

THE INSURANCE DEPARTMENT OF THE STATE OF DELAWARE

In re:)
)
CONSOLIDATED WORKERS ASSOCIATION,)
INC.; CLAIMS AND BENEFIT MANAGEMENT,) **Docket No. 1010-2008**
INC.; NATIONAL ALLIANCE OF BENEFIT)
SERVICES ASSOCIATION; WALTER R.)
CECCHINI, JR., AND BRAD WESSLER,)
Respondents)

ORDER

Pursuant to 29 Del.C. § 10128, the following constitutes my summary of evidence, findings of fact, conclusions of law, and determination in the above-referenced case.

The Department of Insurance filed the above-captioned action on November 14, 2008, alleging:

- (a) That respondent CWA violated 18 Del.C. § 505 by transacting the business of insurance in Delaware without a certificate of authority and transacting the business of insurance in other states without a subsisting license in Delaware.
- (b) That respondents Wessler, CBM, NABSA, and Cecchini have sold insurance in Delaware without a license in violation of 18 Del.C. § 1703.
- (c) That respondent CBM has acted as a third party administrator in Delaware without a license in violation of 18 Del.C. § 1406.
- (d) That respondents Wessler, CBM, NABSA, and Cecchini acted as agents for a company not authorized to transact insurance in Delaware in violation of 18 Del.C. § 2101.
- (e) That respondent Cecchini knowingly made material omissions in his application for a captive insurance company certificate of authority in violation of 18 Del.C. § 2304.
- (f) That all of the respondents engaged in unfair and deceptive business practices through misrepresentations made in faxes and telephone solicitations.
- (g) That the respondents collected premiums without providing any insurance, in violation of 18 Del.C. § 2304.¹

¹ There was testimony introduced at the hearing involving allegations that the respondents had operated a misleading website, and that they had failed to comply with a cease and desist order that I issued in July, 2008. However, because those allegations were not contained in the Complaint, I do not believe that the respondents were given sufficient notice that they would be an issue in this case and I will not make legal conclusions regarding them.

SUMMARY OF EVIDENCE AND FINDINGS OF FACT²

CWA is a Delaware corporation that was incorporated in Delaware in 2007. Tr. at 8. Walter Cecchini Jr. is the sole owner, president, and director of CWA. Tr. at 9.

Claims Benefit Management (CBM) is a third party administrator which is licensed in California but not licensed in Delaware. Tr. at 8-9. Brad Wessler is the president of Claims Benefit Management. Tr. at 9. On August 10, 2007, CBM entered into an agreement with CWA where CBM would administer health benefits that CWA members were entitled to by virtue of their membership in CWA. CWA had entered into an insurance policy with Consolidated Workers Risk Retention Group, under which CWRRG would insure the liability of CWA to CWA's members.

NABSA was CWA's marketing agent pursuant to a written agreement. Mr. Wessler is the managing member of NABSA. Tr. at 9. Pursuant to an October 11, 2007 agreement between CWA and NABSA, NABSA had a limited license to use CWA's name, and is an affiliate of CWA. By virtue of NABSA being an affiliate under the October 11, 2007 agreement, any NABSA member was automatically eligible to enroll as a member of CWA. NABSA was responsible for soliciting from its members applications for membership in CWA. Claims were to be managed by CWA (which in turn had them managed by CBM, also owned by Mr. Wessler), but dues were to be collected by NABSA.

None of the respondents are licensed to sell insurance in the State of Delaware or act as third party administrators in the State of Delaware. Tr. at 9.

The Use of Call Centers

Much of the dispute at the hearing surrounded the use by NABSA of call centers to market the health plans in question, and the legal liability of the respondents for the conduct of those call centers.

Mr. Wessler testified that NABSA carried out its responsibilities under the October 11, 2007 agreement by entering into agreements with "independent call centers." Tr. at 114. Mr. Wessler also testified that he discussed with Mr. Cecchini how the call centers used by NABSA would market CWA's product. Tr. at 117. Mr. Wessler testified that although the call centers were told that the CWA product they were selling was not insurance, they were provided with scripts, a sample of which the respondents

² As I suggested at the hearing, in making findings of fact I have used only original documents contained in the "Report of Investigation" submitted as an exhibit by the Department, and have not used any summaries of statements by third persons. Although I believe that the respondents have overstated the holding of Blue Cross & Blue Shield of Delaware, Inc. v. Elliott, 479 A.2d 843 (Del. Super. 1984), I do not think it would be fair given the specific facts of this case for me to rely upon specific allegations of wrongdoing made by alleged victims through an investigator.

introduced into evidence. Tr. at 120. Indeed, Mr. Cecchini testified that he, on behalf of CWA, approved these scripts. Tr. at 191.

During his testimony Mr. Wessler freely admitted that a number of consumers who had been solicited by the call centers working for NABSA believed that they had been offered health insurance:

Q: Now, you've heard today that sometimes when people call the call centers they were told, no, no, this is definitely insurance, this is not discount, you are actually buying insurance. Did you ever learn that any of the call centers' employees made such statements?

A: We constantly would take calls and explain to people this was not insurance and people would cancel. . . . That was an issue we had to deal with on an ongoing basis. The call centers would deny that they presented it as insurance, but members would call and say 'I bought this insurance' and we would quickly say 'This is not an insurance plan.'

Tr. at 120-121.

Rhonda Biddle

Rhonda Biddle of Dover, Delaware testified that she had contacted CWA in April, 2008 after her husband received a "blast fax" offering health insurance at his Maryland workplace. The Department introduced into evidence the fax in question, which contained a statement at the bottom stating "You are receiving this fax because of recent inquiry regarding health insurance." (Dept. Ex. N) Ms. Biddle testified that the sales representative who spoke to her when she called the number on the fax said that he worked for CWA, told her that the product she was purchasing was insurance, not a medical discount plan, and that it would cover pre-existing conditions. Ms. Biddle, who was uninsured at the time of her phone call, was told on the telephone that she had approximately two weeks to purchase the coverage. She was told that the policy in question was underwritten by Aetna, and that she could cancel the policy and receive a refund for it at any time. Tr. at 50-54, 60. She purchased the policy. Ms. Biddle said that the reference to a PPO in the discussion of the plan helped her to overcome her suspicion that it might not be a true insurance plan. Tr. at 63.

Ms. Biddle attempted to use the policy twice, once for her son who had broken his shoulder and once for herself for a routine doctor's visit. The company refused to pay on both occasions. Ms. Biddle testified that the premiums for the insurance were taken from her bank account, even after she faxed letters pursuant to the procedure she had been given to cancel the insurance. Her bank account statements indicated that the withdrawals were made by "NABSA Insurance," and that after she contacted the Delaware Insurance Department, two of the four automatic withdrawals were refunded to her. Ms. Biddle testified that she owes Kent General Hospital approximately \$3,200 for the medical procedure that she thought would be covered by her insurance. Tr. at 55-57.

Anthony Scalia

Mr. Scalia testified that he called a number in response to receiving a number of faxes on his fax machine in November, 2007, and that the person who answered the phone identified himself as being a representative of CWA. Tr. at 69-70. Mr. Scalia, whose wife suffered from cancer, switched his coverage from an existing insurance plan to CWA because the representative to whom he spoke said it would cover his wife's cancer treatment. *Id.* Mr. Scalia purchased the policy over the telephone by giving information to a representative that allowed his checking account to be debited, and was told that he could cancel the plan whenever he chose. Mr. Scalia's checking account statements indicate that the withdrawals were made by NABSA. Tr. at 79.

Mr. Scalia was subsequently told that his wife's cancer treatment would not be covered, and he attempted to cancel the plan. However, funds continued to be withdrawn from his account until he ultimately stopped the withdrawals by instructing his bank to stop permitting them. Tr. at 73-75. Mr. Scalia later received a refund for most, but not all, of the money that NABSA withdrew from his account, after intervention by the Delaware Insurance Department. Tr. at 79-80.

Bodunwa Kintunde³

Bodunwa Kintunde, a Maryland resident, testified that she called a telephone number in April, 2008 after receiving a fax, and spoke to a person who identified herself as a representative of CWA and told her that she was offering health insurance that covered pre-existing conditions. Tr. at 82-83. Ms. Kintunde was told that the plan was "part of a large PPO network." Tr. at 84-85. Ms. Kintunde provided information that allowed NABSA to begin removing money from her bank account in the first week of April, 2008, but once she received her actual plan later that month (in an envelope indicating that it was from Claim and Benefits Management), she decided that she did not want to purchase the plan and asked that it be cancelled. Tr. at 85-87. After contacting the Delaware Department of Insurance, Ms. Kintunde did receive a refund, and the refund check indicated that it was from "CBM TPA." Tr. at 90-91.

Judi Foracre

Ms. Foracre received a number of faxes on her fax machine in September, 2007, and ultimately called the number listed on those faxes in November, 2007. After a number of conversations with the person who answered the phone (who identified the product for sale as an insurance plan affiliated with named insurance carriers), Ms. Foracre gave the name of her bank to a representative of the unknown company but declined to give authorization to have money withdrawn from her account. Nevertheless, NABSA began withdrawing money from her account in February, 2008. When she called NABSA to inquire about the problem, she was transferred to a person who

³ Although I have not sanctioned any of the defendants based upon Ms. Kintunde's testimony due to her residence, her testimony is still helpful in confirming the accuracy of the other complainants' testimony and the respondents' pattern of business practices.

identified herself as being with Claims and Benefit Management. Tr. at 99-103. Ultimately, after a great deal more difficulty contacting representatives of NABSA, she was able to get a refund by contacting the Delaware Department of Insurance. Tr. at 104-106.

Allegation of An Absent Bad Actor

The respondents claim that on December 14, 2007, a “block of business” was transferred by call center representatives from an organization known as the National Alliance of Associations to CWA and NABSA. They claim that some of the complaints above actually arose from the sale by call center representatives of National Alliance of Associations business to consumers, and that CWA and NABSA actually played a helpful role in resolving complaints once that block of business was transferred in December, 2007. Tr. at 130-133. However, I do not find the respondents’ assertions credible. No evidence of such a transfer of business other than oral testimony and an undocumented self-serving letter from Mr. Wessler was introduced at the hearing. None of the respondents’ allegations regarding NAA were corroborated by any of the complaining witnesses (and CWA’s claim in its post-hearing briefing that the Department’s investigator corroborated the allegation is inaccurate).

CONCLUSIONS OF LAW AND DETERMINATION

The Department’s allegations are essentially pled in the alternative. Some counts allege that the respondents were engaged in the business of insurance in manner that violated Delaware law, other allegations center on the respondents representing a non-insurance product as insurance. And in both cases, the respondents are accused of accepting consumers’ funds without providing promised benefits in return.

There are common elements to the testimony of all three of the Delaware witnesses who claimed to have been mistreated by some or all of the respondents. All three were solicited by fax and called a phone number to get further information. Two of the three specifically recall being told that they were purchasing a health plan from CWA. All three of the Delaware witnesses had money withdrawn from their checking accounts by NABSA. All three attempted at one time or another to get NABSA to stop withdrawing funds from their accounts, and in each instance NABSA did not do so until the Department of Insurance intervened.

NABSA/Wessler/CBM

Both CBM and NABSA appear from the testimony offered to be wholly controlled by Mr. Wessler. In fact, their activities appear to be almost interchangeable: withdrawals from witnesses’ accounts were listed on their account statements as having been made by NABSA, even though the testimony introduced suggested that they were made by CBM. They are referred to herein as the “Wessler respondents.”⁴

⁴ Although Mr. Wessler testified at the hearing of this case, he restated at the outset of the case his objection to the case going forward because he claimed that his attorney was unavailable. Mr. Wessler had

The evidence unequivocally shows that the Wessler respondents either improperly withdrew funds or declined to return funds that were wrongfully taken from the Delaware witnesses' checking accounts until the Department of Insurance intervened. Their conduct in so doing was a violation of 18 Del.C. § 2304(7), which forbids the willful collection of any sum as premium or charge for insurance, which insurance is not then provided.

Mr. Wessler also candidly admitted that, aside from the use of misleading scripts (which is more fully discussed below with respect to Mr. Cecchini), he was fully aware of the fact that the call centers he chose were routinely misleading customers by telling them that CWA and NABSA's product was insurance. Tr. at 120-121. Yet, Mr. Wessler's own testimony indicates that he continued to use this method of marketing CWA's product, at least until he was ordered to cease and desist by the Delaware Department of Insurance.

Pursuant to 18 Del.C. § 2308, I find that the Wessler respondents, directly and through the use of misleading scripts (as discussed below), caused to be placed before the public advertisements containing assertions with respect to the business of insurance which were deceptive and misleading. I also find that the Wessler respondents continued to use a system of call centers that they knew to be providing affirmatively deceptive information to potential customers. I find that at least three such instances occurred in the State of Delaware, and that the Wessler defendants knew or reasonably should have known that their actions violated Delaware law. Finally, I find that on at least three occasions, the Wessler defendants violated 18 Del.C. § 2304(7). Therefore, I am imposing a fine of \$20,000 against Mr. Wessler for these violations, and I am forbidding him and any entity with which he serves in any management or director capacity from engaging in the business of insurance in the State of Delaware.

CWA/Cecchini

I have not found sufficient evidence to suggest that CWA or Mr. Cecchini condoned, knew of, or were otherwise responsible for the failure of NABSA and CBM to institute refunds when appropriate or NABSA and CBM's premature withdrawals from victims' accounts.

I do find, however, that Mr. Cecchini and CWA are legally responsible for some of the misleading marketing of CWA's health product as an insurance policy. NABSA and Mr. Wessler acted, as a matter of law, with actual authority from Mr. Cecchini and CWA when, at the time of making their representations, NABSA and Mr. Wessler reasonably believed, in accordance with Cecchini's manifestations, that Cecchini wished for them to act in that manner. Restatement (Second) of Agency § 2.01. Although Mr. Cecchini testified that he instructed NABSA to discontinue the use of call centers that specifically represented CWA's product as insurance, evidence that he himself

already made this argument in writing prior to the date of the hearing, and my written decision with respect to his continuance motion stands.

introduced shows that he had every intention of causing persons who were solicited to purchase CWA's plan to believe that it was insurance. A sample script introduced by respondents CWA and Cecchini of language they suggested to call center operators uses phrases such as "open enrollment," "PPO network," and "health benefits" that are associated by laypersons with insurance, and the script contains no language explaining to potential consumers that the product is not insurance. (Ex. CC)

Pursuant to 18 Del.C. § 2308, I find that Mr. Cecchini and CWA, through the use of their agents NABSA and Mr. Wessler, caused to be placed before the public advertisements containing assertions with respect to the business of insurance which were deceptive and misleading. I find that at least two such instances occurred in the State of Delaware, and that Mr. Cecchini and CWA knew or reasonably should have known that his actions violated Delaware law. Therefore, I am imposing a fine of \$10,000 against Mr. Cecchini, and I am forbidding him and any entity with which he serves in any management or director capacity from engaging in the business of insurance in the State of Delaware.

IT IS SO ORDERED this 6th day of January, 2009



Matthew Denn
Insurance Commissioner