 PM 3:30  
ADMIN HEARINGS OFFICE

IN RE:	:	VIOLATIONS:
	:	
WILLIAM A. KELLY, JR.	:	40 P.S. §§ 310.11(5), and (20)
182 Woodmont Boulevard	:	and 40 P.S. § 512
Nashville, TN 37205-2213	:	
	:	
	:	
	:	
	:	
Respondent	:	Docket No. CO14-02-002

CONSENT ORDER

AND NOW, this *11<sup>th</sup>* day of *Feb.*, *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. 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.A. §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 specifically denies he violated Pennsylvania insurance laws.

#### FINDINGS OF FACT

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

- (a) Respondent is William A. Kelly, Jr., who maintains his business address at 3100 West End Avenue, Suite 905, Nashville, TN 37203-1394. Kelly is the registered agent, director and president of Voluntary Employee Benefit Advisors (VEBA), Inc.
- (b) Respondent is, and at all times relevant hereto has been, a licensed insurance producer.
- (c) Between October 2012 and February 2013, Respondent and VEBA coordinated with non-resident producers Derek A. Siewert ("Siewert"), ARX Insurance Advisors, LLC, Jacksonville, Florida and Thomas D. Cushman ("Cushman"), Troy, New York, to sell life insurance policies

against the lives of members of two unions based in Pittsburgh, Pennsylvania.

- (d) The plan, the Legacy Life Insurance Program ("Legacy Life"), was organized so that Respondent and Siewert would be appointed as producers for Sagicor Life Insurance Company ("Sagicor"). Sagicor is the life Sagicor that was designated to, and did, issue life insurance coverage to Pennsylvania consumers through the Legacy Life plan.
- (e) Respondent was a producer appointed by Sagicor on or around late November of 2012.
- (f) Siewert, with Respondent's knowledge, coordinated arrangements for the Legacy Life plan to obtain coverage life insurance through Sagicor.
- (g) Legacy Life was to operate pursuant to two irrevocable trusts as owners of the Sagicor policies. The trusts were established effective November 30, 2012.
- (h) The trusts were vehicles to be used by third party entities (i.e., investors unknown to the unions or their members) to pay premiums to Sagicor Life Insurance Company.

- (i) The trusts ceded all authority over management of the trusts and assets, including the disposition of trust assets and policy proceeds, to third party trustees. The identities of the third party entities were never disclosed to the members/insureds.
  
- (j) Respondent maintains that the trust was reviewed and approved by Sagieor, and that he relied on their review of the trust, and the manner in which it was implemented, as being in compliance with all applicable Pennsylvania insurance and other related laws. Respondent negligently failed to ensure that the trusts complied with applicable insurance laws.
  
- (k) Respondent himself was not aware of the identities of the third party entities.
  
- (l) Respondent, by and through VEBA, mailed marketing materials to union members, assisted in filling out applications for coverage, and asked questions relating to qualification for coverage, for Pennsylvania consumers.
  
- (m) Respondent maintains that the marketing materials, applications, and application process were designed and/or reviewed and approved by Sagieor and the union. However, Respondent failed to exercise due

diligence to ensure that they comported with Pennsylvania law.

- (n) Respondent, by and through VEBA in Indiana, took applications from the union members over the telephone while the members were in Pittsburgh, Pennsylvania, and its environs.
- (o) The applications for the life insurance contained pre-populated fields with certain information, including misrepresentations that the members were employees of the respective trusts, that the trusts themselves were the beneficiaries of the death proceeds (i.e., contrary to the members' designations of their own beneficiaries), and that the situs of the policies was Tenafly, New Jersey.
- (p) Although the applications indicated that they were taken in New Jersey, in fact they were taken telephonically by producers employed at the offices of VEBA.
- (q) VEBA processed and forwarded approximately 1,152 union members' applications to Sagicor, from December 2012 to February 2013. While Respondent maintains that the application contents and process were done pursuant to Sagicor's instructions, Respondent negligently failed to exercise sufficient due diligence to ensure compliance with Pennsylvania insurance laws.

- (r) Ultimately, approximately 800 life insurance policies were issued to members of the two unions under the Legacy Life plan.
- (s) Although it was represented to the union members that their personally designated beneficiaries would receive \$100,000 upon their deaths, in fact the irrevocable trust documents provided that (i) the trusts themselves were the "beneficiaries" of the policies; (ii) the trustee had unlimited authority to change the beneficiaries of the death proceeds; and (iii) the trust document did not disclose the amount of proceeds to be distributed to the unions or to the third party entities.
- (t) Respondent was to receive from ARX Insurance Advisors commissions of 15% of the premium to Sagicor.
- (u) Approximately \$1 million in premium was remitted to Sagicor through ARX Insurance Advisors during early March 2013 with an additional \$3 million expected to be remitted by April 2013 although policy effective dates were in December 2012 and January 2013. Respondent maintains that neither he nor VEBA ever received said commissions and that in fact he was never paid, nor reimbursed, for costs associated with VEBA's work on the plan.
- (v) By March of 2013, Sagicor had received in excess of \$1.16 million in

premium from Siewert through ARX Insurance Advisors for the Legacy plan.

- (w) No documents associated with the Legacy plan, including applications, policies, trusts and the TOLI agreements, reflected that any insurable interest existed between the members and either the unions, the third party entities, or any other party involved in the Legacy plan. No party demonstrated that coverage for the insured lives related to or was engendered by love and affection, or a lawful economic interest in having the life of the insured continue. Respondent maintains that he detrimentally relied on an opinion from counsel that an insurable interest existed.
- (x) Respondent and Siewert were interviewed by the Department on April 16, 2013, and affirmed their respective roles in the Legacy plan.
- (y) Respondent did not know that, in fact, from the time the trusts were established in late November of 2012 through May of 2013, when premiums were forwarded to Sagicor, that the entities that were to fund the Legacy plan had never been incorporated or otherwise established. Respondent maintains that he relied on others who represented to him that these entities were in fact established and incorporated.
- (z) Respondents failed to perform adequate due diligence to ensure that

(i) the Legacy 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.

(aa) During August 2013, Respondent undertook significant time and effort to unwind the Legacy plan, and Respondent cooperated throughout the investigation.

#### 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.
- (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) Respondent's activities above 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) Respondent's activities described above violate 40 P.S. § 310.11(20).
- (f) Respondent's violations of Sections 310.11(5) and (20) are punishable by the following, under 40 P.S. § 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.
- (g) 40 P.S. § 512 provides that no person shall cause to be insured the life of another unless the beneficiary named in the policy or agreement of life insurance has an insurable interest in the life of the 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.
- (h) Respondent's activities described above in 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) Respondent shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.
  
- (b) Respondent shall pay a civil penalty of \$30,000 (Thirty Thousand dollars) to the Commonwealth of Pennsylvania. Payment of this penalty shall be made by certified check or money order, payable to the PA Insurance Department, Commonwealth of Pennsylvania. Payment should be directed to April Phelps, 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 thirty (30) days after the date of the Consent Order.
  
- (c) Respondent shall assist to the best of his 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) Respondent's 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 this Order.
- (e) Respondent specifically waives his 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 Respondents 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 5(d) of this Order, Respondent shall have the burden of demonstrating that he is worthy of a license.
- (g) In the event Respondent's licenses are suspended pursuant to paragraph 5(c) 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 license, Respondent's 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.

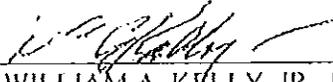
9. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

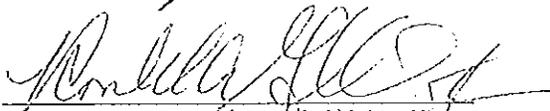
10. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

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 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:

  
WILLIAM A. KELLY, JR., Respondent

  
By: RONALD A. GALLAGHER, JR.  
Deputy Insurance Commissioner  
Commonwealth of Pennsylvania