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Insurance Commissioner

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STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

RENT-A-CENTER, INC.
RENT-A-CENTER WEST, INC.

And

BENEFIT MARKETING
SOLUTIONS, LLC and BENEFIT
SERVICES ASSOCIATION,

NO. 14-0082
NO. 14-0081

**OIC RESPONSE TO MOTION FOR
RECONSIDERATION OF FINAL
ORDER**

The Hearing Officer in this matter did not exceed the scope of his authority nor did he misapply the law. RCW 48.02 permits the Commissioner, and his designee, to investigate, hold hearings, and take enforcement action. An agency adjudicative proceeding is not a court of law subject to court rules and procedures. The only superior court rules cited in the APA concern subpoenas, discovery and protective orders, RCW 34.05.446(3). The Washington Rules of Evidence are only guidelines for evidentiary rulings in adjudicative proceedings, and the Judge has broad discretion in admitting evidence. RCW 34.05.452.

The Second Amended Notice of Hearing in this matter satisfied all requirements of proper notice to the Respondents. The APA has specific requirements for notices of hearing, set out in RCW 34.05.434. *McDaniel v. DSHS*, 51 Wn. App. 893 (1988). The issues must be presented in the Notice of Hearing, but the facts required to support positions regarding the issues do not. *Eidson v. Dep't of Licensing*, 108 Wn. App. 712 (2001). The Second Amended Notice of Hearing clearly listed the

1 actions of Respondents that violated the statutes enumerated. RAC solicited insurance
2 by selling the Benefits Plus memberships that included insurance. BMS/BSA acted as
3 an unregistered service contract provider and transacted insurance without
4 authorization of any kind, as well as violating RCW 48.01.250 for providing members
5 with insurance not approved for sale in Washington. Furthermore, detailed evidence
6 (the so-called Benefits Plus membership "Booklet" incorporated by reference and
7 made part of the Benefits Plus agreement) was presented by the Respondents and
8 admitted into evidence. That document explained all of the parts of Benefits Plus
9 membership that the Hearing Officer determined to be insurance products.
10 Respondents opened the door to looking at those other benefits and the Hearing
11 Officer had no need to exclude certain parts of the Benefits Plus program from review.
12 There was no agreement between the agency and Respondents as to the scope of the
13 hearing other than as laid out in the Second Amended Notice of Hearing.

14 Respondents' reliance on the California cases involving debt cancellation and
15 damage waivers is misplaced. In those cases, the lender and the car rental company,
16 respectively, were the parties extending the benefit to their own customers. Here,
17 BMS/BSA, a third party, provided the benefits to both customers and to RAC. RAC
18 did not extend these benefits directly to its rent-to-own customers, but BMS/BSA paid
19 for disabled or unemployed members' obligations to RAC. Similarly, regarding the
20 Hearing Officer's finding that RAC solicited insurance, it is critical to note that RAC
was offering the insurance services of a third party, BMS/BSA. It was in RAC's
business interest to promote the Benefits Plus program, as it benefitted from the
insurance that would pay membership fees to it if a member became disabled or
involuntarily unemployed. Providing brochures promoting Benefits Plus, and the
AD&D insurance, constituted solicitation under both *National Federation* and RCW
48.17.010(14). By common definition, "a brochure is a flyer, pamphlet or leaflet that
is used to pass information about something. Brochures are advertising pieces mainly
used to introduce a company or organization and inform about products and/or

1 services to a target audience.”¹ The purpose is to encourage the purchase of a
2 membership in Benefits Plus, which for a period of time included accidental death and
3 dismemberment insurance not authorized for sale in Washington. The testimony of
4 Jim Tompkins was incorrectly characterized by Respondents. Mr. Tompkins did not
5 state, as Respondents claim, that the *National Federation* case was inapplicable in
6 toto. He did explain that there is some ambiguity because the statutory definition of
7 “solicit” may be read as narrower than the definition of solicit in *National Federation*,
8 yet that case has not been overruled or otherwise reconciled with the statutory
9 language.

10 The Hearing Officer did not misapply the *Rayos* and *GAF* cases. The judge
11 correctly noted that the *Rayos* and *GAF* cases made clear distinctions between
12 warranties and insurance. In *Rayos*, a Texas case decided in 1985, the Court ruled that
13 the service contract issued by the Chrysler Corporation on a brand new Chrysler vehicle
14 to be repaired at a Chrysler dealership was more like a warranty than an insurance
15 policy. This only goes to support that a warranty is issued by a manufacturer to repair
16 defects or failures in the product, not an occurrence unrelated to any defect paid for by a
17 third party to the transaction. In the instant case, the manufacturer of the rent-to-own
18 product is not offering a warranty on its product. The rent-to-own products are covered
19 by a separate entity, BMS/BSA, which indemnifies the renter should the product fail,
20 even as a result of normal wear and tear.

Similarly, the *GAF* case out of western Virginia in 1980 concerns a contractual
agreement between the manufacturer of roof shingles and a school district that was
building a school that it would repair any damage caused by various defects in the
materials and workmanship of the shingles, but excluded leaks in the roof caused by
events unrelated to the product. The Court ruled that this agreement was a warranty
rather than insurance. At that time, Virginia had no statutory definition of “insurance
contract.” Again, in the present case, separate consideration is paid to a third party,

¹ www.en.wikipedia.org/wiki/Brochure

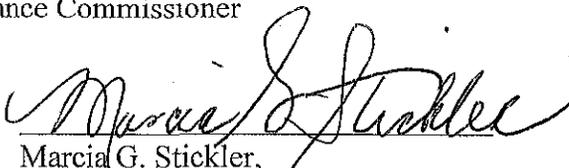
1 BMS/BSA, not the manufacturer, for repairs that may be the result of normal wear and
2 tear, not limited to manufacturing defects in the rent-to-own products.

3 The "any specific duration" of the service protection and replacement benefits
4 were as specific as they could be given the business model of RAC. Because the actual
5 length of rentals vary from customer to customer, a standard service contract with a set
6 date would be inappropriate and not serve the interests of the customer. The duration
7 was from inception to termination for stated reasons. The Hearing Officer was correct in
8 finding that the paid out account protection, although atypical, was a service contract
9 product appropriate to RAC's unique business practices and its customers.

10 For the reasons stated above, the Findings of Fact, Conclusions of Law and Final
11 Order should be upheld as written.

12 Executed at Tumwater, Washington, this 20th day of February 2015.

13 MIKE KREIDLER
14 Insurance Commissioner

15 By: 
16 Marcia G. Stickler,
17 Insurance Enforcement Specialist
18 Legal Affairs Division
19
20

1 CERTIFICATE OF MAILING

2 The undersigned certifies under the penalty of perjury under the laws of the
3 state of Washington that I am now and at all times herein mentioned, a citizen of the
4 United States, a resident of the state of Washington, over the age of eighteen years,
5 not a party to or interested in the above-entitled action, and competent to be a
6 witness herein.

7 On the date given below I caused to be served the foregoing OIC
8 RESPONSE TO MOTION FOR RECONSIDERATION OF FINAL ORDER on the
9 following individuals in the manner indicated:

10 Hon. George Finkle, Chief Hearing Officer
11 P O Box 40255
12 Olympia, WA 98504-0255

13 finkle@jdrllc.com

14 (XXX) Via Hand Delivery and Email

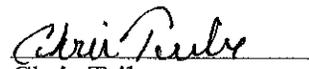
15 **Counsel for Respondents**

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17 Jerry Kindinger
18 Ryan, Swanson & Cleveland, PLLC
19 1201 Third Avenue, Suite 3400
20 Seattle, WA 98101-3034

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kindinger@ryanlaw.com

(XXX) U.S. Regular Mail, via state Consolidated Mail Services and Email

SIGNED this 20th day of February, 2015, at Tumwater, Washington.


Chris Tribe