

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	Division Case No. 91935
)	
CYNTHIA J. FITZGERALD,)	ORDER AND
NPN 1718294,)	CONSENT TO ORDER
DOB 07/08/XXXX,)	
)	
ROBERT J. STILLWELL AGENCY,)	
NPN 2005764,)	
)	
Respondents)	

NOW THEREFORE, upon motion of the Iowa Insurance Division (“Division”) and consent of Respondents Cynthia J. Fitzgerald and the Robert J. Stillwell Agency, pursuant to the provisions of Iowa Code Chapter 507B—Insurance Trade Practices and Iowa Code Chapter 522B—Licensing of Insurance Producers, the Commissioner enters the following consent order:

I. PARTIES AND JURISDICTION

1. The Commissioner of Insurance, Nick Gerhart, administers Iowa Code Chapter 507B—Insurance Trade Practices, Iowa Code Chapter 522B—Licensing of Insurance Producers, and Iowa Administrative Code Chapter 37—Medicare Supplement Insurance pursuant to Iowa Code § 505.8. Commissioner Gerhart has designated the Iowa Insurance Division to seek enforcement of these provisions.

Cynthia Fitzgerald

2. Cynthia J. Fitzgerald (“Fitzgerald”) is an individual with a last-known residence address of 1350 Stoney River Drive, Maple Glen, PA 19002.

3. Fitzgerald is and has been licensed in the state of Iowa as a nonresident insurance producer since February 9, 2016. She is licensed under National Producer Number 1718294.

4. Fitzgerald is also known as “Cynthia Fitzgerald Stillwell” and “Cynthia Stillwell Fitzgerald.”

5. From on or about February 16, 2016 to the present, Fitzgerald has engaged in acts and practices within the state of Iowa constituting cause for probation, suspension, or revocation of her insurance producer license; cease and desist orders; and civil penalties or other relief under Iowa Code Chapters 507B, 522B, and rules adopted pursuant to these chapters.

Roger J. Stillwell Agency

6. The Robert J. Stillwell Agency (“Stillwell Agency”) is a Pennsylvania corporation with a last-known business and mailing address of 1009 N. Bethlehem Pike, P.O. Box 458, Spring House, PA 19477.

7. Stillwell Agency is and has been licensed in the state of Iowa as a nonresident business entity producer since February 10, 2016. Stillwell Agency is licensed under National Producer Number 2005764.

8. Fitzgerald is the listed President and listed Designated Responsible Licensed Person (“DRLP”) for Stillwell Agency.

9. From on or about February 16, 2016 to the present, Stillwell Agency has engaged in acts and practices within the state of Iowa constituting cause for probation, suspension, or revocation of its business entity producer license; cease and desist orders; and civil penalties or other relief under Iowa Code Chapters 507B, 522B, and rules adopted pursuant to these chapters.

II. FINDINGS OF FACT

10. Fitzgerald applied for a nonresident insurance producer license with the Division by submitting through the National Insurance Producer Registry a Uniform Application for

Individual Producer License (“Uniform Application”). In submitting the Uniform Application, Respondent designated the Commissioner as an agent for service of process.

11. Stillwell Agency applied for a business entity producer license with the Division by submitting through the National Insurance Producer Registry a uniform business entity application. In submitting the uniform business entity application, Stillwell Agency designated the Commissioner as an agent for service of process and designated Fitzgerald as the DRLP.

12. Fitzgerald and Stillwell Agency (“Respondents”) sell Medicare supplement policies.

13. Respondents use lead-generating devices (“lead cards”) as a method of soliciting new contact information for potential clients.

14. Between February 2016 and July 2016, Respondents used the services of TargetLeads, a division of Senior Direct Inc., 959 W. Ralph Hall, Pkwy Ste. 101, Rockwall, TX 75032-6680, to mail the lead cards to selected lists of Iowa consumers compiled by Senior Direct.

15. The lead cards contain advertisements relating to Medicare Supplement plans and are mailed directly by TargetLeads to consumers.

16. Respondents used three lead card versions which are referred to as BM2, BM2PH, and BM5PH.

17. The following language was included in the lead cards used by Respondents:

- a. “Medicare Changes”
- b. “Your Medicare benefits have been reduced by Congress due to increases in your Deductibles and ‘Part A’ Co-Insurance payment. Now, Medicare pays less of your health care cost and you are responsible for the unpaid balance.”
- c. “In addition, by 2020 PLAN F WILL BE DISCONTINUED. Find out what your options are and how you can help yourself by taking action now.”

- d. “Also, the DRG PROSPECTIVE PAYMENT SYSTEM is still in effect and sets PERAILMENT CEILINGS on MEDICARE’S payment to a hospital. Because of these CEILINGS, many hospitals are now transferring patients to lower cost nursing homes or extended care facilities.”
18. Two of the lead cards direct consumers to call the phone number for Stillwell Agency for immediate assistance.
19. Fitzgerald, as President of Stillwell Agency, prepared language to be included in the lead cards that stated, “in addition, by 2020 Plan F will be discontinued. Find out what your options are and how you can help yourself by taking action now.”
20. Plan F is not being discontinued in 2020 for those individuals enrolled in the plan prior to 2020.
21. The fact that Plan F would not be discontinued for those individuals already enrolled is not disclosed in the lead card and is not explained to consumers until and unless they later speak with someone from Stillwell Agency on the phone.
22. None of the lead cards disclosed in a conspicuous manner that the purpose of the lead card was solicitation of insurance and that contact would be made by an insurance agent or insurance company.
23. Version BM2 was sent to 2,665 Iowans.
24. Version BM2PH was sent to 15,297 Iowans.
25. Version BM5PH was sent to 13,559 Iowans.
26. More than 780 Iowa consumers filled out a lead card with their contact information and returned the lead card in the mail to request additional information.

27. The consumer contact information was then compiled and forwarded by Senior Direct, Inc. to Respondents.

III. CONCLUSIONS OF LAW

COUNT I

Misrepresentations of Conditions or Terms of Any Insurance Policy

28. Under Iowa Code § 507B.4(3)(a)(1), a person is prohibited from misrepresenting the conditions or terms of any insurance policy.

29. The lead cards used by Respondents misrepresent the terms of Medicare Plan F as there is a grandfathering provision allowing those currently enrolled in Plan F to continue it past 2020.

30. Respondents' acts and practices have been in violation of Iowa Code § 507B.4(3)(a)(1) subjecting Respondents to probation, suspension or revocation of Respondents' insurance producer licenses, the imposition of a civil penalty, and an order requiring Respondents to cease and desist from engaging in such acts or practices pursuant to Iowa Code § 507B.7.

COUNT II

Misrepresentations for the Purpose of Inducing or Tending to Induce the Exchange of an Insurance Policy

31. Under Iowa Code § 507B.4(3)(a)(6), a person is prohibited from making misrepresentations for the purpose of inducing or tending to induce the exchange of an insurance policy.

32. The lead cards misrepresent the terms of Medicare Part A and Medicare Supplement Plan F for the purpose of inducing consumers to call the number on the card or return the card and subsequently exchange insurance policies.

33. Respondents' acts and practices have been in violation of Iowa Code § 507B.4(3)(a)(6) subjecting Respondents to probation, suspension or revocation of Respondents' insurance

producer licenses, the imposition of a civil penalty, and an order requiring Respondents to cease and desist from engaging in such acts or practices pursuant to Iowa Code § 507B.7.

COUNT III
Cold-Lead Advertising Disclosure

34. Under Iowa Administrative Code rule 191—37.52,

“Lead-generating device” means any communication directed to the public that, regardless of form, content or stated purpose, is intended to result in the compilation or qualification of a list containing names and other personal information to be used to solicit residents of this state for the purchase of Medicare supplement insurance.

35. The lead cards used by Respondents are lead-generating devices. Iowa Administrative Code rule 191—37.52.

36. Under Iowa Administrative Code rule 191—37.19(2)(c), it is prohibited to make “use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.”

37. Under Iowa Code § 507B.3, “a person shall not engage in this state in any trade practice which is defined in this chapter, or is determined pursuant to section 507B.6 to be, an unfair method of competition, or an unfair or deceptive act or practice in the business of insurance.”

38. Respondents did not disclose in a conspicuous manner that the purpose of the lead card was solicitation of insurance and that contact would be made by an insurance agent or insurance company.

39. Respondents’ acts and practices have been in violation of Iowa Code § 507B and Iowa Administrative Rule 191—37.19(2)(c), subjecting Respondents to probation, suspension or revocation of Respondents’ insurance producer licenses, the imposition of a civil penalty, and an

order requiring Respondents to cease and desist from engaging in such act or practice pursuant to Iowa Code § 507B.7.

COUNT IV
**Using Fraudulent, Coercive, Dishonest Practices or
Demonstrating Untrustworthiness**

40. Under Iowa Code § 522B.11(1)(h), a license may be subject to probation, suspension, or revocation and civil penalties may be levied, as provided in section 522B.17, for using fraudulent, coercive, or dishonest practices and for demonstrating untrustworthiness in the conduct of business.

41. Fitzgerald's lead card BM5PH used capital letters to inform consumers that Plan F was being discontinued by 2020, but did not disclose the grandfathering clause for those enrolled in Plan F prior to 2020 and consumers would not be notified of the grandfathering clause until speaking with one of the Respondents' agents.

42. Under Iowa Code § 522B.11(3),

The license of a business entity may be suspended, revoked, or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by a partner, officer, or manager acting on behalf of the business entity and the violation was not reported to the commissioner and corrective action was not taken.

43. Fitzgerald's violation was known or should have been known to an officer of Stillwell Agency as Fitzgerald is the President of Stillwell Agency.

44. Fitzgerald's acts and practices have been in violation of Iowa Code § 522B.11(1)(h) subjecting Respondents to probation, suspension, or revocation of Respondents' insurance producer licenses, the imposition of a civil penalty, and an order requiring Respondents to cease and desist from engaging in such act or practice pursuant to Iowa Code §§ 522B.11 and 522B.17.

IV. ORDER

WHEREFORE, IT IS ORDERED pursuant to the powers granted the Commissioner of Insurance by Iowa Code Chapters 507B and 522B:

A. Fitzgerald's Iowa nonresident insurance producer license is placed on probation for a period of one year pursuant to Iowa Code §§ 507B.7 and 522B.11 and is subject to her completion of the following terms:

- i. Fitzgerald shall take and pass three continuing education classes, one for each of the following topics: (1) ethics and seniors, (2) ethics, and (3) Medicare Supplement plans. Proof of class completion shall be sent to Tracy Swalwell of the Iowa Insurance Division and credit from these classes shall not be used to satisfy Fitzgerald's continuing education requirements for her Iowa non-resident license.
- ii. Fitzgerald shall be supervised by the Compliance Department of Guaranteed Trust Life. Fitzgerald shall send any mailings to the Compliance Department for review prior to sending them to Iowa consumers.
- iii. Fitzgerald shall also provide monthly reports to Tracy Swalwell of the Iowa Insurance Division detailing the number of Iowans with whom she or the Robert J. Stillwell Agency has had contact with, the source of contact, and whether or not the contact resulted in a policy purchase or change.

B. The Robert J. Stillwell Agency's Iowa business entity producer license is placed on probation for a period of one year pursuant to Iowa Code §§ 507B.7 and 522B.11 and removal of probation is contingent upon Fitzgerald's successful completion of her probation;

- C. Respondents shall not send any mailings to Iowans for a period of four months;
- D. Respondents shall immediately cease and desist from misrepresenting conditions or terms of any insurance policy pursuant to Iowa Code §§ 507B.7 and 522B.17;
- E. Respondents shall immediately cease and desist from creating and sending to Iowa consumers mailings which fail to contain the disclosure as required by Iowa Administrative rule 191—37.19(2)(c) pursuant to Iowa Code §§ 507B.7 and 522B.17;
- F. Respondents shall immediately cease and desist from creating and sending to Iowa consumers mailings which state Plan F is being discontinued without also including information regarding the grandfathering provision pursuant to Iowa Code §§ 507B.7 and 522B.17;
- G. Respondents shall pay to the State of Iowa, Insurance Division, a civil penalty in the amount of \$4,700.00 (\$2,350.00 by each Respondent) payable to the Iowa Enforcement Fund to provide funds for insurance enforcement and education pursuant to Iowa Code §§ 505.8, 507B.7, 522B.11, and 522B.17. The checks shall be made payable to the Iowa Insurance Division and should be remitted along with the signed Order;
- H. Respondents shall pay to the State of Iowa, Insurance Division, costs of investigation and prosecution in the amount of \$1,200.00, payable to the Iowa Enforcement Fund, to provide funds for insurance enforcement and education pursuant to Iowa Code § 505.8. A check made payable to the Iowa Insurance Division should be remitted along with the signed Order;
- I. Respondents shall strictly comply with Iowa insurance law and regulations and the terms of this Order. Any violation of this Order by Respondents during their

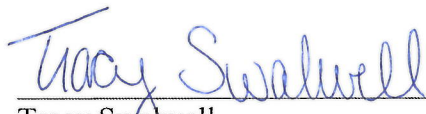
probation periods will result in an immediate suspension of Respondents' licenses for a one year period.

SO ORDERED on the 14 day of December, 2016.



NICK GERHART
Iowa Insurance Commissioner

Respectfully submitted,



Tracy Swalwell
Attorney for the Iowa Insurance Division

NOTICE OF PENALTIES FOR WILLFUL VIOLATION OF THIS ORDER

YOU ARE NOTIFIED that acting as an insurance producer, as defined in Iowa Code Chapter 522B, in without proper licensure, is a felony under Iowa Code § 507A.10, subjecting you to punishment of imprisonment, jail, fines, or any combination of custody and fines.

YOU ARE ALSO NOTIFIED that if you violate this order, your license may be subject to revocation and you may be subject to administrative and civil penalties pursuant to Iowa Code § 522B.17(3). The commissioner may petition the district court to hold a hearing to enforce the order as certified by the commissioner. The district court may assess a civil penalty against you in an amount not less than three thousand dollars but not greater than ten thousand dollars for each violation, and may issue further orders as it deems appropriate.

NOTICE REGARDING IMPACT OF ORDER ON EXISTING LICENSES

A final order of license revocation or a cease and desist order may adversely affect other existing business or professional licenses and result in license revocation or disciplinary action.

CONSENT TO ORDER AND AGREEMENT

I, Cynthia Fitzgerald, Respondent in this matter, and as President of Robert J. Stillwell Agency, Respondent in this matter, have read, understood, and do knowingly consent to this Order in its entirety. By executing this consent, I understand that the Robert J. Stillwell Agency and I am waiving our rights to a hearing, to confront and cross-examine witnesses, to produce evidence, and to judicial review.

I further understand that this Order is considered a final administrative action that may be reported by the Division to the National Association of Insurance Commissioners and to other regulatory agencies. I also understand that this Order is a public record under Iowa Code Chapter 22, which will be disclosed to other state regulatory authorities, upon request, pursuant to Iowa Code section 505.8(8)(d). I also understand that this Order will be posted to the Division's web site and a notation will be made to the publicly available web site record that administrative action has been taken against Senior Direct, Inc.

Dated: 12/8/16

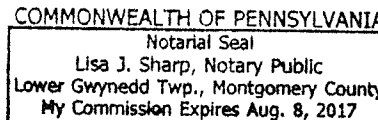
Cynthia J. Fitzgerald
Cynthia Fitzgerald, Respondent

Cynthia J. Fitzgerald
Cynthia Fitzgerald,
As President of and on behalf of Robert J. Stillwell Agency, Respondent

1009 N. Bethlehem PK, P.O. Box 458
Address of Signatory Spring House, PA 19477

Subscribed and sworn before me by Cynthia Fitzgerald on this 8th day of DECEMBER, 2016.

Lisa J. Sharp
Notary Public for the State of Pennsylvania



CERTIFICATE OF SERVICE

County of Polk)
)
State of Iowa)

The undersigned affiant certifies under penalty of perjury that she has entered the above order into the records of the Iowa Commissioner of Insurance; and on the 14th day of December, 2016, the foregoing order was sent by email to:

Cynthia J. Fitzgerald
cindy@robertjstillwell.com

Kevin J. Driscoll
Finley Law Firm
kdriscoll@finleylaw.com

Counsel for the Division:
Tracy Swalwell
Tracy.Swalwell@iid.iowa.gov



Tammi L. Green
Iowa Insurance Division