

**BEFORE THE
DIVISION OF SECURITIES
STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS**

IN THE MATTER OF

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
OPINION AND ORDER**

Mr. CLARE O. CARPENTER,

Respondent

File No. S-00272 (EX)

Randall E. Schumann, Designated Hearing Officer, presiding. Pursuant to paragraph 3 of the January 16, 2001 Notice of Hearing, these Findings of Fact, Conclusions of Law, Opinion and Order issued by the Designated Hearing Officer in this matter constitute the final Decision of the Division.

Appearances

(and persons considered parties for purposes of judicial review and rehearing)

For the Division of Securities:

David A. Cohen, Supervising Attorney,
Enforcement Bureau
DFI Division of Securities
PO Box 1768
Madison, WI 53701

For the Respondent:

Mr. Clare Carpenter (appeared pro se)
3650 Galloway Court, Unit 2902
Rochester Hills, MI 48309

Preliminary Matters

Pursuant to a Notice of Hearing issued January 16, 2001, a hearing was held on March 6, 2001, before the Designated Hearing Officer, with the issue for hearing being whether or not an Order of Prohibition summarily issued by the Division of Securities ("Division") on December 7, 2000 naming the Respondent should be vacated ab initio.

A Prehearing Conference was held on February 15, 2001, and a Prehearing Memorandum was issued on February 28, 2001.

The hearing was transcribed by a court reporter. The record consists of: (i) the Division's Order of Prohibition dated December 7, 2000, with accompanying Staff Petition For Order dated December 4, 2000; (ii) the Request For Hearing filed by the Respondent dated January 5, 2001, accompanied by a separate letter from the Respondent also dated January 5, 2001, addressed to

Susan Kittel Moore of the Division staff, which letter set forth certain information; (iii) the Notice of Hearing issued January 16, 2001; (iv) the Division's Order dated January 26, 2001 vacating as of January 5, 2001, the December 7, 2000 Order of Prohibition naming the Respondent; (v) the February 28, 2001, Prehearing Memorandum; (vi) the transcript of the hearing; (vii) the Division Staff's hearing Exhibits 1 through 13, including as Exhibit 11, a Stipulation of Facts entered into by the parties; (viii) Respondent's Hearing Exhibits A through C.

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Applicable Law

Wisconsin Statutes:

551.56(1) Investigations and subpoenas. The Division may:

- (a) Make such public or private investigations within or without this state as necessary to determine whether any person has violated or is about to violate this Chapter or any rule or order under this Chapter, or to aid in the enforcement of this Chapter....
- (b) Require or permit any person to file a statement in writing, under oath or otherwise as the Division determines, as to all the facts and circumstances concerning the matter being investigated.

551.60(2)

- (a) If the Division has reason to believe that any offer or sale of an unregistered security is, has been or would be fraudulent to offers or purchasers, the Division may by order summarily prohibit further offers or sales of such security in this state until it is registered under this Chapter.
- (b) If the Division has reason to believe that any security is being or has been offered or sold in this state by any unlicensed person in violation of this Chapter or any rule or order hereunder, the Division may by order summarily prohibit such person from further offers or sales of securities in this state until licensed under this Chapter.

551.63 Rules, forms and orders.

- (1) The Division may make, amend and rescind any rules, forms and orders that are necessary to carry out this chapter....
- (2) No rule, form or order may be made, amended or rescinded unless the Division finds that the action is necessary or appropriate in the public interest and for the protection of investors....

* * * * *

Issue

Whether, although the Division issued a January 26, 2001 Order vacating (as of the January 5, 2001 date the Respondent provided to the Division the information previously requested by the staff) a December 7, 2000 Order naming the Respondent, should the December 7, 2000 Order naming the Respondent now be vacated ab initio or should it continue to have an effectiveness duration from December 7, 2000 through January 4, 2001?

* * * * *

Based on the record, the Designated Hearing Officer makes the following:

Findings of Fact

1. Clare O. Carpenter (CRD # 1098201) ("Carpenter") is an individual with a last known residence address at 3650 Galloway Court, Unit 2902, Rochester Hills, Minnesota 48309.
2. From January 22, 1998 until December 31, 2000, Carpenter was employed as a securities agent with Orosey & Pepe Capital Markets, Inc., ("OCPM").
3. Carpenter was licensed as a securities agent with OPCM in Michigan from December 23, 1999 until January 8, 2001.
4. Carpenter was licensed as a securities agent with OPCM in Florida from February 23, 1998 until December 20, 2000.
5. Capital for Life, Inc. ("Capital") is an inactive Florida corporation.
6. Capital's last known business addresses were 201 South Biscayne Boulevard, 1600 Miami Center, Miami, Florida 33131, and 2700 West Atlantic Boulevard, Suite 101, Pompano Beach, Florida 33069.
7. Carpenter was, at all times material hereto, the President and a Director of Capital.
8. Carpenter received a letter dated August 11, 2000 from the Staff of the Division of Securities requesting information and documents concerning offers and sales of viatical settlements to persons in Wisconsin.
9. In response to the Division Staff's August 11, 2000 letter, Carpenter sent a letter dated September 19, 2000 to the Division that stated in part, "your department is without jurisdiction to demand the information and materials you request," and "I am under no obligation to respond to your request."
10. Carpenter received a second letter from the Division, dated October 9, 2000, which stated that Carpenter was incorrect in the positions he took in his September 19, 2000 letter, and that Carpenter should provide the information previously requested by not later than October 16, 2000 or the Division would take action against him without his input.
11. Carpenter received the October 9, 2000 letter prior to December 4, 2000.

12. The Division Staff's Petition For Order attached to the December 7, 2000 Order of Prohibition was signed by Division Enforcement Bureau Supervising Attorney David Cohen under date of December 4, 2000.
13. Carpenter, incident to transferring his securities agent license in December, 2000 to a new broker-dealer firm employer, was notified by the firm that Carpenter was now required to check "Yes" to Question 23 on his Form U-4 that is filed with the Central Registration Depository--which question asks whether the license applicant has been the subject of a disciplinary proceeding.
14. Carpenter did not provide until January 5, 2001, the information requested by the Division staff in its August 11, 2000 and September 19, 2000 letters.
15. On the basis of Hearing Exhibits 1 and 2, and particularly Exhibits 12 and 13, that were part of the Division's Rolland Nielsen investigative file (File No. S-00169), not only was it appropriate for the Division Staff to send the August 11, 2000 letter (Exhibit 3) to Carpenter and Capital for Life seeking information regarding possible offers or sales of viatical settlement contracts to persons in Wisconsin, the staff would have been remiss in its duties not to have made such inquiry.
16. The Division Staff's use or threat of use of the summary order authority under the Wisconsin Uniform Securities Law is a crucial tool for use in obtaining investigative information from persons outside Wisconsin.
17. Carpenter did not have a justifiable basis for intentionally disregarding the plain, unequivocal meaning of the language in the staff's two letters (Exhibits 3 and 5) as to: (i) Carpenter's responsibility to provide the requested information even if he felt the arrangements were not securities; (ii) that Carpenter may be relying on "bad legal advice"; and that (iii) the Staff would take unilateral action if the information sought was not provided; when Carpenter sent his September 19, 2000 letter (Exhibit 4) refusing to provide the investigative information sought by the Division staff in its first letter, as well as when Carpenter determined not to make any response to the Division's second letter.
18. A securities agent's dissatisfaction with the Central Registration Depository System administered by the National Association of Securities Dealers because the System does not particularize "up front," the information and details concerning Disclosure Events concerning the securities agent is not a matter that the Division can remedy.

* * * * *

Conclusions of Law

1. The Division had the authority pursuant to sec. 551.56(1)(a), Wis. Stats., to conduct an investigation as to whether Carpenter, or the Capital For Life, Inc. corporation that Carpenter had been the controlling person of, had violated the Wisconsin Uniform Securities Law in connection with offers or sales that may have been made to persons in Wisconsin of investment contract securities in the form of viatical settlement contracts.
2. The Division had the authority pursuant to sec. 551.56(1)(b), Wis. Stats., to require Carpenter, or the Capital For Life, Inc. corporation that Carpenter had been the controlling person of, to file a statement in writing as to all the facts and circumstances being investigated.
3. Both the intentional refusal by Carpenter in his letter of September 19, 2000 to provide any of the information sought by the Division Staff in its August 11, 2000 letter in connection with

an ongoing investigation, and the intentional failure by Carpenter to respond to the Staff's October 9, 2000 letter informing Carpenter that the Division would take unilateral action if Carpenter did not furnish the information sought, provided the Division with reason to believe under 551.60(2)(a) and (b), Wis. Stats., that sales of unregistered securities or unlicensed activity had taken place in Wisconsin and warranted issuance of the Summary Order dated December 7, 2000 naming Carpenter and prohibiting any unregistered or unlicensed securities activities in Wisconsin.

4. Both the intentional refusal by Carpenter in his letter of September 19, 2000 to provide any of the information sought by the Division Staff in connection with its investigation, and the intentional failure by Carpenter to respond to the Staff's October 9, 2000 letter informing Carpenter that the Division would take unilateral action if Carpenter did not furnish the information sought, provided adequate justification under sec. 551.63(1) and (2) Wis. Stats., for the Division's determination that it was appropriate in the public interest and for the protection of investors that the Division's January 26, 2001 Order only vacate the previous December 7, 2000 Order as of the January 5, 2001 date Carpenter provided the information sought.

* * * * *

Opinion

This hearing proceeding deals with whether an administrative order is appropriate to be in force and effect for an approximate one-month period that names a person--in this particular case, a securities agent licensed in multiple states (but not Wisconsin)--who makes an affirmative choice on two separate occasions, not to provide information requested in two letters sent by the Wisconsin Securities Division staff during the course of conducting an investigation.

Respondent Carpenter at all times material hereto was a securities agent for a broker-dealer firm, and was licensed in a securities agent capacity in two states (Michigan and Florida).

Separately, Carpenter also at all times material hereto was the President of Capital for Life, Inc., an inactive Florida corporation that Carpenter acknowledged in his hearing testimony (Transcript pages 10 and 11) marketed and sold viatical settlement contracts originated by Life Partners, Inc. to purchasers in various states. A viatical settlement contract involves the sale to one or more purchasers, of a life insurance policy of a terminally ill person at a price discounted from the policy's face value.

All securities agents employed by broker-dealers have information regarding their license status and employment history contained on a national electronic database, the Central Registration Depository (CRD), which is maintained by the National Association of Securities Dealers, Inc. ("NASD").

That database contains basic information about securities agents--name, address and employment history with broker-dealer firms, and includes a section relating to disciplinary actions involving the agent taken by federal or state regulatory authorities or self-regulatory organizations, as well as arbitration proceedings, or civil or criminal court proceedings. Among the disciplinary information that must be reported for inclusion on the CRD system by agents or their broker-dealer employers about their agents is the existence of any enforcement orders involving the agent issued by any state securities administrator. The CRD electronic database is Internet accessible, such that members of the general public can review information regarding securities agents, including their disciplinary history.

When a potential customer checks the CRD for information regarding a particular agent, there is a menu choice on the agent's screen that includes the category "Disclosure Events." If the agent in fact has Disclosure Events, that menu choice contains the word "Maybe" next to it, but does not particularize what the Disclosure Events might be. Rather, the screen lists the various types of Disclosure Events, including "criminal events", "regulatory actions (suspensions, bars)" "customer complaints", and "civil judicial events (injunctions)". If a person wants to get specific information to find out exactly what Disclosure Events exist involving the agent, a person has to reveal their identity and make a request in writing to the NASD, following which the NASD will forward the information to the person in hard copy within 10 business days.

As discussed in more detail below, because Carpenter failed to provide information requested in two letters sent by the Division staff during the course of conducting an investigation regarding possible offers or sales of viatical settlement investment securities in Wisconsin, Carpenter was named in an Order summarily issued on December 7, 2000 prohibiting any offers or sales of unregistered securities in Wisconsin, and prohibiting any unlicensed securities broker-dealer or agent activities. Subsequently, on January 5, 2001, Carpenter filed a Request for Hearing with regard to the December 7, 2000 Order, and he also submitted on that date a separate letter providing the information previously sought in the two letters sent by the Division. Thereafter, the Division issued an Order under date of January 26, 2001 vacating the December 7, 2000 Order as of the January 5, 2001 date that Carpenter provided the previously-sought information.

Carpenter stated during the hearing that his purpose for continuing to pursue a hearing in this matter is to have the December 7, 2000 Prohibition Order "expunged" (Transcript page 60), or stated alternatively, he seeks to have the December 7, 2000 Order vacated ab initio as if such December 7, 2000 Order had never been issued. His reason being that notwithstanding the issuance of the January 26, 2001 Vacating Order, because it revoked the December 7, 2000 Order only as of the January 5, 2001 date the previously requested information was furnished to the Division by Carpenter, Carpenter has, and will continue to have, an ongoing reporting obligation with the Central Registration Depository ("CRD") regarding the existence of the Division's December 7, 2000 Order that currently remains in effect between the dates of December 7, 2000 and January 5, 2002. (Transcript page 16)

Carpenter testified he learned such was the case incident to transferring his securities agent license in December, 2000 to a new broker-dealer firm employer, when the firm notified Carpenter that he was now required to check "Yes" to Question 23 on his Form U-4 that is filed with the CRD-- which question asks whether the license applicant has been the subject of a disciplinary proceeding. (Transcript page 16)

Carpenter contends that because of the way the CRD disciplinary-related/Disclosure Events information is presented on the CRD database, once potential clients checking about him in the CRD database see the screen disclosure that Carpenter "Maybe" is the subject of a disciplinary proceeding, and see the list of categories of possible disciplinary events, "they will assume that I'm a bad guy" (Transcript pages 17, 18 and 87) without bothering to take the additional steps necessary to get full information about the Disclosure Events which, as it relates to the Division's December 7 Order, show that the Order was vacated on the January 5, 2001 date Carpenter furnished the information requested by the Division. Carpenter also contends that he has been "damaged by the December 7, 2000 Order... and can't even quantify what the damages are because I would have no way of knowing into the future each time that potentially someone might look at fact (CRD) information and decide against me." (Transcript page 22)

The Division Staff's responses to Respondent Carpenter's contentions were that: (i) Issuance of the December 7, 2000 Order was justified on the basis of Respondent Carpenter's failure and refusal to provide the information requested by the Staff in writing on two occasions; and that (ii)

The January 26, 2001 Order vacating the December 7, 2000 Order should continue to provide that the December 7, 2000 Order remain of record and in effect until the January 5, 2001 date when Respondent Carpenter finally provided to the Division information that had been sought, even though such results in ongoing Disclosure Events reporting obligations by Respondent Carpenter with the CRD. (Transcript page 70)

The Division Staff's stated justification was that it is necessary for the agency to maintain its ability to pursue its investigations, and that because the Division cannot issue subpoenas out-of-state, the only way the Division can effectively get the information it needs from persons outside Wisconsin is through the Division's use (or threat of use) of its Summary Order power. (Transcript page 70) Separately, with respect to the CRD system, the Division Staff observed that Respondent Carpenter's complaint "is essentially that the CRD is a lousy system that doesn't give investors all the information they need to know up front," and although the Division Staff agreed that investors should not have to write in and to get the follow-up information [regarding an agent's Disclosure Events], "the Division can't change that" because the Division is not "running the NASD or the CRD." (Transcript page 70)

Respondent Carpenter also: (1) Questions "Where the Division of Securities has regulatory authority over [him] given that he had not conducted business in Wisconsin" (Transcript page 59). (2) Contends that the August 11, 2000 letter (Exhibit 3) sent to Carpenter by the Division Staff seeking certain information from Carpenter regarding whether and to what extent Carpenter may have sold viatical settlement arrangements to persons in Wisconsin "should never have been sent" (Transcript page 57). and (3) Contends that the December 7, 2000 Order (Exhibit 6) "should not have been issued by the Division in the first place." (Transcript page 21)

Dealing first with the point regarding the Division's authority, the relevant statutory provisions under the Wisconsin Uniform Securities Law providing investigative authority are contained in secs. 551.56(1)(a) and (b), Wis. Stats. (as set forth on page 2 of this Decision and Order under Applicable Law). The investigative authority provisions expressly provide in sec. 551.56(1)(a) that "The Division may make such public or private investigations within or without this state to determine whether any person has violated...this chapter." And under (1)(b) "The Division may require or permit any person to file a statement in writing, under oath or otherwise ... as to all the facts and circumstances concerning the manner being investigated." (Emphasis supplied)

As Division Attorney Cohen stated during the hearing with regard to Division investigations, "We don't know if someone is doing business in our state. The purpose of these letters [seeking investigative information] is to find out what's going on. If we only asked people about what we already knew, it would be a fruitless exercise." [Transcript page 82]

I conclude that the Division had the authority pursuant to sec. 551.56(1)(a), Wis. Stats., to conduct an investigation as to whether Carpenter, or the Capital For Life, Inc. corporation that Carpenter had been the controlling person of, had violated the Wisconsin Uniform Securities Law in connection with offers or sales that may have been made to persons in Wisconsin of investment contract securities in the form of viatical settlement contracts.

I also conclude that the Division had the authority pursuant to sec. 551.56(1)(b), Wis. Stats., to require Carpenter, or the Capital For Life, Inc. corporation that Carpenter had been the controlling person of, to file a statement in writing as to all the facts and circumstances being investigated.

Turning next to whether the Division Enforcement Bureau's August 11, 2000 letter (Exhibit 3) should have been sent, the hearing testimony from Ms. Susan Kittel Moore of the Enforcement Bureau staff was that during 2000, she was involved in conducting an extensive, ongoing

investigation of an individual named Rolland Nielsen of New Berlin Wisconsin. The investigation related to whether and to what extent Nielsen made offers and sales to persons in Wisconsin of unregistered investment contract securities in the form of the viatical settlement contracts. (Transcript page 25)

The Designated Hearing Officer takes judicial notice that: (i) viatical settlement contracts are regulated as securities in most states, with some of those states specifically including them within the statutory definition of "Security," and other states deeming them to constitute "investment contract" securities (Source: NASAA Viaticals Working Group Proposed Guidelines, January, 2002); and (ii) at the time of the Nielsen investigation, the Division previously had formally taken the position in the Division's 4th Quarter 1997 Securities Bulletin and in various Enforcement Orders, that viatical settlement contracts constituted investment contract securities subject to the securities registration and licensing provisions under the Wisconsin Uniform Securities Law.

Ms. Kittel Moore testified that during the course of the Nielsen investigation, she had received certain information and materials from one of Nielsen's Wisconsin resident investors, a Mr. Kleppe. (Transcript pages 29 and 33) Included in such information and materials were letters dated April 12, 1999 and May 27, 1999 (Exhibits 1 and 2) addressed to Roland Nielsen that were signed by Carpenter under the letterhead Capital for Life, Inc. and copies of two Capital for Life advertisements (Exhibits 12 and 13) soliciting investors to purchase viatical settlement contracts.

The Exhibit 1 and 2 letters discussed libel and slander litigation relating to a book written about viatical settlements that made references to Life Partners, Inc., which is one of the largest marketers nationally of viatical settlement contracts. Respondent Carpenter testified that he offered and sold to persons in other jurisdictions, viatical settlement contracts originated by Life Partners, Inc. (Transcript page 11) Exhibit 12 is a copy of a full-page advertisement placed by Capital for Life in Bloomberg Magazine describing potential investment returns on viatical settlements and soliciting persons to call Capital for Life to invest. Exhibit 13 is Page 5 of the Capital for Life Investment Digest labeled "Performance Update" describing profits investors might expect as a result of purchases of viatical settlement contracts.

Ms. Kittel Moore testified that the Exhibit 1 and 2 letters exchanged between Carpenter and Rolland Nielsen--the latter being the subject of an extensive, ongoing investigation by the Division--required an inquiry whether there was an affiliation between Carpenter's Capital for Life firm and Nielsen's firm (Transcript page 29). Additionally, Ms. Kittel Moore testified that because Mr. Kleppe, a Wisconsin resident, had obtained the Exhibit 12 Capital for Life advertisement which appeared in a national publication soliciting investments in viaticals, there were possibly other Wisconsin residents who may have seen such advertisements and may have invested through Capital for Life. Accordingly, she wanted to determine if Capital for Life had contacted Mr. Kleppe or other Wisconsin residents to offer or sell any viatical settlement investments. (Transcript pages 35, 36, 38 and 46).

Ms. Kittel Moore also acknowledged in her testimony that her concerns were not restricted to issuers of the viatical settlement contracts, but also extended to the sales practices of the selling agents and what they might be representing to potential purchasers that may turn out to be fraudulent inducements to purchase. (Transcript pages 54 and 55)

I find that on the basis of Exhibits 1 and 2, and particularly Exhibits 12 and 13, that were part of the Division's Rolland Nielsen investigative file, not only was it appropriate for Ms. Kittel Moore of the Division staff to send the August 11, 2000 letter to Carpenter and Capital for Life seeking information regarding possible offers sales of the viatical settlement contracts to persons in Wisconsin, she would have been remiss in her duties not to have made such inquiry.

With regard to Carpenter's third contention that the Dec. 7, 2001 Order should not have been issued, Carpenter set forth several reasons (i) "I knew I didn't sell viatical settlements or securities in Wisconsin" (Transcript page 11), thus "what action can possibly be taken against me?" (Transcript pages 13 and 66) and "I didn't realize that I could be the subject of an enforcement order" (Transcript page 66); (ii) "Since the company that I represented had a [federal court] determination that their particular transactions were not securities, I felt that I was within my rights not to respond to the letter" (Transcript pages 11 and 12). (iii) That, in effect, Carpenter justifiably relied on advice of counsel because "I talked to Life Partners' General Counsel about Wisconsin's asking me for information [in the Division's first letter dated August 11, 2000, Exhibit 3] ... and he basically said you don't have any legal obligation to respond to the letter--which is what I stated in my letter (Exhibit 4) back to [the Division]." Additionally, with respect to the Division's second letter dated October 9, 2000 (Exhibit 5), Carpenter contacted the same person from Life Partners he contacted before, and that person disagreed with the Division's legal position, following which Carpenter "... determined not to reply at all" to the Division's second letter dated October 9, 2000 (Exhibit 5). (Transcript pages 63 to 65)

The determination whether Respondent Carpenter's above-stated reasons provide a reasonable justification for his intentional refusal to provide the investigative information sought by the Division in its August 11, 2000 letter (Exhibit 3) and its October 9, 2000 letter (Exhibit 5), and thus whether the Dec. 7, 2001 Order should have been issued in the first place, can be made on the basis of a review of the language contained in Exhibits 3 and 5, and how Respondent Carpenter responded to them.

The August 11, 2000 letter from the Division Staff (Exhibit 3) contains the following two-sentence paragraph in boldface type:

"Please note that, if you wish to argue that the investments offered or sold were not 'securities' as that term is defined and use in Chapter 551, Wis. Stats., we will consider any such arguments. However, any such argument is not a substitute for the factual information we have requested."

The above second sentence clearly provides express notice to Respondent Carpenter that even if Carpenter wished to argue that the investments were not securities, he nonetheless was obligated to provide the factual information requested.

Upon receiving the Division's August 11, 2000 letter, Carpenter testified that he talked to the General Counsel for Life Partners regarding the Division's letter asking for information, and the Life Partners General Counsel "basically said 'You don't have any legal obligation to respond to the letter.'" (Transcript Page 21) Carpenter also stated that incident to his discussion, the Life Partners General Counsel provided "an outline" of a response letter--which letter referenced "the doctrine of collateral estoppel" and cited the 1996 federal court decision U. S. Securities and Exchange Commission v. Life Partners, Inc. which held that the viatical settlement contracts involved in that case were not securities for federal securities law purposes. (Transcript page 61)

Thereupon, even though the Division Staff's letter unequivocally told Carpenter that the information sought must be submitted--even if Carpenter wished to argue the investments were not securities--Carpenter sent his letter to the Division dated September 19, 2000 (Exhibit 4) referencing the Life Partners case as set forth above, and stating that "Because of this [Life Partners] decision, your Department is without jurisdiction to demand the information and materials your request, and I am under no obligation to respond to your request."

The Division Legal Staff's October 9, 2000 reply letter (Exhibit 5) to Carpenter's September 19, 2000 letter was concise and to the point:

"Please be advised that the Life Partners decision that you refer to is irrelevant and non-binding on the state of Wisconsin (along with every other state in the nation). I can only assume that you have been given bad legal advice. Please provide us with the requested information by no later than Oct. 16, 2000 or we will have no choice but to proceed to take action against you without your input." (Emphasis supplied)

As previously stated above, Carpenter testified that after he received the Division's October 9, 2000 letter, Carpenter contacted the same person from Life Partners he contacted before, and that person disagreed with the Division's legal position, following which Carpenter "... determined not to reply at all" to the Division's second letter dated October 9, 2000 (Exhibit 5). (Transcript pages 63 to 65). Additionally, Carpenter acknowledged in his hearing testimony (transcript page 66) that he chose not to telephone or otherwise communicate with Division Attorney Cohen (who had sent set the October 9 letter) to find out what possible action the Division could take against him if Carpenter chose not to furnish the information sought.

Ironically, (because this whole situation could have been avoided had Carpenter responded to either of the Staff's letters by providing the information he ultimately submitted on January 5, 2001) Respondent Carpenter stated on the record (Transcript page 19) that "I had no problem providing the information because there really wasn't any information for me to provide, and I never did business in Wisconsin." However, because Carpenter had not furnished any information to the Division in response to its two letters seeking investigative information, the Division--after deferring action for an additional seven weeks following the October 16 deadline thus providing Carpenter additional opportunity to respond--issued its Dec. 7, 2000 Order naming Carpenter.

I find that Carpenter did not have a justifiable basis for intentionally disregarding the plain, unequivocal meaning of the language in the staff's two letters (Exhibits 3 and 5) as to: (i) Carpenter's responsibility to provide the requested information even if he felt the arrangements were not securities; (ii) that Carpenter may be relying on bad legal advice; and that (iii) the staff would take unilateral action if the information sought was not provided.

Therefore, I conclude that both the intentional refusal by Carpenter in his letter of September 19, 2000 to provide any of the information sought by the Division Staff in its August 11, 2000 letter in connection with an ongoing investigation, and the intentional failure by Carpenter to respond to the Staff's October 9, 2000 letter informing Carpenter that the Division would take unilateral action if Carpenter did not furnish the information sought, provided the Division with reason to believe under 551.60(2)(a) and (b), Wis. Stats., that sales of unregistered securities or unlicensed activity had taken place in Wisconsin and warranted issuance of the Summary Order dated December 7, 2000 naming Carpenter and prohibiting any unregistered or unlicensed securities activities in Wisconsin.

The final aspect to this matter is whether the December 7, 2000 Order should continue to have an effectiveness duration from December 7, 2000 until the January 5, 2001 date when Carpenter provided the information sought by the Division.

As previously discussed above, Counsel for the Division stated during the hearing that it is necessary for the agency to maintain its ability to pursue its investigations, and because the Division cannot issue subpoenas out-of-state, the only way the Division can effectively get the information it needs from persons outside Wisconsin is through the Division's use (or threat of use) of the summary order power. (Transcript page 70) In that regard, I find that such summary order power/authority is a crucial tool in obtaining investigative information from persons outside Wisconsin. Indeed, it is worth noting that it took the issuance of the December 7, 2000 Summary Order by the Division (and the CRD reporting consequences thereof) to induce

Respondent Carpenter to provide on January 5, 2001, the information that had been sought by the Division Staff in its investigation.

Respondent Carpenter is aware that he is a securities professional, licensed in two state jurisdictions, and is subject to the information and disclosure provisions of the CRD electronic database maintained by the NASD for all securities agents of NASD firms. As set forth above, I have found that Carpenter did not have a justifiable basis for disregarding the plain, unequivocal meaning of the language in the Division Staff's two letters--particularly that the Division would take unilateral action if the information sought was not provided by Carpenter. When a securities professional who is asked in writing on two occasions to provide investigative information sought by a state securities regulatory authority (in this case Wisconsin), chooses to tell the state to, in effect, "Go Fish," he or she does so at his or her peril. As noted above, the consequences of Respondent Carpenter's conduct regarding the Division Staff's two letters in this case triggered issuance by the Division of the December 7, 2000 Summary Order, which has resulted in a Disclosure Event on Carpenter's CRD Website information screens.

As stated previously, Carpenter contends that because of the way the CRD disciplinary-related Disclosure Events information is presented on the CRD database, once potential or current clients checking about him in the CRD database see the screen disclosure that Carpenter "Maybe" is the subject of a disciplinary proceeding, and see the list of categories of possible disciplinary events, "they will assume that I'm a bad guy" (Transcript pages 17, 18 and 87) without bothering to take the additional steps necessary to get full information about the Disclosure Events which, as it relates to the Division's December 7, 2000 Order, show that the Order was vacated on the January 5, 2001 date Carpenter furnished the information sought by the Division.

Respondent Carpenter's dissatisfaction with the CRD System that it does not particularize information about the actual Disclosure Events regarding an agent "up front" is not, however, something that the Division can remedy. Although the Division Staff agreed that investors should not have to write in to get the follow-up information regarding an agents' Disclosure Events, the Division correctly noted that "the Division can't change the way the CRD system is structured," because "the Division is not "running the NASD or the CRD." (Transcript page 70) Respondent Carpenter thus needs to address with the NASD his concerns in this regard. Additionally, the fact remains that a customer or other interested person does have the ability to obtain follow-up information about Carpenter's CRD Disclosure Event item relating to the Division's December 7, 2000 Order, and such person can ascertain that the Division's December 7, 2000 Order was vacated the following month on January 5, 2001 when Carpenter provided the information sought.

As previously noted, Respondent Carpenter also has stated that having the Disclosure Events information about the Division's December 7, 2000 Order on the CRD Database "is damaging to me" (Transcript page 22). Although I make no finding regarding whether Carpenter is damaged by the CRD Disclosure Event item because such is not necessary or required for purposes of this Decision, it is my view that whether and to what extent Carpenter has damages, they are caused by his choosing to follow the "advice" of the General Counsel for Life Partners instead of providing the information sought by the Division staff on two occasions (or at least talking directly to the Division Staff to determine what sort of enforcement action Carpenter was risking by not responding). Accordingly, it is up to Respondent Carpenter to consider whether he should pursue any damage claims he feels he has against the person who provided the "advice" he chose to rely on.

On the basis of the above, I conclude that both the intentional refusal by Carpenter in his letter of September 19, 2000 to provide any of the information sought by the Division Staff in its August 11, 2000 letter in connection with an ongoing investigation, and the intentional failure by

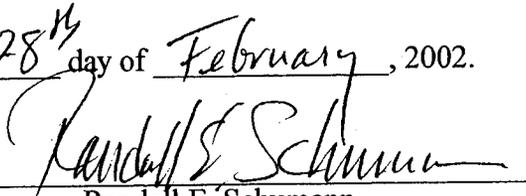
Carpenter to respond to the Staff's October 9, 2000 letter informing Carpenter that the Division would take unilateral action if Carpenter did not furnish the information sought, provided adequate justification under sec. 551.63(1) and (2) Wis. Stats., for the Division's determination that it was appropriate in the public interest and for the protection of investors that the Division's January 26, 2001 Order only vacate the previous December 7, 2000 Order as of the January 5, 2001 date Carpenter provided the information sought.

* * * * *

NOW THEREFORE, based on the Findings of Fact and Conclusions of Law in this proceeding,

IT IS ORDERED THAT the December 7, 2000 Prohibition Order naming Mr. Clare Carpenter, as affected by the Vacating Order issued under date of January 5, 2001, not be vacated ab initio, and thus shall continue to have an effectiveness duration from December 7, 2000 through January 4, 2001.

DATED at Madison, Wisconsin this 28th day of February, 2002.



 Randall E. Schumann
 Designated Hearing Officer

NOTICE OF APPEAL INFORMATION

(Notice of rights for rehearing and judicial review,
 the times allowed for each, and the identification
 of the party to be named as Respondent)

The following notice is served on you as part of this Decision: (with copies of the statutes cited)

1. Rehearing. Any person aggrieved by this Decision may petition for a rehearing within 20 days after the service of the Decision, as provided in sec. 227.49, Wis. Stats. A petition for rehearing is not a prerequisite for appeal directly to Circuit Court through a petition for judicial review.

A petition for rehearing must be filed with the Department of Financial Institutions-Division of Securities at the address below.

2. Judicial review. Any person aggrieved by this Decision has a right to petition for judicial review of the Decision as provided in sec. 227.53, Wis. Stats. The petition must be filed in Circuit Court within thirty days after service of this Decision if there has been no petition for rehearing, or within thirty days after service of the Order finally disposing of the Petition for Rehearing, or within thirty days after the final disposition by operation of law of any Petition for Rehearing.

A petition for judicial review must be served on, and name as the Respondent:

Wisconsin Department of Financial Institutions-Division of Securities
 345 West Washington Avenue, 4th Floor, Post Office Box 1768
 Madison, Wisconsin 53701

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