

**NORTH CAROLINA DEPARTMENT OF INSURANCE  
RALEIGH, NORTH CAROLINA**

**STATE OF NORTH CAROLINA**

**BEFORE THE COMMISSIONER  
OF INSURANCE**

**COUNTY OF WAKE**

**IN THE MATTER OF )  
AFFINITY GROUP BENEFITS ASSOCIATION, )  
INC., SMART DATA SOLUTIONS, LLC, )  
NATIONAL TRADE BUSINESS ALLIANCE OF )  
AMERICA d/b/a NATIONAL ALLIANCE OF )  
ASSOCIATIONS, PROFESSIONAL BENEFITS )  
CONSULTANTS, INC., a.k.a. PBC DIRECT, )  
RICHARD H. BACHMAN, BART POSEY, OBED )  
KIRKPATRICK, THOMAS SULLIVAN, JAMES )  
M. DOYLE, CHRISTOPHER ASHIOTES, )  
ASSOCIATION OF FRANCHISE AND )  
INDEPENDENT DISTRIBUTORS, LLC, PAUL )  
OLZESKI, SPENCER AND ASSOCIATES, LLC, )  
BRUCE E. SPENCER, MARC MORROW, )  
REAL BENEFITS ASSOCIATION, DAVE CLARK, )  
AMERICAN TRADE ASSOCIATION, AND )  
AMERICANS FOR AFFORDABLE HEALTHCARE, )  
STEPHENS-MATTHEWS MARKETING, INC., AND )  
LARRY MATTHEWS )**

**Docket Number 1417**

**FINAL CONSENT  
CEASE AND DESIST  
ORDER**

**CONSENT CEASE AND DESIST ORDER**

This agreed Consent Order (the "Consent Order") is entered into on the <sup>7<sup>th</sup></sup>~~28~~ day of November 2008 (the "Effective Date") between the North Carolina Department of Insurance (the "Department") and Spencer & Associates, LLC ("Spencer & Associates") and Bruce E. Spencer ("Spencer"), hereinafter collectively referred to as "Respondents". The above named persons and entities may also be referred to collectively as the "Parties".

**JURISDICTION AND GENERAL FINDINGS**

The Department is charged with the authority and responsibility for the enforcement of the insurance laws of the State of North Carolina.

This administrative proceeding was instituted against Respondents on 15 August 2008 pursuant to an Amended Emergency Cease and Desist Order, Notice of Hearing, and Order to Produce Documents and Information.



Respondents stipulate and agree that this Consent Order shall not be construed as affecting the legal rights of any third party or other Respondent named in the 15 August 2008 Amended Emergency Cease and Desist Order, Notice of Hearing, and Order to Produce Documents and Information.

Respondents stipulate and agree that this Consent Order shall not be construed as affecting the rights of the Department to pursue administrative action against all other Respondents named in the 15 August 2008 Amended Emergency Cease and Desist Order, Notice of Hearing, and Order to Produce Documents and Information and any other person or entity that has engaged in any unlawful transaction or activity related to the matters and things set forth in this Consent Order and it is not the intent of the Department or the Respondents to release or discharge any person or entity not specifically identified in this Consent Order.

### **FINDINGS OF FACT**

1. Spencer & Associates is a limited liability company owned, managed and operated by Spencer.
2. Spencer & Associates is licensed as a third party administrator in the State of Ohio.
3. Stephens-Matthews Marketing, Inc. ("SMM") is an insurance agency located in Beverly, Ohio. SMM entered into a Broker Commission Agreement with AFID and Spencer & Associates.
4. Through SMM and other agents, Respondents, as an administrator for AFID, enrolled at least twenty-four (24) members in a program offered through Real Benefits Association ("RBA"). These members were residents of the State of North Carolina. Respondents Spencer & Associates and Spencer allege that they were led to believe that RBA was organized under the rules and regulations governing the formation and operation of a union and was subject to The National Labor Relations Board, the Taft Hartley Act of 1947 and the Landrum's Griffin Act of 1959 and was therefore exempt from state regulation. RBA is operated by David L. Clark, Chairman, P. O. Box 74, Basking Ridge, NJ 07920. RBA furnished a Department of Labor File Number LM 543-076 and had a website [www.rbausa.com](http://www.rbausa.com).
5. AFID marketed its programs under various names, including "the One Advantage Plan," "One Advantage Program," Privilege Care, "Per4mance Health Plan," "Per4mance Plan," and "Per4mance Plan Plus" (hereinafter collectively referred to as "the One Advantage Plan"). The RBA union programs marketed and sold through SMM and other agents included a choice of major medical insurance or limited medical indemnity insurance, vision, dental, life, and disability insurance. The major medical insurance benefits, which are referred to as the Part B benefits of the One Advantage Plan, were purportedly made available to AFID members pursuant to an affiliation agreement between the Affinity Group Benefits Association, Inc. ["AGBAI"] and the RBA that allows RBA members to have access to insurance benefits under an insurance policy issued by Beema Insurance Company to AGBAI. Respondents received notice from the North Carolina Department of Insurance that in the opinion of the Department, the RBA program is not a valid union plan that may be exempt from state



regulation and Beema Insurance Company is not authorized to do the business of insurance in the State of North Carolina.

6. Respondents ceased doing business in North Carolina July 2008 and sent notices of termination to all North Carolina residents who were enrolled as members. In the notices of termination, Respondents stated that: (a) it had chosen to no longer do business in North Carolina, (b) it is no longer marketing membership in North Carolina, (c) the benefit program in which they enrolled is no longer available through AFID membership and all benefits will be terminated, and (d) AFID will no longer be deducting any monies from their accounts and their membership will remain in force through July 31, 2008.

### **CONCLUSIONS OF LAW**

1. Notice in this matter was timely and properly effected.
2. This matter is properly before the Commissioner of Insurance and the Commissioner has jurisdiction over the Parties and the subject matter pursuant to Article 28 of Chapter 58 of the General Statutes of North Carolina.
3. Respondents Spencer & Associates and Spencer have violated N.C. General Statutes §58-28-5 and §58-28-10.
4. Respondents Spencer & Associates and Spencer have violated N.C. General Statute §58-33-95(a) by soliciting, negotiating or selling insurance in the State of North Carolina when they should have known that such insurance was not provided through an authorized insurer in the State of North Carolina.
5. Respondents Spencer & Associates and Spencer have violated N.C. General Statute §58-28-45(a) by acting as agents for an insurer not authorized to transact insurance business in the State of North Carolina.
6. Under N.C. General Statute §58-28-10, an assessment of four thousand (\$4,000.00) is warranted against Respondents Spencer & Associates and Spencer.
7. Respondents Spencer & Associates and Spencer consent to be bound by this Consent Order and understand that it has the same binding authority as a final Order of the Commissioner.
8. Respondents Spencer & Associates and Spencer expressly waive their rights to a hearing and to any further proceedings on this matter. They also expressly waive their right to seek judicial review or to otherwise challenge the validity of this Consent Order.
9. This written document contains the entire agreement between the Parties. There are no other oral or written agreements of any kind which alter or add to this agreement.

**IT IS THEREFORE, BY CONSENT, ORDERED** as follows:



1. Spencer & Associates and Spencer shall CEASE AND DESIST from violating N.C. Gen. Stat. §§ 58-28-5, 58-28-12, and 58-28-13 and shall cease and desist from acting directly or indirectly as an agent for, or otherwise representing or aiding in the solicitation, procurement or effectuation of insurance coverage issued by any insurer that is not authorized to transact insurance business in the State of North Carolina.

2. Spencer & Associates and Spencer agree that they shall be properly licensed by the North Carolina Department of Insurance when engaged in the sale or marketing of insurance products in the State of North Carolina.

3. Spencer & Associates and Spencer shall pay an assessment in the amount of four thousand dollars (\$4,000.00) for violation of N.C. General Statute §58-28-10. Spencer & Associates shall pay two thousand dollars (\$2,000.00) and Spencer shall pay the remaining two thousand dollars (\$2,000.00). Spencer & Associates and Spencer shall pay their respective shares by cashier checks made payable to the North Carolina Department of Insurance. The checks shall accompany this Consent Order when it is sent to the Department after Spencer & Associates and Spencer sign this Consent Order. Upon receipt of this Consent by the Department, the Hearing Officer will sign this Consent Order.

4. This Consent Order shall become effective after the Department receives payment of the assessment from Spencer & Associates and Spencer and the Consent Order has been signed by the Parties and the Hearing Officer.

28<sup>th</sup> IN WITNESS WHEREOF, the parties have duly executed this Consent Order this day of November 2008.



William K. Hale  
Hearing Officer and Special Counsel  
North Carolina Department of Insurance



**CONSENTED TO BY:**

Spencer & Associates, LLC

By: Bruce E. Spencer, Manager

10/27/2008  
Date

Bruce E. Spencer, individually

10/27/2008  
Date

NORTH CAROLINA DEPARTMENT  
OF INSURANCE

By

Angela Ford  
Senior Deputy Commissioner

11-24-08  
Date



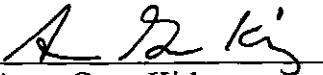
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this day I have served the foregoing **FINAL CONSENT CEASE AND DESIST ORDER** by first class mail pursuant to Rule 4 of the North Carolina Rules of Civil Procedure addressed as follows:

Mr. Robert O. Crawford, III  
Attorney for Respondents AFID, Spencer & Associates, Paul Olzeski, and  
Bruce Spencer  
Landmark Center I  
4601 Six Forks Road, Suite 405  
Raleigh, NC 27609

Bruce E. Spencer  
Spencer & Associates, LLC  
One South Limestone Street, Suite 301  
Springfield, Ohio 45502

This the 1<sup>st</sup> day of December, 2008.

  
Anne Goco Kirby  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629  
Telephone: (919) 716-6610  
North Carolina State Bar No. 13613  
E-mail: akirby@ncdoj.gov