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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH

COMPLAINANT:

UTAH INSURANCE DEPARTMENT

RESPONDENT:

MARTIN FERGUSON
9678 South 700 East, Suite 101
Sandy, UT 84070-3593
License # 46587

STIPULATION AND ORDER

Docket No. 2011-246 HL

Enf. Case No. 2979

STIPULATION

1. Respondent, Martin Ferguson, is licensed resident insurance agent holding License # 46587.
2. Respondent stipulates with the Complainant, Utah Insurance Department, as follows:
 - a. If a hearing were held, witnesses called by the Complainant could offer and introduce evidence that would support the Findings of Fact herein;
 - b. Respondent admits the Findings of Fact and Conclusions made therefrom;
 - c. Respondent stipulates to the summary entry of the Order herein which

shall be in lieu of other administrative proceedings by Complainant in this matter; and

- d. Respondent and Complainant have negotiated the terms of the Order entered herein and Respondent agrees to its entry and further agrees to be bound by all its terms.


3. Respondent is aware of his right to a hearing at which he may be represented by counsel, present evidence and cross-examine witnesses. Respondent has irrevocably waived his right to such hearing and to any appeal related thereto.


4. Respondent admits the jurisdiction of the State of Utah Insurance Commissioner as to all matters herein.

5. Respondent is acting herein free from any duress or coercion of any kind or nature, having been advised fully as to his rights set forth herein.

6. Respondent acknowledges that the issuance of this Order by the Commissioner is solely for purpose of disposition of the matter entitled herein.

DATED this 28 day of October, 2011.


MARTIN FERGUSON


UTAH INSURANCE DEPARTMENT
M. Gale Lemmon
Assistant Attorney General

Based upon the foregoing Stipulation and information in the file, the Presiding Officer makes the following Findings of Fact:

FINDINGS OF FACT

1. On or about June 1, 2011, an advertisement was published in Hometown Values Magazine advertising maternity insurance and listing the agent’s name as “Marty Ferguson” and stating his license number was 4621. This license number is held by Wasatch Benefits. Wasatch Benefits did not appear in the advertisement nor did Martin Ferguson’s individual producer’s license number. The advertisement also failed to identify the insurer.

2. An advertisement on Respondent’s web site also contains the words “you may be eligible to receive up to \$5000 cash if you are planning on becoming pregnant in the next six months.”

3. After meeting with a Department market conduct examiner, Respondent agreed to terminate the ad from the magazine, and to add his nickname to his license, and to correct his web site.

Based upon the foregoing Stipulation and Findings of Fact, the Presiding Officer enters the following Conclusions of Law:

CONCLUSIONS OF LAW

1. Utah Code Ann. § 31A-23a-402(8)(a) states:

(8) (a) A person may not engage in an unfair method of competition or any other unfair or deceptive act or practice in the business of insurance, as defined by the commissioner by rule, after a finding that the method of competition, the act, or the practice:
(I) is misleading;

- (ii) is deceptive;
- (iii) is unfairly discriminatory;
- (iv) provides an unfair inducement; or
- (v) unreasonably restrains competition.

2. Utah Administrative Code R590-154-7 prohibits using a name other than the exact name appearing on the producer license; using a name other than the licensee's full legal name as filed with the department; or using an individual's preferred name or nickname if it has not been filed with the department on any solicitation for insurance.

3. Utah Administrative Code R590-130-12(A) requires the name of the actual insurer to be stated in all advertisements.

4. Utah Administrative Code R590-130-7(2) provides that no advertisement may contain or use words or phrases such as "all," "full," "complete," "comprehensive," "unlimited," "up to," "as high as."

5. Respondent's advertisement in Home Town Values and the solicitation for business on Respondent's web site violated the above provisions.

6. An administrative forfeiture in the amount of \$1,000 and probation for a period of 12 months is appropriate under the circumstances of this case.

Based upon the foregoing Stipulation, Findings of Fact and Conclusions of Law, the Presiding Officer herewith enters the following Order:

ORDER

IT IS HEREBY ORDERED:


1. Respondent Martin Ferguson is assessed an administrative forfeiture of \$1,000. The

forfeiture shall be paid to the Utah Insurance Department withing 30 days of issuance of this Order.

2. Respondent is hereby placed on probation for a period of 12 months commencing with the date of this Order. The terms of probation are that Respondent make timely payment of the administrative forfeiture and shall have no further violations of the Insurance Code, Department Rules, or any Order of the Commissioner.

DATED this 28 day of October, 2011.

NEAL T. GOOCH
Insurance Commissioner


MARK E. KLEINFELD
Administrative Law Judge
Utah Insurance Department
3110 State Office Building
Salt Lake City, UT 84114
Telephone 801-538-3800

NOTIFICATION

Respondent is hereby notified that failure to abide by the terms of this Order may subject you to further penalties, including additional forfeitures of up to \$5,000.00 per violation and the suspension or revocation of your license, and the filing of an action to enforce this Order in the District Court, which may impose penalties of up to \$10,000.00 per day for continued violation.

You are further notified that other jurisdictions in which you may be licensed may require that you report this action to them