

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

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In the Matter of  
BARTON L. HARTER,

PETITION FOR ORDER

Respondent.

File No. S-04159(EX)

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The staff of the State of Wisconsin, Department of Financial Institutions, Division of Securities, Bureau of Registration & Enforcement has conducted an investigation in this matter pursuant to § 551.56, Wis. Stats., and as a result thereof alleges as follows:

1. Barton L. Harter ("Harter") is an individual with a date of birth of May 11, 1953, and a CRD number of 1889206, a last known home and business address of 109 N. Valleywood Court, Oconomowoc, Wisconsin 53066;
2. Mutual Benefits Corporation ("Mutual Benefits") is a Florida corporation with its corporate headquarters at 2881 East Oakland Park Boulevard, Suite 200, Fort Lauderdale, Florida 33306;
3. Upon information and belief, at all times material hereto the business of Mutual Benefits was the sale of viatical settlement contracts;
4. At all times material hereto, Harter was an insurance agent licensed by the Office of the Wisconsin Commissioner of Insurance, and a securities agent licensed by the Wisconsin Department of Financial Institutions, Division of Securities ("the Department);
5. According to information provided by Harter to the Department, during the period of at least 1997 to 1999, Harter, on behalf of Mutual Benefits, offered and sold to at least 16 persons in Wisconsin the viatical settlement contracts of Mutual Benefits;
6. The viatical settlement contracts of Mutual Benefits are investment contract securities as defined by DFI-Sec 1.02(6)(a, Wis. Adm. Code and sec. 551.02(13), Wis. Stats.;
7. The viatical settlement contracts have never been registered for offer and sale in Wisconsin pursuant to Ch. 551, Wis. Stats.;
8. Harter has violated sec. 551.21(1), Wis. Stats., by offering and selling unregistered securities to persons in Wisconsin;
9. Harter's employing broker-dealer did not approve of the offer and/or sale of the viatical settlement contracts by Harter;

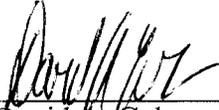
10. Pursuant to DFI-Sec 4.06(2), Wis. Adm. Code, effecting any securities transaction not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transaction is disclosed to, and authorized in writing by, the broker-dealer prior to the execution of the transaction, is deemed a "dishonest or unethical business practice" or "taking unfair advantage of a customer" by an agent, which provides a basis, pursuant to sec. 551.34(1)(g), Wis. Stats., for the censure of a licensee; and

11. The Department wrote in its Securities Bulletin, for the fourth quarter of 1997, in its "Words for Reps" column, that "...securities agents must be aware of and resolve four issues when considering becoming involved in the sale of viatical settlement contracts. First, if the VCSs (viatical settlement contracts) are structured such that they are securities, the securities would have to be registered with the Division (of Securities) or be eligible for an exemption from registration to be marketed in Wisconsin. ... Otherwise, the offer and sale of such VSCs may result in regulatory action against you, ... for the sale of unregistered securities ... Third, NASD regulations and rule DFI-Sec 4.06(2)(c) Wis. Adm. Code, make it an unethical practice for an agent to effect transactions in securities (absent the knowledge of, and written permission from, their employing broker-dealer) that are not recorded on the books and records of the agent's broker-dealer. Therefore, if an agent's sales of viatical settlement contracts involve a 'security' and the agent fails to inform his or her broker-dealer, the result would be a serious sales practice violation commonly referred to as 'doing business away' or 'selling away.' Both the NASD and the Division have taken strong enforcement actions against agents who have violated the 'selling away' rule, ..."

Therefore, the staff of the Bureau of Registration & Enforcement petitions the Administrator of the Division of Securities for the issuance of the attached Order pursuant to Ch. 551, Wis. Stats.

 9-10-04

Mark E. Dorman  
Examiner Date

 9/16/04

David A. Cohen  
Supervising Attorney Date