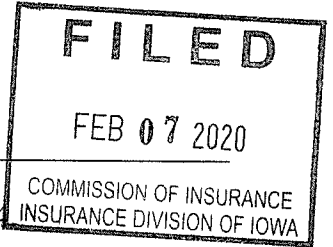


BEFORE THE IOWA INSURANCE COMMISSIONER



IN THE MATTER OF)	Division Case No. 104164
JOHN A. McAFEE,)	
NPN 48911,)	ORDER AND
DOB 12/25/XXXX,)	CONSENT TO ORDER
McAFEE & ASSOCIATES, INC.)	
NPN 2198884,)	
d/b/a Preferred Lead & Mail Co.)	
Respondents)	

NOW THEREFORE, upon motion of the Iowa Insurance Division (“Division”) and by the consent of Respondents John A. McAfee and McAfee & Associates, Inc., pursuant to the provisions of Iowa Code chapter 507B—Insurance Trade Practices and Iowa Administrative Code chapter 191—15, the Commissioner enters the following Order and Consent to Order (“Consent Order”):

I. PARTIES AND JURISDICTION

1. The Commissioner of Insurance, Douglas M. Ommen, directly and through his designees, administers and enforces Iowa Code chapter 507B—Insurance Trade Practices and Iowa Administrative Code chapter 191—15 pursuant to Iowa Code § 505.8.
2. John McAfee (“McAfee”) is an individual with a last-known residence and mailing address of 193 Woodland Trail, Hannibal, Missouri 63401.
3. McAfee and Associates, Inc. (“McAfee & Associates”) is a for-profit business, incorporated in the state of Missouri, with a last-known address of 714 Broadway, P.O. Box 789, Hannibal, Missouri 63401.
4. McAfee is the owner and registered agent of McAfee & Associates.

5. McAfee & Associates owns and does business as Preferred Lead and Mail Company (“Preferred Lead”).
6. McAfee, McAfee & Associates, and Preferred Lead shall be collectively referred to herein as “Respondents.”
7. McAfee is and has been licensed in the state of Iowa as a nonresident insurance producer since March 8, 1978. He is licensed under National Producer Number 48911.
8. McAfee & Associates is licensed in the states of Missouri, Michigan, and Illinois as a business entity producer under National Producer Number 2198884.
9. Pursuant to Iowa Code § 505.28, Respondents have consented to the jurisdiction of the Commissioner of Insurance by committing acts governed by chapter 507B.

II. FINDINGS OF FACT

10. McAfee applied for an insurance producer license with the Division and the Division issued McAfee a license as an insurance producer on March 8, 1978 and assigned to him National Producer Number 48911.
11. McAfee most recently renewed his nonresident insurance producer license with the Division on December 12, 2019 by submitting an application for renewal through the National Insurance Producer Registry. In this renewal application, McAfee designated the Commissioner as an agent for service of process.
12. McAfee is the registered agent for and owner, president, and director of McAfee & Associates.
13. McAfee & Associates uses Preferred Lead for the purpose of obtaining and purchasing lead-generating materials to solicit contact information for potential clients.

14. Respondents are agents of Old American Insurance Company (“Old American”). Old American sells life insurance products.
15. McAfee, on behalf of McAfee & Associates, is a General Agent Manager (“GAM”) for Old American. His assigned territory includes parts of Iowa, Illinois, Indiana, and Missouri.
16. Each GAM is responsible for marketing, recruiting, training and supervising subagents.
17. On or about June 2018, Respondents directed Countrywide Printing and Mailing Services, LLC (“Countrywide”), an Arizona corporation located at 943 S. 48th St., Suite 108, Tempe, AZ 85281 to send solicitation mailers to 61,752 Iowa consumers selected by age range, income level, and zip code. The mailers were sent for the purpose of generating marketing leads for Respondents and Respondents’ subagents.
18. The mailer, version E-5601, was sent to 61,752 Iowa consumers between the ages of 60 and 85 and with income levels ranging from \$15,000 to \$70,000.
19. The following language was used in the E-5601 envelope and mailer sent on behalf of the Respondents:
 - a. “Official business”
 - b. “For private use only”
 - c. “Do not discard”
 - d. “Important information about your government benefit”
 - e. “Government benefit supplement policy”
 - f. “Senior final expense program”
 - g. “The Senior Plan will pay 100% of all funeral expenses not paid by Social Security, up to \$15,000 for each Senior covered. To see if you qualify, mail this postage paid card today”

h. “Receive your **FREE Government Benefits** Informational Brochure”

20. Additionally, the envelope depicted an actual or illustrative government building. A copy of the E-5601 envelope or mailer is attached as “Exhibit A” and incorporated herein by reference.

21. The mailer, inviting the return of a postage paid card containing the consumer’s personal information, did not identify the name of the individual or entity to which the card would be returned.

22. At least 1,079 Iowa consumers responded to the mailer and returned the cards containing their personal information. The returned cards were provided to Respondents who then sold the cards as sale leads to Respondents’ subagents.

23. The subagents then contacted the Iowa consumers and attempted to sell them a life insurance policy with Old American.

24. Respondents’ subagents did not represent any government agency, nor was the purpose of contacting the Iowa consumers to offer them a free government benefit or program.

25. When contacted by a subagent, some consumers told the subagent that they were surprised at being solicited to purchase a life insurance policy as they believed that the mailer was sent by the government and that the product being offered was a free government program.

26. Despite the disclaimer on the mailer which read “Not affiliated with or endorsed by any government or Medicare program”, the language and depictions used in the advertisement mailers, explicitly or implicitly, created a false impression for some consumers that the mailer was from a governmental agency.

27. On February 4, 2019 Polk County District Judge Celene C. Gogerty entered a consent judgment barring McAfee & Associates and its representatives, including but not limited to

McAfee, from sending mailers to Iowa residents or any location in Iowa that “create a false impression that the mailer is sent from any government entity or department” and requiring the payment of \$5,000 to the Attorney General.

III. CONCLUSIONS OF LAW

COUNT ONE

Misleading or Deceptive Advertisements

28. 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.”

29. Under Iowa Code § 507B.4(3)(b)(1), the following is an unfair method of competition and an unfair or deceptive act or practice:

Generally. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of the person’s insurance business, which is untrue, deceptive, or misleading.

30. Iowa Administrative Code chapter 15—Unfair Trade Practices establishes certain minimum standards and guidelines of conduct by identifying unfair methods of competition and unfair or deceptive acts or practices in the business of insurance, as prohibited by Iowa Code chapter 507B.

31. Under Iowa Administrative Code rule 191—15.3(1),

Form and content of advertisements. The format and content of an advertisement shall be truthful and sufficiently complete and clear to avoid deception or the capacity or tendency to misrepresent or deceive. Whether an advertisement has a capacity or tendency to misrepresent or deceive shall be determined by the overall impression that the advertisement may be

reasonably expected to create upon an individual in the segment of the public to which it is primarily directed and who has average education, intelligence and familiarity with insurance terminology for products in that market.

32. Under Iowa Administrative Code rule 191—15.3(9)(b),

No advertisement shall use any combination of words, symbols, or physical materials which by its content, phraseology, shape, color or other characteristics is so similar to combinations of words, symbols, or physical materials used by a municipal, state or federal agency that it would lead a reasonable individual to believe that the advertisement is approved, endorsed or accredited by the agency of the municipal, state or federal government.

33. The Commissioner finds that the language used in the advertisement mailers ordered by Respondents and sent out on their behalf, is deceptive and misleading, or has the capacity to misrepresent or deceive, as the language creates the false impression that the mailer is being sent, approved, endorsed, or accredited by a governmental agency.

34. The Commissioner finds that the envelope used to send the mailer also is deceptive and misleading, or has the capacity to misrepresent or deceive, as it depicts an actual or illustrative government building even though it was not sent, approved, endorsed, or accredited by any government agency.

35. The Commissioner finds that the language and images used in the mailers created a false impression that the mailers were sent by the government and that the product being discussed was a free product or program being offered by the government.

36. Nowhere on the envelope or the enclosed mailer were the Respondents identified. By reviewing the envelope, consumers had no indication that Respondents, a private entity and not a government agency, would be receiving their information if the consumers returned the postage prepaid card. By reviewing the enclosed mailer, consumers may have been alerted that it was not a government agency that would receive their information if they read the bottom text in

significantly smaller font stating, “Not affiliated with or endorsed by any government or Medicare program.” Nonetheless, the enclosed mailer disclaimer does not identify the entity who will be receiving the consumers’ information.

37. The Iowa consumers had no indication that they would be solicited to purchase a life insurance policy if they returned the postage prepaid card. The mailer did not conspicuously disclose that the purpose was to solicit insurance business and that the responder would be contacted by an insurance agent or company. In fact, the language “FREE Government Benefits,” “government benefit supplement policy,” “senior final expense program,” “senior plan will pay 100% of all funeral expenses,” and “this is a free service to you,” would lead a reasonable person to believe that this was a program provided by the government, not a solicitation for life insurance by a private entity.

38. The Commissioner finds that the Respondents engaged in acts and practices in violation of Iowa Code § 507B.4(3), Iowa Code § 507B.3, Iowa Administrative Code rule 191—15.3(1), and Iowa Administrative Code rule 191—15.3(9)(b) subjecting McAfee to suspension or revocation of his insurance producer license, to the imposition of a civil penalty, an order requiring Respondents to cease and desist from engaging in such acts or practices, the imposition of costs of the investigation and prosecution of the matter, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 505.8, 507B.7 and Iowa Administrative Code rule 191—15.14.

IV. ORDER

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

- A. Respondents, pursuant to Iowa Code § 507B.7, shall immediately cease and desist from sending mailer, version E-5601, to Iowa residents or Iowa locations;
- B. Respondents, pursuant to Iowa Code § 507B.7, shall immediately cease and desist from creating or purchasing and sending any mailers and envelopes to Iowa residents or Iowa locations depicting an actual or illustrative government building;
- C. Respondents, pursuant to Iowa Code § 507B.7, shall immediately cease and desist from creating or purchasing and sending any mailers and envelopes to Iowa residents or Iowa locations with the following language:
 - 1) “Official business”
 - 2) “For private use only”
 - 3) “Important information about your government benefit”
 - 4) “Government benefit supplement policy”
 - 5) “Senior final expense program”
 - 6) “The Senior Plan will pay 100% of all funeral expenses not paid by Social Security, up to \$15,000 for each Senior covered. To see if you qualify, mail this postage paid card today”
 - 7) “Receive your **FREE Government Benefits** Informational Brochure”
- D. Respondents shall be subject to a monitoring period of one year beginning on the date of this signed Consent Order and during which time Respondents shall provide to the Division’s Market Regulation Bureau, copies of every mailer (including any

envelopes used to send the solicitation materials) Respondents create or purchase and send to Iowa residents or Iowa locations. These copies shall be provided to the Division on a quarterly basis, on the following dates: April 17, 2020; July 17, 2020; October 19, 2020; and January 19, 2021;

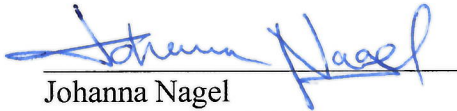
- E. Respondents are jointly and severally liable for and shall, contemporaneously with this Consent Order, pay a civil penalty in the amount of \$10,000.00, made payable to the Iowa Insurance Division, to be credited to the Iowa Enforcement Fund, to provide funds for insurance enforcement and education pursuant to Iowa Code §§ 505.8 and 507B.7; and
- F. Respondents are jointly and severally liable for and shall, contemporaneously with this Consent Order, pay the amount of \$1,800.00 for costs of investigation and proceeding pursuant to Iowa Code § 505.8. Payment shall be made payable to the Iowa Insurance Division, to be credited to the Iowa Enforcement Fund to provide funds for insurance enforcement and education.
- G. These orders may be enforced under Iowa Code chapter 507B, including but not limited to Iowa Code § 507B.8, and additionally, by any collection remedies available to the State of Iowa Department of Revenue for unpaid penalties and other ordered monetary amounts.

SO ORDERED on the 7th day of February, 2020.



DOUGLAS M. OMMEN
Iowa Insurance Commissioner

Respectfully submitted,



Johanna Nagel
Iowa Insurance Division
Two Ruan Center
601 Locust St. – 4th Floor
Des Moines, Iowa 50309-3738
Phone: (515) 725-1255
Attorney for the Iowa Insurance Division

Copy to:
Jess Vilsack, AT0008107
Nyemaster Goode, P.C.
700 Walnut Street, Suite 1600
Des Moines, IA 50309
ATTORNEY FOR RESPONDENTS

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause, or their attorney, at their respective addresses disclosed on the pleadings on February 10, 2020.

- | | |
|--|---|
| By: <input type="checkbox"/> First Class Mail | <input type="checkbox"/> Personal Service |
| <input type="checkbox"/> Restricted certified mail, return receipt | <input checked="" type="checkbox"/> Email, by consent |
| <input type="checkbox"/> Certified mail, return receipt | <input type="checkbox"/> _____ |

Signature: 
Hilary Foster

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 violation of this Order, 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, 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 OF FINAL ORDER IMPACT

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

A final order in an administrative action does not resolve any potential criminal or civil violations or causes of action that might arise from the same or similar conduct that is the subject of this contested case/this order. It may result in criminal law enforcement authorities, including the fraud bureau of the Iowa Insurance Division, pursuing a criminal investigation or prosecution of potential criminal law violations.

CONSENT TO ORDER AND AGREEMENT

I, John A. McAfee, as an individual and in my capacity as owner of McAfee & Associates, Inc., Respondents in this matter, have read, understood, and do knowingly consent to this Order in its entirety. By executing this Consent, I understand that I am waiving both McAfee & Associates, Inc.'s and my rights to a hearing, to confront and cross-examine witnesses, to produce evidence, and to judicial review.

I further understand this Order is considered a final administrative action that will be reported by the Division to the National Association of Insurance Commissioners and to other regulatory agencies. I also understand this Order is a public record under Iowa Code chapter 22 and information may be shared with other regulatory authorities or governmental agencies, pursuant to Iowa Code § 505.8(8)(d). I also understand this Order will be posted to the Division's website and a notation will be made to the publicly available website record that administrative action has been taken against me and McAfee & Associates, Inc.

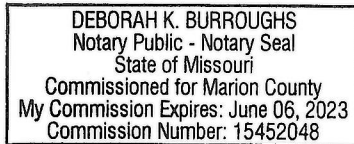
2-04-2020

Date

John A. McAfee
John A. McAfee, Respondent

193 Woodland Tr. Hannibal, Mo 63401
Address of Signatory

Subscribed and sworn before me by John McAfee on this 4th day of February, 2020.



Deborah K. Burroughs
Notary Public for the State of Missouri
Deborah K. Burroughs

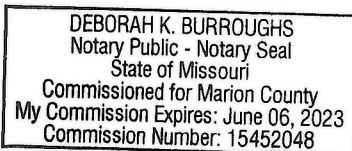
2-04-2020

Date

John A. McAfee
McAfee & Associates, Inc., Respondent
by John A. McAfee, Owner

714 Broadway, Hannibal, Mo 63401
Address of Signatory

Subscribed and sworn before me by John McAfee on this 4th day of February, 2020.



Deborah K. Burroughs
Notary Public for the State of Missouri
Deborah K. Burroughs