



OFFICE OF INSURANCE AND SAFETY FIRE COMMISSIONER

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

BEFORE THE COMMISSIONER OF INSURANCE

STATE OF GEORGIA

SEVENTH FLOOR, WEST TOWER
FLOYD BUILDING
2 MARTIN LUTHER KING, JR., DRIVE
ATLANTA, GEORGIA 30333
(404) 656-2052 TDD: (404) 656-1031

IN THE MATTER OF:

ASSOCIATES FINANCIAL LIFE
INSURANCE COMPANY,
Respondent

CASE NUMBER 99C-014B

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 suspend, cease and desist use of its Application for Credit Insurance Form GA4674787 and Certificate of Insurance Form GA6674787TOP for insurance sold in connection with loans or other credit transactions of more than ten years' duration, and to henceforth comply with the Georgia Insurance Code and the Rules and Regulations of the Georgia Insurance Department, including but not limited to O.C.G.A. §33-24-9.

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.

Due to the fact that another hearing involving the same parties occupied all of November 9, 1999, the hearing in this matter did not convene until November 10, 1999. This hearing was concluded on November 12, 1999. At the hearing, Margaret Witton, Esquire, and Charlene Bird, Esquire, with the Enforcement Division, represented the Department. Herbert D. Shellhouse, Esquire, and A. William Loeffler, Esquire, with Troutman Sanders LLP, Atlanta, Georgia, represented Respondent. The Department called as witnesses Estella T. Smith and Jim Webster. Respondent called Thomas F. Carswell and Betty J. Deal. Both parties also submitted documentary evidence into the record. After the hearing, the parties also filed written 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.

It was stipulated between the parties that Respondent is domiciled in the State of Tennessee, and maintains its home office at 250 East John Carpenter Freeway, Irving, Texas 75062-2729. (T. 13, Exh E-2.)

2.

It was stipulated between the parties that Respondent holds a certificate of authority to transact the business of insurance in the State of Georgia. (T. 13, Exh F-2.)

## 3.

It was stipulated between the parties that, during the course of an examination of Respondent, the Commissioner's examiners discovered that Respondent has used Respondent's Application for Credit Insurance Form GA4674787 and Respondent's Certificate of Insurance Form GA667478 TOP for insurance sold in connection with loans or other credit transactions of more than ten years' duration. (T. 13, Exh. E-2.)

## 4.

Estella T. Smith is Technical Assistant, Life and Health Division with the Department. She has been with the Department since 1983 and has been in her present position since 1992. Her duties include analyzing forms for review and approval and supervising other analysts. (T. 20-21, see Case Number 99C-014A.)

## 5.

Betty J. Deal is employed by Associates Corporation, which owns Respondent. Her position is Director of Insurance Compliance. She has been in her present position for slightly over four years. Her job entails ensuring that insurance products, including those of Respondent, are in compliance with state laws and regulations, and that they are filed with state officials when required. This includes the State of Georgia. Prior to her present employment she has worked for various other insurers for a total of approximately 21 years. In all of these positions she worked on compliance and had contact with the Georgia Insurance Department with regard to insurance laws and regulations. (T. 134-136)

## 6.

On August 9, 1993, Respondent filed forms and a rate schedule with the Department. The forms at issue were included in this filing. Respondent's cover letter

accompanying the filing states: "With regard to form GA4674787 and GA6674787STOP listed in Group II, we would also like to use these forms under Chapter 27, Group Life Insurance, of the Georgia Insurance Code, more specifically, §33-27-1(2), to insure full term loans to 180 months." (Exh. E-19.)

7.

On September 17, 1993, Respondent filed a replacement for one of the two forms at issue (Exh. E-20.)

8.

By letter dated October 18, 1993, signed by Ms. Smith, the Department disapproved the forms at issue. Ms. Smith's letter to Respondent states the following: "As a point of information, credit insurance cannot be written for a term in excess of ten (10) years. Please see Insurance Code Section 33-31-2(c)." (T. 22-32, Exhs. E-19, E-20.)

9.

On November 2, 1993, Respondent filed revised forms, including the forms at issue, with the Department. Unlike Respondent's previous filing, the cover letter accompanying the November 1993 filing contained no reference to proposed use of the forms in connection with any type of credit transactions in excess of ten years. Ms. Deal testified that, in general, forms submitted to the Department indicate variable information by the use of brackets. (She was not employed by Respondent in 1993, but was working in the insurance industry at that time.) Nevertheless, the forms themselves certainly contain no affirmative indication that they are intended for a term in excess of ten years. On December 17, 1993, the forms were stamped "approved" by the Department. (T. 22-32, 142-143, Exh. E-21.)

10.

On November 20, 1996, the Department received a letter from Respondent, "re: Previously Approved Debtor Group Forms GA4674787 and GA667478TOP, Approved by Your Department on October 15, 1993." Ms. Deal testified that this letter was sent, "since the products that we're talking about here had been filed before, we wanted to make sure that as a courtesy we notified the Department that we wanted to do something different even though the forms were exempt from filing." (T. 137.) She further testified that the forms were stamped "Approved" (on December 17, 1993) by the Department (T. 138-147, Exh. E-21.) She cited Respondent's August 5, 1993 letter to the Department as evidence of Respondent's desire to use the forms for loans in excess of 10 years. (T. 143-144, Exh. E-19.) Yet, she also testified that "there's no question" the forms were exempt from filing. (T. 151.) Finally, she testified that they were not listed on Respondent's list of exempt forms, "Because instead of considering them exempt they had been filed." (T. 151-152.)

11.

Ms. Smith responded for the Department, by letter dated January 14, 1997, stating, "To follow-up our telephone conversation and your written request dated November 20, 1996, please be advised that the above referenced forms were reviewed and approved in accordance with the credit rules and laws of this state. The provisions of those forms were designed to meet the minimum and the mandatory requirements of credit insurance and can only be issued in connection with a loan of ten years or less." This letter further states, "As a point of information, the above referenced forms can only be used in connection with credit transactions of ten years or less and only to the extent that the maximum amount of insurance does not exceed \$75,000." (T. 32-37, Exh. E-22.)

12.

Ms. Deal acknowledged having received Ms. Smith's letter dated January 14, 1997. She testified that she did not understand "the position that Ms. Smith was staking out" in the letter. She stated that "it was contrary to every discussion that I had ever had with her on the subject." (T. 148-149.)

13.

The Department has not approved the use of Respondent's Application for Credit Insurance Form GA4674787 and Respondent's Certificate of Insurance Form GA6674787 TOP for insurance held in connection with loans or other credit transactions of more than ten years' duration. Furthermore, Respondent did not file the forms as exempt forms during the period in which Respondent was using them. (T. 32, 52, 93, 151-152.)

14.

Counsel for Respondent stated on the record that the filings have been currently submitted for consideration by the Department, and that no action has been taken. (T. 66.)

#### 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(e) 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 foregoing Findings of Fact show that, when Respondent initially filed the forms at issue, it stated that "we would also like to use these forms under Chapter 27, Group Life Insurance, of the Georgia Insurance Code; more specifically, §33-27-1(2), to insure full term loans to 180 months." Respondent was specifically informed on October 18, 1993, that credit insurance could not be written for a term in excess of ten years. Now, Respondent has attempted to justify its use of the forms at issue by claiming that they were, in fact, approved in 1993. When Respondent resubmitted the forms, however, there was no reference to the issue of using the resubmitted forms in connection with any type of loans in excess of ten years. Respondent argues that the information on the resubmitted forms was "merely by way of example," and could therefore be used even with loans in excess of ten years. This argument overlooks the fact that Respondent specifically asked about "full term loans to 180 months" when it initially submitted the forms. The Department informed Respondent that the forms could not be used for that purpose. Therefore, the Commissioner concludes that it was unreasonable for Respondent to assume that the resubmitted forms had the Department's approval for use in connection with loans in excess of ten years' duration.

3.

Even if Respondent could have somehow misunderstood the Department's position, as communicated on October 18, 1993, the Department reiterated its position on January 14, 1997, in response to an inquiry from Respondent. Respondent's representative testified that she was "confused" by the Department's response of January

14, 1997. After having received that letter, however, Respondent could not reasonably claim that it still believed that the Department had approved the forms for use with loans in excess of ten years. This exchange of correspondence made the Department's position clear without question, that the forms could not be used in connection with insurance in connection with loans in excess of ten years, whether Respondent labeled it as "credit insurance" or as "debtor group insurance."

4.

In the alternative, Respondent argues that its forms were exempt from the filing and approval requirement as debtor group life insurance forms under Chapter 27 of the Insurance Code, O.C.G.A. §§27-1 *et seq.* There are two fallacies in this position. First, Respondent's letter to the Department of November 20, 1996, specifically referred to the forms as "Previously Approved Debtor Group Forms." The Department's response of January 14, 1997, expressly informed Respondent that the forms "can only be issued in connection with a loan of ten years or less." After having received this response, it is inconsistent and illogical for Respondent to claim that the forms were exempt for any type of loans in excess of ten years. Second, Respondent failed to properly inform the Department that it was using exempt forms. Insurers are required to file annually a list of any exempt forms which they are using, pursuant to Regulation §120-2-25-.04. Respondent failed to do so until 1999. (See Case Number 99C-014A.) Moreover, the list must be accompanied by a statement executed by an authorized officer of the insurer, stating that, to the best of the officer's knowledge, *inter alia*, the listed forms contain nothing that has previously been disapproved or objected to by the Department. Respondent could not legitimately argue that the forms were exempt after being told by



the Department in no uncertain terms that the forms could only be issued in connection with loans of ten years or less.

5.

Now, Respondent is trying, in effect, to have it both ways. Despite all evidence to the contrary, Respondent claims that the forms really were approved, and in any event they were exempt from even being filed. Respondent argues that "acceptance of the Department's argument would put Associates and other companies in an untenable 'Catch-22' position" (Reply Brief of Respondent, p. 4.) Respondent, however, had ample opportunities before the Commissioner issued the Order of October 18, 1999, to raise the arguments which it finally raised at the hearing. Respondent was alerted to the Department's position on October 18, 1993, and again on January 14, 1997. If Respondent thought that Ms. Smith's statement of October 18, 1993, was wrong, it could have appealed the statement at that time. On November 2, 1993, when Respondent resubmitted the forms, it could have specifically restated its previous request for approval of the forms for use in connection with loans in excess of ten years. On the other hand, if Respondent actually thought its forms were exempt, despite the Department's October 18, 1993 letter, it could have included them in the required annual filing of exempt forms. Finally, if Respondent really misunderstood the Department's position, it could have appealed when the Department reiterated its position on January 14, 1997. Instead of doing any of the foregoing, Respondent proceeded to simply use the forms without Department approval, and without even listing them as exempt. Thus, if Respondent is in a "Catch-22" position, it is of Respondent's own making.

6.

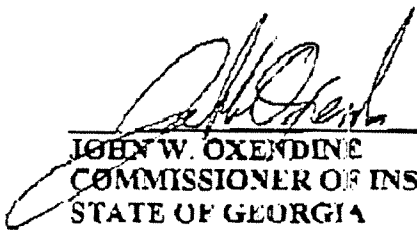
The Commissioner concludes that it is not acceptable for an insurer to use forms in Georgia which have been disapproved by this Department. Respondent had ample opportunity to raise any issues it had with the Department regarding the forms prior to using the forms, and prior to this hearing. The Findings of Fact show that Respondent has violated O.C.G.A. §33-24-9 by using Application for Credit Insurance Form GA4674787 and Certificate of Insurance Form GA6674787 TOP for insurance sold in connection with loans or other credit transactions of more than ten years' duration without the approval of the Department.

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 **SUSPEND, CEASE AND DESIST** all use of its Application for Credit Insurance Form GA4674787 and Certificate of Insurance Form GA6674787 TOP for insurance sold in connection with loans or other credit transactions of more than ten years' duration, unless and until such forms are specifically approved by the Department for that purpose.

2. 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, O.C.G.A. §33-24-9.

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

  
JOHN W. OXENDINE  
COMMISSIONER OF INSURANCE  
STATE OF GEORGIA