

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

In the Matter of
DONALD W. KILEY,

PETITION FOR ORDER

Respondent.

File No. S-05143(EX)

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. Donald W. Kiley ("Kiley") is an individual with a date of birth of June 12, 1956, and a CRD number of 2630201, and a last known home address of 822 Jordan Road, De Pere, Wisconsin 54115;
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, Kiley was a securities agent licensed by the Wisconsin Department of Financial Institutions, Division of Securities ("the Department");
5. According to information provided by the court-appointed Receiver of Mutual Benefits to the Department, during the period of at least 2004, Kiley, on behalf of Mutual Benefits, offered and sold to at least two 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. Kiley has violated sec. 551.21(1), Wis. Stats., by offering and selling unregistered securities to persons in Wisconsin;
9. Kiley's employing broker-dealer did not approve of the offer and/or sale of the viatical settlement contracts by Kiley;

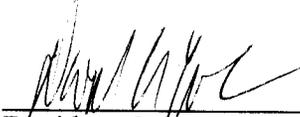
10. Pursuant to DFI-Sec 4.06(2), Wis. Adm. Code, effecting any securities transaction not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transaction is disclosed to, and authorized in writing by, the broker-dealer prior to the execution of the transaction, 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, ..."

12. The Staff of the Bureau of Registration & Enforcement has requested of Kiley information and documents concerning the names and addresses of those persons who invested through Kiley in the above-referenced transactions of Mutual Benefits but to date has not received the information and documents.

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.


Mark E. Dorman
Examiner
Date

10-20-05

David A. Cohen
Supervising Attorney
Date