-198850

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

TENNESSEE INSURANCE DIVISION,	)
Petitioner,	)
	)
vs.	)
	)
JONATHAN M. BROWNING,	)
Respondent.	)

CONSENT ORDER

The Insurance Division of the Tennessee Department of Commerce and Insurance (the "Division"), by and through counsel, and Jonathan M. Browning ("Respondent"), hereby stipulate and agree, subject to the approval of the Commissioner of Commerce and Insurance (the "Commissioner"), as follows:

GENERAL STIPULATIONS

It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.

The Commissioner has determined that the resolution set forth in this Consent Order is fair and reasonable and in the best public interest.

This Consent Order is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts and/or omissions not specifically addressed in this Consent Order or for acts and/or omissions that do not arise from the facts or transactions herein addressed. Respondent also understands that this Consent Order may be used by the Commissioner or any Commissioner, Department or Board to revoke or refuse to issue any license the Respondent currently holds or for which he applies in the future.

Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of this Consent Order, the stipulation and imposition of discipline contained herein and the consideration and entry of said Consent Order by the Commissioner.

JURISDICTION

1. The Commissioner of the Department of Commerce and Insurance has jurisdiction pursuant to the Tennessee Insurance Law (the "Law"), Title 56 of the Tennessee Code Annotated, and the Law places the responsibility for the administration of its provisions on the Commissioner.

PARTIES

2. 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.

3. Respondent is a citizen and resident of the State of Tennessee, residing at 1159 Rock Ledge Pass, Gallatin, Tennessee, 37066-4676. Respondent has a limited insurance producer license, numbered 998850.

FINDINGS OF FACT

4. On January 30, 2009, an investigation was initiated against United Benefits of

America, LLC ("UBA") and Timothy W. Thomas ("Thomas") pursuant to Inquisitorial Order No. 09-003.

5. UBA is a limited liability company engaged in selling membership products, individual accidental death insurance policies, individual life insurance policies, individual health insurance policies, and group insurance coverage offered to individuals incident to membership in non-profit and/or membership associations. Memberships and insurance policies are typically marketed as membership/plan packages that include hospitalization, critical illness, accident and prescription and in numerous cases are represented to customers as insured full-coverage health benefit "plans."

6. Respondent Jonathan M. Browning, began working for UBA on May 5, 2008 as a Benefit Specialist selling the products described in Paragraph 5 above by telephone to prospective clients as part of a telemarketing "boiler room" operation. Respondent described the specific benefits available under the various plans and policies, quoted price, obtained a commitment of the customer to purchase, and secured credit card or checking account payment information. From September of 2008 until he resigned in April of 2009, Respondent was employed by UBA as a Benefits Supervisor. In that capacity, Respondent directed the activities of and managed Benefits Specialists assigned to his sales team, telephonically verified the completed sales made by those Benefits Specialists, and reviewed and submitted all paperwork.

7. On March 30, 2009, investigators interviewed Respondent concerning the sales practices of Benefits Specialists and Benefits Supervisors of UBA. During that interview, Respondent, under oath, denied: (a) that he and other Benefits Specialists and Benefit Supervisors were paid commissions on the sale of insurance products; (b) that he had any knowledge of the use of the term TAFT ("tell them [the customer] any f_____ thing") while he

was employed at UBA; (c) that customers were deceived into believing they were receiving major medical insurance benefits when, in fact, they were joining memberships which provided uninsured medical discounts and paid specific sums for certain medical services; and (d) that customers were deceived about the limitations on benefits they would receive on insurance products by omitting to inform customers of such limitations.

8. On August 27, 2009, Respondent was interviewed by the Insurance Division in order to clarify his March 30, 2009 statement. During that interview, Respondent admitted that some of the answers he gave in his March 30, 2009 statement were untruthful, and admitted: (a) that prior to being interviewed by the Division, he and other Benefits Supervisors met with Tim Thomas at Thomas' request to discuss answers to questions that he anticipated would be asked during the interviews. While in the meeting, Thomas would ask questions and ask a Benefits Supervisor to respond. If the answer given was not acceptable, Thomas would call upon another Benefits Supervisor to solicit another answer. If that Benefits Supervisor gave an answer that was acceptable to Thomas, Thomas would comment that the answer was correct and should be given during the Division's interviews. Based upon that process, Browning gave several false and misleading responses to the Division based upon his understanding of what Thomas considered the "correct" answers to be; (b) that he and other Benefits Specialists and Benefit Supervisors were, in fact, paid "commissions" on the sale of insurance products rather than "finders fees"; (c) that he knew that the term TAFT meant "tell them [the customer] any f_____ thing" and that such term was used by certain Benefits Supervisors to encourage sales while he was employed at UBA; (d) that customers were deceived by statements that they were receiving major medical insurance when, in fact, they were sold memberships which included limited medical benefits; and (e) that customers were deceived with regard to the limitations of insurance

products sold; that is, they were not told about dollar limits on the amount of benefits available.

9. During the time that Respondent was employed by UBA as a Benefits Supervisor, he supervised and managed UBA Benefits Specialists assigned to his sales team and was responsible for their sales. On those occasions that Respondent telephonically verified the completed sales made by those Benefits Specialists, he participated in the deceptive sales practices stated in paragraph 8 (c) and (d) by confirming to customers the misleading or false information provided to them.

CONCLUSIONS OF LAW

1. TENN. CODE ANN. § 56-6-112(a) provides that "[t]he commissioner may place on probation, suspend, revoke or refuse to issue or renew a license issued under this part or may levy a civil penalty in accordance with § 56-2-305 or take any combination of those actions, for any one (1) or more of the following causes:

> (2) Violating any law, rule, regulation, subpoena or order of the commissioner or of another state's commissioner;
>
> . . . . .
>
> (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance; [and]
>
> . . . . .
>
> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

2. Based upon the Findings of Fact cited above and the Conclusions of Law contained herein, the Commissioner considers the actions of Respondent to be in violation of TENN. CODE ANN. § 56-6-112(a)(2), (5) and (8). Respondent is therefore subject to sanctions set forth in TENN. CODE ANN. §56-6-112(a).

3. Respondent does not deny the Findings of Fact stated in paragraphs 1-9 above,

and understands that such Findings subject him to sanctions specified TENN. CODE ANN. § 56-6-112(a). Respondent hereby acknowledges the Commissioner's authority to administer the Insurance Law and concedes that the Commissioner's interpretation of the statutes cited in the Conclusions of Law is reasonable and enforceable.

4. Respondent hereby agrees to the entry of this Consent Order in the interest of cooperation and settlement, and to avoid the costs associated with future administrative and judicial proceedings with respect to the above matter.

ORDER

NOW, THEREFORE, based on the foregoing and the waiver by Respondent of his rights to a hearing and appeal under the Law and Tennessee's Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101 *et seq.*, and the admission by Respondent of the jurisdiction of the Commissioner, the Commissioner finds that the Respondent has agreed to the entry of this Consent Order and that this Consent Order is appropriate and in the public interest.

IT IS THEREFORE ORDERED, pursuant to TENN. CODE ANN. § 56-6-112(a) that:

The limited insurance producer license, numbered 998850, issued to Jonathan Browning, is hereby **REVOKED.**

This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By signature affixed below, Jonathan M. Browning affirmatively states that he has freely agreed to the entry of this Consent Order, that he has been advised that he may consult with legal counsel in this matter, and has had the opportunity to consult with legal counsel, that he waives his right to a hearing on the matters underlying this Consent Order and that no threats or promises of any kind have been made by the Commissioner, the Division or

any agent thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

ALL OF WHICH IS SO ORDERED.

ENTERED this the 19th day of January, 2010.

Leslie A. Newman, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

Larry C. Knight, Jr.
Assistant Commissioner for Insurance
Department of Commerce and Insurance
Davy Crockett Tower
500 James Robertson Parkway, 4th Floor
Nashville, Tennessee 37243

Jonathan Browning
1159 Rock Ledge Pass
Gallatin, Tennessee 37066-4676

John R. Smith (BPR #7872)
Attorney for Insurance Division
Department of Commerce and Insurance
Davy Crockett Tower
500 James Robertson Parkway, 2nd Floor
Nashville, Tennessee 37243
john.smith@tn.gov
(615) 253-3258
(615) 741-4000 Facsimile