

Retirement and College Planning
Services of Vermont LLC

EX PARTE ORDER TO CEASE AND DESIST

Based on the Motion of the Insurance Division of the Vermont Department of Financial Regulation (the Department), pursuant to 8 V.S.A. §§ 11, 12, 15, and 4726 and § 13 of Dept. Reg. 82-1 (Rev.), for an order requiring Jack Trainham and Retirement and College Planning Services of Vermont LLC (“RCFS”) to cease and desist from offering certain deceptive marketing materials and illustrations to their college financial planning clients and the known violations of 8 V.S.A. 4724 and Reg I-98-1, the Commissioner makes the following findings of fact and conclusions of law and enters the following Order:

Introduction and Parties

1. The Department, through its Insurance Division, is charged with administering and enforcing the insurance laws and Regulations of the State of Vermont.
2. At all times relevant herein, Jack Trainham was an insurance agent licensed in Vermont, offering college and retirement planning services through RCFS, with a principal place of business at 46 Partridge Drive, Essex, Vermont.

Findings of Fact

3. On or about May 7, 2018, the Department, through both its Insurance and its Securities Divisions, received a consumer complaint (the Complaint) regarding college financial planning advice offered by Trainham and RCFS (collectively “Respondents”)
4. In response to the Complaint, the Department began an investigation into the business activities of Respondents.

5. As part of its investigation, and pursuant to an administrative subpoena, the Department received documents from Respondents relative to their college planning customers and business activities.
6. In relevant part, the documents showed that Respondents were marketing their services to college planning clients using annuity illustrations drafted by Trainham which showed only the non-guaranteed annuity performance values rather than the full range of non-guaranteed and guaranteed elements and which failed to fully and accurately disclose surrender values and associated surrender charges. The illustrations at issue were found in client files and reflected misleading communications to clients as recently as 2018.
7. Upon further investigation, the Department learned that both of the companies with whom Trainham was appointed and whose annuity products were sold to college planning clients, Athene and Security Mutual, required that their agents use only marketing materials, including illustrations, which had been approved by the company.
8. Neither Athene nor Security Mutual had approved the illustrations being used by Respondents, and each company advised the Department they would not have approved those illustrations because of the potential to mislead consumers.
9. The Department also learned that on July 3, 2019, in response to a specific inquiry by Athene, Trainham represented to Athene that he "had not used annuity illustrations in several years." The Department knew from its own investigation that this representation was false.
10. In annual certifications to Security Mutual from 2012 through 2018, Trainham represented that he had used only marketing materials which the company had approved.
11. On information and belief, Trainham is still engaged in the business of providing college advice, and Respondents may still be using unapproved, potentially misleading illustrations with their college planning clients, creating the risk that additional Vermont consumers will purchase insurance products which do not perform as expected, bear unanticipated costs and/or are not suitable for the consumers' needs.
12. The Department continues to investigate Respondents for additional violations of Vermont insurance and securities law.

Conclusions of law

13. Pursuant to 8 V.S.A. § 4724(1), it is unlawful for a person to issue any illustration which misrepresents or fails to adequately disclose the benefits, conditions, exclusions, limitations or terms of any insurance policy.
 - a. On at least nine occasions, Respondents violated § 4724(1) by using illustrations which failed to present the full range of guaranteed and non-guaranteed elements.
14. Pursuant to 8 V.S.A. 4724 (13), it is unlawful for a person to misrepresent insurance products or services.
 - a. On at least nine occasions, Respondents violated § 4724(13) by using illustrations which did not accurately represent the possible performance of the relevant insurance product.
15. Pursuant to Reg. I-98-1 (7) and (9), it is unlawful for a person to use illustrations showing non-guaranteed elements which does not also contain certain required disclaimers and which, on each page, also refers to the guaranteed elements of the policy.
 - a. On at least nine occasions, Respondents violated Reg I-98(7) and (9) by using illustrations which failed to show both guaranteed and non-guaranteed elements.
15. Pursuant to Reg I-98-1 (11), it is also unlawful to use illustrations which fail to fully disclose surrender charges, and applicable policy loans and loan interest.
 - a. On at least nine occasions, Respondents violated Reg I-98-1(11) by using illustrations which failed to fully disclose surrender charges and related costs.

Commissioner's Authority

16. Pursuant to 8 V.S.A. § 4726, the Commissioner enter orders to enforce the insurance laws of the State of Vermont. Pursuant to Section 13 of Department Regulation 82-1 (Rev), the Commissioner may issue such orders, including cease and desist orders, without prior notice or an opportunity to be heard.

17. In light of the known violations of 8 V.S.A. § 4724 and Reg I-98-1, Trainham's misrepresentations, and the risk the financial health and welfare of additional Vermont residents may be affected by Respondents' conduct, an *ex parte* order is appropriate in this case.

ORDER

- A. Respondents are hereby ordered to CEASE AND DESIST from offering or using any marketing materials, including illustrations, which have not been approved by the relevant insurance company or which fail to comply fully with Reg I-98-1. Respondents are specifically prohibited from using the illustrations described above. Respondents shall not conceal, destroy, mutilate or by any means falsify any relevant documentary material in their possession.
- B. Nothing in this Order precludes the Department from investigating or prosecuting Respondents for any additional violations of Vermont law.

Dated at Montpelier, Vermont this 16th day of July 2019.

Vermont Department of Financial Regulation

By: Mally Dillon Acting
Commissioner

Michael S. Pieciak, Commissioner