STATE OF NORTH DAKOTA

BEFORE THE INSURANCE COMMISSIONER

In the Matter of	)	
	)	**CONSENT ORDER**
Brent Kitzan, NPN 5743278,	)	
and Kitzan & Associates,	)	**CASE NO. AG-11-333**
	)	
Respondents.	)	

Insurance Commissioner Adam Hamm ("Commissioner") has determined as follows:

1. As a result of information obtained by the North Dakota Insurance Department ("Department") regarding the conduct of Brent Kitzan, NPN 5743278, DOB 5/16/59, and Kitzan & Associates ("Respondent"), the Commissioner has considered scheduling a formal hearing to determine whether Respondent's conduct as alleged constitutes a basis for imposition of a civil penalty or any other action the Commissioner deems necessary. As more fully described below, Respondent's conduct is alleged to be in violation of N.D.C.C. §§ 26.1-02.1-02.1, 26.1-04-03, 26.1-26-15, and 26.1-26-42 and N.D. Admin. Code § 45-02-02-14.1.

2. N.D.C.C. § 26.1-02.1-02.1 states, in part:

A person may not commit a fraudulent insurance act.

3. N.D.C.C. § 26.1-04-03 states, in part:

> **26.1-04-03. Unfair methods of competition and unfair or deceptive acts or practices defined.** The following are unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

1. Misrepresentations and false advertising of policy contracts. Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policies, or making any misleading representation or any misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurance company operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy or for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance.

2. False information and advertising generally. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of that person's insurance business, which is untrue, deceptive, or misleading.

. . .

12. Misrepresentation in insurance applications. Making false or fraudulent statements or representations on or relative to an application

for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, insurance producer, or individual.

4. N.D.C.C. § 26.1-26-15 states:

26.1-26-15. License requirement - Character. An applicant for any license under this chapter must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation.

5. N.D.C.C. § 26.1-26-42 states, in part:

The commissioner may suspend, revoke, place on probation, or refuse to continue or refuse to issue any license issued under this chapter if, after notice to the licensee and hearing, the commissioner finds as to the licensee any of the following conditions:

. . .

6. In the conduct of affairs under the license, the licensee has used fraudulent, coercive, or dishonest practices, or has shown oneself to be incompetent, untrustworthy, or financially irresponsible.

7. A misrepresentation of the terms of any actual or proposed insurance contract.

8. The licensee has been found to have knowingly solicited, procured, or sold unnecessary or excessive insurance coverage to any person.

. . .

10. An improper withholding of, misappropriating of, or converting to one's own use any moneys belonging to policyholders, insurers, beneficiaries, or others received in the course of one's insurance business.

11. The licensee has been found guilty of any unfair trade practice defined in this title or fraud.

6. N.D. Admin. Code § 45-02-02-14.1 states:

> **45-02-02-14.1. Client loans to licensed producers and consultants prohibited - Exceptions.** A licensed insurance producer or consultant may not solicit or accept a loan from an individual with whom the insurance producer or consultant came into contact in the course of the person's insurance business, or sold an insurance policy to, within the past ten years. This does not prohibit a licensed insurance producer or consultant from accepting loans from financial institutions; immediate family members, which shall mean only a spouse, parents, siblings, and children; or other loans upon the prior written approval of the insurance commissioner.

7. The Commissioner has come into information which alleges that Respondent has knowingly and intentionally engaged in the conduct of deceit and fraud against residents of the State of North Dakota in his actions of accepting money and converting to his own use moneys belonging to several clients. By these actions, Respondent has shown himself incompetent, untrustworthy, or financially irresponsible in the conduct of affairs under the license.

8. In or about 2005, Respondent began selling, or purported to sell, insurance to L. K. and R.K., a husband and wife. Respondent accepted payments of approximately $1,331 per quarter from L.K. and R.K., which were supposed to be paid by Respondent to Conseco Insurance Company which had issued a long-term care insurance policy to R.K. Respondent accepted the payments from L.K. and R.K., but failed to pay all of them to the insurer. As a result, R.K.'s policy was canceled in January 2011 due to nonpayment of premium. Respondent continued to accept premium payments from the couple even after the policy had been canceled for

nonpayment. When the couple eventually began to question whether the policy was still in force, Respondent stated that the cancellation was just a mistake and he would straighten it out with the company. The policy was never reinstated.

9. Since 2005, Respondent rolled the couple's annuity products several times which cost the couple substantial and unnecessary penalties. Since April 2010, L.K. and R.K. wrote checks to Kitzan and Associates totaling $155,666.18.

10. In or around September 2011, Respondent went to the couple's home and said that he needed a favor. Respondent stated that he was changing banks and he needed some money to close out his account. He said that one of the guys in his office had overspent and he was going to go on his own. Respondent asked the couple for a loan of $6,472. He said he would cash the check and then deposit the money back into the couple's checking account which he did the next day. In October 2011, Respondent asked L.K. and R.K. for another loan, this time for $6,200, and said it would be back into their account in a couple of days. Respondent told L.K. to leave the payee line blank and told him to put "brokerage clearance" on the memo line. Then Respondent asked for another check for $23,000 for the same thing, which L.K. gave to him. Respondent then gave a check to L.K. for $17,650 but it was returned for nonsufficient funds when L.K. tried to deposit it.

11. At that time, Respondent was going to the couple's house approximately once a week. When L.K. told him that the check had been returned unpaid, Respondent said that he was working with Starion to get a loan to repay the couple. They discussed that Respondent had borrowed approximately $48,000 from L.K. and R.K. Respondent then promised to repay the amount he owed plus 5% interest for a total of $51,000.

Respondent signed a handwritten document on November 28, 2011, in which he promised to repay them $51,000 "...by Tuesday". He also states in that document "Two weeks from the second all policies will be delivered."

12. Respondent sold insurance to L.K. or R.K. or both of them or came into contact with them in the course of the Respondent's insurance business within 10 years of getting a loan from them. Respondent converted the money received from L.K. and R.K. to his own personal use.

13. Respondent also handled the funds of A.G., an elderly woman who resided in a nursing facility. Respondent was handling all of A.G.'s financial matters, including paying her nursing home bills. Respondent failed, however, to pay A.G.'s account at the nursing facility and at the time of her death the account was delinquent in an amount of $7,270.90. When the nursing facility pursued payment from Respondent, he issued three checks on three different dates between September 22, 2010, and October 12, 2011. All of the checks were returned for nonsufficient funds.

14. Within days of A.G.'s death, Respondent arrived at A.G.'s daughter's house and proceeded to shred a majority of A.G.'s financial documents. A.G.'s daughter stated that her mother had close to $1,000,000 at one time, but upon her death she had nothing and the money has not been accounted for.

15. Respondent's conduct shows that he has used fraudulent, coercive, or dishonest practices, or has shown himself to be incompetent, untrustworthy, or financially irresponsible which constitute violations of N.D.C.C §§ 26.1-02.1-02.1, 26.1-04-03, 26.1-26-15, and 26.1-26-42 .

16. Respondent's conduct of withholding, misappropriating, or converting his client's money to his own use and of soliciting and accepting a loan from an individual

with whom the Respondent had come into contact in the course of his insurance business constitute violations of N.D.C.C §§ 26.1-02.1-02.1, 26.1-04-03, 26.1-26-15, and 26.1-26-42 and N.D. Admin. Code § 45-02-02-14.1 and are grounds for revocation of Respondent's individual insurance producer license.

17. At all times relevant to this Order, Respondent held a resident individual insurance producer license issued by North Dakota.

18. Respondent acknowledges that at the time of signing the Consent to Entry of Order, he was aware of or had been advised of the right to a hearing in this matter, to consult an attorney, to present argument to the Commissioner, to appeal from any adverse determination after a hearing, and Respondent expressly waives those rights.

19. Respondent has agreed to informal disposition of this matter, without a hearing, as provided under N.D.C.C. § 28-32-22.

20. For purposes of resolving this matter without further administrative proceedings, Brent Kitzan has agreed to enter into the following order.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Respondent Brent Kitzan's individual insurance producer license is hereby **REVOKED** effective upon the Commissioner's execution of this Order.

2. No administrative fine or other civil penalty is imposed.

3. The use of this Consent Order for competitive purposes by an insurance producer or agency holding a license in the State of North Dakota, or by any company holding a Certificate of Authority, or by anyone on their behalf, may be deemed unfair competition and be grounds for suspension or revocation of said license or authority.

DATED at Bismarck, North Dakota, this 25th day of July, 2012.

Adam Hamm
Insurance Commissioner
State of North Dakota

CONSENT TO ENTRY OF ORDER

The undersigned, **Brent Kitzan**, states that he has read the foregoing Consent Order, that he knows and fully understands its contents and effect; that he has been advised of the right to a hearing in this matter, the right to be represented by legal counsel, the right to present evidence and arguments to the Commissioner, and the right to appeal from an adverse determination after hearing; and that by the signing of this Consent to Entry of Order he waives those rights in their entirety, and consents to entry of this Order by the Commissioner. It is further expressly understood that this Order constitutes the entire settlement agreement between the parties, there being no other promises or agreements, either expressed or implied.

DATED this 20 day of July, 2012.

Brent Kitzan

Subscribed and sworn to before me

this 20 day of July, 2012.

Notary Public

County of Burleigh
State of North Dakota

My commission expires:

PAUL M. HEWITT
Notary Public
State of North Dakota
My Commission Expires June 30, 2016

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