

Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building – Third Floor
Des Moines, Iowa 50319

IN THE MATTER OF) Docket No. 13IID024
)
BJORN HJELMELAND,) Division Docket No.: 76675
)
(National Producer No. 11385936))
)
Respondent.) **PROPOSED DECISION**

A contested case hearing was held before Administrative Law Judge Carol J. Greta on October 22, 2013. The Respondent, Bjorn Hjelmeland (“Mr. Hjelmeland”), appeared and testified on his own behalf. Attorney John Leonhart appeared on behalf of the Insurance Division (“Division”). Mark Crandell appeared and testified on behalf of the Division. Exhibits 1, 2, and 3 were admitted into the record without objection. The record was held open until 4:30 p.m. on October 22, 2013 for either submission of a copy of a communication sent in November of 2010 to former insureds of National States Insurance Company or a statement from the Division that it does not have a copy. That communication was timely submitted to the Respondent and to the undersigned, and has been made a part of the record herein, marked Exhibit A.

ISSUES

Whether Bjorn Hjelmeland should be sanctioned for having (1) violated any insurance laws; (2) intentionally misrepresented the terms of an actual or proposed insurance contract or application for insurance; (3) admitted or been found to have committed any unfair insurance trade practice or fraud; or (4) used fraudulent, coercive, or dishonest practices or demonstrates incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in the state of Iowa.

FINDINGS OF FACT

Mr. Hjelmeland is authorized to sell insurance in the State of Iowa pursuant to a license issued to him by the Division on August 8, 2008. He is employed by Bankers Life and Casualty Company (“Bankers Life”).

In the fall of 2010, Judith Ripperger responded to a company mailer from Bankers Life, indicating her interest in a Bankers Life product. Mr. Hjelmeland met with her and assisted her with an application for a long term care policy. Ms. Ripperger’s application for a long term care policy was ultimately not approved, but during the time she was meeting with Mr. Hjelmeland about the long term care policy, Ms. Ripperger received what the Division characterized as a letter from National States Insurance Company (“National States”). What Ms. Ripperger and all National States insureds received was a “Notice of Liquidation” dated November 15, 2010, from the “Special Deputy Receiver” of National States under “Order of the Court.” The Division asserted that the notice stated “your insurance coverage will continue and policy claims will be offered and paid by state insurance guaranty associations.” (Exhibit 1) Contrary to this

assertion, the notice was not so clear. After stating that a court had found National States to be insolvent, the notice stated as follows:

Each state in which National States was licensed to do business has created a life and health guaranty association to provide protection for policyholders and beneficiaries of insolvent insurance companies, like National States, subject to certain statutory limitations. To the extent your policy is covered by a guaranty association, your policy shall continue in force for such period and under such terms as is provided by your guaranty association's enabling statute and other applicable laws. Coverage provided by the guaranty associations will be subject to certain statutory caps and limitations applicable to each guaranty association.

(Exhibit A)

Ms. Ripperger asked Mr. Hjelmeland to meet with her about the notice from National States. Mr. Hjelmeland testified that she was one of a half dozen persons in Centerville that he met with who had received the notice, but that she was the only one who was "distraught" and determined to cancel her National States policy. In fact, Mr. Hjelmeland characterized Ms. Ripperger's attitude as being "hell bent" on cancelling the National States policy before he spoke with her about her options.

The options Mr. Hjelmeland presented to Ms. Ripperger were (1) to keep her National States policy, (2) cancel the policy, get her guaranteed cash return of roughly \$2100, and do nothing more, or (3) cancel the policy, get her guaranteed cash return of roughly \$2100, and purchase another policy.

Mr. Hjelmeland understood that Ms. Ripperger's goal was to have a life policy that would cover the cost of her funeral expenses. He testified that he was aware that all National States policies would be honored by another company, but he did not try to convince Ms. Ripperger to stay with her current policy (option #1) because she was very unhappy that she did not know what company would be taking over her policy and she simply wanted to have nothing more to do with that policy. He also admitted that he did not point out to Ms. Ripperger that her National States policy provided more coverage for a smaller monthly premium (\$14,000/\$49.83) than the new Bankers Life policy (\$10,000/\$66.53). Mr. Hjelmeland stated he sold Ms. Ripperger the new policy because "if she didn't do business with us (Bankers Life), she was going to do business with some other company."

The application Mr. Hjelmeland filled out with Ms. Ripperger is dated February 23, 2011, and is signed by both of them. At the top of the policy, it clearly states the amount of the death benefit (\$10,000) and the annual premium (\$798.36). Elsewhere, the application clearly states that the monthly premiums are \$66.53. (Exhibit 3)

Thereafter, at some unspecified time, Ms. Ripperger complained to the Division, and Mark Crandell investigated her complaint. Ms. Ripperger told Mr. Crandell that Mr. Hjelmeland represented to her that National States was "going under" and that he convinced her to cancel her National States policy and purchase a whole life policy with Bankers Life. Mr. Crandell discovered that, on the Bankers Life application, Mr. Hjelmeland answered "no" to Question 8, "Is the policy applied for intended to, or likely to, replace or change any existing life insurance or annuities in this or any other company?" (Exhibit 3) Mr. Crandell explained that this information is used to give the company that provided the existing policy a chance to talk to the insured and find out why the insured is making a change.

Mr. Hjelmeland explained that he had no intention of precluding National States from an opportunity to talk to Ms. Ripperger when he reported on the application that the new policy was not a replacement policy. Although Ms. Ripperger's National States policy was still in effect on February 23, 2011, Mr. Hjelmeland believed that nothing was going to dissuade Ms. Ripperger from cancelling that policy. Thus, he regarded hers as a household without insurance, which is why he did not regard the Bankers Life policy as a replacement policy. He summarized his contact with Ms. Ripperger by stating, "I felt I was doing what the customer wanted."

CONCLUSIONS OF LAW

The Iowa Legislature created the Insurance Division to regulate and supervise the conducting of the business of insurance in the state of Iowa. The Insurance Commissioner is the chief executive officer of the Division. Iowa Code § 505.1.

The issues raised herein also raise an issue of credibility. There are many factors used when considering the credibility of witness testimony. Some of the most common standards are as follows:

1. Whether the testimony is reasonable and consistent with other evidence you believe.
2. Whether a witness has made inconsistent statements.
3. The witness' appearance, conduct, age, intelligence, memory and knowledge of facts.
4. The witness' interest in the trial, their motive, candor, bias and prejudice.

State v. Holtz, 548 N.W.2d 162,163 (Iowa App. 1996).

This administrative tribunal finds the testimony of Mr. Hjelmeland to be credible. That does not mean that Ms. Ripperger lied to Mr. Crandell. She clearly had a change of heart, and the reason for her second thoughts is not important. Mr. Hjelmeland's testimony was reasonable and consistent with common sense. He was understandably frustrated that, having done what he thought had been requested of him, a client would complain. He was frank about admitting that he made no attempt to persuade Ms. Ripperger to stay with her National States policy, and this was consistent with what he understood her wishes to be. His admission adds to his credibility.

I. Prohibited Acts and Improper Sales Tactics

Iowa Code chapter 507B governs insurance trade practices of producers, adjusters and businesses. The Division alleges Bjorn Hjelmeland engaged in prohibited acts and improper sales tactics in violation of Iowa Code statutes 507B.4(3)(n) and 507B.4B, and regulations 191—Iowa Administrative Code (IAC) 15.8(2)"a", 15.8(4), and 191—IAC 16.24(2).

Misrepresentation on Application

Iowa Code § 507B.4(3)(n) prohibits producers from making "false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual." Here, the allegation is that Mr. Hjelmeland misrepresented the nature of the

transaction when he failed to indicate in Question 8 that the Bankers Life policy was a replacement of the National States policy.

While there really is no question that the Bankers Life policy was a replacement of the National States policy, and Mr. Hjelmeland should have marked “yes” in response to Question 8, the Division did not present any evidence at hearing he answered “no” for the purpose of obtaining any benefit. The credible evidence is that Ms. Ripperger was going to cancel her National States policy and that she had made that decision before filling out the Bankers Life application with Mr. Hjelmeland. Mr. Hjelmeland and his employer were going to benefit regardless of how Question 8 was answered. Mr. Hjelmeland made an error in judgment, but the Division has failed to prove he violated Iowa Code § 507B.4(3)(n) by making a misrepresentation for the purpose of gaining a benefit.

Duty regarding Replacement

One of the duties of a producer such as Mr. Hjelmeland is described in rule 191—IAC 16.24 as follows:

16.24(1) A producer who initiates an application for a policy or a contract shall submit to the insurer...a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts. ...

16.24(2) If the applicant does have an existing policy or contract, the producer shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements ...

a. The notice shall be signed by both the applicant and the producer attesting that the notice has been read aloud by the producer or that the applicant did not wish the notice to be read aloud (in which case the producer need not have read the notice aloud) and that a copy of the notice was left with the applicant.

b. The notice shall list all life insurance policies or annuities proposed to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

As concluded above, Mr. Hjelmeland should have recognized that the transaction he helped Ms. Ripperger complete was a replacement of an existing policy. The Division has proven Bjorn Hjelmeland breached his duty in subrule 191—IAC 16.24(2).

Suitability of Product

Another allegation leveled at Mr. Hjelmeland by the Division is regarding suitability of product to the purchaser. Iowa Code § 507B.4B and its regulation, 191—IAC 15.8(4) prohibit a producer from recommending the purchase or exchange of any policy without reasonable grounds to believe that the recommendation is suitable for the individual, based on knowledge of the buyer’s insurance objectives, financial situation and needs, age and other relevant information.

On first blush, exchanging a policy that would pay a death benefit of \$14,000 for one with a death benefit of \$10,000 does not appear to be a wise exchange, especially when the evidence shows that the new policy is more costly for the insured by about \$16/month. However, as Mr. Hjelmeland pointed out, life insurance becomes more costly as we age. Nothing in the record

showed when Ms. Ripperger acquired her National States policy, but common sense dictates that any policy acquired after that would be more expensive. The Division presented no evidence that the premium was out of line or that the death benefit did not meet Ms. Ripperger's goal of having her funeral expenses covered. The only evidence was that this was not as good as the deal Ms. Ripperger currently had with National States, not that the Bankers Life policy was an unsuitable policy. The Division's evidence falls far short of proving that Mr. Hjelmeland violated Iowa Code § 507B.4B and 191—IAC 15.8(4).

Improper Sales Tactics

Paragraph 191—15.8(2)“a” states that it is an improper sales tactic for a producer to “employ any method of marketing or tactic which uses undue pressure, force, fright, [or] threat” to solicit the purchase of insurance. This allegation is apparently based on Ms. Ripperger's statement to Mr. Crandell that she had to be convinced by Mr. Hjelmeland to cancel her National States policy and did so only when he told her that the company was “going under.”

Mr. Hjelmeland's testimony that she was already “hell bent” on canceling the policy because she was unhappy not knowing who would take over the continuity of that policy is more credible. The reaction described by Mr. Hjelmeland is both understandable and consistent with the reaction one would expect from a person who had received the notice of liquidation. Although the Statement of Charges herein includes the fact that Family Life Insurance Company assumed all of the National State life insurance policies *as of April 1, 2012*, that was not the case on February 23, 2011 when Ms. Ripperger met with Mr. Hjelmeland at her request, and the notice of liquidation was hardly reassuring.

The Division has not proven any violation of paragraph 191—15.8(2)“a”. Mr. Hjelmeland did not employ any method of marketing or tactic of undue pressure, force, fright, or threat to get Ms. Ripperger to purchase a whole life policy from Bankers Life. He was doing what he was asked by her to do.

II. Alleged Violations of Iowa Code Section 522B.11

Iowa Code chapter 522B governs the licensing of insurance producers such as Mr. Hjelmeland. The Insurance Commissioner may suspend, revoke or place on probation an insurance producer's license or levy a civil penalty if an insurance producer: (1) violates any insurance laws; (2) intentionally misrepresents the terms of an actual or proposed insurance contract or application for insurance; (3) admits or is found to have committed any unfair insurance trade practice or fraud; or (4) uses fraudulent, coercive, or dishonest practices or demonstrates incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in the state of Iowa. Iowa Code § 522B.11(1)(b,e,g,h).

As analyzed in Division I, the Division proven only that Bjorn Hjelmeland violated the insurance laws in Iowa by breaching his duty regarding replacement policies in rule 191—IAC 16.24.

III. Sanction

Iowa Code § 507B.7 allows for the imposition of civil penalties of up to \$1,000 per violation and/or suspension or revocation of the producer's license if it is determined that the producer “has engaged in an unfair method of competition or an unfair or deceptive act or practice.” The Division did not prove that Mr. Hjelmeland engaged in an unfair method of competition or an unfair or deceptive act or practice.

The Division did prove that Mr. Hjelmeland violated section 522B.11(1)(b). Therefore, Mr. Hjelmeland is subject to section 522B.17(1)'s provision that he "may be ordered to cease and desist from engaging in the conduct resulting in [a found violation of chapter 522B] and may be assessed a civil penalty pursuant to chapter 507B."

The one proven violation against Mr. Hjelmeland is relatively minor, but to deter him from further violations, he should be assessed a \$250 civil penalty. Bjorn Hjelmeland shall immediately cease and desist from violating any of insurance laws and rules in Iowa.

ORDER

Bjorn Hjelmeland is hereby assessed a \$250 civil penalty. The Insurance Division shall take any steps necessary to implement this decision.

Dated this 23rd day of October, 2013.



Carol J. Greta
Administrative Law Judge

cc: Bjorn Hjelmeland
John Leonhart
Irene Vega

Notice

An adversely impacted party may appeal a proposed decision to the commissioner within 30 days after the issuance of the proposed decision. See 191—IAC 3.27. The appeal must be filed with the commissioner's office in writing. The commissioner's office is at 601 Locust Street, 4th Floor, Des Moines, Iowa 50309-3738. The notice shall specify: (1) the proposed decision or order appealed from; (2) the party initiating the appeal; (3) the specific findings or conclusions to which exception is taken; (4) the grounds for relief; and (5) the relief sought.