



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)
)
MUTUAL BENEFITS CORPORATION;)
PETER LOMBARDI;) Case No. AP-04-46
LES STEINGER; and)
ANTHONY M. LIVOTI, JR.,)
)
Respondents.)

Serve: Mutual Benefits Corporation at: Peter Lombardi at:
200 East Broward Blvd., 10th Floor 3090 NE 44 Street
Fort Lauderdale, Florida 33301; Fort Lauderdale, Florida 33308;

Les Steinger at: Anthony M. Livoti, Jr. at:
333 Sunset Drive, #306 721 Northeast 3rd Avenue
Fort Lauderdale, Florida 33301; Fort Lauderdale, Florida 33304;

ORDER TO CEASE AND DESIST

On the 21st day of June 2004, Mary S. Hosmer, Assistant Commissioner for Enforcement, submitted a petition for a cease and desist order. After reviewing the petition, the Commissioner issues the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. Mutual Benefits Corporation is a Florida corporation and has a last-known address of 200 East Broward Blvd., 10th Floor, Fort Lauderdale, Florida 33301.
2. Peter Lombardi is a co-founder of Mutual Benefits, and, at all times pertinent hereto, was a director of Mutual Benefits. Lombardi has a last-known address of 3090 NE 44 Street, Fort Lauderdale, Florida 33308.

3. Leslie Steinger is a co-founder of Mutual Benefits, and, at all times pertinent hereto, was a director of Mutual Benefits. Steinger has a last-known address of 333 Sunset Drive, #306, Fort Lauderdale, Florida 33301.
4. Anthony M. Livoti, Jr., is an individual with a last-known address of 721 Northeast 3rd Avenue, Fort Lauderdale, Florida 33304. At all times pertinent hereto, Livoti acted as trustee for Mutual Benefits.
5. As used in this Cease and Desist Order, the term "Respondents" refers to Mutual Benefits, Lombardi, Steinger and Livoti.
6. Mutual Benefits marketed its viatical settlement contracts through a web of individuals many of these individuals were also insurance agents. Mutual Benefits employed at least nine Missouri agents:
 - a. George William Hull;
 - b. Randy Tiefenthaler;
 - c. G. Russ Hagan;
 - d. Art Cambridge;
 - e. Lewis Dean McBride;
 - f. Laura Harris;
 - g. Rick Rob;
 - h. Randy Stevens; and
 - i. W. T. Jergensmeyer.
7. Only one of the above-listed agents, Art Cambridge, was registered to sell securities in the State of Missouri.
8. From approximately April 1996 through July 1999, the above-listed agents of Mutual Benefits sold over \$2.5 million in viatical settlement contracts to approximately eighty Missouri investors.
9. In promotional materials provided to these agents and to Missouri residents, Mutual Benefits presented the investments as a compassionate and humanitarian way to help AIDS patients that produced financial rewards for the investor.
10. In these promotional materials, Mutual Benefits claimed that while life expectancy could vary widely from individual to individual the life expectancy of

people with AIDS could be “reasonably predicted based upon the medical condition of the patient.” And that a rate of return on the investment could be “predicted within reasonable parameters.”

11. To facilitate these transactions, investors executed Mutual Benefits Purchase Agreements stating, in part, that Mutual Benefits, among other things, would:
 - a. Identify life insurance policies of terminally ill individuals, which complied with the following criteria:
 - i. Insurance carrier must have a current rating of “B+” or better from A.M. Best, Moody’s or Standard & Poors;
 - ii. Policy must be beyond the contestability period; and
 - iii. Insured must be diagnosed terminally ill by an independent medical reviewing physician;
 - b. Enter into any agreements or contracts necessary for the purchase of life policies and/or death benefits on behalf of the Purchaser which fall within the agreed underwriting criteria set forth in this Agreement and related documents provided by Mutual Benefits;
 - c. Provide to the purchaser, prior to closing, a summary of any policy to be purchased for review; and
 - d. After closing, purchaser would be provided with a copy of the original insurance policy, a copy of the transfer of ownership, a copy of the re-assignment of beneficiary form, and a copy of the independent reviewing physician’s report determining the maximum life expectancy.
12. Under the Mutual Benefit Purchase Agreement, investors could choose the type of policy to be purchased from a list that contained the fixed returns to be earned by the investor. These included a 12-month policy that provided a 12% fixed return, (ostensibly a 12-month policy indicated that the life expectancy of the insured under the insurance policy was 12 months) an 18-month policy that provided a 21% fixed return, a 24-month policy that provided a 28% fixed return and a 36-month policy that provided a 42% return.
13. In July and August of 1997, one Missouri resident (“MR1”) invested funds in four purchase agreements through a Mutual Benefits Agent. MR1 chose to invest in 36-month policies that were to pay a 42% return. After receiving the Purchase Agreement, Mutual Benefits placed MR1’s funds into fourteen (14) different viatical settlement contracts.

14. At least one of the fourteen policies in which MR1 invested was still within the contestability period. This same policy also provided that the premiums would increase at the end of five years from the date of issue. This information was not provided to MR1 prior to MR1's purchase.
15. Respondents failed to disclose the dates on which six of the policies were issued to the insureds.
16. Respondents failed to disclose adequate information to MR1 concerning the viators' diagnosis and dates of onset of any illness.
17. Paramount to the success or failure of an investment in a viatical settlement contract is Mutual Benefit's "expertise" in determining the projected life expectancy of the insureds. The projected life expectancy affects the discount rate paid to the insured for the policy and the price an investor pays to participate in the viatical settlement contract. Mutual Benefits did not disclose information on the accuracy of the independent physician in determining the life expectancy of other viators.
18. The maximum life expectancies for eight of the fourteen policies underlying the viatical settlement contracts were determined by Clark C. Mitchell, MD. On or about June 28, 2001, Dr. Mitchell was charged by the State of Florida on 25 counts of engaging in an organized scheme to defraud and communications fraud in connection with his estimation of life expectancies for Mutual Benefits.
19. As of January 6, 2003, none of the fourteen policies had matured within the 3-year life expectancy. Many of these so-called 36-month policies have now been in place for over 78 months.
20. On January 3, 2001, the Commonwealth of Virginia, Division of Securities and Retail Franchising entered a Settlement Order with Mutual Benefits finding that the viatical settlement contracts as offered and sold by Mutual Benefits between February 1995 and July 1998, were investment contracts and therefore securities under Virginia law and requiring Mutual Benefits, among other things, to offer rescission to Virginia residents with 6% interest.
21. On April 25, 2003, the State of Arizona issued a Notice of Opportunity For Hearing Regarding Proposed Order to Cease and Desist against Mutual Benefits, based on the offer and sale of viatical settlement contracts from March 1995 through January 2002. The viatical settlement contracts sold by Mutual Benefits were found to constitute investment contracts and Mutual Benefits was ordered to cease and desist the offer and sale of its viatical settlement contracts in Arizona and to make restitution to Arizona investors. Mutual Benefits was given 10 days to file a written request for hearing. No request was docketed.

22. A check of the records maintained by the Missouri Commissioner of Securities confirmed no registration or granted exemption for the securities offered and sold by Respondents in the State of Missouri.
23. The viatical settlement contracts sold by Respondents are not federal covered securities.
24. An investigation by the Securities Division revealed that the investments offered by Respondents were investment contracts for the following reasons:
 - a. Missouri residents invested money to purchase viatical settlement contracts;
 - b. These investments occurred when Missouri resident parted with their money;
 - c. The investors' money was used to purchase fractional interests in viatical settlement contracts. This money was pooled with other investors' money to fund the purchase of insurance policies from viators or other viatical settlement companies. The sharing in the profit or loss of the enterprise with the other investors who purchased fractional interests establishes the existence of a common enterprise;
 - d. The investors expected to make a profit from the investments in these fractional interests in viatical settlement contracts. The investors were told they would get a return of 12-42%;
 - e. Investor's profits were to have been derived from the significant managerial efforts of the Respondents. These efforts by Respondents were part of what investors bargained for in purchasing the investments, including, but not limited to the following:
 - (1) locating and qualifying individuals with life insurance policies;
 - (2) reviewing the status, terms and viability of each life insurance policy;
 - (3) reviewing and assessing the insured individuals' medical records;
 - (4) determining the individuals' maximum life expectancies;
 - (5) determining an appropriate amount to escrow for the payment of premiums;
 - (6) negotiating the price to be paid to each insured individual for their policy; and

- (7) making decisions concerning policy ownership and method of distribution to beneficiaries upon maturation of the life insurance policies.

Mutual Benefits' performance of these activities subsequent to the purchase by MR1 had a material impact upon the profits MR1 would receive.

- f. MR1's only effort was to put forth the money required for the investment. All other significant efforts, both managerial and entrepreneurial, came from the performance of parties other than MR1.
- 25. A check of the records maintained by the Commissioner confirmed that at no time pertinent hereto were Mutual Benefits, Steinger, Lombardi or Livoti registered to sell securities in the State of Missouri.
 - 26. Respondents offered and sold unregistered, non-exempt securities in the form of investment contracts to Missouri residents.
 - 27. Respondents utilized unregistered agents to offer and sell its investment contracts.
 - 28. In connection with the offer, sale or purchase of a security to a Missouri resident, Respondents omitted to state material facts necessary in order to make the statements made not misleading, as follows:
 - a. That Mutual Benefits employed agents that were not registered to offer or sell securities in the State of Missouri;
 - b. That the viatical settlement contracts were not registered securities;
 - c. That there were risks associated with the investment;
 - d. The dates the policies were purchased by the insured individuals; and
 - e. Respondents stated that the life expectancy of people with AIDS could be reasonably predicted based upon the medical condition of the patient but omitted to provide information on the accuracy rate of any independent physician in setting life expectancies for the viators.
 - 29. In connection with the offer, sale or purchase of a security to a Missouri resident, Respondents made untrue statements of material facts, as follows:
 - a. That a rate of return on the investment could be "predicted within reasonable parameters";

- b. That all viaticated insurance policies would be beyond the contestability period;
 - c. That the investor would receive a summary of any policy to be purchased with investor's funds prior to closing; and
 - d. That after closing the investor would be provided with a copy of the original insurance policy and the reviewing physician's report determining the maximum life expectancy.
30. This Order is in the public interest.

CONCLUSIONS OF LAW

1. §409.401, RSMo Cumulative Supp. 1996, included "investment contracts" within the definition of a security. "Investment contract" is an investment of money in a common enterprise with the expectation of profit from the significant managerial efforts of others. *State v. Kramer*, 804 S.W.2d 845 (Mo. App. E.D. 1991). Under Missouri securities law, viatical settlement contracts, which satisfy the elements of an investment contract, are subject to securities law. *In the Matter of William R. Tweedy, et al.*, 2002 WL 1344587 (Mo. Div. Sec.). Under federal law, viatical settlement contracts issued by Mutual Benefits are investment contracts. *S.E.C. v. Mutual Benefits Corp., et al.*, case no. 04-60573, U. S. D. Ct. (Fla.), (May 4, 2004 *Temporary Restraining Order*). The viatical settlement contracts as described in the above findings of fact, constitute investment contracts and are securities.
2. §409.101, RSMo 1994, provided, "It is unlawful, in connection with the offer, sale or purchase of any security (1) to employ any device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading or (3) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person. The conduct described in the above findings of fact constitutes a violation of this section.
3. §409.301, RSMo 1994, provided, "It is unlawful for any person to offer or sell any security in this state unless (1) it is registered under this act or (2) the security or transaction is exempted under section 409.402. The conduct described in the above findings of fact constitutes violations of this section.
4. §409.408(b), RSMo 1994, provided, in part, that:

If the commissioner shall believe, from evidence satisfactory to him, that such person is engaged or about to engage in any of the fraudulent or

illegal practices or transactions above in this subsection referred to, he may issue and cause to be served upon such person and any other person or persons concerned or in any way participating in or about to participate in such fraudulent or illegal practices or transactions, an order prohibiting such person and such other person or persons from continuing such fraudulent or illegal practices or transactions or engaging therein or doing any act or acts in furtherance thereof.

5. Offering or selling unregistered securities as described in the above findings of fact constitutes an illegal practice under §409.408(b), RSMo 1994.
6. Omitting to state material facts in connection with the offer and sale of securities as described in the above findings of fact constitutes an illegal practice under section 409.408(b), RSMo 1994.
7. Making an untrue statement of material fact, in connection with the offer or sale of a security, constitutes an illegal practice under §409.408(b), RSMo 1994.
8. The Missouri Commissioner of Securities is empowered to issue such orders as he may deem just. §409.408(b), RSMo 1994.

ORDER

NOW, THEREFORE, it is hereby ordered that Respondents, their agents, employees and servants, and all other persons participating in or about to participate in the above-described violations with knowledge of this order are prohibited from:

1. Violating or materially aiding in the violation of §409.5-501, RSMo Cumulative Supp. 2003, by omitting to state, in connection with the offer, sale or purchase of any security, any material facts, including the following:
 - a. Mutual Benefits employed agents who were not registered to offer or sell securities in the State of Missouri;
 - b. The viatical settlement contracts are not registered securities;
 - c. There are risks associated with the investment;
 - d. The purchase date of the policies purchased by the viators; and
 - e. The life expectancy of people with AIDS could be reasonably predicted based upon the medical condition of the patient, unless also disclosing information on the accuracy rate of any independent physician in setting life expectancies for the viators.

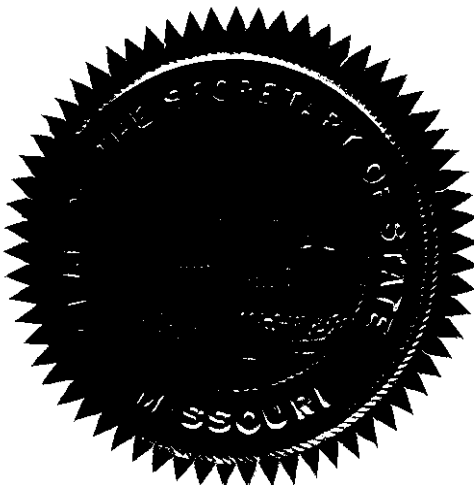
2. Violating or materially aiding in the violation of §409.5-501, RSMo Cumulative Supp. 2003, by making in connection with the sale of any security, untrue statements of material fact, including the following:
 - a. The rate of return on the investment could be “predicted within reasonable parameters”;
 - b. All viaticated insurance policies would be beyond the contestability period;
 - c. Investor’s will receive a summary of any policy to be purchased with investor’s funds prior to closing; and
 - d. After closing the investor are provided with a copy of the original insurance policy and the reviewing physician’s report determining the maximum life expectancy.

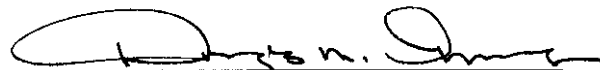
3. Violating or materially aiding in the violation of §409.3-301, RSMo Cumulative Supp. 2003, by offering or selling any unregistered investment contract in the form of a viatical settlement contract, or any other security in this state, unless the security is exempt from registration, or is a federal covered security under the Missouri Securities Act of 2003.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 29th DAY OF June, 2004.

MATT BLUNT
SECRETARY OF STATE




DOUGLAS M. OMMEN
COMMISSIONER OF SECURITIES