

Government of the District of Columbia
Department of Insurance, Securities and Banking
810 First St., N.E., Suite 701
Washington, D.C. 20002



IN THE MATTER OF:)	
)	
District of Columbia Department of)	
Insurance, Securities and Banking)	
Petitioner)	
)	
v.)	IB-SC-25-07
)	
Darnell Keys)	
Respondent)	
)	

FINAL DECISION AND ORDER

JURISDICTION

This matter, IB-SC-20-07, came before Leslie E. Johnson, Hearing Officer, District of Columbia Department of Insurance, Securities and Banking (hereinafter "Department" or "Government") on October 11, 2007, in accordance with the provisions of the District of Columbia Administrative Procedure Act (DCAPA), D.C. Official Code § 2-509 (2001), the Producer Licensing Act of 2002, (ACT), D.C. Official Code § 31-1131.12, and Chapter 38 of Title 26 of the District of Columbia Municipal Regulations (DCMR), for the purpose, of considering whether the individual insurance producer license (No. 2841871) of Darnell Keys should be revoked.

PROCEDURAL HISTORY

An Amended Notice to Show Cause was sent to Darnell Keys on July 8, 2008, informing him of the charges against him and setting a hearing date of August 21, 2008 at 1:00 p.m. The hearing

was convened on August 21, 2008, but was stopped for the purpose of settlement discussions. However, no settlement was reached on that date and the matter was continued to November 18, 2008.

After notice was duly given, a Show Cause hearing was held on November 18, 2008 at the Department of Insurance, Securities and Banking, 810 First Street, NE, Washington, D.C., 20002. Charlotte Parker, Assistant Attorney General, represented the Government (hereinafter Petitioner). Darnell Keys (hereinafter Respondent) represented himself.

ISSUES CONSIDERED

- (1) Whether Respondent made statements at a sales presentation that misrepresented the benefits, advantages, conditions or terms of a policy in violation of D.C. Official Code §31-2231.03(1)?
- (2) Whether Respondent intentionally misrepresented the terms of a proposed insurance contract in violation of D.C. Official Code §31-1131.12(a)(5)(2001)?
- (3) Whether Respondent used dishonest practices, demonstrated incompetence, and untrustworthiness in the conduct of business in the District of Columbia in violation of D.C. Official Code §31-1131 .12(a)(8)(2001)?
- (4) Whether action may be taken against Respondent pursuant to D.C. Official Code §31-2231.03(1) (2001)?

EVALUATION AND ANALYSIS OF THE EVIDENCE

Evaluation

D.C. Code Official Code §31-2231.03(1) states:

“No person shall make, issue, circulate, or cause to be made, issued or circulated, an estimate, illustration, circular or statement, sales presentation, omission, or comparison that:

- (1) Misrepresents the benefits, advantages, conditions, or terms of a policy;...

D.C. Code Official Code §31-1131.12(a)(5) and (8) state:

“(a) The Commissioner may place an insurance individual or business entity producer on probation; suspend, revoke, or refuse to issue or renew an insurance producer’s license, may levy a civil penalty in accordance with subsection (d) of this section; may issue subpoenas and administer oaths; or take any combination of these actions if an insurance producer:

(5) Intentionally misrepresents the terms of an actual or proposed insurance contract or application for insurance;

(8) Uses fraudulent, coercive, or dishonest practices, or demonstrates incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in the District or elsewhere; . . .

The first witness to testify on behalf of the Petitioner was Andres Izaguirre, Fraud Investigator for the Department of Insurance, Securities and Banking (DISB). He testified he began an investigation of Advantra after being assigned the case from his supervisor in October of 2007. Mr. Izaguirre stated he sent 385 surveys to various residents and that one of the agents involved in the selling of the product was Respondent. He testified that he was able to obtain a list from Coventry Health Care, Inc. (hereinafter Coventry) (the health insurance company that marketed the Advantra product) indicating which policies were sold by Respondent. He also stated that he received 87 responses from the surveys and that the responses indicated the residents were confused and felt the Advantra products had been misrepresented. Mr. Izaguirre testified that he conducted interviews with 3 resident managers (all of properties located at different addresses on Bladensburg Road, N.E.). (See Government's Exhibit 1 to 7 - returned surveys.)

The next witness to testify on behalf of the Petitioner was Carolyn King, Senior Insurance Operation Specialist, in the Department of Insurance, Securities and Banking (DISB). Ms. King testified that she received a call regarding marketing concerns about Advantra. After receiving the call Ms. King said she began an investigation and met with a group of residents (enrollees) who all had problems with Advantra. In explaining the Advantra product, Ms. King stated that each person with whom she spoke was removed from the Medicare A and B rolls by the Advantra representative and was offered dental and vision benefits. She also testified that most facilities did not accept Advantra and most doctors take Medicare Part A and B and not Part C that was being offered by Advantra. She stated that many of the seniors were not informed that they would lose benefits under Advantra, but were led to believe they would obtain additional benefits. Ms. King indicated that she reviewed the surveys completed by the residents (who had been serviced by Advantra) and felt that the citizens were removed from Medicare Part A and B without their knowledge. Ms. King stated that the citizens had no idea what happened until they tried to get services. She believed that the citizens had been misled and given wrong information by the Advantra representatives.

Ms. King stated that while visiting one of the Bladensburg Road, N.E. locations, the residents told her that during Respondent's presentation he told them the following:

- (1) They would maintain Medicare Parts A and B.
- (2) They would obtain free glasses.
- (3) They would obtain free vision benefits.
- (4) They would maintain their same doctors.

Respondent did not cross-examine Petitioner's witnesses.

The Respondent made no objections to the evidence submitted by the Petitioner. Respondent represented himself and was his only witness. The Respondent requested that several documents be moved and made a part of the record (See Respondent's Exhibits 1 to 4). The documents were accepted into the record with no objection by Petitioner.

Respondent began his case by stating that almost everything that was stated during the Petitioner's case in chief was true. He stated that the representations made to residents during the Advantra presentations were made based upon information he received during the Advantra training. Specifically Respondent testified that Melvin Tucker from Ohio was the person that initially trained him. (See Respondent's Exhibits 1, 2, and 3, Respondent's notes from his initial training.) Respondent stated that he later discovered that everything that he initially was taught was a "blatant lie". After this discovery, he said he called Coventry and said he needed retraining. He also stated that he did some of his own research. Respondent testified that he received additional training from Nathaniel Reid, but indicated the training was more of the same (i.e. wrong information). Respondent said that even after questions were raised regarding the Advantra product, he still continued to sell it, but marketed it differently based upon his research. Respondent testified that he stopped selling the Advantra product after he received the June 12, 2007 termination letter from Advantra (See Petitioner's Exhibit 9). Respondent closed his testimony by requesting that his license not be revoked.

Petitioner's counsel did not cross-examine Respondent.

Exhibits

Government's Exhibit #1:

Interview with Community Relations Manager (Resident Manager) Norma Aaron on 3/13/08.

DISB surveys from Elizabeth Clarke, Rose Beverly and Laurel Black.

Government's Exhibit #2:

DISB surveys from Sarah Greene, Shirley Proctor, Octvaious McCullough, Mary Liddell, Sollie Harris, Elma Harris, William Crutchfield, Claude Bess and Laura Bess.

Government's Exhibit #3:

Interview with Community Relations Manager (Resident Manager) Glen Geter on 4/08/08.

DISB surveys (with attachments) from James Witcher, Joseph Short, Raymond Githara, Ethel Perry, Celestine Pendarvis, Pearline Herndon, Beulah Elliott and Mae Chapman.

Government's Exhibit #4:

DISB surveys (with attachments) from Constance Lathern, Lee Alston, Emmaline Austin, Ollie Gray, Charles Green, Ada Jackson, Geraldine Mack, Richard Laurey, Rosa Kelly, Beatrice McKeamer, Mahlon Payne, Laura Miller and Willie ONeal.

Government's Exhibit #5:

DISB survey (with attachments) from Annie Gadsden.

Government's Exhibit #6:

DISB surveys (with attachments) from Andrew Drew, Maurice Hill, Jane Haynes, Yvonne Johnson, Joyce Johnson, Lessie Mckiver, Marvin Thomas and Sylvester Porter.

Government's Exhibit #7:

DISB survey for Dartois Davis.

Government's Exhibit #8:

DISB Licensee Summary for Respondent.

Respondent's Exhibit #1:

Respondent's notes from Advantra training.

Respondent's Exhibit #2:

Respondent's notes from Advantra training.

Respondent's Exhibit #3:

Respondent's notes from Advantra training.

Respondent's Exhibit #4:

Letter dated June 5, 2008 from Coventry Health Care, Inc. to Respondent.

Analysis

Violation of D.C Official Code § 31-2231.03 (1)

Respondent admitted that everything that was presented by the Petitioner during its case in chief was true; and that what he represented to the residents during the Advantra presentations was based upon the training that he received, although he later discovered the information was incorrect. Therefore, Respondent admitted that he misrepresented the benefits, advantages, conditions and terms of the Advantra policy.

Accordingly, the Hearing Officer finds that Respondent violated D. C. Official Code § 31-2231.03(1) by making statements at sales presentations that misrepresented the benefits, advantages, conditions and terms of the Advantra policy.

Violation of D.C Official Code § 31-1131.12 (a) (5)

Petitioners' witness presented credible testimony that Respondent did misrepresent the benefits, advantages, conditions and terms of the Advantra policy (see Ms. Carolyn King's testimony above). Respondent himself through his own testimony admitted to

misrepresentations during the Advantra presentations. However, in order to determine a violation of D.C Official Code § 31-1131.12 (a) (5), a determination must be made as to whether there was an intentional misrepresentation of the terms of an actual or proposed insurance contract or application of insurance.

For an act to be considered intentional, it must be done purposely. In the instant case, Petitioner presented no testimony or evidence that Respondent intentionally misrepresented the terms of an actual or proposed insurance contract or application of insurance. Nor did Respondent's testimony or evidence reveal that he intentionally or purposefully misrepresented the terms of an actual or proposed insurance contract or application of insurance. In fact, Respondent's testimony revealed that once he found out that the information contained in the presentations were a "blatant lie" he sought retraining and researched to find correct information to make accurate representations.

Accordingly, the Hearing Officer finds that Respondent did not violate D.C. Official Code § 31-1131.12 (a) (5) in that there was no evidence or testimony that Respondent intentionally misrepresented the terms of a proposed insurance contract.

Violation of D.C Official Code § 31-1131.12 (a) (8)

Dishonest Practices or Untrustworthiness

In order for a determination to be made as to whether the Respondent used dishonest practices or used untrustworthiness in the conduct of business in the District of Columbia, the evidence must show that Respondent had a disposition to lie, cheat, deceive, or defraud, lacked integrity, lacked honesty, lacked fairness and straightforwardness, had a disposition to defraud, deceive or betray. (Black's Law Dictionary with Pronunciations, Sixth Edition, 1990).

Petitioner's witnesses presented no evidence or testimony that Respondent acted in a dishonest or untrustworthy manner as defined above. Respondent's credible testimony indicated that once he discovered that the information he had presented to prospective clients was incorrect he sought to receive additional training and did his own research to obtain accurate information and go back to the Bladensburg residents to give them an accurate presentation. These actions do not demonstrate a person who has a disposition to lie, cheat or defraud while conducting business.

Demonstrated Incompetence

In order to make a determination as to whether Respondent demonstrated incompetence in the conduct of business in the District of Columbia, the evidence must show that Respondent lacked ability, knowledge, legal qualification, or fitness to discharge the required duty or professional obligation. (Black's Law Dictionary with Pronunciations, Sixth Edition, 1990).

In the instant case the evidence indicates that Respondent did in fact lack the ability and

knowledge to make accurate representations concerning the Advantra product to prospective clients when the initial presentations were made. Ms. Carolyn King's testimony (as detailed above) indicated that Respondent misrepresented the product by informing the residents that there would be certain benefits provided by the Advantra product that were in fact untrue or incorrect. Respondent admitted that he made incorrect representations to the residents because of faulty training he received from Advantra representatives.

Respondent is required to act as a competent insurance producer. He is required to discharge his duty as an insurance producer with all the requisite ability and knowledge. As such, in addition to receiving training from Advantra representatives, he should have also researched on his own all aspects of the Advantra product prior to making presentations or statements to prospective insureds to ensure all information presented was accurate. In failing to do so, Respondent demonstrated incompetence in the conduct of business in the District of Columbia.

Accordingly, the Hearing Officer finds that Respondent violated D.C. Official Code § 31-1131.12 (a)(8) by demonstrating incompetence in the conduct of business in the District of Columbia.

Action to be taken for violations of D.C Official Code § 31-2231.03(1) and § 31-1131.12(a)(8)

For the reasons stated above the Hearing Officer finds that Respondent misrepresented the benefits, advantages, conditions and terms of a policy in violation of D.C Official Code § 31-2231.03(1) and demonstrated incompetence in the conduct of business in the District of Columbia in violation of D.C. Official Code § 31-1131.12(a)(8); therefore, action may be taken against the Respondent pursuant to D.C Official Code § 31-1131.12(a). The latter code section provides that if certain enumerated violations are found, an insurance individual may be placed on probation, suspended or revoked, refused renewal of his or her license or levied a civil penalty. In the instant case, the Hearing Examiner finds that although Respondent admitted to making misrepresentations regarding the Advantra product (and thereby demonstrated incompetence in so doing), once he was made aware of it, he sought to obtain retraining and did his own research to find out correct product information before making additional presentations. In considering these factors and the record as a whole, the Hearing Examiner finds that the Respondent should be placed on probation for a period of 6 (six) months.

Accordingly, the Hearing Examiner finds Respondent shall be placed on probation for a period of 6 (six) months for violation of D.C. Official Code § 31-2231.03(1) and D.C. Official Code § 31-1131.12(a)(8).

FINAL FINDINGS OF FACT

The Hearing Officer makes the following findings of fact based on the record as a whole:

1. An Amended Notice to Show Cause was sent to Darnell Keys on July 8, 2008, informing him of the charges against him and setting a hearing date of August 21, 2008 at 1:00 p.m. The hearing was convened on August 21, 2008, but was stopped for the purpose of settlement discussions. However, no settlement was reached on that date and the matter was continued to November 18, 2008.

2. After notice was duly given, a Show Cause hearing was held on November 18, 2008 at the Department of Insurance, Securities and Banking, 810 First Street, NE, Washington, D.C., 20002. Charlotte Parker, Assistant Attorney General, represented the Government (hereinafter Petitioner). Darnell Keys (hereinafter Respondent) represented himself.

3. The first witness to testify on behalf of the Petitioner (DISB) was Andres Izaguirre, Fraud Investigator for the Department of Insurance, Securities and Banking (DISB).

4. Mr. Izaguirre testified he began an investigation of Advantra after being assigned the case from his supervisor in October of 2007. Mr. Izaguirre stated he sent 385 surveys to various residents and that one of the agents involved in the selling of the product was Respondent. He testified that he was able to obtain a list from Coventry Health Care, Inc. (hereinafter Coventry) (the health insurance company that marketed the Advantra product) indicating which policies were sold by Respondent. He also stated that he received 87 responses from the surveys and that the responses indicated the residents were confused and felt the Advantra products had been misrepresented. Mr. Izaguirre testified that he conducted interviews with 3 resident managers (all of properties located at different addresses on Bladensburg Road, N.E.). (See Government's Exhibit 1 to 7 - returned surveys.)

5. The next witness to testify on behalf of the Petitioner was Carolyn King, Senior Insurance Operation Specialist, in the Department of Insurance, Securities and Banking. Ms. King testified that she received a call regarding marketing concerns about Advantra. After receiving the call Ms. King said she began an investigation and met with a group of residents (enrollees) who all had problems with Advantra. In explaining the Advantra product, Ms. King stated that each person with whom she spoke was removed from the Medicare A and B rolls by the Advantra representative and was offered dental and vision benefits. She also testified that most facilities did not accept Advantra and most doctors take Medicare Part A and B and not Part C that was being offered by Advantra. She stated that many of the seniors were not informed that they would lose benefits under Advantra, but were led to believe they would obtain additional benefits. Ms. King indicated that she reviewed the surveys completed by the residents (who had been serviced by Advantra) and felt that the citizens were removed from Medicare Part A and B without their knowledge. Ms. King stated that the citizens had no idea what happened until they tried to get services. She believed that the citizens had been misled and given wrong information by the Advantra representatives.

6. Ms. King stated that while visiting one of the Bladensburg Road, N.E. locations, the residents told her that during Respondent's presentation he told them the following:

- (1) They would maintain Medicare Parts A and B.
- (2) They would obtain free glasses.
- (3) They would obtain free vision benefits.
- (4) They would maintain their same doctors.

7. The Respondent made no objections to the evidence submitted by the Petitioner. Respondent represented himself and was his only witness. The Respondent requested that several documents be moved and made a part of the record (See Respondent's Exhibits 1 to 4). The documents were accepted into the record with no objection by Petitioner.

8. Respondent began his case by stating that almost everything that was stated during the Petitioner's case in chief was true. He stated that the representations made to residents during the Advantra presentations were made based upon information he received during the Advantra training. Specifically Respondent testified that Melvin Tucker from Ohio was the person that initially trained him. (See Respondent's Exhibits 1, 2, and 3, Respondent's notes from his initial training.) Respondent stated that he later discovered that everything that he initially was taught was a "blatant lie". After this discovery, he said he called Coventry and said he needed retraining. He also stated that he did some of his own research. Respondent testified that he received additional training from Nathaniel Reid, but indicated the training was more of the same (i.e. wrong information). Respondent said that even after questions were raised regarding the Advantra product, he still continued to sell it, but marketed it differently based upon his research. Respondent testified that he stopped selling the Advantra product after he received the June 12, 2007 termination letter from Advantra (See Petitioner's Exhibit 9). Respondent closed his testimony by requesting that his license not be revoked.

FINAL CONCLUSIONS OF LAW

After a careful evaluation of the evidence and findings of fact, the Hearing Officer concludes, as a matter of law:

1. Respondent violated D.C Official Code § 31-2231.03(1) by making statements at a sales presentation that misrepresented the benefits, advantages, conditions and terms of a policy.
2. Respondent violated D.C. Official Code §31-1131.12(a) (8) by demonstrating incompetence in the conduct of business in the District of Columbia.
3. Respondent did not intentionally misrepresent the terms of a proposed insurance contract in violation of D.C. Official Code §31-1131.12(a) (5).
4. Respondent violated D.C. Official Code § 31-2231.03(1) and D.C. Official Code §31-1131.12(a) (8) and therefore pursuant to D.C. Official Code §31-1131.12(a) he will be placed on probation for 6 (six) months.

FINAL ORDER

IT IS HEREBY ORDERED that Respondent Darnell Keys is **PLACED ON PROBATION FOR SIX MONTHS** for violations of D.C Official Code § 31-1131.12(a)(8) and D.C Official Code § 31-2231.03(1).

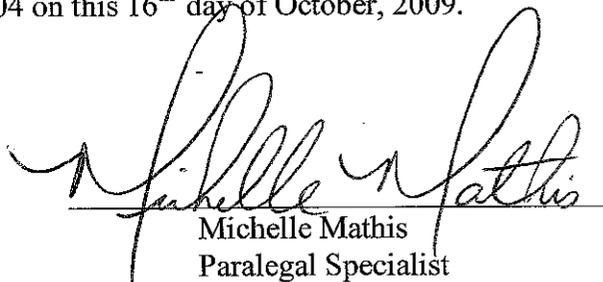
IT IS FURTHER ORDERED THAT during the probationary period beginning on November 1st, 2009 and ending on May 1st, 2010. Respondent is required report to Phillip Barlow, Associate Commissioner of Insurance, DISB, the first of each month regarding his activities with respect to conduct of the business of insurance in the District of Columbia. (Mr. Barlow may be contacted by calling (202) 442-7823 or by email at phillip.barlow@dc.gov). As part of this reporting process, Respondent is required to provide Mr. Barlow each month a client list, a list of products sold, companies for which he is affiliated and make himself available for pertinent questioning.. Upon Mr. Barlow's review and approval, a monthly determination will be made as to whether Respondent is demonstrating competence in the conduct of insurance business in the District of Columbia. If after the 6 (six) month probationary period is complete Respondent has demonstrated competence during the sixth month probationary period, Respondent's probationary period will end. However, if Respondent fails to demonstrate competence, his license will be suspended or revoked.



Gennet Purcell
Acting Commissioner
Department of Insurance, Securities and Banking
Dated: This 16th day of October, 2009.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Final Decision and Order was sent by Certified U.S. Mail, return receipt requested, to Darnell Keys, 512 E. Randolph Road, Suite J, Silver Spring, Maryland 20904 on this 16th day of October, 2009.



Michelle Mathis
Paralegal Specialist