

STATE OF NORTH DAKOTA
BEFORE THE INSURANCE COMMISSIONER

In the Matter of)	
)	CONSENT ORDER
Gary L. Ihry,)	
NPN 656621,)	CASE NO. AG-13-392
)	
Respondent.)	

TO: Gary L. Ihry and his counsel, William Brudvik, Brudvik Law Office, PC, 231 Ninth Avenue SE, P.O. Box 547, Mayville, ND 58257

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 Gary L. Ihry, NPN 656621, an individual who has held a North Dakota insurance producer license at all times relevant to this proceeding, the Commissioner has considered initiating administrative proceedings regarding Respondent’s conduct as alleged below and regarding the imposition of a civil penalty or any other action the Commissioner deems necessary. Respondent’s conduct is alleged to be in violation of N.D.C.C. §§ 26.1-04-03, 26.1-04-06, and 26.1-25-16.

2. Employees of the North Dakota Insurance Department (“Department”) have investigated the activities of Respondent, including conducting witness interviews and reviewing hundreds of pages of documentation pertaining to the Department’s investigation.

3. N.D.C.C. § 26.1-26-42 states, in relevant 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:

...

11. The licensee has been found guilty of any unfair trade practice defined in this title or fraud.
12. A violation of or noncompliance with the insurance laws of this state...

4. N.D.C.C. § 26.1-04-02 states:

A person may not engage in this state in any trade practice defined in this chapter as, or determined pursuant to this chapter to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

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

The following are unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

...

8. Rebates.
 - a. Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity, or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to the insurance or annuity any rebate of premiums payable on the contract, or any special favor or advantage in the

dividends or other benefits thereon, or any valuable consideration or inducement whatsoever not specified in the contract; or giving, selling, or purchasing, or offering to give, sell, or purchase as inducement to the insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

- ...
- c. Notwithstanding any other provision in this subsection, if the cost does not exceed an aggregate retail value of fifty dollars per person per year, an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly to a person in connection with marketing, promoting, or advertising the business. As used in this subdivision, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subdivision, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotion article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subdivision, an insurance producer may make a

donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a quote or a contract of insurance.

6. N.D.C.C. § 26.1-04-06 states:
1. An insurance producer or agent of any insurance or surety company, reciprocal, benevolent society, or any other insurance organization or association, however constituted or entitled, may not grant, and an insured person or party or applicant for insurance, either directly or indirectly, may not receive or accept, or agree to receive or accept, any rebate of premium or of any part thereof, or all or any part of any insurance producer's commission thereon, or any favor or advantage, or any share in any benefit to accrue under any insurance policy, or any other valuable consideration or inducement other than such as may be specified in the policy, except as provided in an applicable filing which is in effect under the provisions of the laws regulating insurance rates or except as provided under subsection 2.
 2. Notwithstanding any other provision in this section, if the cost does not exceed an aggregate retail value of fifty dollars per person per year, an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly to a person in connection with marketing, promoting, or advertising the business. As used in this subsection, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subsection, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotional article, logo

merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subsection, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a quote or a contract of insurance.

7. N.D.C.C. § 26.1-25-16 states:
 1. No insurance producer may knowingly charge, demand, or receive a premium for any insurance policy except in accordance with this chapter. No insurer or employee of an insurer, and no broker or agent may pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in an insurance policy, or any special favor or advantage in the dividends or other benefits to accrue on the policy, or any valuable consideration or inducement whatever, not specified in the insurance policy, except to the extent provided for in applicable filing. No insured named in an insurance policy, nor any employee of the insured, may knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit, or reduction of premium, or any such special favor or advantage or valuable consideration or inducement. This section does not prohibit the payment of commissions or other compensation to licensed insurance producers, nor any insurer from allowing or returning to its participating policyholders, members, or subscribers dividends, savings, or unabsorbed premium deposits. As used in this section, "insurance" includes suretyship and "policy" includes bond.
 2. Notwithstanding any other provision in this section, if the cost does not exceed an aggregate retail value of fifty dollars per person per year, an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly to a person in connection with marketing, promoting, or advertising the business. As

used in this subsection, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subsection, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotional article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subsection, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a quote or a contract of insurance.

8. The Commissioner has come into information that evidences Respondent cosponsored a trip to a Minnesota Vikings game on or about December 17, 2011 (the "2011 Vikings Trip"). A total of 59 individuals attended the 2011 Vikings Trip, and 21 of these individuals were identified as insurance customers of Respondent. As discussed further in paragraph 9 below, the 2011 Vikings Trip constitutes illegal rebating in violation of N.D.C.C. §§ 26.1-04-03, 26.1-04-06, and 26.1-25-16.

9. Respondent indicated to the Department the total cost of the 2011 Vikings Trip was \$21,384.37, of which \$15,535.45 (73% of total trip cost) was paid by Pioneer Seed¹ and \$5,848.92 (27% of total trip cost) was paid by Respondent. A total benefit of \$362.45 was received by each person ($\$21,384.37/59$), of which \$97.86 represents the benefit attributable to Respondent received by each trip attendee who was an insurance

¹ Respondents have represented to the Department that Pioneer Seed is a seed business owned in part by Keith Ihry.

customer of Respondent ($\$362.45 \times 0.27$). The \$97.86 figure is \$47.86 above the aggregate retail value gift limit of \$50 per insurance client allowed pursuant to N.D.C.C. §§ 26.1-04-03, 26.1-04-06, and 26.1-25-16. This results in 21 separate rebating violations committed by Respondent.

10. The Commissioner has come into information that evidences Respondent held a customer appreciation dinner on or about February 5, 2011 (referred to as the "2010 Customer Appreciation Dinner"). Respondent also held a customer appreciation dinner on or about February 4, 2012 (referred to as the "2011 Customer Appreciation Dinner").

11. The Commissioner has come into information that evidences approximately 70% of the attendees at the 2010 and 2011 Customer Appreciation Dinners were insurance customers of Respondent. The invitations to the 2010 and 2011 Customer Appreciation Dinners, copies of which were provided to the Department, were sent in the name of Respondent's insurance business, Ihry Insurance Agency.

12. The Commissioner has come into information that evidences 365 dinners were served at the 2010 Customer Appreciation Dinner, approximately 255 of which were insurance clients of Respondent. The total cost of the event was \$10,976.70, for a total benefit received by each attendee of \$30.07. The aggregate retail value gift of \$50 per insurance client presently allowed pursuant to N.D.C.C. §§ 26.1-04-03, 26.1-04-06, and 26.1-25-16 was not in place at the time of the 2010 Customer Appreciation Dinner. This results in 255 separate rebating violations committed by Respondent.

13. The Commissioner has come into information that evidences 427 dinners were served at the 2011 Customer Appreciation Dinner, approximately 299 of which

were insurance clients of Respondent. The total cost of the event was \$22,469.45, for a total benefit received by each attendee of \$52.52 per person. The rebate conferred upon each insurance client of Respondent is \$2.52 above the aggregate retail value gift limit of \$50 per insurance client allowed pursuant to N.D.C.C. §§ 26.1-04-03, 26.1-04-06, and 26.1-25-16. This results in 299 separate rebating violations committed by Respondent.

14. The 2011 Vikings Trip and the 2010 and 2011 Customer Appreciation Dinners produced a total of 575 separate rebating violations committed by Respondent.

15. As discussed above, Respondent's conduct constitutes violations of N.D.C.C. §§ 26.1-04-03, 26.1-04-06 and 26.1-25-16.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Respondent Gary L. Ihry agrees to issuance by the Commissioner of a conditional license for a period of one year;

2. Respondent Gary L. Ihry agrees he has committed a total of 575 separate rebating violations for the 2011 Vikings Trip and the 2010 and 2011 Customer Appreciation Dinners;

3. Respondent Gary L. Ihry agrees he has disclosed all costs related to the Department's investigation of the 2011 Vikings Trip and the 2010 and 2011 Customer Appreciation Dinners;

4. Respondent Gary L. Ihry agrees he has no past rebating violations other than those described in this Consent Order;

5. Respondent agrees to pay a fine in the amount of \$57,500, of which \$37,500 will be suspended during Respondent's one-year conditional license period so

long as no other violations of Title 26.1 of the North Dakota Century Code occur during Respondent's one-year conditional license period. Respondent shall pay \$20,000 by money order, cashier's check, or credit card to the North Dakota Insurance Department within 30 days of the effective date of this Order;

6. Further, the Department may, during the one-year conditional license period, revoke, suspend, or take such further action as may be deemed necessary against Respondent's insurance license without Notice of Hearing or the issuance of a Complaint if the Department receives a complaint from any source against Respondent and after investigation of the merits of said complaint, notifies the Respondent that Respondent has, in the Commissioner's opinion, violated the laws of the State of North Dakota. Respondent further agrees that any action taken against Respondent's license or in furtherance of this action is not appealable; and

7. The use of this Consent Order for competitive purposes by an insurance agent 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 12th day of June, 2013.

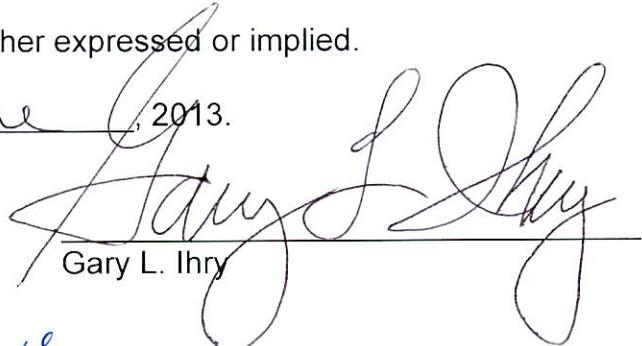


Adam Hamm
Insurance Commissioner
State of North Dakota

CONSENT TO ENTRY OF ORDER

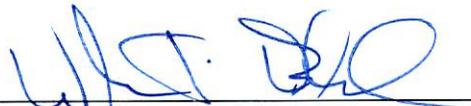
The undersigned, **Gary L. Ihry**, states that he has read the foregoing Consent Order, that he knows and fully understands its contents and effect; that he has been advised of his right to a hearing in this matter, his right to be represented by legal counsel, his right to present evidence and arguments to the Commissioner, and his right to appeal from an adverse determination after hearing; and that by the signing of this Consent to Entry of Order he voluntarily 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 3rd day of June, 2013.



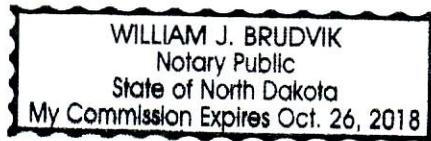
Gary L. Ihry

Subscribed and sworn to before me this 3rd day of June, 2013.



Notary Public

State of _____
County of _____



My commission expires: