OFFICE OF INSURANCE AND SAFETY FIRE COMMISSIONER

JOHN W. OXENDINE
COMMISSIONER OF INSURANCE
SAFETY FIRE COMMISSIONER
INDUSTRIAL LOAN COMMISSIONER
COMPTROLLER GENERAL

SEVENTH FLOOR, WEST TOWER
FLOYD BUILDING
2 MARTIN LUTHER KING, JR. DRIVE
ATLANTA, GEORGIA 30334
(404) 656-2050 TDD# (404) 656-1021

BEFORE THE COMMISSIONER OF INSURANCE

STATE OF GEORGIA

IN THE MATTER OF:	)	
	)	
	)	**CASE NUMBER 99C-014A**
ASSOCIATES FINANCIAL LIFE INSURANCE COMPANY,	)	
Respondent	)	

ORDER

The Commissioner of Insurance of the State of Georgia (the Commissioner), through the staff of the Georgia Insurance Department (the Department), has examined the records and activities of ASSOCIATES FINANCIAL LIFE INSURANCE COMPANY (Respondent). Based on information discovered or developed during the course of that examination, the Commissioner issued an Order to Respondent on October 18, 1999. Respondent was ordered to henceforth comply with the Georgia Insurance Code and the Rules and Regulations of the Georgia Insurance Department, and to pay a monetary penalty of $147,000.00 pursuant to O.C.G.A. §33-2-24(g).

On October 27, 1999, Respondent filed a request for hearing in this matter. On October 27, 1999, a Notice of Hearing was issued in which the hearing in this matter was scheduled for November 9, 1999.

The hearing convened as scheduled on November 9, 1999, continued on November 10, 1999, and concluded on November 12, 1999. At the hearing, Margaret Witten, Esquire, and Charlene Bird, Esquire, with the Enforcement Division, represented the Department. A. William Loeffler, Esquire, and Herbert D. Shellhouse, Esquire, with Troutman Sanders LLP, Atlanta, Georgia, represented Respondent. The Department called as witnesses Terrence J. Meagher, Harry J. Bradlaw, and Estella T. Smith. Respondent called Faye Johnson. The Commissioner called Arvl Vohra. Both parties also submitted documentary evidence into the record. The parties also filed closing briefs and reply briefs.

Now that a proper transcript of the hearing and all written briefs have been received, no further information appears necessary to make a decision. Therefore, the hearing and record regarding this matter are closed. After consideration of the record as a whole, the substantial evidence of record supports the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1.

Associates Financial Life Insurance Company (Respondent) is domiciled in the State of Tennessee. It maintains its home office at 250 East John Carpenter Freeway, Irving, Texas 75062-2729. Respondent holds a certificate of authority to transact the business of insurance in the State of Georgia.

2.

On April 17, 1998, pursuant to Certificate of Examination Number 98-5030MC, the Chief Deputy Commissioner of Insurance, by virtue of the authority vested in the

Commissioner and delegated to his Chief Deputy Commissioner appointed Huff, Thomas & Company to represent the Office of the Commissioner in the Market Conduct Examination of Respondent. The Examination covered the three-year period from March 1, 1995, through March 31, 1998. (T. 56-60, Exh. E-12, pp. A1-1, B2-1.)

3.

Terrence J. Meagher is Vice President of Huff Thomas & Company. His position is insurance company examiner. State insurance regulatory authorities contract with his firm to perform examinations, both financial and market conduct, of companies which they regulate. He has been in this business for approximately 25 years, and has been in his present position for approximately three years. Mr. Meagher was qualified as an expert in insurance examinations. He was assigned to conduct the market conduct examination of Respondent. He monitored the examination as a whole with the examiners on site, and spent some time on site, reviewed the work papers, and prepared a draft report of the examination. He had authority to speak for Huff Thomas & Company with regard to the firm's opinions on the examination. (T. 51-57.)

4.

Harry J. Bradlaw is Life and Heath Marketing and Rate Analyst with the Department. He has been in that position for three years. His functions include review and approval of insurance advertising, including credit disability advertising. (T. 193-196.)

5.

Estella T. Smith is Technical Assistant, Life and Health Division with the Department. She has been with the Department since 1985 and has been in her present

position since 1992. Her duties include analyzing forms for review and approval, and supervising other analysts. (T. 208-209.)

6.

Faye Johnson is Director Market Conduct, Compliance, and Product Installations for Respondent. She has been in her present position with Respondent for three years. She has been in the insurance business for approximately 20 years, and for approximately seven years of that time she has been involved in compliance work. She was involved in the recent market conduct examination of Respondent that was authorized by the Commissioner. All requests and conversations on any of the issues or concerns that the examiners had were directed to her. It was her responsibility to go to the others within the company and coordinate the response back to the examiners. (T. 228-231.)

7.

Atvi Vohra is the President of Respondent. His employer is Associates First Capital Corporation. He is also President of Associates Insurance Group and Vice President of the holding company which ultimately controls Respondent. He has held his position with Respondent for approximately six months. Before he came to his present position, he was in banking. He is a marketing professional by background. He testified that he thought he had colleagues who were much more technically well-versed, and much more familiar with the proceedings at hand. He did not think he could add much value through his testimony. (T. 250, 357-366.)

8.

As part of the Examination, Respondent was asked to produce evidence that 82 of its insurance policies or certificates were sold by insurance agents licensed in the State of

Georgia. Respondent produced such evidence for only one of the 82 policies. Respondent did produce a list of its currently licensed agents, but did not identify which, if any, of these agents had sold each of the remaining 81 policies. (T. 62-68, Exh. E-12H.)

9.

Ms. Johnson, testifying for Respondent, stated that it was the practice and the policy of Respondent that only licensed agents could sell its insurance products. She acknowledged, however, that "it may happen" that an unlicensed agent could sell one of Respondent's policies, although it would violate company policy. When asked whether documents exist somewhere which would show who sold a particular policy, she responded, "It's a possibility." She further testified that the agents are employees of a lending entity which is an affiliate of Respondent. When asked if she could get information from the lending institution or its employees, she responded, "Yes, that's true. That's normally how the procedure works." (T. 232, 311-312.)

10.

The Commissioner called Mr. Vohra, President of Respondent, as a witness. He was asked how he knows that only agents sell his product in Georgia. He responded, "I believe we have a fairly comprehensive monitoring and tracking system to ensure that we have licensed agents in place, and they are the ones who are selling the product." When asked whether Respondent's agents keep records of what they sell, however, he stated, "I'm not sure I know the answer whether specific agents keep records." He further stated that Respondent's agents should keep records, "If they are required to, and I believe that we do keep the records that we're required to keep." Finally, when asked specifically

whether Respondent's agents should also keep records, he responded. "Yes, but what I'm not sure of is whether there is a requirement at the individual level or at the company level." (T. 364-365)

11.

The examiners requested Respondent to furnish copies of the advertising materials which it uses in Georgia. Respondent produced advertising brochures in response to this request. (T. 71, Exh. E-12E.)

12.

Mr. Meagher testified that he found that Respondent's name was not prominent on eight brochures for life policies, and on two brochures for disability policies. He testified that Respondent's name was in much smaller font, and in very fine print. He concluded that, in his opinion, these brochures were not in compliance with the requirement that the name of the insurer be prominently displayed. Mr. Bradlaw also reviewed these advertising materials, and he was shown the same materials at the hearing. He stated that Respondent's name was in very small type, difficult to find, and almost seemed to be de-emphasized. On cross-examination, he was asked whether the statutes or regulations contained any further definition of the term, "prominently displayed." He responded, "No, I'm not aware of any. I think it's felt to be self-explanatory." (T. 68-85, 197-207, Exh. E-12E.)

13.

Ms. Johnson, testifying for Respondent, testified that Respondent's name is displayed on each of the cited brochures. She stated that she has seen other brochures within the industry that resemble the ones Respondent is using. (T. 235-236.)

14.

An examination of the actual materials themselves reveals that Respondent's name is not "prominent" on these materials by any conceivable definition. In fact, the display of Respondent's name is the very antithesis of the word "prominent." The evidence shows that Respondent used eight sales brochures or other materials related to advertising of its credit life insurance policies which failed to prominently display the name of the insurer. Likewise, the evidence shows that Respondent used two sales brochures or other materials related to advertising of its credit disability insurance policies which failed to prominently, clearly or conspicuously display the name of the actual insurer. (Exh. E-12E.)

15.

The Commissioner's examiners discovered that Respondent used an advertisement which contained statistical information relating to the insurer or the policy but which failed to identify the source of such statistics therein. Mr. Meagher testified that the advertisement in question was in use during the time period covered by the examination, and was not in compliance with Georgia law. Ms. Johnson testified for Respondent that this advertisement had been discontinued in October 1997, and replaced with a different form. She acknowledged that Respondent had used it at some point during the period that was covered by the examination. (T. 86-87, 238, 314. Exh. E-12E1-25, Exh. R-1.)

16.

The Commissioner's examiners discovered that Respondent used four training manuals which contained statistical information relating to Respondent or Respondent's

policies which failed to identify the source of such statistics contained therein. The Commissioner's examiners also discovered that Respondent used one training manual which contained the term "investment" in connection with a policy in a context or under such circumstances or conditions as to have the capacity or tendency to mislead a purchaser or prospective purchaser of such policy. Mr. Meagher testified that Respondent produced the training manuals at issue in response to a request for advertising materials, training manuals, and other such materials. He stated that he considered training materials to be advertising. (T. 87-98, 155, Exh. E-12E.)

17.

Ms. Johnson testified that Respondent's training manuals were not disseminated to the public, not presented to potential customers, and not intended to be shown or read to the public or to prospective customers. She stated that the manuals were used to educate Respondent's agents, who in turn solicit the public to purchase Respondent's insurance products. She acknowledged that it is possible that an agent in selling the product could use the information in these training manuals. She acknowledged that the heading "Credit Life Sales Suggestions" in one of the manuals indicates that the information should be disseminated to the public by the agent, if it is intended as suggestions for how they are going to sell the product. (T. 325.) These suggestions include the term "investment." Mr. Vohra testified that parts of the information in the training manuals would be disseminated to potential customers. He stated that the information in the manuals was very generic, but he was not familiar with the specific brochures or the training. He further testified that he would feel comfortable that the statistics are accurate for the purpose for which they are intended, which is to prepare the

individual for a sales situation. He was not sure, however, that they are "accurate enough for a brochure where you need to be more specific." (T. 243-244, 321-325, 358-362.)

18.

On June 3, 1998, as part of the market conduct examination, Respondent was asked whether it considered any forms to be exempt from filing under Insurance Regulation §120-2-25 and, if so, whether it had filed a list of such forms with the Department. Pursuant to the Regulation, this filing must be made annually. Ms. Johnson responded by letter dated June 22, 1998. In the letter, she stated that Respondent was currently using exempt forms, but that no list of such forms had recently been provided to the Department. She attached a list of forms that Respondent considered exempt. (The list comprises nine forms, including the two forms at issue in Case Number 99C-014(B).) In her testimony, she admitted that Respondent failed to file the required list of exempt forms until sometime in 1999. (T. 99-102, 245-246; Exh. E-12B6-8, H1 52, H1 54.)

19.

Mr. Meagher testified that among the insurance products offered by Respondent are credit life and credit disability products sold in combination with one another. In such cases, Respondent calculates and returns each unearned premium refund separately. Ms. Smith testified that she is familiar with the requirements for premium refunds. She testified that unearned premium refunds earned in connection with each policy must be calculated separately, as Respondent does. The refund amounts for such combined products within a policy, however, must be added together to determine whether a refund is due. A refund of unearned premium must be made if the unearned premium is $10.00

or more. If the total refund for both products is $10.00 or more, the full refund for both products must be given. (T. 103, 208-212, Exh. E-13.)

20.

Respondent incorrectly calculated unearned premium refunds by separately calculating the unearned premium per product. Ms. Smith testified that if one of the products had a $4.00 refund and the other had a $6.00 refund, then the total refund of $10.00 should be made. Likewise, if one was $10.00 and the other was 99 cents, then a refund of $10.99 should be made. In the latter case, Ms. Smith pointed out that it would not benefit the consumer if the insurer treated the products separately and failed to refund the 99 cents because that amount, by itself, is less than $10.00. On cross-examination, Ms. Johnson was asked about Respondent's refund in a specific instance. Ms. Johnson acknowledged that a refund of $9.91 was due on the life product, but no refund was made, although a refund of $25.33 was made on the disability product. (T. 211-212, 222, 334-335; Exh. E-13.)

21.

During the examination, it was discovered that Respondent miscalculated the unearned premium due on one credit disability policy, resulting in a deficiency of $35.49. This error was brought to Ms. Johnson's attention in June 1998. Ms. Johnson admitted that there was in fact a deficiency of $35.49, and that a refund was actually made to this customer on October 8, 1999. (T. 104, 251-252, 333, Exh. R-3.)

22.

Mr. Meagher testified that, according to documentation reviewed by the examiners, Respondent received Sylvia Pyles' Claim Number 1494643 on July 1, 1994,

but did not pay it until February 2, 1995. Respondent argues that the claim paid on February 2, 1995, is a different claim from the one filed on July 1, 1994. According to Ms. Johnson's testimony, Respondent first received this claim on December 13, 1994. She stated that Respondent required the branch office, Respondent's affiliate, to submit a corrected claim form. She testified that the branch office finally submitted a correct form to Respondent on January 30, 1995, and Respondent paid the claim on the same day. Whether the claim was received on July 1 or December 13, 1994, this was still more than 30 days after it was initially received. (T. 110, 257.)

23.

Mr. Meagher testified that, according to documentation reviewed by the examiners, Respondent received Elaine Johnson's Claim Number 3449252 on April 20, 1993, but did not pay it until August 6, 1993. According to Ms. Johnson's testimony, Respondent received the claim on May 17, 1993. Respondent sent notice to the branch office, Respondent's affiliate, requesting additional information regarding this claim on May 24, 1993. The branch office provided the requested information to Respondent's claims department on August 6, 1993, and Respondent paid the claim on the same day. Whether the claim was received on April 20 or May 17, 1993, this was still more than 30 days after it was originally received. (T. 112, 258-262.)

24.

Mr. Meagher testified that Respondent received Wendy Hall's Claim Number 3517873 on March 31, 1995, but did not deny it until February 14, 1996. According to Ms. Johnson, Respondent first received the claim on September 20, 1995. She testified that Respondent asked the branch office, Respondent's affiliate, to verify certain

information on the application that might have led to a decision. Ironically, the insured had never completed an application. The claim was finally denied on February 14, 1996. Whether the claim was received on March 31 or September 20, 1995, this was still more than 30 days after it was originally received. (T. 113-114, 264, 383.)

25.

On cross-examination, Ms. Johnson was asked, "Do you think it's fair to penalize an insured, or to delay payment of an insured's claim when the insured has provided all the information that it needs to provide?" She answered, "No." (T. 380.) While an insurer has the right to investigate a claim, it should not penalize the claimant for the failure of its own affiliates to promptly or properly process the claims files or answer Respondent's requests for additional information. Even giving Respondent the benefit of every doubt on this issue, the evidence still shows that Respondent failed to pay or deny, within thirty days, three disability claims.

26.

Ms. Johnson confirmed that Respondent submitted an agent termination form in which the blank space for the reason for termination of the agent was not completed. Respondent argues that the termination was not for cause; therefore, the reason for termination need not be completed. The evidence shows, however, that Respondent failed to adequately document reasons for termination of one agent's certificate of authority. (T. 338, Exh. R-5, R-6.)

27.

During the course of the examination, Respondent was requested by the Commissioner's examiners to produce and make freely accessible certain accounts,

records, documents or files in Respondent's possession or control, which were related to the subject of the examination. Respondent did not provide the following: (1) an alphabetical listing of its policies in force for the period under examination; (2) twelve files requested as part of a statistical sample of canceled policies; (3) eighteen files requested as part of the underwriting and rating phase of the examination; (4) a questionnaire related to information systems; (5) four claims files requested as part of the paid claims review; and (6) four claims files requested as part of the denied claims review. (T. 134-138.)

28.

Ms. Johnson provided Respondent's reasons for not producing the files and documents at issue. Respondent claims that, for various reasons, the files were not in its possession or control. In some cases, Respondent did not consider that some of the files were necessary for the purposes for which they were requested. Respondent offered to provide replacement files in place of certain files it did not produce. (T. 275-304, Exhs. R-7 through R-15.) Significantly, Mr. Meagher was asked on cross-examination, "Are you aware of anything under Georgia law that precludes the provision of replacement files or their review by examiners?" He responded, "I'm not aware of that, no, but an examiner would not do that because the company may intentionally not produce some files." (T. 173.)

29.

The evidence shows that, during the course of the examination, Respondent failed to produce and make freely accessible to the Commissioner forty items including certain accounts, records, documents or files which were, or which reasonably should have been,

in Respondent's possession or control, which were requested by the Commissioner's examiners, and which were related to the subject of the examination. It is not an acceptable excuse for an insurer to simply claim that it does not have records in its possession or control relating to its transaction of the business in Georgia. Moreover, it is not an acceptable excuse for an insurer to transfer pertinent records to one or more of its affiliates in other lines of business, and then to claim that the records are not in its possession or control. These were not isolated instances. Instead, Respondent appears to be reluctant to provide relevant information requested by the examiners as part of the market conduct examination.

30.

The Commissioner is concerned that the testimony of Respondent's President reveals that he is extraordinarily uninformed about Respondent's business. Likewise, Ms. Johnson seemed to be lacking in knowledge of particular areas which, according to her description of her duties, were within her responsibility. The Commissioner is disappointed that the two representatives of Respondent who testified were so uninformed on clearly foreseeable areas of inquiry at the hearing.

CONCLUSIONS OF LAW

1.

The burden of proof generally lies upon the party who is asserting or affirming a fact and to the existence of whose case or defense the proof of such fact is essential. O.C.G.A. §24-4-1. O.C.G.A. §33-2-14(c) provides, however, that the findings of fact and conclusions made pursuant to an examination shall be *prima facie* evidence in any legal or regulatory action. Moreover, if a party has evidence in its power and within its

reach by which it may repel a claim or charge, but omits to produce it, a presumption arises that the charge or claim is well founded. O.C.G.A. §24-4-22.

2.

The Findings of Fact show that, in 81 out of the 82 policies examined, Respondent failed to produce and make freely accessible to the Commissioner evidence showing that individuals who solicited or took applications for, procured, or placed insurance were duly licensed agents. Therefore, the Department was unable to determine compliance with O.C.G.A. §33-23-4. While Respondent argues that no evidence was presented that unlicensed individuals actually performed any of these acts, this is not pertinent to the violation with which Respondent is charged. The evidence, if indeed there is any such evidence, is clearly under the control of Respondent and not the Department. In fact, testimony indicated that the agents are employed by an affiliate of Respondent; therefore, their records would be accessible to Respondent. By failing to produce and make freely accessible to the Commissioner this evidence, Respondent violated O.C.G.A. §33-2-13.

3.

The Commissioner concludes that the Findings of Fact show that Respondent used sales brochures or other materials related to advertising of its credit life insurance policies which failed to prominently display the name of the insurer, thereby violating Regulation §120-2-11-.07. Respondent argues that it cannot be charged with a violation of this Regulation because it does not specifically define the word "prominently." The Commissioner finds that there is no need to proliferate regulatory verbiage unnecessarily by defining a term which has a readily recognized and understood meaning. As one

witness said, it is self-explanatory. Moreover, there is no conceivable definition of the word "prominent" which could possibly describe the display of Respondent's name in the advertising materials at issue. Therefore, the Commissioner concludes that Respondent is in violation of Regulation §120-2-11-.07.

4.

For the same reasons set forth in paragraph 3 of these Conclusions of Law, the Commissioner concludes that the Findings of Fact show that Respondent used sales brochures or other materials related to advertising of its disability insurance policies which failed to prominently, clearly or conspicuously display the name of the actual insurer, thereby violating Regulation §120-2-12-.15.

5.

The Findings of Fact show that Respondent used an advertisement which contained statistical information relating to the insurer or the policy but which failed to identify the source of such statistics therein, thereby violating Regulation §120-2-11-.06. Respondent voluntarily replaced this particular advertisement prior to the commencement of the examination. As Respondent points out, the assessment of the maximum fine under these circumstances could have the unintended effect of discouraging insurers from voluntarily correcting violations. On the other hand, to eliminate the fine for this offense completely would have the opposite effect of allowing an acknowledged violation to have no consequences. Therefore, the fine for this violation is hereby reduced to $500.00.

6.

The Findings of Fact show that Respondent used training manuals which contained statistical information relating to Respondent or Respondent's policies which

failed to identify the source of such statistics contained therein. It is obvious that the purpose of these training manuals is to provide information to the agents. It is difficult to fathom any purpose for including information in these manuals which would not ultimately be used by these agents in soliciting customers to buy the product. Clearly, these materials are distinguishable from materials used within Respondent's own organization and not disseminated to the public. The mere fact that the manuals are not physically provided to members of the public, or read verbatim to members of the public, does not show that the materials in the manuals are not disseminated to the public. Respondent's use of these training manuals without identifying the source of the statistics contained therein is in violation of Regulation §120-2-11-.06.

7.

The Findings of Fact show that Respondent used a training manual which contained the term "investment" in connection with a policy in a context or under such circumstances or conditions as to have the capacity or tendency to mislead a purchaser or prospective purchaser of such policy. For the same reasons set forth in paragraph 6 of these Conclusions of Law, this constitutes a violation of Regulation §120-2-11-.05.

8.

The Findings of Fact show that Respondent failed to file with Department a list of all basic insurance policies and contract forms exempted from filing under Regulation §120-2-25, thereby violating Regulation §120-2-25-.04. Respondents argue that the Department did not present substantial evidence as to whether any of Respondent's forms were, in fact, exempt from filing. This misses the point. It was Ms. Johnson, representing Respondent, who stated that Respondent was using exempt forms. It is

illogical for Respondent to attempt to place the burden on the Department to prove that Respondent's forms are exempt, when Respondent's own representative told the examiners that they were. Thus, Respondent has violated the Regulation as well as thwarting its purpose.

9.

The Findings of Fact show that Respondent incorrectly calculated unearned premium refunds by separately calculating the unearned premium per product, thereby violating O.C.G.A. §33-31-9 and Regulation §120-2-27-.18.

10.

The Findings of Fact show that Respondent miscalculated the unearned premium refund due on one credit disability policy, thereby violating O.C.G.A. §33-31-9.

11.

The Findings of Fact show that Respondent failed to pay or deny, within thirty days, three disability claims, thereby violating O.C.G.A. §33-30-6(5)(B).

12.

The Findings of Fact show that Respondent failed to adequately document reasons for termination of one agent's certificate of authority, thereby violating O.C.G.A. §33-23-26.

13.

The Findings of Fact show that Respondent failed to produce and make freely accessible to the Commissioner forty items, including certain accounts, records, documents, or files in Respondent's possession or control, which were requested by the

Commissioner's duly appointed examiners and were related to the subject of the examination, thereby violating O.C.G.A. §33-2-13.

After consideration of the record as a whole and based on the substantial evidence of record, it is hereby **ORDERED** as follows:

1. Associates Financial Life Insurance Company shall henceforth comply with the Georgia Insurance Code and the Rules and Regulations of the Georgia Insurance Department, including but not limited to those sections of the Code and Regulations cited above.

2. Pursuant to O.C.G.A §33-2-24(g), Associates Financial Life Insurance Company shall pay, within fifteen (15) days of the date of this Order, a monetary penalty of One Hundred Forty-Three Thousand Five Hundred Dollars ($143,500.00) for the violations described herein.

Given under my Hand and Official Seal, effective this 31st day of January, 2000.

JOHN W. OXENDINE
COMMISSIONER OF INSURANCE
STATE OF GEORGIA