

**NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA**

STATE OF NORTH CAROLINA)	BEFORE THE COMMISSIONER OF
COUNTY OF WAKE)	INSURANCE
)	Docket Number: 1630
IN THE MATTER OF THE LICENSURE)	
OF MICHAEL T. ZWICK)	
(NPN 0008247707))	FINAL AGENCY DECISION AND
)	ORDER
)	
_____)	

This matter was heard on Wednesday, 10 July 2013, by the undersigned hearing officer, designated by the Commissioner of Insurance ("Commissioner") pursuant to North Carolina General Statute § 58-2-55, pursuant to a notice of hearing that was duly issued and served.

The North Carolina Department of Insurance ("Department") was present, represented by the Agent Services Division. The Department was represented by Assistant Attorney General Robert D. Croom.

Respondent, Michael T. Zwick ("Respondent"), was present and represented by Robert O. Crawford, III of the Wake County Bar.

At the hearing, Angela Hatchell, Martina Barnett, Sara J. Chappell, and the respondent were called to testify for the Department.

At the hearing, William Campbell Douglas, Hal Cooper, Chris Fewox, and Mark Jones were called to testify for Respondent.

The Department offered into evidence Administrative Exhibits A1 through A9 and Hearing Exhibits 1 through 11, and those exhibits were admitted into evidence.

Respondent offered into evidence Exhibits R1 through R3, and those exhibits were admitted into evidence.

Any finding of fact contained in this final agency decision and order that also constitutes a conclusion of law is hereby adopted as a conclusion of law. Likewise, any conclusion of law contained in this final agency decision and order that also constitutes a finding of fact is hereby adopted as a finding of fact.

Based upon careful consideration of the sworn testimony of the witnesses presented at the hearings and the entire record in this proceeding, the undersigned hearing officer makes the findings of fact and conclusions of law below. In making these findings and conclusions, The undersigned hearing officer has weighed all of the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interest, bias, or prejudice the witness may have; the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether the testimony is consistent with all other credible evidence in the case.

The undersigned hearing officer has weighed all of the evidence to determine if the evidence was (1) substantial in accordance with North Carolina General Statute §§ 150B-41 and 150B-51 and (2) relevant in accordance with North Carolina General Statute § 8C-1, Rule 401 and North Carolina General Statute § 8C-1, Rule 402.

From the sworn testimony of witnesses and all of the evidence, the undersigned hearing officer makes the following:

Findings of Fact

1. The Amended Notice of Administrative Hearing was properly served on Respondent on 22 May 2012.
2. Respondent is currently licensed by the Department as a Life, Accident & Health or Sickness and Medicare Supplement / Long Term Care agent. Respondent held these licenses at all times relevant to the findings in this Final Agency Decision and Order.

Findings of Fact Regarding Doris T. Scordas

3. Doris T. Scordas ("Ms. Scordas") was at all times relevant to the findings in this final agency decision and order a resident of Savannah, Georgia.
4. On or about 8 April 2010 Respondent accepted a check in the amount of \$5,000.00 from Ms. Scordas.
5. On or about 15 April 2010 Respondent reached an agreement with Ms. Scordas under which Respondent would invest \$30,000.00 provided to him by Ms. Scordas and pay Ms. Scordas' granddaughter, Rhonda Stark ("Ms. Stark"), \$375.00 every three months until Ms. Stark was paid a total of \$45,000.00.

6. On or about 15 April 2010 Respondent accepted a check in the amount of \$30,000.00 from Ms. Scordas pursuant to this agreement.
7. At the time Ms. Scordas wrote the \$30,000.00 check to Respondent, she was 86 years old.
8. Respondent deposited the \$30,000.00 into his personal Scottrade account.
9. This agreement was originally made in writing but the written agreement now cannot be found.
10. On or about 15 April 2010 Respondent wrote a check to Ms. Stark in the amount of \$375.00 for the initial payment on the agreement.
11. Respondent did not make the second payment to Ms. Stark because he learned that she was in jail and he could not locate her.
12. After a complaint was made with the Agent Services Division against Respondent, Respondent returned the \$35,000.00 he received from Ms. Scordas to the estate of Ms. Scordas on 25 October 2010.

Findings of Fact Regarding Mack and Lula Vinston

13. On 26 June 2012 Respondent went to the residence of Mack and Lula Vinston in Raleigh, North Carolina.
14. Respondent had not called or spoken to the Vinstons before going to their residence on that date.
15. On that date, Mack Vinston and Lula Vinston were both over 80 years old.
16. On that date, Mack and Lula Vinston's granddaughter, Martina Barnette ("Ms. Barnette") was also at their residence.
17. Ms. Barnette helped as a caretaker for her grandparents.
18. Respondent said he was there to talk to the Vinstons about their insurance policy.
19. Respondent discussed with the Vinstons about their getting a refund or a rebate.

20. On that date Lula Vinston had a whole life insurance policy issued by Foresters.
21. On that date Respondent told Lula Vinston to call Foresters.
22. On the phone call, Respondent asked the customer service representative for the cash surrender value of Ms. Vinston's policy and requested that she be sent surrender forms.
23. On that date Respondent represented to the Foresters customer service representative that he was a friend of Lula Vinston and did not reveal that he was an agent.
24. Respondent had not met Lula Vinson before coming to her house on that date.
25. Ms. Barnette stopped the telephone call with Foresters and told Respondent that they would not be making any financial decisions that day and asked Respondent to leave.
26. Respondent then became hostile and angry.
27. Ms. Barnette felt very threatened and afraid for her and her grandparents' safety at that time and again requested that Respondent leave the home and said she would call the police if he didn't.

Findings of Fact Regarding Sarah J. Chappell

28. On 25 September 2012 Respondent went to the residence of Sarah J. Chappell ("Ms. Chappell"), who was 75 years old on that date.
29. On that date Ms. Chappell had a life insurance policy with Unity Financial.
30. Ms. Chappell's Unity Financial insurance policy provided \$4,000.00 in coverage and her premiums were \$22.00 a month.
31. Respondent told Ms. Chappell that his company, Columbian Life Insurance Company ("Columbian"), had acquired Unity Financial and that he was going to put her in his insurance and send her \$700.00.
32. Columbian neither merged with nor acquired Unity Financial.
33. Respondent sold Ms. Chappell a policy with Columbian that provided \$4,000.00 in coverage but had a \$31.00 per month premium.

34. When Ms. Chappell learned that Unity Financial had not been acquired by Columbian, she cancelled the Columbian policy.

35. Ms. Chappell would not have bought the Columbian policy from Respondent if she had not been told her Unity Financial policy had been acquired by Columbian.

36. Respondent does not remember anything specific about his meeting with Ms. Chappell.

Based on the forgoing Findings of Fact, the undersigned hearing officer makes the following:

Conclusions of Law

1. This matter is properly before the Commissioner. The Commissioner has jurisdiction over the parties and the subject matter pursuant to North Carolina General Statute §§ 58-33-30, 58-33-46, 150B-38, 150B-40; 11 NCAC 1.0401 *et seq.*, and other applicable statutes and administrative rules.

2. Respondent was properly served with the Notice of Administrative Hearing.

Conclusions of Law Regarding Doris T. Scordas

3. Under Ga. Code Ann. § 10-5-2(31) (2013) the definition of "Security" includes an investment contract.

4. "An investment contract is a security if the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others." Golden Atlanta Site Dev., Inc. v. Tilson, 299 Ga. App. 646, 648, 683 S.E.2d 166, 170 (2009).

5. Under Ga. Code Ann. § 10-5-20 (2013) it is unlawful for a person to offer or sell an unregistered security in the State of Georgia.

6. Respondent's offer to invest \$30,000.00 of Ms. Scordas' money and then pay Ms. Stark \$375.00 every three months until Ms. Stark was paid a total of \$45,000.00 involved the investment of money in a common enterprise with the profits to come solely from the efforts of others and therefore constituted an investment contract.

7. Respondent sold an unregistered security to Ms. Scordas in the State of Georgia.

8. Pursuant to North Carolina General Statute § 58-33-46(a)(8), the Commissioner may place on probation, suspend, revoke, or refuse to renew any license issued under Article 33 of Chapter 58 of the North Carolina General Statutes for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere.

9. By selling an unregistered security to Ms. Scordas, Respondent used dishonest practices and demonstrated incompetence in the conduct of business in violation of North Carolina General Statute § 58-33-46(a)(8).

10. This violation of North Carolina General Statute § 58-33-46(a)(8) is by itself sufficient to support the revocation of Respondent's licenses.

11. Respondent's licenses should be revoked for this violation.

Conclusions of Law Regarding Mack and Lula Vinston

12. Respondent tried to get Lula Vinston to cancel her Foresters insurance policy and failed to disclose to the Foresters customer service representative that he was an agent.

13. Pursuant to North Carolina General Statute § 58-33-46(a)(8), the Commissioner may place on probation, suspend, revoke, or refuse to renew any license issued under Article 33 of Chapter 58 of the North Carolina General Statutes for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere.

14. By trying to get Lula Vinston to cancel her Foresters insurance policy and failing to disclose to the Foresters customer service representative that he was an agent, Respondent used dishonest practices in the conduct of business in violation of North Carolina General Statute § 58-33-46(a)(8).

15. This violation of North Carolina General Statute § 58-33-46(a)(8) is by itself sufficient to support the revocation of Respondent's licenses.

16. Respondent's licenses should be revoked for this violation.

Conclusions of Law Regarding Sarah J. Chappell

17. Respondent misrepresented to Ms. Chappell that Columbia Life Insurance Company had acquired Unity Financial and he sold Ms. Chappell an insurance policy that was

for the same amount of coverage as her Unity Financial policy but had a monthly premium that was \$9.00 more per month than the Unity Financial policy she then had.

18. Pursuant to North Carolina General Statute § 58-33-46(a)(8), the Commissioner may place on probation, suspend, revoke, or refuse to renew any license issued under Article 33 of Chapter 58 of the North Carolina General Statutes for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere.

19. By misrepresenting to Ms. Chappell that Columbia Life Insurance Company had acquired Unity Financial and by selling Ms. Chappell an insurance policy that was for the same amount of coverage as her Unity Financial policy but had a monthly premium that was \$9.00 more per month than the Unity Financial policy she then had, Respondent used dishonest practices and demonstrated incompetence in the conduct of business, in violation of North Carolina General Statute § 58-33-46(a)(8).

20. This violation of North Carolina General Statute § 58-33-46(a)(8) is by itself sufficient to support the revocation of Respondent's licenses.


21. Respondent's licenses should be revoked for this violation.

Based on the foregoing Finding of Facts and Conclusions of Law, the Hearing Officer enters the following:

Order

It is hereby ordered that Michael T. Zwick's Life, Accident & Health or Sickness and Medicare Supplement / Long Term Care agent licenses are revoked.

This 15th day of October 2013



William Hale, Hearing Officer
N.C. Department of Insurance
1201 Mail Service Center
Raleigh, NC 27699-1201

APPEAL RIGHTS: This Order may be appealed to Superior Court within 30 days after receipt, as set forth in the General Statutes of North Carolina.

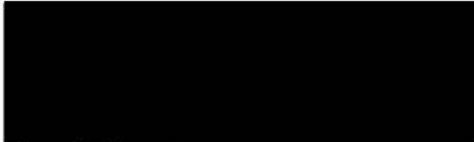
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the foregoing FINAL AGENCY DECISION AND ORDER by mailing a copy of the same via certified U.S. mail, return receipt requested, in a first class postage prepaid envelope addressed as follows:

Michael Zwick
171 Charleston Cir.
Winston-Salem, NC 27103

Robert O. Crawford, III
Crawford & Crawford, LLP
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Raleigh, NC 27613
Attorney for the Respondent

This the 16th day of October, 2013.



Robert D. Croom
Assistant Attorney General
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