

STATE OF MAINE
BUREAU OF INSURANCE

In re: BANKERS LIFE AND CASUALTY
COMPANY,

CONSENT AGREEMENT

Docket No. INS-09-204

Introduction

Bankers Life and Casualty Company (“Bankers Life”), the Maine Bureau of Insurance (“the Bureau”), and the Maine Office of the Attorney General hereby enter into this Consent Agreement pursuant to 10 M.R.S.A. § 8003(5)(B) to resolve, without an adjudicatory proceeding, violations of the Maine Insurance Code under a license issued by the Bureau. As more fully set out below, Bankers Life violated 24-A M.R.S.A. §§ 1445((1)(A), 1445(1)(B), 2152, and 2152-B (2) (B) by using an appointment made to discuss or to solicit the sale of Medicare products to solicit the sale of an annuity.

Parties

1. The Superintendent of Insurance is the State official charged with administering and enforcing Maine’s insurance laws and regulations.
2. The Superintendent has jurisdiction over this matter pursuant to the Insurance Code generally, Title 24-A Maine Revised Statutes Annotated, and, in particular, 24-A M.R.S.A. §§ 12-A and 229, as well as other provisions.
3. Bankers Life and Casualty Company is an Illinois domiciled insurance company that is authorized to transact insurance in Maine under Maine License No. LHF127.

Facts

4. Ervin Dumond is licensed by the Superintendent as a resident insurance producer under License Number PRR 9776 and National Producer Identification Number 3681709. Mr. Dumond was at all times relevant to this matter an appointed insurance producer for Bankers Life and Casualty Company, Maine License No. LHF127.
5. Steven M. Hersey is licensed by the Superintendent as a resident insurance producer under License Number PRR 150840 and National Producer Identification Number 10376011.
6. Ervin Dumond and Steven Hersey were at all times relevant to this matter appointed insurance producers for Bankers Life and Casualty Company.
7. On July 8, 2008, producer Steven Hersey called a Consumer in Mt. Desert, Maine, then age 80, based on a lead sheet for a Bankers Life Medicare and Active Americans booklet and made an appointment to visit the Consumer at her home to deliver the booklet. Bankers Life has advised the Bureau that the Consumer’s name was on the lead sheet

because she had responded to an advertisement regarding Medicare products. The text of the advertisement is set out in Attachment "A" hereto.

8. Mr. Dumond and Mr. Hersey visited the Consumer at her home on the morning of July 10, 2008 and delivered the Bankers Life Medicare and Active Americans booklet. Mr. Dumond and Mr. Hersey have advised Bankers Life and the Bureau of Insurance that they reviewed the Consumer's current health care coverage and verified that she had a Medicare supplement plan and a Medicare Part D plan with other insurance carriers. Mr. Dumond and Mr. Hersey have advised Bankers Life and the Bureau of Insurance that during the course of the meeting the Consumer mentioned that her situation would not allow her to pay any more for health insurance than she was currently paying and that she voiced concerns about rising fuel costs. This led to a discussion of the interest rate on her savings being very low and that Bankers Life could offer her a higher rate of return on her money through an annuity. As a result of this conversation, Mr. Dumond and Mr. Hersey obtained a signed application from the Consumer, as well as a signed authorization allowing them to access her bank deposits. Mr. Dumond and Mr. Hersey then used those documents to obtain a Manager's Check from the Consumer's bank for the sum of \$37,000.00 for funding a Bankers Life single premium deferred annuity.
9. On July 14, 2008 the Consumer filed a written complaint with the Bureau of Insurance, stating in part that she felt she had been taken advantage of. The Bureau of Insurance communicated this information to Bankers Life, and Bankers Life reversed the transaction immediately.

Statutory Authority

10. Title 24-A M.R.S.A. § 2152-B, "Unfair solicitation methods," provides:
 1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.
 - A. "Cold lead advertising" means making use directly or indirectly of a method of marketing that fails to disclose in a conspicuous manner that a purpose of the marketing is insurance sales solicitation and that contact will be made by an insurance producer or insurance company.
 - B. "Medicare products" includes Medicare Part A, Medicare Part B, Medicare Part C, Medicare Part D, Medicare Advantage and Medicare supplement plans.
 2. Unfair solicitation methods. It is an unfair trade practice under this Chapter for an insurer or producer to:
 - A. Sell, solicit or negotiate the purchase of health insurance in this State Through the use of cold lead advertising;
 - B. Use an appointment that was made to discuss Medicare products or to solicit the sale of Medicare products in order to solicit sales of life insurance, health insurance or annuity products unless the consumer requests such solicitation and the products to be discussed are clearly identified to the consumer in writing at least 48 hours in advance of the appointment; and

- C. Solicit the sale of Medicare products door-to-door prior to receiving an invitation from a consumer.
11. Title 24-A M.R.S.A. §1445, “Responsibility of insurer, health maintenance organization, fraternal benefit society, or nonprofit hospital or medical service organization; prohibited activities,” provides in part:
1. Responsibilities for training and supervision. In addition to any other Applicable provisions of law, the insurer, health maintenance organization, fraternal benefit society or nonprofit hospital or medical service organization:
 - A. Shall ensure adequate training for its appointed producers;
 - B. Shall provide supervision of its appointed producers who sell insurance on its behalf;
 - C. Is responsible for injuries to consumers resulting from the actions of its appointed producers to the extent of restitution, reimbursement of money or payment of interest to the consumer; and
 - D. Is accountable and may be penalized by the superintendent, as provided for in this Title, for the actions of its producers.
12. Title 24-A M.R.S.A. § 2152 prohibits engagement in any conduct determined to be “an unfair method of competition or unfair or deceptive act or practice in the business of insurance.”

Covenants

13. Bankers Life admits that it is accountable for the actions of its producers who use an appointment to discuss or to solicit the sale of Medicare products to solicit the sale of an annuity product. Bankers Life admits that by its appointed producers’ conduct described in paragraphs 7-8 above it violated 24-A M.R.S.A. § 2152-B (2)(B). Bankers Life admits that by its appointed producers’ conduct described in paragraphs 7-8 above it violated 24-A M.R.S.A. §§ 1445(1)(A) and 1445(1)(B) by failing to train or supervise its appointed producers to ensure that they comply with the requirements of 24-A M.R.S.A. § 2152-B(2)(B). Bankers Life admits that by its appointed producers’ conduct described in paragraph s 7-8 above it committed an unfair practice in the business of insurance, in violation 24-A M.R.S.A. § 2152.
14. Bankers Life agrees to the imposition of a civil penalty of Five Hundred Thousand Dollars (\$500,000.00), pursuant to 24-A M.R.S.A. § 12-A (1), for the violations admitted herein. Bankers Life shall pay that penalty within 30 days after the date of the last signature to this Consent Agreement. Payment shall be by certified check or money order made out to “Treasurer, State of Maine” and delivered to the Bureau.
15. No later than thirty days after the date of the last signature to this Consent Agreement, Bankers Life shall provide all its appointed producers with additional training regarding the requirements of 24-A M.R.S.A. § 2152-B(2)(B) and will provide such training to all new producers prior to permitting them to market any Bankers Life Medicare product to Maine residents. At least ten business days prior to the first such training, Bankers Life shall submit a syllabus of the training to the Bureau for approval. Every three months thereafter until December 31, 2010, Bankers Life shall file a written report, in a form satisfactory to the Bureau, of training conducted pursuant to this paragraph.

16. Upon the execution of this Consent Agreement, the Bureau of Insurance shall appoint an independent auditor to obtain the following information related to any appointment that was made to discuss Medicare products or to solicit the sale of Medicare products in order to solicit sales of life insurance, health insurance or annuity products (hereinafter “Non-Medicare Products”) for the period October 1, 2007 to the date of the last signature to this Consent Agreement (the “Covered Period”):
 - a. The name, address, and telephone number of each purchaser of Non-Medicare Products;
 - b. The date of each sale of Non-Medicare Products; and
 - c. Such other information the independent auditor may need to identify and contact each purchaser of Non-Medicare Products.

The independent auditor thereafter shall conduct all necessary research to determine which sales of Non-Medicare Products during the Covered Period constituted violations of 24-A M.R.S.A. § 2152-B(2)(B). For that research, the independent auditor shall use criteria chosen by the Bureau following non-binding consultation with Bankers Life. All data obtained by the independent auditor shall be reported to the Bureau and shall be the property of the State of Maine. Bankers Life shall cooperate fully with the independent auditor but shall exercise no authority or control over the conduct of the independent auditor’s work. Bankers Life shall communicate with the independent auditor only as permitted by the Bureau. Bankers Life shall be responsible for full payment for the independent auditor’s work pursuant to this paragraph, including payment for all attendant expenses and costs incurred. Payment shall be made on a schedule set by the Bureau; the Bureau, after receiving invoices from the independent auditor, shall transmit them to Bankers Life for payment. Bankers Life shall then remit payment to the Bureau for transmittal to the independent auditor.

17. “Covered Conduct” shall mean all violations of 24-A M.R.S.A. §2152-B(2)(B), or any other statute the violation of which would rely upon the same factual predicate as a §2152-B(2)(B) violation including without limitation, any violation of 24-A M.R.S.A. §§ 1445(1)(A), 1445(1)(B) and 2152 based on that factual predicate. For all Covered Conduct during the Covered Period found by the independent auditor pursuant to paragraph 16 above, by means approved by the Bureau, Bankers Life shall offer individuals who purchased Non-Medicare Products as the result of such violation an opportunity to rescind their contracts/policies (as applicable) without penalty and so as to place them in the same position they were in prior to their purchases, plus any interest accrued pursuant to their contracts/policies. In the event that a Non-Medicare Products purchaser would otherwise suffer financial penalties as a result of such rescission, Bankers Life and the Bureau will discuss the appropriate financial remedy to make such purchaser whole. Subsequent to those discussions, Bankers Life shall provide such remedy as the Bureau deems appropriate, subject to Bankers Life’s receipt of a release from the purchaser in a form approved by the Bureau. The preceding is intended to cover financial penalties occasioned by the violation of §2152-B(2)(B) (such as a tax obligation that would otherwise not have been incurred) and is not intended to cover extraneous expenses, such as legal fees the Non-Medicare Products purchaser may incur.

18. This Consent Agreement does not preclude the State of Maine or any of its agencies from seeking any remedy for illegal conduct by Bankers Life or its appointed producers, except for the Covered Conduct, by Bankers Life and its appointed producers during the Covered Period.
19. In consideration of Bankers Life's execution of and compliance with the terms of this Consent Agreement, the Superintendent of Insurance and the Attorney General agree to forgo pursuing further disciplinary measures or other civil or administrative sanctions against Bankers Life and its appointed producers for the Covered Conduct by Bankers Life and its appointed producers during the Covered Period.
20. For each failure by Bankers Life to comply with any condition or term of this Consent Agreement, misrepresentation to the Bureau regarding implementation of this Consent Agreement, or misrepresentation to the Bureau in information required by this Consent Agreement, Bankers Life shall be liable to the State of Maine for a monetary penalty of Twenty-Five Thousand Dollars (\$25,000.00). Such penalty shall be separate from and in addition to any other remedy available by this Consent Agreement or under the law.
21. No provision of this Consent Agreement in any way supersedes any provision of the April 2005 Consent Agreement between and among Bankers Life, the Bureau, and the Attorney General in Docket No. INS-05-202.
22. The Parties to this Agreement understand that nothing herein shall affect any right or interest that any person not a party to this Agreement may possess.
23. Nothing in this Consent Agreement shall be construed to excuse any obligation or duty of Bankers Life to past or present clientele.
24. This Consent Agreement is a public record subject to the provisions of the Maine Freedom of Access Law, 1 M.R.S.A. §§ 401 through 410, will be available for public inspection and copying as provided for by 1 M.R.S.A. § 408, and will be reported to the National Association of Insurance Commissioners' "RIRS" database.
25. This Consent Agreement is enforceable by an action in Maine Superior Court.
26. This Consent Agreement is not subject to appeal.
27. This Consent Agreement may be modified only by a written agreement executed by all of the parties.
28. By the duly-authorized signature of its representative on this Consent Agreement, Bankers Life indicates that it has consulted with counsel before signing the Agreement, that it understands the Agreement, and that it enters into the Agreement voluntarily and without coercion of any kind from any person.

Signatures

BANKERS LIFE AND CASUALTY COMPANY

Dated: _____

Printed Name: _____

Title: _____

For Bankers Life and Casualty Company

MAINE BUREAU OF INSURANCE

Dated: _____

Mila Kofman
Superintendent of Insurance

MAINE OFFICE OF ATTORNEY GENERAL

Dated: _____

James M. Bowie, Bar No. 2496
Assistant Attorney General

ATTACHMENT "A"

Dear _____

The Certificate below is important. Detach it from this letter, and mail it today in the postage-paid envelope provided.

As soon as we get your Certificate, we'll rush you a copy of an important booklet concerning your latest Medicare Hospital and Medical benefits and deductibles. We'll mail it directly to the (last name XX) residence by First Class Mail.

As you'll learn by returning your Certificate promptly, this booklet – called "Medicare and Active Americans" – contains up-to-the-minute facts and easy-to read charts covering the benefits you are now eligible to receive under Medicare Part A (Hospital) and Part B (Medical).

And it gives the sensible precautions you should take to get help with the bills Medicare doesn't cover.

Sending for this booklet today is your chance to get answers to your questions about Medicare... and how its present benefits (and limitations) can affect your financial security.

And it will help you learn about the standardized Medicare supplement insurance plans designed to help you avoid loss.

There's no cost or obligation for this booklet. So you can only gain by detaching your Certificate and mailing it now in the postage-paid envelope, (title, last name XXX).

Folks who have already received this booklet have read the good news about an easy way to help protect themselves from the medical expenses not covered by Medicare.

You can, too! That's why we urge you to detach your Certificate and mail it today for your booklet and chart. There's no cost or obligation for either this booklet or when an insurance agent calls to answer any questions you may have.

So mail the card in the postage-paid envelope today. It would help save you worry and possible financial loss later on.

Detach Here and Mail Today

Please mail me a copy of the new edition of "Medicare and Active Americans" with up-to-date facts, plus charts, of my current Medicare benefits. I understand there's no cost or obligation for either this booklet now or when an insurance agent calls to answer any questions I may have.