

**NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA**

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

**BEFORE THE COMMISSIONER
OF INSURANCE**

IN THE MATTER OF)	
AFFINITY GROUP BENEFITS ASSOCIATION,)	
INC., SMART DATA SOLUTIONS, LLC,)	Docket Number 1417
NATIONAL TRADE BUSINESS ALLIANCE OF)	
AMERICA d/b/a NATIONAL ALLIANCE OF)	
ASSOCIATIONS, PROFESSIONAL BENEFITS)	
CONSULTANTS, INC., a.k.a. PBC DIRECT,)	FINAL CONSENT CEASE
RICHARD H. BACHMAN, BART POSEY, OBED)	AND DESIST ORDER
KIRKPATRICK, THOMAS SULLIVAN, JAMES)	
M. DOYLE, CHRISTOPHER ASHIOTES,)	
ASSOCIATION OF FRANCHISE AND)	
INDEPENDENT DISTRIBUTORS, LLC, PAUL)	
OLZESKI, SPENCER AND ASSOCIATES, LLC,)	
BRUCE E. SPENCER, MARC MORROW,)	
REAL BENEFITS ASSOCIATION, DAVE CLARK,)	
AMERICAN TRADE ASSOCIATION, AND)	
AMERICANS FOR AFFORDABLE HEALTHCARE,)	
STEPHENS-MATTHEWS MARKETING, INC., AND)	
LARRY MATTHEWS)	

WHEREAS, the North Carolina Department of Insurance [“the Department”] is charged with the authority and responsibility for the enforcement of the insurance laws of the State of North Carolina.

WHEREAS, Respondent Stephens-Matthews Marketing, Inc. [“SMM”] is an insurance agency located in Beverly, Ohio and is co-owned, managed, and operated by Larry Matthews and Dave Stephens. SMM holds a nonresident business entity license issued by the Department. Mr. Matthews holds nonresident life producer and accident & health or sickness producer agent licenses issued by the Department.

WHEREAS, this administrative proceeding was instituted against the Respondents SMM and Mr. Matthews on 15 August 2008 with an Amended Emergency Cease and Desist Order, Notice of Hearing, and Order to Produce Documents and Information.

WHEREAS, Respondents SMM and Matthews and the Department stipulate and agree, by entering into this Consent Order, that this Consent Order shall not be construed as affecting the legal rights of any third party or other Respondent named in the 15 August 2008 Amended Emergency Cease and Desist Order, Notice of Hearing, and Order to Produce Documents and Information. Further, nothing shall prevent SMM or Mr. Matthews from transacting insurance through insurance companies that are authorized to transact insurance business in this State, provided SMM and Mr. Matthews fully comply with North Carolina insurance laws and administrative rules in doing so.

WHEREAS Respondents SMM and Matthews and the Department stipulate and agree, by entering into this Consent Order, that this Consent Order shall not be construed as affecting the rights of the Department to pursue administrative action against all other Respondents named the 15 August 2008 Amended Emergency Cease and Desist Order, Notice of Hearing, and Order to Produce Documents and Information and any other person who or entity that has engaged in any unlawful transaction or activity related to the matters and things set forth in this Consent Order; and it is not the intent of the Department or the Respondents SMM and Matthews to release or discharge any person or entity not specifically identified in this Consent Order.

WHEREAS, the Department and Respondents SMM and Matthews have reached a mutually agreeable resolution of the claims raised by the Department against SMM and Mr. Matthews in the 15 August 2008 Amended Emergency Cease and Desist Order, Notice of Hearing, and Order to Produce Documents as set forth in this Consent Order.

WHEREAS, THE DEPARTMENT AND RESPONDENTS SMM AND MATTHEWS STIPULATE AND AGREE TO THE FOLLOWING:

FINDINGS OF FACT

1. The 15 August 2008 Amended Emergency Cease and Desist Order, Notice of Hearing, and Order to Produce Documents was served upon the Respondents SMM and Matthews.
2. Respondent SMM is an insurance agency located in Beverly, Ohio. SMM is co-owned, managed, and operated by Mr. Matthews and Mr. Stephens. SMM holds a nonresident business entity license issued by the Department. Mr. Matthews holds nonresident life producer and accident & health or sickness producer agent licenses issued by the Department.
3. The Association of Franchise and Independent Distributors, LLC ["AFID"] is a limited liability company located in Springfield, Ohio. Spencer & Associates, LLC ["S&A"] is a third party administrator that provides services for AFID.
4. AFID is a purported membership association that markets and sells major medical, limited medical indemnity, vision, dental, life, and disability insurance through independent insurance agents with which AFID has brokerage agreements.

5. AFID's health insurance plans have been marketed under various names, including the One Advantage Plan, One Advantage Program, Privilege Care, Per4mance Health Plan, "Per4mance Plan, Per4mance Plan Plus, and similar names. AFID has jointly offered major medical insurance benefits with the Real Benefits Association ["the RBA"]. The RBA is purportedly an association located in Basking Ridge, New Jersey. Individuals who applied for major medical insurance benefits through AFID were required to elect membership in the RBA on their benefits applications.

6. AFID and the RBA have asserted that the RBA is a union that provides insurance benefits to its members pursuant to one or more collective bargaining agreements and that the major medical insurance benefits that the RBA offers are therefore exempt from state insurance laws. However, the United States Department of Labor has determined that the RBA is not a bona fide union.

7. Although AFID has represented that its insurance plans are backed by contracts issued by multiple insurance companies, no licensed insurer has issued an insurance policy covering AFID members.

8. SMM executed a broker commission agreement with AFID and S&A on 04 April 2007. Pursuant to this agreement, AFID and S&A agreed to pay SMM a monthly commission for each individual enrolled in AFID's insurance plans.

9. From 04 April 2007 to 09 June 2008, SMM acted as a general agent for AFID. In that capacity, SMM made the insurance products offered by AFID available to other agents, including a number of agents who are licensed in North Carolina. SMM posted marketing materials and other information about AFID's insurance plans on its Web site, distributed marketing and other materials about AFID to interested agents, collected AFID membership and benefit applications from agents, and forwarded those applications to AFID for enrollment. SMM received commissions for these enrollments in accordance with the broker commission agreement.

10. Since November 2007, SMM helped North Carolina agents solicit at least nineteen applications for medical, dental, vision, life, and disability insurance through AFID and the RBA from North Carolina residents. SMM submitted these applications to AFID for enrollment.

11. On 09 June 2008, the Chief Examiner of the Department's Unlicensed Plans Investigation unit, Mr. Terry Dorman, sent a certified letter to Mr. Matthews. In the letter, Mr. Dorman informed Mr. Matthews that Beema Insurance Company ["Beema"], the insurance company purportedly providing the major medical insurance benefits connected with AFID's One Advantage Program, has not been authorized by the Department to transact insurance business in North Carolina. Mr. Dorman also outlined North Carolina laws applicable to persons who market or sell unauthorized insurance, requested information regarding SMM's involvement in the marketing and sale of insurance for AFID in North Carolina, and requested

documents pertaining to the AFID insurance benefits sold by or through SMM to North Carolina residents.

12. On 18 June 2008, Mr. Dorman received a written response from Mr. Matthews and Mr. Stephens of SMM. In its response, SMM informed Mr. Dorman that multiple insurance companies provided the insurance benefits. However, SMM did not know the names of those insurance companies. SMM further informed the Department that although it believed that all AFID benefits were "fully insured," it had removed all references to AFID from its Web site.

13. On 27 June 2008, Mr. Dorman sent another certified letter to Mr. Matthews. In the letter, Mr. Dorman requested additional information and documents and requested Mr. Matthews to attend an informal conference with the Department. Mr. Matthews produced the information and documents that Mr. Dorman requested and cooperated with the Department in its investigation. Mr. Stephens has also cooperated with the Department in its investigation.

14. During separate conferences with the Department, Mr. Stephens and Mr. Matthews told the Department how SMM became involved with AFID. Mr. Stephens stated that Mr. Marc Morrow, the National Sales Director of AFID, contacted him in March 2007 to discuss AFID's health insurance plans. Mr. Morrow represented to Mr. Stephens that AFID provided major medical benefits to members through a group policy issued by Perfect Health of New York ["Perfect Health"] and that AFID provided all other insurance benefits through policies issued by multiple insurance companies, including AIG and GE.

15. Mr. Stephens informed the Department that after his initial discussion with Mr. Morrow, he met with AFID's President, Paul Olzeski, and Mr. Morrow at AFID's office in Springfield, Ohio. During that meeting, Mr. Morrow and Mr. Olzeski told him that: (1) AFID's major medical insurance benefits were provided through a group policy issued to RBA by Perfect Health; (2) insurance certificates for major medical coverage would be issued to individuals who elected to join the RBA; (3) the RBA was a union under the federal Taft Hartley Act; and (4) RBA's status as a union allowed AFID to market the plan throughout the country without having to comply with state insurance laws. Mr. Morrow and Mr. Olzeski also told Mr. Stephens that AFID and the RBA were looking for another carrier to provide the major medical insurance benefits because Perfect Health told them to move the plan after the New York Department of Insurance and other states questioned the arrangement.

16. After the meeting at AFID's office, Mr. Stephens and Mr. Matthews decided to execute the broker commission agreement. Mr. Stephens and Mr. Matthews did not make any efforts to verify Mr. Morrow's and Mr. Olzeski's representations about the insurance carriers or to confirm that the provision of major medical insurance benefits through the RBA was in compliance with state insurance laws. Instead, Mr. Stephens and Mr. Matthews merely relied upon the representations made by Mr. Morrow and Mr. Olzeski.

17. Mr. Stephens and Mr. Matthews told the Department that AFID informed them in September 2007 that Protective Life of Alabama ["Protective Life"] was the new major medical

insurance carrier, months after Mr. Olzeski and Mr. Morrow told Mr. Stephens that they were going to find a new insurance carrier. Although SMM repeatedly requested AFID and Mr. Morrow to provide it with a copy of the new policy, SMM never received a copy of the policy. Nevertheless, SMM continued to collect AFID applications and to otherwise help agents sell insurance through AFID based upon the assumption that Protective Life had issued an insurance policy providing major medical insurance benefits to AFID members.

18. On 22 January 2008, AFID informed SMM that Protective Life had never issued a policy to AFID and that AFID had obtained a contract with Beema. Neither Mr. Stephens nor Mr. Matthews had ever heard of Beema. Mr. Stephens told the Department that he called Mr. Morrow to request a copy of the Beema policy after he received this news and that during this telephone conversation, Mr. Morrow told him that Beema was an unrated carrier in Pakistan and that AFID enrollees who were supposed to be covered by Protective Life were being "rolled into" Beema. SMM determined that Beema was not licensed as an insurance company in any state.

19. Subsequently, Mr. Stephens participated in a telephone conference among Mr. Morrow, Mr. Olzeski, and other agents marketing for AFID to discuss Protective Life and Beema. After the conference, Mr. Stephens received a copy of the Beema policy. Mr. Stephens reviewed the policy and observed that it was issued to Affinity Group Benefits Association, Inc. ["AGBA"] instead of AFID. Neither Mr. Stephens nor Mr. Matthews had ever heard of AGBA.

20. SMM, Mr. Matthews, and Mr. Stephens continued to collect AFID applications and to otherwise help agents sell insurance through AFID after learning that Protective Life had never issued a policy to AFID or the RBA and that AFID had purportedly obtained coverage for AFID members through an insurance policy issued to AGBA by Beema.

21. SMM, Mr. Matthews, and Mr. Stephens failed to exercise due diligence to verify that the insurance benefits marketed and sold through AFID actually existed and had been issued by licensed insurance companies.

22. SMM, Mr. Matthews, and Mr. Stephens failed to properly investigate the legality of AFID's arrangement to provide major medical insurance benefits through an affiliation with the RBA.

23. SMM, Mr. Matthews, and Mr. Stephens should have known that the insurance benefits that they helped North Carolina agents market and sell through AFID were not provided through insurance policies issued by licensed insurance companies.

CONCLUSIONS OF LAW

1. Notice in this matter was timely and properly effected.

2. This matter is properly before the Commissioner of Insurance, and he has jurisdiction over the parties and the subject matter pursuant to Article 28 of Chapter 58 of the General Statutes of North Carolina.

3. Respondents SMM and Mr. Matthews have violated N.C. General Statute §§ 58-28-5 and 58-28-10.

4. Respondents SMM and Mr. Matthews violated N.C. General Statute § 58-28-45(a) by acting as agents for insurers not authorized to transact insurance business in this State and by aiding in the placement of insurance coverage in this State for another with insurers not authorized to transact insurance business in this State.

5. Respondents SMM and Mr. Matthews violated N.C. General Statute § 58-33-95(a) by soliciting, negotiating, or selling insurance in this State for AFID when SMM, Mr. Matthews, and Mr. Stephens should have known that AFID's insurance benefits were not provided through insurance policies issued by licensed insurers.

6. Respondents SMM and Mr. Matthews violated N.C. General Statute § 58-33-95(a) by soliciting, negotiating, or selling insurance in this State for AFID when SMM, Mr. Matthews, and Mr. Stephens knew that AFID's major medical insurance benefits were purportedly provided through an insurance policy issued by an alien, unauthorized insurer named Beema.

7. Under N.C. General Statute §§ 58-2-70 and 58-28-10, a penalty of seventeen thousand dollars (\$17,000.00) is warranted against SMM and Mr. Matthews. SMM should pay twelve thousand dollars (\$12,000.00) of the penalty and Mr. Matthews should pay the remaining five thousand dollars (\$5,000.00) of the penalty.

IT IS THEREFORE, BY CONSENT, ORDERED as follows:

1. SMM and Mr. Matthews shall **CEASE AND DESIST** from violating N.C. General Statute §§ 58-28-5 and 58-28-10 and shall cease and desist from acting directly or indirectly as an agent for, or otherwise representing or aiding in the solicitation, procurement, or effectuation of insurance coverage issued by any insurer that is not authorized to transact insurance business in this State.

2. SMM and Mr. Matthews shall pay a penalty in the amount of seventeen thousand dollars (\$17,000.00). SMM shall pay twelve thousand dollars (\$12,000.00) of the penalty and Mr. Matthews shall pay the remaining five thousand dollars (\$5,000.00) of the penalty. SMM and Mr. Matthews shall pay their respective shares of the penalty by cashier checks, made payable to the North Carolina Department of Insurance. The checks shall accompany this Consent Order when it is sent to the Department after SMM and Mr. Matthews sign this Consent Order. Upon receipt of this Consent by the Department, the Hearing Officer will sign this Consent Order.

3. This Consent Order shall become effective after the Department receives payment of the penalty from SMM and Mr. Matthews and the Consent Order has been signed by the parties and the Hearing Officer.

IN WITNESS WHEREOF, the parties have duly executed this Consent Order as of the dates indicated below.

This the 29th day of September 2008.

William K. Hale
William K. Hale
Hearing Officer and Special Counsel
North Carolina Department of Insurance

CONSENTED TO BY:

STEPHENS-MATTHEWS MARKETING, INC.

DATE

Dave Stephens
By: Dave Stephens, President

9/29/08

Larry Matthews
By: Larry Matthews, Agent

9/29/08

DATE

NORTH CAROLINA DEPARTMENT
OF INSURANCE

DATE

By Angela Ford
Angela Ford
Senior Deputy Commissioner

10/3/08


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day I have served the foregoing **CONSENT ORDER** by mailing a copy thereof by First Class Mail addressed as follows:

Dave Stephens, President
Stephens-Matthews Marketing, Inc.
P.O. Box 1208
Beverly, Ohio 45715

Larry Matthews
Rte 1, Box 154j
Beverly, Ohio 45715

This the 7th day of October, 2008.


Anne Goco Kirby
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