

**STATE OF VERMONT
DEPARTMENT OF FINANCIAL REGULATION**

IN THE MATTER OF:)
)
Danjack Enterprises, Inc. d/b/a)
Business Resource Services)
_____)

Docket # 19-039-I

STIPULATION AND CONSENT ORDER

This Stipulation and Consent Order is entered this 12th day of August, 2019 by and between Danjack Enterprises, Inc. d/b/a Business Resource Services (the “Company”) and the Vermont Department of Financial Regulation (the “Department”).

WHEREAS, the Commissioner of the Department (the “Commissioner”) is responsible for administering and enforcing the insurance laws and regulations of the State of Vermont, including 8 V.S.A. §§ 11, 12, 15, 3661, 4079, 4079a, 4724, 4726 and Department Rule I-2018-01; and

WHEREAS, after an investigation, the Department asserts that the Company has violated the insurance laws and Rule I-2018-01, as set forth below; and

WHEREAS, the Company and the Department wish to resolve this matter without further administrative proceedings or litigation; and

WHEREAS, the Company has agreed to make certain payments to the Department subject to the terms and conditions of this Order, and take certain other actions; and

WHEREAS, the Company elects to permanently waive any right to a hearing and appeal under the Vermont Administrative Procedure Act, Title 3, Chapter 25 of the Vermont Statutes Annotated, the rules, regulations, and orders of the Commissioner, and any right to judicial review by any court with respect to this Consent Order (the “Order”).

NOW THEREFORE, the Commissioner makes findings and conclusions as follows:

FINDINGS OF FACT

1. The Company is a domestic corporation with its principal place of business located at 620 Hinesburg Road, Suite 120, South Burlington, Vermont 05403.
2. The Company is subject to the jurisdiction of the Commissioner pursuant to 8 V.S.A. §§ 4079, 4079a.
3. The Company consents to the entry of this Order.
4. At all times relevant to this matter, the Company operated as a licensed association in the State of Vermont or had submitted its application for a license and approval was pending.
5. On October 24, 2018, the Department became aware of an advertisement that went out regarding a Company partnership with Vermont Businesses for Social Responsibility (“VBSR”). This advertisement contained potentially misleading information regarding the plan offerings that had been previously rejected by the Department in direct Company advertisements, including the following: “VBSR members located in Vermont with fewer than 100 FTEs can now save up to 10% on the cost of providing healthcare for employees by choosing from four BRS Blue Cross Blue Shield including plans which are HRA & HSA compatible.”
6. On October 25, 2018, the Department spoke with the Company about partnership advertising and that such advertising would require independent Department approval.
7. On October 29, 2018, the Department spoke with a representative from VBSR who assured the Department the advertising would cease until it had been properly approved by the Department.
8. On November 1, 2018, another unapproved VBSR partnership advertisement was

disseminated by VBSR containing the same potentially misleading information.

9. As a result of this history, on November 1, 2018, the Company participated in a call with the Department regarding potential and existing partnerships with other associations to provide access to the Company's association health plan. This call was memorialized in an email on the same day, which included the Company's obligations regarding, among other things, marketing and advertising approval requirements for partnership advertisements.
10. The Department's November 1 email emphasized the following regarding submission, approval, and use of association partnership marketing and advertising: "[A]ll marketing, advertising, and other consumer-facing materials—whether generated for or used by BRS or a BRS-partner—must be submitted to DFR for approval before they are used."
11. On the November 1 call, the Department indicated that BRS, as the licensee, is responsible for all partnership advertising and marketing submission, approval, and use.
12. On November 8, 2018, the Vermont Bar Association ("VBA") included an advertisement in its email newsletter "VBA Pulse" that read, "Association Health Plans Are Coming Back! The VBA will be offering Association Health Plans through Blue Cross Blue Shield of Vermont. For more information contact Tim Clain at Pinnacle Financial at 802-773-2617 ext. 202 or email Tim at tclain@pfcbenefits.com."
13. According to the VBA, this email newsletter went out to approximately 2,400 VBA members and 250 administrative assistants and secretaries.
14. After receiving this email advertisement, the Department learned that a postcard advertising the VBA association health plan had been sent to approximately 600 law firm attorneys on or about October 31, 2018.
15. Due to Department intervention, no additional postcards or emails were sent out, but

there was an intent to mail an additional 100 postcard per week.

16. The Company did not disclose to the Department a potential or existing partnership with the VBA.
17. The Company did not seek or receive approval from the Department for any advertisements concerning the VBA offering access to the Company's association health plan.
18. The Company was consulted by and provided feedback to the broker by email in early October about the VBA advertising copy prior to its release.
19. At around this time, the Company was discussing partnership with the VBA via a broker.
20. The information obtained by the Department evidences approximately 3,250 unapproved advertisements about the VBA plan were disseminated during this period in digital and print form. This represents approximately 2,650 people contacted with the unapproved advertisement.
21. The Department's investigation also revealed that the Company posted at least five sets of text on its website—What are Association Health Plans (text below the header), Who's eligible for AHPs, Flexibility in Design, BRS & AHPs – Slide Deck—that were not approved by the Department.
22. Further, the Company's website includes a section of "Important Dates" that does not indicate to potential plan participants that the period for enrollment has ended for the 2019 Plan Year. This information was not approved by the Department and is potentially misleading to consumers: indicating that enrollment is being conducted on a rolling basis.
23. The Department's investigation also revealed that the Company denied participation in its association health plan to at least one applicant ("Consumer 1") for a failure to carry workers' compensation coverage despite granting exemptions to six other applicants to

allow them to participate in the association health plan without workers' compensation coverage.

24. Consumer 1 sought coverage through a broker working with BRS but was told that the coverage would not be provided due to lack of workers' compensation coverage. The Company did not offer an explanation for the disparate treatment of Consumer 1. Consumer incurred an additional \$1,306.56 in costs to obtain health coverage elsewhere for the 2019 Plan Year.
25. The Department finds that this conduct was preventable, repeated, caused financial harm to consumers, or had the potential to mislead consumers.

CONCLUSIONS OF LAW

26. The Commissioner is charged with enforcing the insurance laws and rules of the State of Vermont, including 8 V.S.A. §§ 11, 12, 15, 3661, 4079, 4079a, 4724, 4726 and Department Rule I-2018-01.
27. Pursuant to 8 V.S.A. § 3661, the Commission may impose a civil administrative penalty for each violation of Title 8, an administrative rule of the Department, or an order of the Commissioner relating to insurance. Each violation is subject to an administrative penalty of up to \$1,000.
28. Pursuant to Department Rule I-2018-01, §§ 5(A)(12), 5(B)(3)(g), and 13(A), an association has an obligation to file all marketing and advertising materials with the Department for approval and may not use any marketing and advertising materials that have not been approved by the Department.
29. It is a violation of Department Rule I-2018-01, §§ 5(A)(12), 5(B)(3)(g) to fail to file with the Department marketing and advertising materials disseminated to potential customers.

30. Licensed associations are responsible for advertising or marketing materials disseminated by a producer, broker, partnership association, or other agent.
31. A website constitutes marketing and advertising materials by placing a written, electronic, or media communication directly before the public with the purpose of inducing a person to enroll in an association health plan.
32. "Making, publishing, disseminating, circulating, or placing before the public or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public . . . an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his or her business, which is untrue, deceptive, or misleading" is a violation of the Insurance Trade Practices Act. 8 V.S.A. § 4724(2); *see also* Insurance Bulletin 173.
33. It is a violation of Department Rule I-2018-01, § 13(A) to disseminate or cause to be disseminated to potential customers any marketing and advertising materials that were not approved by the Department.
34. It is a violation of Department Rule I-2018-01, § 9(A) to selectively grant waivers to enrollment criteria where the applicants are identically situated.
35. It is a violation of 8 V.S.A. § 4084 to disseminate or cause to be disseminated the advertisement in question here as it is materially misleading as to the nature of the association health plan being advertised.
36. Pursuant to 8 V.S.A. § 4726, the Commission may impose a civil administrative penalty of up to \$1,000 for each violation of Title 8, Chapter 129.
37. It is a violation of 8 V.S.A. § 4724(2) to disseminate or cause to be disseminated the advertisement in question here as it is materially misleading as to the nature of the

association health plan being advertised.

38. By disseminating or causing to be disseminated (either itself or via an agent) the print and digital advertising identified in ¶¶ 8, 12, 13, 14, and 20 above, the Company committed 3,250 violations of 8 V.S.A. §§ 4084, 4724(2) and Department Rule I-2018-01, §§ 5(A)(12), 5(B)(3)(g), and 13(A).
39. By posting the unapproved material on its website, the Company committed, at a minimum, five additional violations of §§ 4084, 4724(2) and Department Rule I-2018-01, §§ 5(A)(12), 5(B)(3)(g), and 13(A), which carry a potential administrative penalty of \$5,000.
40. By denying an application for failure to carry workers' compensation insurance when other identically situated applicants were granted a waiver, the Company committed a violation of I-2018-01, § 9(A), which carries a potential administrative penalty of \$1,000.

**CONSENT BY DANJACK ENTERPRISES, INC.
d/b/a BUSINESS RESOURCE SERVICES**

1. The Company hereby admits the jurisdiction of the Commissioner over the subject matter of this proceeding and knowingly and voluntarily waives its right to a hearing before the Commissioner or his designee and all other procedures otherwise available under Vermont law, the rules of the Department, the provisions of Title 3, Chapter 25, or any right it may have to judicial review of this matter.
2. The Company certifies that the Findings of Fact are complete to the best of its knowledge, that it has reported to DFR all failures to file its advertising or marketing materials or dissemination of unapproved advertising or marketing materials, whether direct advertising on its behalf or advertising for a partner association.

3. Without admitting or denying the allegations and findings contained in the Consent Order, the Company hereby admits the jurisdiction of the Commissioner over the subject matter of this proceeding and consents to the entry of an Order by the Commissioner.
4. The Company acknowledges this Order constitutes a valid order duly rendered by the Commissioner and agrees to be bound by it.
5. The Company acknowledges and agrees this Order is entered into freely and voluntarily and that no promise has been made to induce it to consent except as otherwise stated herein.
6. The Company acknowledges it has the right to be represented by counsel in this matter, and has knowingly and voluntarily waived that right, and voluntarily waives its right to an administrative hearing on this matter and to judicial review of this matter.
7. The Company acknowledges its understanding of all terms, conditions, and obligations contained in the Order and further acknowledges that should it fail to comply with any provision of the Order, the Commissioner may impose additional sanctions and seek appropriate relief subject to the Company's right to a hearing pursuant to Vermont insurance laws.
8. The undersigned representative of BRS affirms that he or she has the authority to bind the Company to the obligations stated herein.

Danjack Enterprises, Inc. d/b/a Business Resource Services

By: 

Mitch Fleischer, President

Date: 8-2-19

ACCEPTED BY:



Michael S. Pieciak, Commissioner
Vermont Department of Financial Regulation

CONSENT ORDER

NOW, THEREFORE, based on the Company's stipulation and on the Findings of Fact and Conclusions of Law, the Commissioner issues the following Order:

1. If the Company fails or neglects to comply with any of the terms, conditions or undertakings set forth in this Stipulation and Consent Order, the Department may, upon written notice to the Company, institute any legal or administrative proceedings it deems appropriate to enforce same and to seek such other appropriate sanctions, and the Company shall consent to the entry of judgment for any unpaid balance.
2. The Company's future failure to file proposed advertising or marketing materials or dissemination of unapproved advertising or marketing materials, whether direct advertising or marketing on its behalf or advertising or marketing for a partner association where the Company is responsible by law or rule for the dissemination, shall constitute a "willful" violation pursuant to 8 V.S.A. § 3661(a)(3) and § 4726(b) and will be subject to a heightened penalty amount.
3. The Company shall not require workers' compensation insurance of some applicants and not others. If it chooses to maintain the workers' compensation requirements, it must either require workers' compensation coverage for all members or expressly provide for a uniform waiver process in its bylaws and apply that process equally to all members under uniform criteria.
4. The Company shall pay an administrative penalty in the amount of \$7,500.00 to the Department within thirty (30) days of the execution of this Stipulation and Consent Order.
5. The Company shall provide \$1,306.56 in restitution to Consumer 1.
6. The Company shall comply with all Vermont laws, Regulations, Orders, and Bulletins.

7. Nothing in this Order shall be construed as limiting the Commissioner's authority to investigate the Company for matters not resolved by this Order or for matters unrelated to this Order.
8. Nothing herein shall be construed as limiting any private action a person may have.
9. The Company consents to the entry of this Order and acknowledges its consent is given freely and voluntarily and that no promise has been made to induce it to consent except as otherwise stated herein.
10. The Company voluntarily waives its right to an administrative hearing on this matter and to judicial review of this matter.
11. The Company further acknowledges the Commissioner retains jurisdiction over this matter for purposes of enforcing this Order.
12. This Order shall be governed by and construed under the laws of the State of Vermont.
13. This Order is entered into solely for the purpose of resolving this matter and is not intended to be used for any other purpose.

Entered at Montpelier, Vermont this 12th day of August, 2019.



Michael S. Pieciak, Commissioner
Vermont Department of Financial Regulation