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Mail: P.O. BOX 13187
AUSTIN, TEXAS 78711-3187

Texas State Securities Board

DERRICK MITCHELL
MEMBER

Phone: (512) 305-8300
Facsimile: (512) 305-8310

208 E. 10th Street, 5th Floor
Austin, Texas 78701-2407
www.ssb.state.tx.us

E. WALLY KINNEY
MEMBER

SOAH DOCKET NO. 312-10-4169

IN THE MATTER OF
AGAP LIFE OFFERINGS, LLC,
CHARLES D. MADDEN and
MATTHEW SEARLE

§
§
§
§

ORDER NO. ENF-11-CDO-1697

TO: AGAP Life Offerings, LLC
5600 Tennyson Parkway, Suite 155, Plano, Texas 75024, and
c/o Charles D. Madden, Registered Agent, 8880 W. Sunset, Suite 250, Las Vegas,
Nevada 89148, and
c/o Tax Lawyers, LLC, Registered Agent, 7345 S. Durango Drive, Suite B107-355,
Las Vegas, Nevada 89113, and
c/o Lee Polson, its attorney, 600 Congress Avenue, Suite 1600, Austin, Texas
78701

Charles D. Madden
10567 Buccaneer Parkway, Frisco, Texas 75034, and
5600 Tennyson Parkway, Suite 155, Plano, Texas 75024, and
6210 Campbell Road, Suite 160, Dallas, Texas 75248, and
c/o Lee Polson, his attorney, 600 Congress Avenue, Suite 1600, Austin, Texas
78701

Matthew Searle
Queengate House, Queen Street, Exeter, Devon EX4 3SR, and
c/o Lee Polson, his attorney, 600 Congress Avenue, Suite 1600, Austin, Texas
78701

ORDER MODIFYING EMERGENCY CEASE AND DESIST ORDER

STATEMENT OF THE CASE

On April 5, 2010, the Deputy Securities Commissioner issued an Emergency Cease and Desist Order ("Emergency Order"), Order No. ENF-10-CDO-1687, to AGAP Life Offerings, LLC ("AGAP"); Charles D. Madden ("Madden"); and Matthew Searle ("Searle") (collectively "Respondents"). He ordered them to cease and desist:

1. Offering for sale any security in Texas until the security is registered with the Securities Commissioner or is offered for sale pursuant to an exemption from registration under the Texas Securities Act;
2. Acting as securities dealers or agents in Texas until Respondents are registered with the Securities Commissioner or are acting pursuant to an exemption from registration under the Texas Securities Act;
3. Engaging in any fraud in connection with the offer or sale of any security in Texas;
or
4. Offering securities in Texas through an offer containing a statement that is materially misleading or otherwise likely to deceive the public.

On May 4, 2010, AGAP and Madden requested a hearing to modify or set aside the Emergency Order. On May 7, 2010, Searle filed a special appearance and alternatively requested a hearing to modify or set aside the Emergency Order. The case was referred to the State Office of Administrative Hearings ("SOAH").

On May 11, 2010, the Texas State Securities Board Staff "Staff" issued a notice of hearing to all Respondents, advising that the hearing would be held by a SOAH Administrative Law Judge ("ALJ"). On June 2, 2010, the hearing on the merits was convened with ALJ Michael J. O'Malley presiding. Staff was represented by attorneys Travis J. Iles and Laura McKenzie Holt. Respondents were represented by attorneys Merritt H. Spencer and Lee Polson. The hearing concluded on June 3, 2010, but the record did not close until July 23, 2010, after written closing briefs were submitted.

The ALJ issued a Proposal for Decision ("PFD") on August 25, 2010. On September 10, 2010, Staff filed its exceptions to the proposed decision of the ALJ. On September 10, 2010, Respondents filed their exceptions to the proposed decision of the ALJ. Staff filed its reply to the Respondents' exceptions on September 24, 2010. The ALJ responded to the Staffs' and Respondents' exceptions by letter dated September 29, 2010, declining to make any changes to the Findings of Fact or Conclusions of Law contained in the PFD.

The Findings of Fact and Conclusions from the PFD, as modified by the Securities Commissioner, are as follows:

FINDINGS OF FACT

1. On April 5, 2010, the Deputy Securities Commissioner of the State of Texas issued Emergency Cease and Desist Order No. ENF-10-CDO-1687 against AGAP Life Offerings, LLC, Charles D. Madden, and Matthew Searle (collectively, Respondents).
2. On May 4, 2010, AGAP and Charles D. Madden filed a request for hearing to determine whether the Emergency Order should be modified or set aside.

3. On May 7, 2010, Matthew Searle filed a special appearance, challenging personal jurisdiction. Mr. Searle asserted that the State Securities Board lacked personal jurisdiction over him and alternatively requested a hearing on the Emergency Order to determine whether it should be modified or set aside.
4. On May 11, 2010, Staff of the Board filed a Notice of Hearing, scheduling the hearing at the State Office of Administrative Hearings (SOAH) on June 2, 2010. The notice contained a statement of the allegations.
5. The hearing commenced on June 2, 2010, and concluded on June 3, 2010. Respondents appeared through their counsel, Merritt H. Spencer and Lee Polson, and Staff appeared through Travis J. Iles and Laura McKenzie Holt. The record closed on July 23, 2010, after the parties filed their final reply briefs.
6. Mr. Madden is the owner and manager of AGAP, and he and his son, Jeffrey N. Madden, are the governing partners of AGAP.
7. AGAP and Mr. Madden offered for sale a bonded life settlement program in Texas. AGAP identifies the bonded life settlement program as a "Life Offering Investment" to prospective and actual investors.
8. Life Settlement is a contractual right to receive the death benefit from a life insurance policy issued to a policyholder who sells the life insurance policy at a discount to its death benefit value.
9. The Life Offering Investment is an investment in a life settlement combined with a contract with one or more third parties to administer the life settlement, including payment of future premiums and collection and distribution of death benefits, and the purchase of a maturity bond to protect the minimum value of the Life Offering Investment if the policyholder does not die within a specified period based upon the policyholder's life expectancy plus a deferred period.
10. AGAP acquires the maturity bond through a facility agreement with Gresham Insurance Brokers, Ltd. (hereinafter referred to as "Gresham") to reduce the risk should the insured in the underlying life insurance policy live beyond his estimated life expectancy.
11. AGAP and Mr. Madden offer investments in an undivided interest in life settlements, in which more than one investor may purchase an interest in the same policy.
12. Investors receive a pro rata portion of the death benefits of the life insurance policy upon either the death of the insured during the estimated life expectancy period or a deferred period that lasts twelve months following the expiration of the estimated life expectancy.
13. AGAP secures extended longevity insurance through Gresham to provide an ultimate maturity date and a predetermined minimum return on investment.

14. George Albert Smith, III, an investigator with the Board's Enforcement Division, conducted an undercover investigation of Respondents' offer and sale of AGAP's Life Offering Investment to Texas residents.
15. Mr. Smith assumed an alias and posed as a potential investor to determine the manner in which Respondents were offering and selling the Life Offering Investment to Texas residents.
16. During the investigation, Mr. Smith identified Mr. Searle as a person associated with the Life Offering Investment.
17. AGAP provided Mr. Smith with contact information for Mr. Searle so that Mr. Smith could obtain additional information concerning the maturity bond or extended longevity insurance.
18. Mr. Smith contacted Mr. Searle, and Mr. Searle understood Mr. Smith to be a prospective, Texas-based investor in the Life Offering Investment.
19. Mr. Searle provided Mr. Smith with due diligence information concerning the extended longevity insurance.
20. Had it not been for the efforts of Mr. Smith in his investigation, Mr. Searle would not have had any contact with the Board (and likely the Board would have had no knowledge of him).
21. Mr. Searle had no knowledge of the details of the Life Offering Investment; therefore, he could not have been involved in the sale of the investment.
22. Mr. Searle responded to questions on the bond/long-term insurance, which was his only involvement with AGAP.
23. Mr. Searle's connection and conduct with Texas was insufficient to establish the Board's personal jurisdiction.
24. AGAP went through enormous efforts on behalf of its investors to make this a successful venture.
25. AGAP has: (1) recommended a life settlement for purchase; (2) provided the investor with a variety of information about the policy and the insured, including an evaluation of their life expectancy; (3) arranged for the holding and disbursing of funds related to premium payments and payouts to investors through an escrow agent; and (4) arranged for the purchase of maturity bonds related to the policies from insurance companies.
26. AGAP's investors have no ability to assess the accuracy of AGAP's representations by referring to market trends and independently assessing the prospective value of these viatical settlements.

27. AGAP has exerted significant pre-purchase entrepreneurial efforts on behalf of its investors.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the Respondents and the subject matter of this disciplinary action pursuant to the provisions of TEX. REV. CIV. STAT. ANN. art. 581-1 *et seq* (Texas Securities Act).
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this disciplinary proceeding, including the authority to issue a proposal for decision with findings of fact and conclusions of law pursuant to the provisions of the Texas Government Code. TEX. GOV'T CODE ANN. ch. 2003.
3. On receiving a request for a hearing from a person who is the subject of an Emergency Cease and Desist Order, the Commissioner of the Board must serve notice of the time and place of the hearing. The hearing must be held not later than the 10th day after the date the Commissioner receives the request for a hearing unless the parties agree to a later hearing date. Texas Securities Act § 23-2.D.
4. Based on the above Findings of Fact and Conclusions of Law, the Respondents were given the required notice of a hearing.
5. At the hearing, the Commissioner has the burden of proof and must present evidence in support of the order. Texas Securities Act § 23-2.D.
6. After the hearing, the Commissioner must affirm, modify, or set aside in whole or part the emergency order. Texas Securities Act § 23-2.E.
7. Respondents violated Section 7 of the Texas Securities Act by offering and selling securities in Texas at a time when the securities were not registered with the Securities Commissioner.
8. The AGAP viatical arrangement, Life Offering, is a security as defined by the court in *SEC v. Mut. Benefits Corp.*, 408 F.3d 737 (11th Cir. 2005).
9. Respondents violated Section 12 of the Texas Securities Act by offering and selling securities in Texas without being registered as sellers of securities.
10. At the hearing, Staff did not establish that Respondents engaged in fraud in connection with the offer and sale of securities.
11. At the hearing, Staff did not establish that Respondents made an offer containing statements that were materially misleading or otherwise likely to deceive the public.
12. Respondents' conduct, acts, and practices threatened immediate and irreparable public harm.

13. The foregoing violations constitute a sufficient basis for issuing an Emergency Cease and Desist Order pursuant to Section 23-2 of the Act.
14. Based on the above Findings of Fact and Conclusions of Law, the Emergency Cease and Desist Order should be upheld to the extent discussed in the proposal for decision pursuant to Section 23-2 of the Act.

MODIFICATIONS TO CONCLUSIONS OF LAW

Pursuant to the provisions of Government Code Section 2001.058, the Securities Commissioner has modified Conclusions of Law 10 and 11.

As noted by the ALJ in Conclusion of Law 5 and as established by the Texas Securities Act, Section 23-2.D, at a hearing requested by the person against whom the emergency cease and desist order is directed, the Commissioner (acting through the Staff) has the burden of proof and must present evidence in support of the order.

Evidence offered at the SOAH hearing was insufficient to enable the ALJ to conclude that there was fraud in connection with the offer and sale of the securities or that the offer contained statements that were materially misleading or otherwise likely to deceive the public. However, this does not support sweeping conclusion that there was no fraud in the offer and sale or that the offer contained no statements that were materially misleading.

As set out in Section 23-2.D, after receiving a request for a hearing on the original emergency cease and desist order, the Staff presents evidence in support of that emergency cease and desist order. The matters covered in the hearing do not necessarily encompass activities outside the emergency cease and desist order so do not address the entirety of all activities or representations made in connection with the offer and sales of the securities at issue. The ALJ's findings and conclusions can only be based on the evidence presented at the hearing. This is supported by the statement in the ALJ's September 29, 2010 letter noting that "[t]he Texas State Securities Board failed to prove that AGAP failed to disclose material facts or that any statements were likely to deceive the public."

Accordingly, Conclusions of Law 10 and 11 have been modified to reflect that the evidence presented did not support the fraud or the materially misleading conclusions in the original emergency cease and desist order.

ORDER

IT IS THEREFORE ORDERED that the Emergency Cease and Desist Order No. ENF-10-CDO-1687 issued against AGAP LIFE OFFERINGS, LLC; CHARLES D. MADDEN; AND MATTHEW SEARLE on April 5, 2010, shall be vacated as to MATTHEW SEARLE; the findings of fact and conclusions of law shall be modified to those contained in the PFD, as modified by the Securities Commissioner, as set forth above; and

1. It is therefore ORDERED that AGAP LIFE OFFERINGS, LLC and CHARLES D. MADDEN immediately CEASE AND DESIST from offering for sale any security in Texas until the security is registered with the Securities Commissioner or is offered for sale pursuant to an exemption from registration under the Texas Securities Act; and
2. It is further ORDERED that AGAP LIFE OFFERINGS, LLC and CHARLES D. MADDEN immediately CEASE AND DESIST from acting as securities dealers or agents in Texas until Respondents are registered with the Securities Commissioner or are acting pursuant to an exemption from registration under the Texas Securities Act.

SIGNED and ENTERED by the Securities Commissioner this 20th day of January, 2011.



DENISE VOIGT CRAWFORD
Securities Commissioner

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been sent to the Respondents by certified mail, return receipt requested, at their last known addresses on Page 1 of this Order, and to their representatives named below in this matter by certified mail, return receipt requested, to the Staff by hand-delivery, and by regular mail to the State Office of Administrative Hearings, on this the 21st day of January, 2011.

Lee Polson
Strasburger & Price, LLP
600 Congress Avenue, Suite 1600
Austin, Texas 78701



Marlene K. Sparkman
Assistant General Counsel
Texas State Securities Board