

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	CEASE AND DESIST ORDER
)	
JAMES ROBERTS)	
CRD # 2884110)	DIVISION FILE NO.: 78986

Now comes the Iowa Insurance Division ("Division"), pursuant to the provisions of the Iowa Uniform Securities Act – Iowa Code Chapter 502 and finds as follows:

PARTIES AND JURISDICTION

1. The Commissioner of Insurance, Nick Gerhart, pursuant to Iowa Code § 502.601(2013), administers the Iowa Uniform Securities Act.
2. James Roberts ("Roberts") is an individual with a last known mailing address of 14723 Miami St., Omaha, NE 68116. Roberts was licensed as a securities agent in Iowa with Ameritas Investment Corporation ("Ameritas") between January 28, 2000 and August 24, 2011. Roberts was terminated by Ameritas on August 24, 2011 for "failure to follow policy and procedures in regards to outside business activities by acting in a capacity outside the scope of the [Registered Representative's] ("RR") relationship with the broker dealer that involved custody of assets not beneficially owned by the RR, disclosure reporting requirements and borrowing of customer funds."
3. Roberts has engaged in acts or practices within the state of Iowa constituting violations of Iowa Code Chapter 502 and/or any rule or order adopted or issued pursuant to Iowa Code Chapter 502. The Insurance Commissioner is authorized to issue a summary order directed to any person requiring the person to cease and desist from engaging in such acts or practices or take other affirmative action as in his judgment is necessary to comply with the requirements of Iowa Code Chapter 502 pursuant to Iowa Code § 502.604 (2013).

FACTUAL BACKGROUND

4. Client A is an elderly Iowa resident and was a former client of Roberts at Ameritas. The brokerage branch office was located inside the Tier One Bank in Red Oak, Iowa.
5. Roberts represented himself as a bank employee. Client A believed that Client A was safe in doing investments with and trusted Roberts because he was a bank employee.

BEING NAMED AS BENEFICIARY OF ANNUITY POLICY

6. In 2005, Client A purchased an annuity for a face value of \$10,000 from the Lincoln Benefit Life Insurance Company through another insurance producer. Roberts was aware that he could not sell the insurance policy to Client A and be named as the beneficiary of the policy which would raise questions with the insurer and his employer. Client A was convinced to name Roberts as the sole beneficiary of the policy.
7. On September 8, 2006, a Change of Beneficiary Form was filed by Client A removing Roberts as the beneficiary of the policy.
8. On April 14, 2008, a Change of Beneficiary Form was filed by Client A adding Roberts back as the sole beneficiary of the policy.
9. Sometime in late 2011, the beneficiary of the annuity policy was changed by Client A to a trust account. This occurred after one of Client A's relatives told Client A that something was wrong with Client A's insurance and investments with Roberts.
10. Roberts was aware of and accepted to being named as the beneficiary of the annuity policy.

LOANS MADE TO ROBERTS BY CLIENT A

11. Over the course of several years, Roberts took loans or gifts from Client A. The loans or gifts were at the request of or accepted by Roberts. Roberts often accepted these gifts or loans through his wife or children in an attempt to hide these gifts or loans from his employer and/or broker-dealer.

12. A check dated March 21, 2007 was made payable to Patricia Roberts, Roberts wife, in the amount of \$1,200.

13. A check dated January 5, 2010 was made payable to Patricia Roberts in the amount of \$800.

14. On information and belief, there was other checks made payable to "cash" or to Roberts that were either gifts or loans.

15. Roberts persuaded Client A to establish an Iowa College Savings Plan (the "Plan") for the benefit of Roberts' son, in the amount of \$100 sometime before July 2011. To establish this Plan, Roberts completed the on-line application including providing his son's social security number, information that Client A would not have had access to.

CHECK GIVEN TO ROBERTS FROM CLIENT A FOR A THIRD PARTY

16. A check dated September 28, 2009 was made payable to an individual third party in the amount of \$10,000 with the notation "7% monthly int."

17. Roberts accepted a loan from Client A for the purpose of providing funds to third party.

UNDUE INFLUENCE BY ROBERTS OVER CLIENT A'S TRANSACTIONS

18. Over the course of several years Roberts exercised a great deal of influence over the insurance and securities transaction of Client A. This influence was gained by befriending

Client A and leading Client A to believe that he was acting in the client's best interests in all of his dealings with Client A.

SUITABILITY

19. On August 28, 2007, Roberts sold Client A a non-traded limited partnership call Leaf Equipment Leasing Income Fund III, LP in the amount of \$45,000 when Client A was over the age of 80. According to the Direct Participation Program Concentration Worksheet & Disclosure Form (the "DPP"), Client A had already been sold a non-traded Wells II REIT (Real Estate Investment Trust) in 2006 and 2007 in the amount of \$95,000. The DPP indicated that a Concentration Percentage of 16.4% in these non-liquid investments.

20. Client A was totally reliance on Roberts in making these investments. Client A did not understand the investments nor did Roberts make any substantive attempt to explain them to Client A. Client A signed the forms as Roberts instructed Client A to do.

21. The New Account Form signed on August 28, 2007 stated that Client A's risk tolerance was "High Risk" and a time horizon of "10+ years". Client A did not want to take a high risk at Client A's advanced age nor did Client A really understand the length of the investment Client A was being put into by Roberts.

22. On May 14, 2008, Roberts sold Client A a non-traded Cornerstone REIT in the amount of \$25,000 at the attained age of 88. The Concentration Percentage went down to 15.7%, which was the result of Roberts raising Client A's net worth figure from \$850,000 to \$1,050,000.

23. The New Account Form signed May 14, 2008 stated that Client A's risk tolerance was "Speculative" and time horizon of "10+ years".

24. Client A was totally reliant on Roberts on his decision to put Client A into the Cornerstone REIT. Client A did not understand the product being sold to her.

25. On August 19, 2008, Roberts sold Client A a non-traded Cornerstone REIT in the amount of \$50,000 at Client A's advanced age. The Concentration Percentage was 19.5%.

26. The New Account Form dated August 19, 2008 states that Client A had a risk tolerance of "Moderate" and a time horizon of "10+ years".

27. Client A was reliant on Roberts decision to purchase this investment. Client A did not understand the investment, but signed the forms as instructed by Roberts.

28. The non-traded limited partnerships were unsuitable for Client A and resulted in an excessive concentration of Client A's investment in non-liquid investments.

29. Roberts stated to the Division's investigators that these non-liquid investments were made for the purpose of meeting production goals set by Tier One Bank and/or Ameritas.

FAILURE TO DISCLOSE MATERIAL FACTS

30. In connection with the offer and sales of securities, Roberts, directly or indirectly, failed to disclose material facts to Client A, including, but not limited to, the following.

a. failed to adequately disclose the risks being taken by Client A in the non-traded limited partnerships.

MISREPRESENTATION OF MATERIAL FACTS

31. Roberts has made misrepresentations of material fact to Client A including, but not limited to, the following:

a. misrepresented the investment risk(s) being taken by Client A in non-traded limited partnerships;

VIOLATIONS OF SECURITIES ACT

COUNT I

PROHIBITED GIFTS OR LOANS FROM A CLIENT

32. Paragraphs 1 – 31 are incorporated by reference.
33. Roberts solicited, directly or indirectly, a gift or loan to the agent or to a member of the agent's immediate family from a customer that in the aggregate exceeds \$250 in a calendar year in violation of Iowa Code § 502.412(4)(m) (2013) and Iowa Administrative Rule 191-50.16(2)(a) & (f).
34. This action is necessary and appropriate in the public interest and for the protection of investors and consistent with the purposes fairly intended by the provisions of Iowa Code Chapter 502 (The Iowa Uniform Securities Act).

COUNT II

BEING NAMED AS BENEFICIARY OF INSURANCE POLICY

35. Paragraphs 1 – 34 are incorporated by reference.
36. Roberts solicited or accepted being named as a beneficiary in an insurance policy or annuity of a customer in violation of Iowa Code § 502.412(4)(m) (2013) and Iowa Administrative Rule 191-50.16(2)(g) & (h).
37. This action is necessary and appropriate in the public interest and for the protection of investors and consistent with the purposes fairly intended by the provisions of Iowa Code Chapter 502 (The Iowa Uniform Securities Act).

COUNT III

SUITABILITY

38. Paragraphs 1 – 37 are incorporated by reference.

39. Roberts recommended to a customer the purchase, sale or exchange of any securities without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer in violation of Iowa Code § 502.501A (2013) and Iowa Administrative Rule 191-50.16(1)(c).

40. This action is necessary and appropriate in the public interest and for the protection of investors and consistent with the purposes fairly intended by the provisions of Iowa Code Chapter 502 (The Iowa Uniform Securities Act).

COUNT IV

UNDUE INFLUENCE OVER THE CLIENT

41. Paragraphs 1 – 40 are incorporated by reference.

42. Roberts committed acts which show the agent has exerted undue influence over a person in violation of Iowa Code § 502.412(4)(m) (2013) and Iowa Administrative Rule 191-50.16.

43. This action is necessary and appropriate in the public interest and for the protection of investors and consistent with the purposes fairly intended by the provisions of Iowa Code Chapter 502 (The Iowa Uniform Securities Act).

COUNT IV

MISREPRESENTATIONS

44. Paragraphs 1 - 43 are incorporated herein by reference.
45. Roberts has made untrue statements of material fact in the sale of securities.
46. Therefore, Roberts has violated Iowa Code § 502.501 (2013) by making untrue statements of material facts and should be ordered to cease and desist.
47. This action is necessary and appropriate in the public interest and for the protection of investors and consistent with the purposes fairly intended by the provisions of Iowa Code Chapter 502 (The Iowa Uniform Securities Act).

COUNT V

OMISSIONS

48. Paragraphs 1 - 47 are incorporated herein by reference.
49. Roberts has made omissions of material fact in the sale of securities.
50. The omission of these material facts, in light of the circumstances surrounding the sale of securities, is misleading.
51. Therefore, Roberts has violated Iowa Code § 502.501 (2013) by failing to state material facts, and should be ordered to cease and desist.
52. This action is necessary and appropriate in the public interest and for the protection of investors and consistent with the purposes fairly intended by the provisions of Iowa Code Chapter 502 (The Iowa Uniform Securities Act).

ORDERS

WHEREFORE, IT IS HEREBY ORDERED pursuant to the powers granted to the Commissioner of Insurance by Iowa Code §§ 502.604 (2013) as follows:

- A. Roberts shall Cease and Desist soliciting, directly or indirectly, a gift or loan to the agent or to a member of the agent's family from a customer that in the aggregate exceeds \$250 in a calendar year in violation of Iowa Code § 502.412(4)(m) (2013) and Iowa Administrative Rule 191-50.16(2)(a) & (f).
- B. Roberts shall Cease and Desist soliciting or accepting being named as a beneficiary in an insurance policy or annuity of a customer in violation of Iowa Code § 502.412(4)(m) (2013) and Iowa Administrative Rule 191-50.16(2)(g) & (h).
- C. Roberts shall Cease and Desist recommending to a customer the purchase, sale or exchange of any securities without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer in violation of Iowa Code § 502.501A (2013) and Iowa Administrative Rule 191-50.16(1)(c).
- D. Roberts shall Cease and Desist committing any act which shows that the producer has exerted undue influence over a person in violation of Iowa Code § 502.412(4)(m) (2013) and Iowa Administrative Rule 191-50.16.
- E. Roberts shall Cease and Desist making untrue statements of material facts in the offer or sale of securities in violation of Iowa Code § 502.501 (2013).
- F. Roberts shall Cease and Desist omitting material facts which, in light of the circumstances surrounding the sale of securities, are misleading in violation of Iowa Code § 502.501 (2013).

G. Roberts shall each be assessed a civil penalty of \$10,000.00 for knowingly and recklessly violating provisions of the Iowa Uniform Securities Act pursuant to Iowa Code § 502.604(4) (2013) and rules enacted thereunder.

H. The Division shall retain \$1,000 costs from any penalty or payment.

NOTICE REGARDING FAILURE TO REQUEST A HEARING

If you fail to request a hearing within thirty (30) days of the date of this Cease and Desist Order, the Order shall be a final Order of the Commissioner of Insurance and shall be enforceable by the Commissioner of Insurance in an administrative or court proceeding.

NOTICE REGARDING EXHAUSTION OF ADMINISTRATIVE REMEDIES AND RIGHT TO SEEK JUDICIAL REVIEW

The failure to request a hearing can constitute a failure to exhaust your administrative remedies and limit the issues subject to judicial review. You may seek judicial review of this Order pursuant to Iowa Code chapter 17A after the Order becomes final. The Order becomes final thirty (30) days after it is issued if you do not timely request a contested case hearing, or following hearing if you do timely request a contested case hearing.

NOTICE OF PENALTIES FOR WILLFUL VIOLATION OF THIS ORDER

YOU ARE NOTIFIED that any person who willfully violates this order shall be deemed in contempt of the order pursuant to Iowa Code § 502.604. The administrator may petition the district court to hold a hearing to enforce the order as certified by the administrator. The district court may assess a civil penalty against the person in an amount not less than three thousand

dollars but not greater than ten thousand dollars per violation and may issue further orders as it deems appropriate.

YOU ARE ALSO NOTIFIED that a person who willfully violates any provision of this chapter, or any rule or order under this chapter, is guilty of a class "D" felony pursuant to Iowa Code § 502.605(1)(a). A person who willfully violates §§ 502.401, 502.402, 502.403, or 502.408, subsection (1) or (2), resulting in a loss of more than ten thousand dollars is guilty of a class "C" felony pursuant to Iowa Code § 502.605(1)(b).

NOTICE REGARDING IMPACT OF ORDER ON EXISTING LICENSES

A final Cease and Desist Order may adversely affect existing business or professional licenses and result in license revocation or disciplinary action. For example, a final Cease and Desist Order issued to a licensed insurance agent may subject the insurance agent to insurance license revocation or other disciplinary action. Further notice is given that the Iowa Insurance Division may review this Cease and Desist Order for a potential license revocation or disciplinary action.

NOTICE OF RIGHT TO REQUEST HEARING

NOTICE IS HEREBY GIVEN that Roberts or any individual representing any Respondent, may request a hearing in this matter. This request must be in writing and must be filed within thirty (30) calendar days of the date of this Order with Robert Koppin, Enforcement Bureau Chief, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. A notice of the hearing shall be prepared and shall be given at least fifteen (15) days before the date of the hearing unless the parties agree to an earlier date. The hearing shall be held within ninety (90) days after the date of the notice of the hearing unless extended by the presiding officer for good

cause with at least fifteen days notice to the parties. The resulting hearing will be held in accordance with Iowa Code Chapter 17A (2013).

Dated this 12th day of April, 2013.

Iowa Insurance Division



by JIM MUMFORD
First Deputy Commissioner and
Securities Administrator

COPY SENT BY CERTIFIED MAIL TO:

James Roberts
14723 Miami St.
Omaha, NE 68116