

**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In Re: Michael S. Bettencourt

Docket No.: INS No. 12-008-EP

**ORDER TO SHOW CAUSE
AND NOTICE OF HEARING**

The New Hampshire Insurance Department (“NHID”) orders Michael S. Bettencourt (“Respondent”) to show cause why the New Hampshire Insurance Commissioner should not revoke his insurance producers license and impose the maximum administrative fine allowed by law. In support of the Order to Show Cause and pursuant to RSA 541-A and Chapter Ins 200, the NHID states as follows:

I. BACKGROUND FACTS

A. The Respondent

The Respondent is a licensed New Hampshire resident insurance producer, authorized to sell life insurance. The contact information for the Respondent on file with NHID, which is based on information provided by the Respondent himself, indicates the Respondent’s business address is 11 Merrimack Drive in Merrimack, New Hampshire. However, upon information and belief, the Respondent’s actual business address is 71 Spit Brook Road, Suite 304B in Nashua, New Hampshire.

B. Superior Performers, Inc.

At all relevant times, the Respondent was affiliated as an independent producer with a sales company called Superior Performers, Inc. (“Superior Performers”), and the misconduct

alleged herein pertains to life insurance sales the Respondent made or attempted to make while conducting business through Superior Performers.

Superior Performers is incorporated pursuant to the laws of Virginia, with a principal place of business at 1214 Turrentine Street in Burlington, North Carolina. Superior Performers is registered as a foreign corporation with the New Hampshire Secretary of State's Corporate Division and is also licensed by the NHID as a nonresident insurance producer. In 2006, Superior Performers registered "NAA" as a trade name with the New Hampshire Secretary of State's Corporate Division, stating that the nature of its business was "insurance sales and marketing." According to information that Superior Performers filed with the NHID's Producer Licensing Division, it also conducts business under several other DBAs or trade names, including: Family Protection Center; National Agents Alliance; NAA; NAA Insurance Agency; Marriage Benefits Center; NAA Life; and Mortgage Protection Center. This administrative proceeding concerns the Respondent's alleged misconduct while selling insurance through NAA, whose marketing websites describe the Respondent as "National Manager."

C. NAA

NAA is a network marketing and sales system where independent producers, like the Respondent, are encouraged to build and manage their own sales force by recruiting and training other independent producers. In this sales system, commissions are earned on the producer's own sales revenue, as well as on the sales revenue of the sales force recruited by the producer and his recruits, who are known in the insurance industry as "downlines."

NAA, through producers like the Respondent, markets small value whole life insurance policies. The insurance is sometimes marketed as mortgage protection insurance and funeral expense insurance. NAA initiates contact with consumers through direct mail solicitations sent

to consumer's homes. These mailers include a return postcard, which has a box for the consumers to check off if they wish to receive additional information about the insurance offering, as well as space for the consumer to write their home address. When a consumer returns a postcard to NAA, NAA then sells the card as a "lead" to producers, like the Respondent, who, in turn, telephone the consumer to set up a sales meeting at the consumer's home. NAA may sell the same lead multiple times to different producers.

D. The Consumers

1. Jeanne

Jeanne is a nurse anesthesiologist who resides alone in Concord, New Hampshire. Shortly after moving from Seabrook, New Hampshire to Concord, she received a direct mail solicitation informing her that if she returned the attached postcard, she would receive additional information about an offering for mortgage protection coverage. The mailing was directed to Jeanne's address in Seabrook. In any case, Jeanne returned the postcard, expecting to receive a brochure in the mail.

Instead, Jeanne received a telephone call from the Respondent. When the Respondent suggested meeting with the Respondent at her home, Jeanne requested that the Respondent mail her written information about the mortgage protection coverage. The Respondent refused, stating that a "government regulation" required him to present the information to her in person. Jeanne told the Respondent she was no longer interested in the mortgage protection coverage, but the Respondent continued to call Jeanne at all hours of the day. Indeed, the Respondent told her at one point that "the government" would not allow her to withdraw her information request, that once she requested the information she was obligated to accept in-hand delivery of the documents.

As it turned out, the Respondent was not aware that Jeanne had moved to Concord, believing she still resided at the Seabrook address where the original mailer had been sent. Jeanne never disclosed her new address to the Respondent. Instead, she agreed to meet with him at the Seabrook address, although she had no intention of actually meeting with the Respondent.

Concerned about sending the Respondent on a wild goose chase to Seabrook, Jeanne contacted the NHID and explained the situation to Richard McCaffrey, the NHID's Compliance and Enforcement Counsel. Mr. McCaffrey advised Jeanne he would contact the Respondent and advise him that Jeanne did not wish to purchase any insurance from him and that the meeting in Seabrook was cancelled. When Mr. McCaffrey contacted the Respondent, the Respondent described what had transpired between Jeanne and him as a misunderstanding.

2. Paul & Rose

Paul and Rose are an elderly couple who reside in Nashua, New Hampshire. The couple received a direct mail solicitation offering a "government benefit." The mailer did not mention insurance. Because Paul is a Korean War veteran, they assumed this was an offer for a veteran's benefit, although the mailer did not specifically refer to veterans. Rose checked off the box on the card indicating they wished to receive additional information about the benefit, and she put the card in the mail.

Sometime later, the Respondent contacted Paul by telephone and asked to meet with Rose and him at their home to discuss the benefit; the Respondent never mentioned insurance during the call. Paul told the Respondent that they did not wish to meet with him and asked him to send them literature about the benefit offering. The Respondent stated he was not allowed to mail the information to Paul, that "government rules" required him to deliver the information in-person.

Paul informed the Respondent he did not want to meet him, but the Respondent was insistent. Although Paul finally told the Respondent that he would meet with him at his home that same evening, Paul and Rose actually had no intention of meeting with the Respondent. In fact, Paul only agreed to a meeting because the Respondent refused to accept “no” for an answer. So about fifteen minutes before the appointed time, Paul and Rose left their home in their car. When they returned home, they found no literature, business card or anything else indicating whether or not the Respondent had actually stopped by the house.

A few days later, the Respondent again telephoned Paul and Rose. This time Rose answered the phone. When Rose said “no” to the Respondent’s request for a meeting, the Respondent repeated what he had told Paul during the first call: namely, that “government rules” required him to deliver the information in-person. Paul took the phone from his wife and told the Respondent that he was harassing them. The Respondent responded by threatening to call Paul and Rose every day until they agreed to meet with him. Paul relented and agreed to a meeting. However, as before, Rose and he left the house in their car before the appointed hour, and when they returned home there was still no indication of whether or not the Respondent had stopped by the house.

The Respondent’s last call to Paul and Rose was on a Saturday afternoon. The Respondent told Paul he could be at their home in five minutes to deliver the literature about the benefit in-person. This time Paul and Rose did not leave the house. However, rather than showing up in five minutes, the Respondent arrived over an hour later at a side door that led into the kitchen. Paul opened the door just enough to allow the Respondent to pass materials through the opening. However, before Paul could close the door on the Respondent, the Respondent pushed his way past Paul, asked for a glass of water and sat down at the kitchen table.

After the Respondent sat down and set up a notebook computer on the kitchen table, Paul and Rose learned for the first time that the Respondent was not offering a government benefit, but was instead selling life insurance. Paul and Rose immediately told the Respondent they were not interested in insurance, that they already had life insurance through MetLife. Nevertheless, it took another two hours before Paul and Rose could get the Respondent out of their house.

During those two hours, the Respondent employed a variety of crude and sometimes bizarre sales tactics. For example, he asked the couple why they would trust their MetLife agent but not him. Having apparently noticed a crucifix and other Christian icons in the kitchen, the Respondent asked Paul and Rose if they believed in God, adding that he (the Respondent) believed he had been sent to their home for a reason, implying God had sent him. When Paul and Rose expressed impatience with the Respondent's refusal to accept that they did not wish to purchase insurance from him, the Respondent made statements such as, "I have all night" and "I'm not leaving until I get an answer." At another point, the Respondent asked Paul and Rose for a "void check" from their personal checking account, a request which baffled them, since they had made it clear they were not going to buy insurance from the Respondent.

Paul and Rose were never alone with the Respondent; their son Brian was also home during the Respondent's visit. Over the course of the evening, Brian had become exasperated by the Respondent's refusal to listen to his parents and leave their home. The evening finally came to a head when Brian informed the Respondent he was calling the Nashua Police Department. As Brian reached for a telephone to make the call, the Respondent asked, "What did I do wrong?" Only then did the Respondent pack up his computer and leave. He did not leave a business card, and he did not leave the literature that he had insisted over the phone could only be hand-delivered due to "government rules."

3. Helen

Helen is an elderly woman who resides in Haverhill, Massachusetts with her husband, an elderly gentleman experiencing the advance stages of Alzheimer's disease. Helen received a direct mail solicitation informing her that if she returned the attached postcard, she would receive additional information about an offering for funeral expense insurance. Helen checked off the box on the card indicating she would like to receive additional information about the insurance, and she put the card in the mail. Sometime later, the Respondent contacted Helen by telephone and asked to meet with her at her home to discuss the funeral expense insurance. Helen told the Respondent she was expecting to receive a brochure in the mail and was not interested in a meeting. However, after the Respondent said he was already in the neighborhood and could meet with her that same day, Helen reluctantly agreed to a meeting.

When the Respondent arrived at Helen's home, she allowed him into her home, and the two of them sat down at her kitchen table to discuss the funeral insurance. The Respondent's husband was in the living room, dozing in front of the television. As soon as Helen learned that the insurance would cost almost \$50 per month, she told the Respondent she was not interested. Undeterred, the Respondent continued talking and trying to sell the insurance.

Helen eventually informed the Respondent that under no circumstances would she purchase insurance from him. She also told him she felt he was pressuring her, and she demanded he leave her home immediately. The Respondent ignored Helen's demand that he leave, and he continued trying to sell the insurance. At this point Helen stood up from her chair and again demanded that the Respondent leave, stating that if he did not, she would telephone the police. In response, the Respondent said, "Police? I know some police too." He then added, "Remember, I have your signature." Although Helen was certain the Respondent did not have

her signature, she nevertheless perceived this last statement as a threat. The Respondent only left Helen's home when she started walking out of the kitchen as if she were going to call the police.

4. Virginia

Virginia is a disabled woman who resides in an apartment in Derry, New Hampshire. Virginia's sister had recently died, and Virginia and her husband had struggled financially to pay for her sister's funeral. Consequently, when she received a direct mail solicitation offering funeral expense insurance coverage, Virginia was interested. She therefore filled out the return postcard and put it in the mail.

Shortly afterwards, Virginia was contacted by the Respondent, who scheduled a meeting with her and her husband at Virginia's Derry apartment. The Respondent failed to show up for this appointment. However, the Respondent called Virginia the next day, offering excuses regarding why he had not kept the appointment the previous day and seeking to reschedule. Virginia and her husband agreed.

The Respondent was forty-five minutes late for the rescheduled appointment. Nevertheless, the meeting went forward, and by its conclusion Virginia and her husband each agreed to purchase whole life insurance policies issued by Monumental Life Insurance Company ("Monumental"). Virginia applied for a death benefit of \$10,000, while her husband applied for a death benefit of \$5,000. The Respondent asked the couple to give him a void check. When they asked why he needed the void check, the Respondent stated that he needed the check to confirm they had a checking account. He did not discuss anything about automatic direct withdrawals from their checking account.

Following their meeting with the Respondent, Virginia and her husband each received correspondence dated May 9, 2011 from Monumental. Virginia's husband's correspondence,

which included his life insurance policy, advised that Monumental had “set up [his] policy to have premiums automatically withdrawn from [his] bank account.” This surprised and worried Virginia and her husband, who had understood that Monumental would send them monthly bills in the mail. When Virginia called the Respondent to complain that he had never explained the payment options to her and her husband, the Respondent replied, “Of course I did. What are you? Stupid?”

Monumental’s May 9, 2011 letter to Virginia did not include the policy, but it did advise her that “the coverage [she] applied for will be offered other than applied for.” Virginia was anxious to receive her policy, and she called the Respondent to request it. He eventually stopped by Virginia’s apartment to deliver an envelope containing the policy, as well as a transmittal letter from Monumental to Virginia. The Respondent opened the envelope and read the letter. Virginia discovered that Monumental would only insure her for \$8,046, not the \$10,000 she had applied for. The Respondent could not (or would not) explain why Monumental would only insure Virginia for \$8,046. Instead, the Respondent told Virginia she would have to figure it out for herself. The Respondent, Virginia discovered, had also set up an automatic withdrawal program from her checking account to pay for the premium on the \$8,046 policy.

About a month after purchasing insurance from the Respondent Virginia was contacted by another producer regarding funeral insurance. This producer had apparently purchased from NAA the same lead that the Respondent had. In any case, Virginia, who still wanted life insurance to cover her and her husband’s funeral expenses, liked the new producer, who seemed more caring than the Respondent. Among other things, the new producer explained the premium payment options and informed Virginia that Monumental could send her monthly invoices by mail if she preferred that option over direct withdrawals from her checking account. Because she

liked and trusted the new producer, Virginia cancelled the two Monumental policies sold by the Respondent and replaced them with Monumental policies sold by the new producer.

Soon after cancelling the policies sold by the Respondent, Virginia received several telephone calls requesting the identity of the new producer who had facilitated the cancellation and replacement of the two Monumental policies sold by the Respondent. The first call came from a woman who identified herself as "Jessica." Jessica told Virginia she was the Respondent's secretary, and she also said it had come to their attention that she had cancelled the policies that the Respondent had sold her and her husband. Jessica claimed that the Respondent was now being "audited"; and that they needed to know the identity of the new producer for the audit. Virginia refused to identify her new producer. Jessica tried calling again, but Virginia screened her call using caller-ID.

Virginia next received a series of approximately five calls from the Respondent himself. Virginia screened the Respondent's calls using caller-ID. Each time the Respondent called, he left a voice-mail message asking Virginia to call him back. She never did.

Next, Virginia received a voice-mail message from someone identifying himself as "Josh Bartlett." Josh Bartlett stated in the voice-mail message that he was calling from the New Hampshire Insurance Department and was investigating the Respondent. He stated he needed Virginia to call him back. The first time Virginia called the number left by Josh Bartlett, she blocked her own telephone number so the person she was calling could not identify her phone number; no one answered the phone, and she was put into a voice mailbox. She called again, this time releasing her phone number. A person identifying himself as "Josh Banion" answered the phone. He claimed he was calling from the Insurance Department and needed the identity of her new producer. Virginia asked this caller where his office was located, and he said, "Nashua."

When Virginia continued to refuse to disclose the identity of her new producer, Josh Bartlett (aka Banion) told her someone would be sent to her home to get the information. The call ended, but about five minutes later, Virginia received a call from another number, which she recognized as the Respondent's. At this point, Virginia thought she might be in physical danger. Accordingly, she contacted the Derry Police Department, who then sent a police officer to her home. The police officer advised Virginia that he would contact the Respondent and advise him to stop telephoning her. After that, the calls from the Respondent, Jessica and Josh stopped.

II. STATEMENT OF ISSUES

A. Whether the Respondent engaged in unfair insurance trade practices in the sale of insurance products.

B. Whether the Respondent used fraud, coercion or dishonest practices in the conduct of business in New Hampshire or elsewhere.

C. Whether the Respondent violated RSA 402-J:7, VI by failing to inform the Department of his change of address within thirty days of changing his business address from 11 Merrimack Drive in Merrimack, New Hampshire to 71 Spit Brook Road, Suite 304B in Nashua, New Hampshire.

The Department reserves the right to amend this Statement of Issues upon reasonable notice to the Commissioner (or his designated representative) and the Respondent.

III. NEW HAMPSHIRE INSURANCE LAWS VIOLATED BY RESPONDENT

As a result of the conduct outlined above, the NHID maintains that the Respondent violated New Hampshire insurance law, including RSA 417:4, I (f, h); RSA 402-J:12, I (b, h); and 402-J:7, VI.

The Department reserves the right to amend this list of insurance laws violated by the Respondent upon reasonable notice to the Commissioner (or his designated representative) and the Respondent.

IV. REQUEST FOR ADMINISTRATIVE PENALTIES

Based on the insurance law violations alleged above, the Department requests that the Commissioner (or his designated representative) revoke the Respondent's New Hampshire producer license and impose the maximum administrative fine allowed by law.

V. NOTICE OF HEARING

Pursuant to RSA 541-A:31 and Chapter Ins 200, the hearing in this matter shall commence on June 20, 2012 at 9:00 a.m. and shall continue until the close of evidence at the offices of the Department, 21 South Fruit Street, Suite 14, Concord, New Hampshire.

The Insurance Commissioner or his designated representative shall act as the Hearing Officer at the hearing.

An audio recording of the hearing shall be made. However, any party may request a certified court reporter to transcribe the proceeding. The party requesting a transcript of the proceedings shall file a written request for a certified court reporter with the Hearing Officer at least 10 days prior to the scheduled hearing date. The costs incurred for the services of a certified court reporter shall be borne by the requesting party.

The Respondent also has the right to be represented by counsel at his own expense. Should the Respondent choose to retain counsel, said counsel shall file a notice of appearance with the Commissioner at the earliest possible date.

Richard P. McCaffrey shall appear as Staff Advocate, representing the interests of the Department. He shall be assisted in this matter by Donald Belanger.

NEW HAMPSHIRE INSURANCE DEPARTMENT

Date: 4-4-12

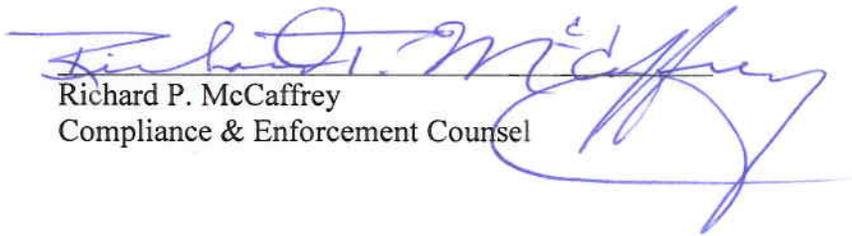


Roger A. Sevigny
Insurance Commissioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Amended Order to Show Cause and Notice of Hearing was sent this day by certified mail, return receipt requested, and first-class mail, postage prepaid to Michael Bettencourt at his last address on file with the NHID, 11 Merrimack Drive in Merrimack, New Hampshire, as well to 71 Spit Brook Drive, Suite 304B, Nashua, New Hampshire, where, upon information and belief, Michael Bettencourt's current office is in fact located

Date: 4/4/2012



Richard P. McCaffrey
Compliance & Enforcement Counsel