0793512

BEFORE THE COMMISSIONER OF COMMERCE
AND INSURANCE OF THE STATE OF TENNESSEE

IN THE MATTER OF:	)	
	)	
TENNESSEE INSURANCE DIVISION	)	
Petitioner	)	
	)	
v.	)	DOCKET NO. 12.01-076347J
	)	
JOHN FURLOW	)	
Respondent	)	

ORDER

This cause came on to be heard on July 12, 2006, before Phillip D. Barber, Administrative Judge, sitting for the Commissioner of Commerce and Insurance of the State of Tennessee.

The subject of this hearing was the proposed revocation of the Respondent's agent license and the imposition of a fine for his violation of Tennessee Code Annotated ("T.C.A.") §56-6-155 et seq.

After consideration of the record, and the argument of the parties, it is determined that the cause is well taken and the Respondent's license should be and is hereby revoked and Respondent is assessed a civil penalty of Five Hundred Dollars total ($500.00).

This determination is based on the following findings of fact and conclusions of law:

FINDINGS OF FACT

The Tennessee Securities Act of 1980, as amended, T.C.A. §48-2-101, et seq., (the"Act"), makes the Commissioner of Commerce and Insurance ("Commissioner") responsible for the administration of the Act.

The Insurance Division ("Division") is the lawful agent through which the Commissioner discharges the insurance agent licensing responsibility.

The Division charged the Respondent with three (3) violations of Tennessee Code Annotated (T.C.A. § 56-6-112 (a) (8). All violations are based upon the same facts.

The Division is the lawful agent through which the Commissioner administers the Law, and is authorized to bring this action for the protection of the public.

The Respondent, Join Furlow (hereinafter referred to as the "Respondent Furlow" and collectively "Respondents"), is a citizen of Tennessee and a resident of Antioch, residing at 4985 Algonquin Trail, Antioch, Tennessee 37013 and at all times relevant to the events herein has been licensed by the Division to sell insurance in this state, having obtained said license, numbered 793512, in 1998.

Respondent's license is currently canceled due to the licensee having failed to renew it as prescribed by law.

On or around August, 2001, the Respondent was engaged by Building Greater Communities, Inc. (hereinafter referred to as "BGC"), a Tennessee company principally located in Brentwood, Tennessee, to obtain health insurance for BGC's employees.

The Respondent represented to BGC that they could obtain group health insurance through Avemco Insurance Company (hereinafter referred to as "Avemco") and that the final rates would not vary by more than four percent (4%) from the quoted rates. However, the final rates were much higher due to the Respondents' failure to adequately review the medical applications submitted by BGC's employees and Avemco's policies regarding fertility-related matters.

BCG was unable to purchase group health insurance through Avemco due to the higher than quoted rates and was unable to obtain coverage from August 1, 2001 as anticipated.

The Respondents next presented BGC with Ultramed Choice, a health plan sponsored by the National Association for Working Americans. This plan was administered by Advanced Administration. Electronic Health Plans, Inc., (hereinafter referred to as "Electronic Health Plans") processed the claims for the medical plan. Electronic Health Plans was also doing business as American Benefits Plans.

On or about August 20, 2001, BGC completed an Employer Agreement to be a member of National Association for Working Americans in order to be eligible for the health plan.

The Respondents referred to the coverage they secured for BGC as that of a traditional insurance company, rather than referring to the coverage as that provided by a multiple employer welfare arrangement.

On or about October 23, 2001, BGC received a letter from the Respondents advising BGC to move their group coverage to another "carrier" due to changes in the current reinsurance carrier. The letter further advised that the Respondents were unfamiliar with the "carrier" that they had found to issue BGC's coverage through Ultramed Choice.

On or about February 25, 2002, the Louisiana Commissioner of Insurance issued a Cease and Desist Order against National Association of Working Americans, Electronic Health Plans and American Benefit Plans prohibiting National Association of Working American's operation of an unlicensed self-insurance program in the state.

On or about March 2002, Texas State District Judge Darlene Byrne entered a temporary restraining order against, among others, the National Association of Working Americans, Electronic Health Plans and American Benefit Plans, at the motion of the Office of the Attorney General on behalf of the Texas Department of Insurance.

In March 2002, BGC learned of these court actions by chance, when one

of their employees was unable to fill a prescription and contacted the number on her health insurance card.

On or about March 14, 2002, Respondent Furlow sent an email to BGC advising them to switch their program to Southern Plan Administrators, out of Memphis.

On or about March 31, 2002, Respondent Furlow sent a letter to BGC advising them that he learned of the Ultramed Choice plan that BGC had through David Neal and did not personally have much information about the coverage placed by the Respondents for BGC.

The plan BGC purchased, Ultramed Choice, was not a licensed product in the State of Tennessee, nor was the National Association of Working Americans licensed in Tennessee to offer health benefits to its members.

Advanced Administration and Electronic Health Plans were required to be licensed by the State of Tennessee in order to engage in the administration of health insurance claims. Neither Advanced Administration, nor Electronic Health Plans ever obtained the required license.

Southern Plan Administrators was not licensed to engage in the administration of health insurance claims and did not offer a lawful insurance product to citizens of this State.

The Respondents did not verify the legitimacy of Ultramed Choice, National Association of Working Americans, Advanced Administration, Electronic Health Plans or Southern Plan Administrators.

In fact, Respondent admitted at the hearing that he did not personally call the State of Tennessee, Commerce and Insurance Department to determine the status of the companies mentioned above. Also, Respondent admitted that he did not take any action to determine if Ultramed Choice was licensed by the State of Tennessee.

Additionally, Respondent, under oath and during his testimony

admitted to violating the State of Tennessee insurance laws, however, he denied having any intent to defraud or deceive anyone.

Respondent did not and could not have had a valid appointment as required by law to offer Ultramed Choice or their products as their agent to any purchaser.

The Respondent had no justifiable belief on which to base any representations that BGC's employees had insurance coverage.

The activities of the Respondents left the employees of BGC without health insurance coverage during a period for which the Respondents represented that they would have coverage and for which premiums were paid by BGC. As a result, some of BCG's employees' claims for health insurance benefits arising during this time were unpaid.

CONCLUSIONS OF LAW

The state bears the burden of proof by a preponderance of the evidence that the Respondent violated the cited statutes and rules by the acts or omissions charged.

Tennessee Code Annotated § 56-6-1 12(a)(8) provides that the Commissioner may place on probation, suspend, revoke, or refuse to issue or renew any insurance producer license upon finding that the insurance producer or applicant was using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

The facts demonstrate that the Respondent failed to adequately review the medical applications that were submitted to Avemco on behalf of BGC's employees and failed to be informed as to Avemco's policies toward fertility-related matters. Such facts evidence the Respondent' incompetence and constitutes grounds for an order revoking the Respondent' insurance producer licenses pursuant to Tennessee Code Annotated § 56-6-1 12(a)(8).

Tennessee Code Annotated § 56-6-1 12(a)(8) provides that the Commissioner may place on probation, suspend, revoke, or refuse to issue or renew any insurance producer license upon finding that the insurance producer or applicant was using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

The facts stated above, demonstrate that the Respondent allowed the employees of BGC to be without health insurance coverage by placing them with Ultramed Choice. The Respondent's failure to determine whether Ultramed Choice was a licensed product offered by legitimate entities caused BGC's employees to not have their health insurance claims covered at a time when they had a reasonable expectation of such coverage. Such facts evidence the Respondent' untrustworthiness and incompetence and constitute grounds for an order revoking the Respondent' insurance producer licenses pursuant to Tennessee Code Annotated § 56-6-112(a) (8).

Tennessee Code Annotated § 56-6-112(a)(8) provides that the Commissioner may place on probation, suspend, revoke, or refuse to issue or renew any insurance producer license upon finding that the insurance producer or applicant was using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

The facts stated above, demonstrate that the Respondent recommended BCG purchase their health insurance coverage through Southern Plan Administrators. The Respondent made this recommendation without verifying that Southern Plan Administrators were offering a licensed product in this State. Such facts evidence the Respondent' incompetence and constitute grounds for an order revoking the Respondent' insurance producer licenses pursuant to Tennessee Code Annotated § 56-6-112(a) (8).

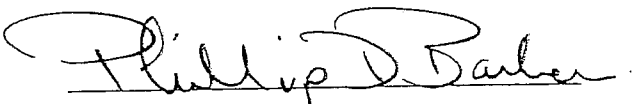
The state has carried its burden in that the proof established that the Respondent violated the cited statutes as alleged.

Because the facts making out the offense are identical in each of the counts and because the Respondent violated the law, but without intent to defraud or deceive and because Respondent did not substantially profit or gain by his violations and because there was another possibly more culpable individual involved besides the Respondent, such constitutes mitigating and extenuating circumstances allowing for leniency in the civil penalty.

Therefore, it is determined that the Respondent's license should be revoked and Respondent assessed a civil penalty of Five Hundred Dollars total ($500.00)

It is so ORDERED.

Entered this 1 day of September, 2006.



PHILLIP D. BARBER
Administrative Judge