

JUN 1 9 2007

IN THE DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION STATE OF MISSOURI

MO. DEPT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

In Re:)
Kevin W. Louderback)
Serve at:)
3831 W. Creekside Ct.)
Springfield, MO 65802)
Shelia G. Atchley)
and)
Stephen J. Atchley)
Serve at:)
3823 W. Creekside Ct.)
Springfield, MO 65802)
Justin R. Barnes)
Serve at:)
4334 S. Timbercreek Ave. Apt. 99)
Battlefield, MO 65619)
C.A.A.P.,)
C.A.A.P. & Associates)
and)
Premier Financial Services)
Serve at:)
512 N. West Bypass)
Springfield, MO 65802)

Case No. 070518314C

AMENDED STATEMENT OF CHARGES

The Division of Consumer Affairs of the Department of Insurance, Financial Institutions and Professional Registration, by and through counsel, requests the Director of the Department

of Insurance, Financial Institutions and Professional Registration (“Director”) to issue a cease and desist order and order payment of a monetary penalty based on the following statement of charges:

JURISDICTION

1. The jurisdiction of the Director to initiate and administer this proceeding is found in § 374.046.1, RSMo (Cumulative 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.

2. Section 374.049, RSMo (Cumulative 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.

3. Section 374.280, RSMo (2000), authorizes the Director to order a forfeiture to the state of Missouri a sum not to exceed one hundred dollars for each violation by any person, partnership, or corporation knowingly violating any provision of chapters 374, 375, 376, 377, 378 and 379, RSMo.

4. Section 375.144, RSMo (Cumulative Supp. 2006) states:

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

- (1) Employ any deception, device, scheme, or artifice to defraud;
- (2) As to any material fact, make or use any misrepresentation, concealment, or suppression;
- (3) Engage in any pattern or practice of making any false statement of material fact; or
- (4) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person.

5. 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.

6. 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.

7. This proceeding is in the interest of the public.

Facts Pertinent to All Counts

8. At all times mentioned herein, Kevin W. Louderback (“Louderback”) was a licensed insurance producer (license #PR339355) in the state of Missouri. Louderback’s insurance producer license is currently active and in good standing.

9. At all times mentioned herein, Shelia G. Atchley (“S.G. Atchley”) was a licensed insurance producer (license #PR370336) in the state of Missouri. S.G. Atchley’s insurance producer license is currently active and in good standing.

10. At all times mentioned herein, Stephen J. Atchley (“S.J. Atchley”) was a licensed insurance producer (license #PR370337) in the state of Missouri. S.J. Atchley’s insurance producer license is currently active and in good standing.

11. At all times mentioned herein, Justin R. Barnes (“Barnes”) was a licensed insurance producer (license #PR381080) in the state of Missouri. Barnes’ insurance producer license is currently active and in good standing.

12. At all times mentioned herein, Citizens for Aids Assistance and Prevention (and the registered fictitious name Citizens for Aids Assistance and Prevention & Associates, hereinafter collectively referred to as “CAAP”), was a domestic non-profit corporation (charter #N00562196) properly filed with the Missouri Secretary of State. CAAP has never been issued a business entity insurance producer license.

13. At all times mentioned herein, Premier Financial Services (“Premier”) was a licensed business entity insurance producer (license #AG8019240) in the state of Missouri. Premier’s business entity insurance producer license is currently active and in good standing.

14. The duties of the Director, pursuant to Chapters 374 and 375, RSMo, include the supervision, regulation, and discipline of insurance producers and business entity insurance producers licensed to operate and to do business in the state of Missouri.

15. All statutory citations herein are to Revised Statutes of the State of Missouri, Cumulative Supplement 2006, unless otherwise noted.

Count I

16. On or about August 1, 2005, Louderback contracted with UnitedHealth Care Insurance Company (“UnitedHealth Care”) to provide small employee group plan insurance to CAAP. The policy language stated that small employee group plans are for employers with 2 to 50 employees. At the time this contract was executed between Louderback and UnitedHealth Care, CAAP had approximately 2 employees.

17. By April of 2007, CAAP consisted of approximately 700 employees, the majority of which were eligible for Medicaid benefits through the state of Missouri. These benefits were part of the Health Insurance Premium Payment (“HIPP”) program that would cover premium costs for Medicaid recipients.

18. Between the approximate dates of August 1, 2005 and May 1, 2007, Louderback, S.G. Atchley, S.J. Atchley, and Barnes, as representatives of CAAP and Premier, submitted employee insurance applications to both UnitedHealth Care and HIPP. Information contained in these applications varied significantly between those submitted to UnitedHealth Care and HIPP.

19. As a result of the variance in information stated in the aforementioned insurance applications, higher amounts for premiums were submitted to HIPP from those stated by UnitedHealth Care. This difference in premium amounts resulted in HIPP being excessively and improperly billed by more than seven hundred thousand dollars (\$700,000) for approximately six hundred (600) CAAP employees.

20. The aforementioned conduct by Louderback, S.G. Atchley, S.J. Atchley, and Barnes, as representatives of CAAP and Premier, constitutes intentional misrepresentation of the terms of an actual or proposed insurance contract or application for insurance per § 375.141.1(5), RSMo.

21. The aforementioned conduct by Louderback, S.G. Atchley, S.J. Atchley, and Barnes, as representatives of CAAP and Premier, constitutes fraudulent or dishonest practices and demonstrates incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere per § 375.141.1(8), RSMo.

22. The aforementioned conduct by Louderback, S.G. Atchley, S.J. Atchley, and Barnes, as representatives of CAAP and Premier, constitutes, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, an employment of a deception, device, scheme, or artifice to defraud, making or using misrepresentation to material facts, engaging in a pattern or practice a making false statements of material facts, or engaging in an act, practice, or course of business which operates as a fraud or deceit upon persons per § 375.144.

23. The aforementioned conduct by Louderback, S.G. Atchley, S.J. Atchley, and Barnes, as representatives of CAAP and Premier, was knowingly committed in conscious disregard of the law.

Count II

24. On or about March 29, 2007, HIPP paid Louderback, S.G. Atchley, S.J. Atchley and Barnes, as representatives of CAAP and Premier, approximately five hundred thirty-eight thousand, five hundred sixty-seven dollars (\$538,567) as part of Medicaid coverage for insurance premiums for certain CAAP employees.

25. By May 10, 2007, Louderback, S.G. Atchley, S.J. Atchley and Barnes, as representatives of CAAP and Premier, had not forwarded the aforementioned funds to UnitedHealth Care.

26. The aforementioned conduct by Louderback, S.G. Atchley, S.J. Atchley, and Barnes, as representatives of CAAP and Premier, constitutes improper withholding, misappropriating or converting of moneys or properties received in the course of doing insurance business per § 375.141.1(4), RSMo.

27. The aforementioned conduct by Louderback, S.G. Atchley, S.J. Atchley, and Barnes, as representatives of CAAP and Premier, constitutes fraudulent or dishonest practices and demonstrates incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere per § 375.141.1(8), RSMo.

28. The aforementioned conduct by Louderback, S.G. Atchley, S.J. Atchley, and Barnes, as representatives of CAAP and Premier, constitutes, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, an employment of a deception, device, scheme, or artifice to defraud, making or using misrepresentation to material facts, engaging in a pattern or practice a making false statements of material facts, or engaging in an act, practice, or course of business which operates as a fraud or deceit upon persons per § 375.144.

29. The aforementioned conduct by Louderback, S.G. Atchley, S.J. Atchley, and Barnes, as representatives of CAAP and Premier, constitutes a violation of 20 CSR 700-1.140(2)(D) because the HIPP funds were not remitted within thirty days from the date of receipt.

30. The aforementioned conduct by Louderback, S.G. Atchley, S.J. Atchley, and Barnes, as representatives of CAAP and Premier, was knowingly committed in conscious disregard of the law.

Count III

31. The Division of Consumer Affairs realleges and expressly incorporates the allegations contained in paragraphs 16–19.

32. The aforementioned conduct by Louderback, S.G. Atchley, S.J. Atchley, and Barnes, as representatives of CAAP and Premier, constitutes the making of false or fraudulent statements or representations on or relative to an application for a policy, for the purpose of obtaining a fee, commission, money, or other benefit from an insurer, agent, agency, broker or other person as defined by § 375.936(7), RSMo (2000).

33. Between the approximate dates of August 1, 2005 and May 1, 2007, Louderback, S.G. Atchley, S.J. Atchley, and Barnes, as representatives of CAAP and Premier, knowingly made, published, disseminated, circulated or placed before the public, directly or indirectly, an advertisement, announcement, representation or statement regarding an agreement for insurance as part of employment with CAAP that consisted of an inducement to such insurance. This inducement, which specifically referenced an offer of free food, was not plainly expressed in the insurance contract.

34. The aforementioned conduct by Louderback, S.G. Atchley, S.J. Atchley, and Barnes, as representatives of CAAP and Premier, constitutes a rebate as defined by § 375.936(9) (2000).

35. The aforementioned conduct by Louderback, S.G. Atchley, S.J. Atchley, and Barnes, as representatives of CAAP and Premier, constitutes unfair trade practices, as defined by § 375.934, RSMo (2000), because each incidence was committed in conscious disregard of §§ 375.930 to 375.948, RSMo (2000), or each incidence was committed with such frequency to indicate a general business practice to engage in that type of conduct.

RELIEF

WHEREFORE, the Consumer Affairs Division of the Department of Insurance requests that the Director issue an order granting the following relief:

1. A cease and desist order pursuant to § 374.046, RSMo, prohibiting Louderback, S.G. Atchley, S.J. Atchley, Barnes, CAAP and Premier from violating §§ 375.141, 375.934, and 570.030, RSMo, and 20 CSR 700-1.140(2)(D);
2. A monetary penalty of one hundred dollars (\$100) pursuant to § 374.280, RSMo, for each and every violation of the provisions of chapters 374, 375, 376, 377, 378 and 379 knowingly committed by Louderback, S.G. Atchley, S.J. Atchley, Barnes, CAAP and Premier;
3. A monetary penalty of twenty-five thousand dollars (\$25,000) pursuant to § 375.942, RSMo, for each and every violation of § 375.934, RSMo, committed in conscious disregard or with such frequency to indicate a general business practice by Louderback, S.G. Atchley, S.J. Atchley, Barnes, CAAP and Premier;
4. A monetary penalty of five thousand dollars (\$5000) pursuant to §§ 374.046 and 374.049, RSMo, for each and every violation of the laws of this state relating to insurance committed knowingly committed in conscious disregard of the law by Louderback, S.G. Atchley, S.J. Atchley, Barnes, CAAP and Premier; and
5. Such other relief as the Director deems just in this proceeding.

Kevin Hall

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ATTORNEY FOR DIVISION OF
CONSUMER AFFAIRS

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the foregoing was first class mailed, with sufficient postage attached, on this 13 day of June, 2007 to:

Kevin W. Louderback
3831 W. Creekside Ct.
Springfield, MO 65802

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