

supervision, regulation, and discipline of title insurers and their agents licensed to operate and conduct business in the state of Missouri.

3. The Consumer Affairs Division of the Department of Insurance, Financial Institutions, and Professional Registration (“Consumer Affairs Division”) has the duty of conducting investigations into the unfair or unlawful acts of insurance companies and agents under the insurance laws of this state and has been authorized by the Director to initiate this action before the Director to enforce the insurance laws of this state.

JURISDICTION

4. The jurisdiction of the Director to initiate and administer this proceeding is found in § 374.046.1, RSMo (Cum. Supp. 2006), which provides, in part:

If the director determines based upon substantial and competent evidence that a person has engaged, is engaging in or has taken a substantial step toward engaging in an act, practice, omission, or course of business constituting a violation of the laws of this state relating to insurance in this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of the laws of this state relating to insurance in this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto, the director may order the following relief:

- (1) An order directing the person to cease and desist from engaging in the act, practice, omission, or course of business;
- (2) A curative order or order directing the person to take other action necessary or appropriate to comply with the insurance laws of this state;
- (3) Order a civil penalty or forfeiture as provided in section 374.049; and
- (4) Award reasonable costs of the investigation.

5. Section 374.049, RSMo (Cum. Supp. 2006) authorizes the Director to impose a monetary penalty or forfeiture of not more than one thousand dollars (\$1,000.00) for each violation which resulted in actual financial loss to consumers or which was knowingly committed, but not to exceed an aggregate penalty of fifty thousand dollars (\$50,000.00) per annum, unless the violation was committed in conscious disregard of the law, in which case the monetary penalty or forfeiture may be up to five thousand dollars (\$5,000.00) per violation but not to exceed an aggregate penalty of one hundred thousand dollars (\$100,000.00) per annum.

6. The Director has jurisdiction to administer this proceeding pursuant to the Unfair Trade Practices Act, found in § 375.940, RSMo (2000), which provides, in part:

1. Whenever the director shall have reason to believe that any person or insurer has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice, and that a proceeding by him in respect thereto would be to the interest of the public, he shall issue and serve upon such person or insurer a statement of the charges in that respect and a notice of hearing thereon to be held at a time and place fixed in the notice which shall not be less than twenty days after the date of service thereof.

7. In addition to the authority to issue a cease and desist order, § 375.942, RSMo, (2000) authorizes the imposition of a monetary penalty of not more than one thousand dollars (\$1000.00) for each violation but not to exceed an aggregate penalty of one hundred thousand dollars (\$100,000.00), unless the violation was committed in conscious disregard of the law, in which case the penalty may be up to twenty-five thousand dollars (\$25,000.00) per violation but not to exceed an aggregate penalty of two hundred fifty thousand dollars (\$250,000.00) in a twelve month period.

ALLEGATIONS RELEVANT TO ALL COUNTS

8. Nations, as a licensed title agency, has negotiated and sold title insurance to real estate buyers and sellers on behalf of several title insurance companies, and in conjunction with this title insurance business, has determined the insurability of real estate title by conducting searches and examinations and clearing defects.

9. Nations has also served as an escrow, settlement or closing agent and contributed to the preparation of real estate settlement documents intended to provide, prior to closing, material disclosure to all parties to the transaction, including the purchasers of title insurance and title search and examination services.

10. This proceeding is in the public interest.

COUNT I

11. Nations violated § 381.181, RSMo (1994) by using and collecting premiums at rates that had not been filed with the Director.

12. Section 381.181.1, RSMo (1994) provides, in part:

Every title insurer shall file with the director its premium schedules it proposes to use in any county of this state.

13. Section 381.181.2, RSMo (1994) provides, in part:

No title insurer or title agent or agency may use or collect any premium after September 28, 1987, except in accordance with the premium schedules filed with the director as required by subsections 1 and 2 of this section.

14. Section 381.031(14), RSMo (1994) defines "Premium" as "risk rates charged to the insured."

15. Pursuant to 20 CSR 500-7.100(1)(D), “risk rate” means “the total consideration paid by or on behalf of the insured for a title insurance policy.” It further states that “[r]isk rate shall include the title insurance agent’s commission but shall not include any charge as defined in subsection (1)(A).”

16. Pursuant to 20 CSR 500-7.100(1)(A), “charge” means
“any fee charged to the insured, or paid for the benefit of the insured for the performance of title-related services other than the risk rate charged for title insurance. This charge shall include, but is not limited to, fees for abstracts, title search and examination, handling of escrows, settlements or closings . . .”

17. The facts are as follows:

- a. Guarantee Title Insurance Company (hereinafter “Guarantee Title”) and United General Title Insurance Company (hereinafter “United General”) underwrite title insurance for Nations. Copies of Guarantee Title’s and United General’s underwriting agreements are attached hereto as Exhibits 1 and 2, respectively, and incorporated herein by reference.
- b. Guarantee Title and United General filed premium rates with the Director as required by § 381.181.1, RSMo (1994). Such rates were deemed effective or otherwise approved for use by Guarantee Title, United General, and any of their licensed agents at all times relevant hereto. A copy of United General’s Premium Rate Filing is attached hereto as Exhibit 3 and incorporated herein by reference. A copy of Guarantee Title’s Premium Rate Filing is attached hereto as Exhibit 4 and incorporated herein by reference.

- c. Nations, as an agent for Guarantee Title and United General, advertised and used or collected a single amount for title insurance premium, in addition to using or collecting other fees including a settlement or closing fee. Copies of Nations' pricing and product descriptions are attached hereto as Exhibits 5 and 6 and incorporated herein by reference.
- d. The single amount advertised and used or collected for title insurance premium by Nations is not based on the premium rates filed with the Director.
- e. The single amount advertised and used or collected for title insurance premium by Nations had not been filed with the Director before Nations used or collected premium based upon that unfiled rate.

COUNT II

- 18. Nations violated § 381.171, RSMo (1994) by advertising and using or collecting unfairly discriminatory title insurance premiums.
- 19. Section 381.171, RSMo (1994) provides, in part:
 - 1. Premiums shall not be inadequate, excessive or unfairly discriminatory. . . .
 - 4. Premiums are unfairly discriminatory if the premium charged for a policy of any particular face amount of liability is higher than the premium for an identical policy within the same classification where such policy has a like face amount or a higher face amount of liability.
- 20. The facts are as follows:
 - a. Nations supplied two distinct advertisement flyers to "special pricing customers" and regular customers. See Exhibits 5 and 6 attached hereto.

- b. Nations charged “Special pricing customers” a lower all-inclusive fee than regular customers for identical title insurance policies.
- c. “Special pricing customers” received additional discounts on other title related services while regular customers did not automatically receive similar discounts. See Exhibit 5.

COUNT III

21. Nations violated § 375.934, RSMo (2000) by engaging in an unfair trade practice defined by § 375.936(4), RSMo (2000).

22. Section 375.934, RSMo (2000) provides:

It is an unfair trade practice for any insurer to commit any practice defined in section 375.936 if:

(1) It is committed in conscious disregard of sections 375.930 to 375.948 or of any rules promulgated under sections 375.930 to 375.948; or

(2) It has been committed with such frequency to indicate a general business practice to engage in that type of conduct.

23. Section 375.936, RSMo (2000), provides:

Any of the following practices, if committed in violation of section 375.934, are hereby defined as unfair trade practices in the business of insurance: . . .

(4) “False information and advertising generally”, making . . . or causing, directly or indirectly, to be made, . . . in any other way, . . . [a] statement containing any assertion, representation or statement with respect to the business of insurance, . . . which is untrue, deceptive or misleading;

24. The facts of Nations’ untrue, deceptive, and misleading statements are as follows:

- a. Nations, in one or more instances, listed an all-inclusive "title insurance" fee on real estate closing documents when only a small portion of that fee is a filed insurance premium rate and most of the all-inclusive fee is not title insurance premium, but instead, charges subject to negotiation and discount.

25. Nations committed the aforesaid violation(s) in conscious disregard of §§ 375.934 and 375.936, RSMo (2000).

26. Nations knew or reasonably should have known its actions described in the foregoing paragraphs were in violation of § 375.934, RSMo (2000).

COUNT IV

27. Nations violated § 375.144, RSMo (Cum. Supp. 2005) by concealing from purchasers at the time of negotiation and sale of insurance material facts concerning the cost of title insurance.

28. Section 375.144, RSMo (Cum. Supp. 2005) provides, in part:

It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:

(2) As to any material fact, make or use any misrepresentation, concealment or suppression;

29. Nations concealed the following information in violation of § 375.144, RSMo (Cum. Supp. 2005).

- a. Information regarding the actual cost of title insurance, which must be calculated in accordance with a filed premium rate and may not be discounted or negotiated except as provided for in the filed premium rate plan; and

- b. Information regarding charges for related services, including search and examination expenses, clearing title defects, and other charges that are not included in the filed premium rate and may be discounted or negotiated without limitation.

COUNT V

30. Nations violated § 375.934, RSMo (2000) by engaging in an unfair trade practice defined by § 375.936(9), RSMo (2000). Nations conduct is also a violation of § 381.141, RSMo (1994).

31. Section 375.934(9), RSMo (2000) defines the unfair trade practice of “Rebates,” as follows:

“Rebates”: (a) Except as otherwise provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity, accident and health insurance or other insurance, or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering or to give, sell, or purchase as inducement to such insurance contract or annuity or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract;

32. Section 381.141.1, RSMo (1994) provides:

No title insurer or title agent or agency shall:

(1) Pay, directly or indirectly, to the insured or to any other person any commission, any part of its premiums, fees, or other charges; or any other consideration as inducement or compensation for the referral of title business or for performance of any escrow or other service by the title agent or agency; or

(2) Issue any title insurance policy or perform any service in connection with any transaction in which it has paid or intends to pay any commission, rebate or inducement which it knows to be in violation of this section.

33. The facts are as follows:
- a. On or about March 1, 2006, Nations president, Kevin Kattelman, signed a Settlement Services Agreement with Richard Hagan, vice president for American Financial Services d/b/a American Lending Group, a mortgage company. According to the contract, Nations agreed to pay American Financial Service d/b/a American Lending Group one hundred twenty-five dollars (\$125.00) per closed transaction for services ordinarily provided by a mortgage company in the regular course of business. Records provided by Nations indicate "agreement fees" were paid to the mortgage company within 30 days after a loan was closed and funded. The "agreement fees" were not paid from escrow accounts; instead, the "agreement fees" were paid by Nations apart from the closing transaction. A copy of the Settlement Services Agreement is attached hereto as Exhibit 7 and incorporated herein by reference.
 - b. On or about February 9, 2006, Nations president, Kevin Kattelman, signed a Settlement Services Agreement with Gary Bussard, president of Residential Building Services, Inc., a mortgage company. According to the contract, Nations agreed to pay Residential Building Services, Inc. two hundred dollars (\$200.00) per closed purchase transaction and one hundred twenty-five dollars (\$125.00) per closed refinance transaction for services ordinarily provided by a mortgage company in the regular course

of business. Records provided by Nations indicate "agreement fees" were paid to the mortgage company within 30 days after a loan was closed and funded. The "agreement fees" were not paid from escrow accounts; instead, the "agreement fees" were paid by Nations apart from the closing transaction. A copy of the Settlement Services Agreement is attached hereto as Exhibit 8 and incorporated herein by reference.

- c. On or about June 1, 2006, Nations president, Kevin Kattelman, signed a Settlement Services Agreement with Richard Hagen, manager of CFIC Home Mortgage d/b/a Castlebrook Lending, LLC, a mortgage company. According to the contract, Nations agreed to pay CFIC Home Mortgage d/b/a Castlebrook Lending, LLC one hundred dollars (\$100.00) per closed transaction for services ordinarily provided by a mortgage company in the regular course of business. Records provided by Nations indicate "agreement fees" were paid to the mortgage company within 30 days after a loan was closed and funded. The "agreement fees" were not paid from escrow accounts; instead, the "agreement fees" were paid by Nations apart from the closing transaction. A copy of the Settlement Services Agreement is attached hereto as Exhibit 9 and incorporated herein by reference.
- d. On or about November 19, 2004, Nations then president, Kent Gardner, signed a Settlement Services Agreement with John Linnenbrink, president of Right Choice Mortgage, a mortgage company. According to the contract, Nations agreed pay Right Choice Mortgage one hundred twenty-

five dollars (\$125.00) per closed transaction for services ordinarily provided by a mortgage company in the regular course of business. Records provided by Nations indicate “agreement fees” were paid to the mortgage company within 30 days after a loan was closed and funded. The “agreement fees” were not paid from escrow accounts; instead, the “agreement fees” were paid by Nations apart from the closing transaction. A copy of the Settlement Services Agreement is attached hereto as Exhibit 10 and incorporated herein by reference.

- e. On or about June 20, 2006, Nations president, Kevin Kattleman, signed a Settlement Services Agreement with Jayson Hardle, member of Endeavor Capital, LLC d/b/a Homestead Financial Mortgage, a mortgage company. According to the contract, Nations agreed pay Endeavor Capital, LLC d/b/a Homestead Financial Mortgage seventy-five dollars (\$75.00) per closed transaction for services ordinarily provided by a mortgage company in the regular course of business. Records provided by Nations indicate “agreement fees” were paid to the mortgage company within 30 days after a loan was closed and funded. The “agreement fees” were not paid from escrow accounts; instead, the “agreement fees” were paid by Nations apart from the closing transaction. A copy of the Settlement Services Agreement is attached hereto as Exhibit 11 and incorporated herein by reference.
- f. A copy of the “agreement fee” payment records is attached hereto as Exhibit 12 and incorporated herein by reference.

34. The above noted "agreement fees" constitute a prohibited rebate as defined by § 375.936(9), RSMo (2000) or a referral fee prohibited by § 381.141.

35. Nations committed the aforesaid violation(s) in conscious disregard of §§ 375.934 and 375.936, RSMo (2000).

36. Nations knew or reasonably should have known its actions described in the foregoing paragraphs were in violation of § 375.934, RSMo (2000) and § 381.141, RSMo (1994).

COUNT VI

37. Nations violated § 381.201.3 by failing to prominently display copies of the premium rates which are required to be filed with the Director under the provisions of §§ 381.011 to 381.241.

38. The facts are as follows:

- a. On or about October 24, 2006, Martha Burton, Examiner with the Missouri Department of Insurance, Financial Institutions, and Professional Registration, visited Nations' office in St. Louis, Missouri.
- b. Ms. Burton observed that Nations had failed to prominently post the filed premium rates anywhere in the reception area or closing room.

RELIEF

WHEREFORE, the Consumer Affairs Division requests the Director:

- A. Find that Nations engaged in the unlawful acts and unfair practices alleged herein;
- B. Issue an order prohibiting Nations and its agents and employees from:
 - a. Violating or materially aiding in any violation of § 381.181, RSMo (1994).
 - b. Violating or materially aiding in any violation of § 381.171, RSMo (1994).
 - c. Violating or materially aiding in any unfair practice defined by § 375.936, RSMo (2000).
 - d. Violating or materially aiding in the violation of §375.144, RSMo (Cum. Supp. 2006) by concealing in connection with the negotiation or sale of title insurance to Missouri residents by failing to disclose that the all-inclusive fees include non-negotiable title insurance premium and other negotiable non-insurance charges.
 - e. Violating or materially aiding in the violation of § 381.201.3, RSMo (1994) by failing to prominently display the schedule of premiums which are required to be filed with the Director.
- C. Order Nations to pay a civil penalty for each unlawful act or unfair practice;
- D. Order Nations to pay reasonable costs of the investigation.
- E. Such other relief as the Director deems just in this proceeding

Respectfully submitted,

A handwritten signature in cursive script that reads "Tamara Wallace". The signature is written in black ink and is positioned above a horizontal line.

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