

**STATE OF MAINE
BUREAU OF INSURANCE**

In re:

GHM Agency

Docket No. INS-07-223

CONSENT AGREEMENT

This document is a Consent Agreement authorized by Title 10 M.R.S.A. § 8003(5), entered into among GHM Agency, a licensed Maine resident insurance producer business entity; the Maine Bureau of Insurance; and the Maine Office of the Attorney General. Its purpose is to resolve, in lieu of an adjudicatory proceeding, issues implicating Title 24-A M.R.S.A. §1417(1), §1420-K(1)(B), and §2154.

STATEMENT OF FACTS

1. The Superintendent of Insurance is the official charged with administering and enforcing Maine's insurance laws and regulations, and the Bureau of Insurance is the administrative agency with such jurisdiction.
2. GHM Agency is an active insurance agency with its principal place of business in Waterville, Maine, and which has been licensed in Maine as a resident insurance producer business entity since 1972 under License #AGR 1705 held by GHM Agency, Inc., and since 2002 under License #AGR 90183 held by BRM Associates, LLC d/b/a GHM Agency.
3. In October, 2007, the Bureau of Insurance received an inquiry from a third party indicating that GHM Agency was offering "10% off when combining Home & Auto Insurance" to participants in a particular local Chamber of Commerce program. The program indicated that such benefits were offered only to Chamber members. In that regard, the Chamber's website stated:

"The ... Chamber of Commerce is pleased to bring to you some very special discounts offered only to Chamber Members by Chamber Member businesses. This free program offers exclusive discounts given only to employees of a Chamber member."
4. According to an agreement form also available from the Chamber's website, the terms of this Chamber of Commerce member program required the various business participants, such as GHM Agency, to agree that any such discounts "must be of value and offered to the Chamber membership exclusively."
5. By e-mail communication to the GHM Agency's Chief Executive Officer on October 16, 2007, an attorney on the staff of the Bureau of Insurance requested an explanation of the advertised promotion, noting that it implicated two general possible issues: first, multiline discounts are common and therefore would not be exclusively available through any such special program, and second, if there were such a special discount, the rebating laws would be implicated.
6. The agency's CEO promptly replied, and stated: "With regard to this program, GHM simply extends the same discounts offered to all consumers by our carriers to Chamber

members and their employees. Under no circumstances do we offer any additional discounts not offered by our carriers.”

7. In response to some additional questions from staff of the Bureau, GHM Agency indicated that it had held this offer out in the above fashion for approximately one year. GHM Agency has asserted to the Bureau that it misunderstood that the advertisement would be offered exclusively to chamber members, that its CEO was the sole individual responsible for the wording of the promotion, and that it did not intend to mislead or deceive Chamber members or the general public. GHM Agency has also stated that no rebating occurred.
8. In accordance with some further e-mail messages, GHM Agency removed this promotion from the Chamber’s website as of October 18, 2007.

CONCLUSIONS OF LAW

9. Under 24-A M.R.S.A. §1417 and §1420-K(1)(B), after notice and opportunity for hearing, the Superintendent may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license or may levy a civil penalty in accordance with section 12-A, or take any combination of such actions, for violating any insurance laws.
10. The Trade Practices chapter of the Maine Insurance Code, at 24-A M.R.S.A. §2154, provides as follows with regard to false advertising:

“A person may not make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or 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 that person's insurance business that is untrue, deceptive or misleading....”

11. The GHM Agency placed or caused to be placed before the public an advertisement, announcement or statement containing an untrue statement indicating that a routine insurer discount was only available to customers of GHM Agency, and who also participated in a special Chamber of Commerce member program. Although GHM Agency corresponded with the Bureau in a forthright manner in response to the Bureau’s inquiry, and cooperated readily in removing the promotion from the Chamber website, the untrue, deceptive or misleading characterization of a routine, generally available discount constitutes grounds for action against the producer business entity licenses of GHM Agency in accordance with 24-A M.R.S.A. §1420-K(1)(B).

COVENANTS

12. GHM Agency, the Maine Bureau of Insurance, and the Maine Office of the Attorney General agree to the following.

13. This Consent Agreement is entered into in accordance with 10 M.R.S.A. §8003(5)(B) and is not subject to review or appeal. This Consent Agreement is enforceable by an action in the Superior Court.
14. At the time of executing this Consent Agreement, GHM Agency will remit to the Maine Bureau of Insurance a civil penalty in the amount of \$500.00, payable to the Treasurer of the State of Maine.
15. GHM will assure that references to the above apparent discount are removed from any other sources where it has been advertised or otherwise promoted, specifically including any electronic or printed promotional material.
16. GHM Agency will immediately conduct specific internal training, to inform its associated producers and staff about the terms and factual basis of this consent agreement, as well as to educate them about the antirebating and advertising laws,. GHM Agency will confirm in writing to the Bureau of Insurance that it has completed this training within thirty days of the effective date of this consent agreement, which is defined as the date of the Superintendent’s signature. The facts leading to the requirements under this paragraph relate to the nature of the referenced advertising, and nothing in the paragraph is intended to imply that any rebating transactions occurred.
17. GHM Agency acknowledges that this Agreement will constitute a public record within the meaning of 1 MRSA § 402, and will be available for public inspection and copying as provided for by 1 MRSA § 408, and will be reported to the NAIC “RIRS” database.
18. The licensee, the Superintendent of Insurance, Bureau of Insurance, and Office of the Attorney General agree that no further administrative or legal action shall be initiated based on the facts contained in this Consent Agreement, except in the event that the licensee fails to comply with the terms of this Consent Agreement. In the event of a violation of this Agreement the licensee may be subject to any available legal remedy for the violation, including without limitation the further suspension or revocation of all licenses issued under the Maine Insurance Code.
19. Nothing in this Agreement shall affect the rights or interests of any person who is not a party to this Agreement, nor does it resolve any issues pertaining to any other facts other than those recited herein.

[Signature page follows]

GHM Agency

Dated: _____, _____

by: _____
(printed name)

its _____
(title)

State of Maine, _____, ss

Subscribed and Sworn to before me _____

this _____ day of _____, _____.

Notary Public

(printed name)

THE MAINE SUPERINTENDENT OF INSURANCE

Dated: _____, _____

Eric A. Cioppa, Acting Superintendent

FOR THE OFFICE OF THE ATTORNEY GENERAL

Dated: _____, _____

Assistant Attorney General

(printed name)