

**BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS**

**IN THE MATTER OF PENN GLOBAL
MARKETING, LLC,
AN ARKANSAS NON-RESIDENT INSURANCE AGENCY**

A.I.D. 2012-427

CONSENT ORDER

Now on this day, the matter of Penn Global Marketing, LLC (“PGM”), of Ballwin, Missouri, NAIC #391196, an Arkansas non-resident insurance agency authorized to transact accident, health, and sickness, property and casualty, life, and surety insurance business, comes before Jay Bradford, Insurance Commissioner of the State of Arkansas (“Commissioner”). The Commissioner and PGM are in agreement concerning the matter of the captioned non-resident agency insurer operating under the Consent Order. From the facts, matters, and other evidence before the Commissioner, the Commissioner and PGM consent and agree to the following:

FINDINGS OF FACT

1. The Commissioner has jurisdiction over the PGM and subject matter herein pursuant to Ark. Code Ann. §§23-61-103, *et seq.*
2. PGM is a non-resident agency licensed to transact insurance in the State of Arkansas.
3. The Department received a complaint regarding Aaron Young and launched an investigation of PGM due to PGM’s affiliation with Aaron Young and Arkansas licensed producer responsible for PGM, Julie Young, pursuant to Ark. Code Ann. §23-66-208.
4. The Department issued a Notice of Hearing pursuant to §23-66-209, which named PGM as a Respondent, with a hearing date of May 22, 2012. The charges are as follows:
 - a. Noncompliance with the Arkansas Insurance Department’s previous instruction as to improper training and marketing material.

b. Use of misleading marketing material and advertisements that references Medicare.

c. Use of a slideshow during the course of the business of insurance that references the legal reserve.

d. Insufficient business records due to incomplete usual and customary records. The Department, upon copying what was represented as the full and complete business records for the last two (2) years of business, was unable to locate usual and customary records.

e. Department investigation revealed unsuitable replacements, lack of comparison forms or memorandum, and evidence of churning.

5. Respondents neither admit nor deny the allegations found in this Consent Order or the Notice of Hearing, nor admits to having knowledge that certain training materials were utilized.

6. Respondents have knowingly and voluntarily waived the right to an administrative hearing and has been made aware of the right to consult legal counsel prior to executing this Consent Order.

CONCLUSIONS OF LAW

7. Noncompliance, or the continued use of these materials, constitutes misrepresentation to a regulator, which is a violation of the Trade Practices Act, Ark. Code. Ann. §23-66-206(6).

8. Demonstrated incompetency is a cause for a producer to lose an insurance producers license according to Ark. Code. Ann. §23-64-512(a)(8).

9. Misleading marketing material and advertisements are a violation of Rule 99 and Rule 13. Violations of Rule 99 include misleading telemarketing scripts and advertisements that use a trade name and an insurance group designation, “if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the insurer or create the impression that a company other than the insurer would have any responsibility for the financial obligation under a policy.” Rule 13 pertains to Long-Term Care Insurance, which includes procedures for advertising Long-Term Care Insurance, which the Department alleges have not been followed.

10. Use of a slideshow during the course of the business of insurance that references the legal reserve is a violation of the Trade Practices Act, §23-66-206(8)(D) and Ark. Code Ann. §23-96-105(A).

11. Ark. Code Ann. § 23-64-220 requires usual and customary records to be kept for at least five (5) years from the date the record was created. Usual and customary records means “applications, memoranda, notifications of telephone conversations or other communications, billing information, correspondence, policy information, claims files, and any other records detailing insurer information or insurance policies or contracts bound through the agent or broker.”

12. Unsuitable replacements, lack of comparison forms or memorandum, and evidence of churning are violations of the Trade Practices Act, including §23-66-206(2), §23-66-307, §23-66-306, and Rule 97.

13. Knowledge of any and all unlawful acts found to be conducted at these agencies are imputed to Respondent IQ2 and Respondent Omega pursuant to Ark. Code Ann. § 23-64-512(c), “the license of a business entity may be suspended, revoked, or refused if the

commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one (1) or more of the partners, officers, or managers acting on behalf of the partnership or corporation and the violation was neither reported to the commissioner nor corrective action taken.”

14. Pursuant to §23-66-512, licensees who are found to have violated the Trade Practices Act are subject to suspension, revocation, or monetary penalties, up to ten thousand dollars (\$10,000) per violation, or both.

IT IS THEREFORE ORDERED

15. PGM is hereby placed on probation for a period of ninety (90) days from the date of this order pursuant to Ark. Code Ann. § 23-64-512(a). Any failure to comply with the provisions of this order or the Arkansas Insurance Code, or the receipt of additional complaints against PGM during the period of probation may result in the suspension or revocation of PGM's producer license.

16. PGM will provide the Department with procedures that ensure the full compliance of PGM agents that conduct business in the state of Arkansas.

17. PGM will provide all training and marketing materials to the Department for review prior to use.

18. Any and all training and marketing materials, electronic, hard copy and otherwise, in PGM's possession utilized by persons in the PGM office location in Little Rock, Arkansas, prior to the date of this Consent Order shall be destroyed, and shall not be utilized by any Arkansas licensed agent or agency from the date of this Consent Order. PGM bears the responsibility to ensure that this training and marketing material is not used.

19. If PGM intends to utilize any training or marketing material of any nature that was used in the Little Rock, Arkansas location prior to this Order, that material shall be submitted to the Department for approval immediately following this Order. Use of this unapproved past material by PGM will void this Consent Order and this matter will proceed to a hearing.

20. Proof of compliance with the requirements herein imposed shall be provided to the Department within ninety (90) days of the date of this Consent Order.

21. The Department reserves the right to inspect and examine PGM for compliance, pursuant to Ark. Code Ann. §23-61-103.

IT IS SO ORDERED, DIRECTED, AND AGREED TO THIS 24th DAY OF May, 2012.



JAY BRADFORD
INSURANCE COMMISSIONER
STATE OF ARKANSAS

