

STATE OF OHIO
DEPARTMENT OF INSURANCE
2100 STELLA COURT
COLUMBUS, OHIO 43215-1067

IN RE: : ANN H. WOMER BENJAMIN
SUITABILITY OF : SUPERINTENDENT OF INSURANCE
KEVIN P. GRADY :
D.O.B.: 12/16/1950 : LOUIS E. GERBER
TO BE LICENSED AS AN INSURANCE : HEARING OFFICER
AGENT IN THE STATE OF OHIO :
AND : HEARING NO. LGL-0001544-H
: :
SUITABILITY OF :
GRADY ENTERPRISES, INC. :
F.E.I.N. 31-1461229 :
TO BE LICENSED AS A BUSINESS :
ENTITY INSURANCE AGENT IN :
THE STATE OF OHIO :

ORDER

This matter comes before the Department for a determination of whether **KEVIN P. GRADY** and **GRADY ENTERPRISES, INC.** are suitable to continue to be licensed as insurance agents in the State of Ohio. On behalf of the Superintendent of the Ohio Department of Insurance, the Ohio Department of Insurance (hereinafter "Department") has conducted an investigation of the activities of **KEVIN P. GRADY** and **GRADY ENTERPRISES, INC.** and, as a result of such investigation, alleges that **KEVIN P. GRADY** and **GRADY ENTERPRISES, INC.** have committed unfair and deceptive acts, as well as other violations of the insurance laws and regulations of this State, and that they are not suitable to be licensed as insurance agents.

Following a hearing and thorough review of the Report and Recommendation issued on the 14th day of July, 2006, the transcript of testimony, the exhibits, and the objections of the parties, I, Ann H. Womer Benjamin, Superintendent of the Ohio Department of Insurance, hereby accept in part and reject in part the Hearing Officer's recommendations. For the reasons set forth below, I hereby modify the Hearing Officer's recommendations and make the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Since 1972, Kevin P. Grady (hereinafter "Grady") has been a licensed insurance agent in the State of Ohio. Since 1996, Grady Enterprises, Inc. (hereinafter "GEI") has been a

licensed insurance agency in the State of Ohio. Grady holds one hundred percent (100%) of the stock of GEI.¹

2. On July 20, 2005, the Department issued a Notice of Opportunity for Hearing to Grady advising him that the Superintendent intended to suspend, revoke, or refuse to continue or renew his license as an insurance agent in the State of Ohio and/or impose any other civil forfeiture or penalty, including administrative costs, authorized by former Ohio Revised Code § 3905.49(D), Ohio Revised Code § 3901.22(D), and Ohio Revised Code § 3905.14(D).²
3. On July 20, 2005, the Department issued a Notice of Opportunity for Hearing to GEI advising it that the Superintendent intended to suspend, revoke, or refuse to continue or renew its license as an insurance agent in the State of Ohio and/or impose any other civil forfeiture or penalty, including administrative costs, authorized by former Ohio Revised Code § 3905.49(D), Ohio Revised Code § 3901.22(D), and Ohio Revised Code § 3905.14(D).³
4. Grady and GEI requested Hearings, and on August 23, 2005, Columbus Public Schools (hereinafter "CPS") filed a Motion to Intervene. On September 22, 2005, the Superintendent of Insurance issued an Order granting the Motion to Intervene.

The Ohio Department of Insurance filed a Motion to Consolidate the Hearings of Grady and GEI, which the Superintendent of Insurance granted on October 18, 2005.

5. The Hearing commenced as scheduled on April 10, 2006. All parties were present and were represented by counsel. Upon the commencement of the Hearing, the Department presented one witness, Stephanie Hightower, former President of the CPS Board of Education, and thereafter, the parties jointly moved for a continuance of the Hearing, which was granted. The Hearing was scheduled to reconvene on May 8, 2006.

The Hearing was reconvened on Monday, May 8, 2006. Just prior to the Hearing, counsel for Grady and GEI filed a Notice of Withdrawal. Thereafter, Grady proceeded *pro se* on his own behalf and K. Joseph Grady, an officer of GEI, proceeded *pro se* on its behalf.

The Hearing then proceeded through its conclusion on May 17, 2006.

6. During the 1990s, Grady had been the insurance agent handling life insurance contracts for CPS. In 1999, he was no longer acting as an agent for any insurance contracts for CPS.

On December 10, 1999, Grady, as Chairman and CEO of GEI, wrote a letter to Jerry Buccilla ("Buccilla"), the Treasurer of CPS, soliciting insurance business from CPS.⁴

7. On September 15, 2000, Buccilla, on behalf of CPS, issued an agent of record letter for Columbus Public Schools to GEI so that GEI could begin soliciting bids for CPS.⁵

Following GEI's appointment as agent of record, Grady pursued a consultant contract with CPS as well, as evidenced in Buccilla's letter to Grady dated October 11, 2000.⁶

8. Together, Findings of Fact No. 6 and No. 7 establish that Grady and GEI actively marketed their services to CPS. They promoted themselves to CPS, making deliberate representations that they would act in CPS's best interests. They held themselves out as fiduciaries, and represented they would not put their own business interests ahead of those of CPS.
9. While soliciting bids for CPS as its agent of record and pursuing a consulting contract with CPS, Grady began to negotiate with United Healthcare of Ohio (hereinafter "UHC") to be paid compensation for bringing in the CPS business, even before any consulting contract with CPS was finalized, as evidenced in internal UHC e-mails.⁷
10. Marie Zuniga, director of sales at UHC in 2000, testified that GEI through its principal, Grady, approached UHC about handling CPS's business. UHC presented a proposal that included a commission, but Grady asked to have the commission removed because "the fees weren't competitive," and she later told him she could not pay a commission because it was not included.⁸

Zuniga then testified that Grady went to the CEO, Brett Baby, to negotiate a payment, which was agreed to at least as of February 12, 2001, as evidenced in internal UHC e-mails.⁹ Zuniga also testified that the payment was specific to CPS.¹⁰

11. Together, Findings of Fact No. 9 and No. 10 establish that Grady sought and obtained compensation from UHC for bringing in and retaining the CPS business, and the nature of that compensation was specific to the CPS account.
12. On January 3, 2001, GEI entered into a Consulting Services Agreement with CPS for the period January 3, 2001, through January 2, 2002. The Agreement provided for CPS to pay GEI a retained service fee in the annual amount of \$32,000.00, and for GEI to conduct all services "in the best interest of Columbus Public Schools."¹¹

On December 3, 2001, GEI entered into an identical Consulting Services Agreement with CPS for the period January 3, 2002, through January 2, 2004. The only change was that the retained service fee was increased from \$32,000.00 to \$35,000.00 annually. GEI was still to conduct all services "in the best interest of Columbus Public Schools."¹²

On June 30, 2004, GEI entered into an identical Consulting Services Agreement with CPS for the period July 1, 2004, through June 30, 2006. The retained service fee remained at \$35,000.00 annually. Again, GEI was still to conduct all services "in the best interest of Columbus Public Schools."¹³

13. On January 6, 2001, CPS authorized its Treasurer to execute an agreement with UHC to serve as the Columbus Board of Education employee health insurance carrier beginning March 1, 2001.¹⁴
14. During the period December 20, 2001, through July 8, 2002, Grady had discussions with

UHC, which resulted in an increase of the compensation paid by UHC to Grady from \$8,333.33 per month to \$11,916.69 per month.¹⁵

15. Neither Grady nor any representative of GEI disclosed to CPS that Grady was receiving compensation from UHC. Grady made misrepresentations to CPS Treasurer Jerry Buccilla about his UHC compensation¹⁶ and lied to CPS Human Resources Director Craig Bickley about his UHC compensation.¹⁷ Grady had solicited CPS business initially through Buccilla by alleging that ". . . the total compensation being paid out to the [then current] consultant has never been disclosed."¹⁸ Grady was clearly aware of the importance of the issue of broker compensation by third parties and the importance of full disclosure in the CPS relationship. He had touted his openness regarding his own compensation in order to obtain CPS business.¹⁹

In addition, Grady took steps to prevent disclosure of his UHC compensation to CPS. In 2003 and 2004, UHC generated an Underwriting Approval Form reflecting commissions paid on the CPS business.²⁰ On Cross-Examination, Grady admitted he had stopped the second form from being sent to CPS, and was evasive about the earlier form.²¹

Further, Grady made no attempt to correct any misrepresentations or misunderstandings regarding compensation prior to or during the October 2004 presentation by UHC's then CEO Tom Brady to the CPS Board.^{22 23}

16. In 2004, when asked whether he performed all of the services for CPS for the \$35,000.00 consulting fee, Grady answered in the affirmative.²⁴
17. CPS Treasurer Jerry Buccilla did not learn that Grady was being paid compensation by UHC until January 2005.²⁵
18. For the period January 22, 2001, through September 10, 2004, GEI received consulting fees in the total amount of \$137,000.00 from CPS for consulting services.²⁶
19. For the period 2001 through 2005, GEI and Grady received a total of \$517,138.23 from UHC for bringing in and retaining the CPS business.²⁷
20. No evidence was presented that any of the UHC compensation payments were attributable to any other GEI accounts, except the CPS account.

CONCLUSIONS OF LAW

1. GEI, largely through the actions of its principal, Grady, voluntarily assumed and owed a fiduciary duty to CPS under the Consulting Services Agreement. This fiduciary duty imposed a heightened degree of care on GEI and Grady and additional obligations including a prohibition against self-dealing, the duty of full disclosure, and a duty of loyalty.²⁸
2. Grady, by his representations to CPS both personally and on behalf of GEI, from his initial December 1999 solicitation of CPS through his execution of the CPS Consulting Services Agreement in January 2001, voluntarily assumed and owed a fiduciary duty to

CPS. This fiduciary duty imposed a heightened degree of care upon Grady and additional obligations including a prohibition against self-dealing, the duty of full disclosure, and a duty of loyalty.²⁹

3. GEI systematically and continuously breached its fiduciary duty, manipulating CPS and UHC to achieve its own ends. GEI negotiated an apparently competitive consulting contract with CPS, while at the same time assuring itself of additional, regular compensation from UHC for bringing in the CPS business. GEI misrepresented, lied about, and failed to disclose to CPS the additional compensation, and led CPS to believe that, unlike CPS's previous broker, GEI's "books would be open to anyone to observe."³⁰
4. Grady systematically and continuously breached his fiduciary duty, manipulating CPS and UHC to achieve his own ends. Grady negotiated an apparently competitive consulting contract with CPS, while at the same time assuring himself of additional, regular compensation from UHC for bringing in the CPS business. Grady misrepresented, lied about, and failed to disclose to CPS the additional compensation, and led CPS to believe that, unlike CPS's previous broker, Grady's "books would be open to anyone to observe."³¹
5. Pursuant to Ohio Revised Code § 3901.20, GEI's conduct, as described in Conclusion of Law No. 3, above, constitutes unfair and deceptive acts and practices in the business of insurance, as defined in Ohio Revised Code § 3901.21.
6. Pursuant to Ohio Revised Code § 3901.20, Grady's conduct, as described in Conclusion of Law No. 4, above, constitutes unfair and deceptive acts and practices in the business of insurance, as defined in Ohio Revised Code § 3901.21.
7. The conduct of GEI described in Conclusion of Law No. 3, above, constitutes using fraudulent, coercive, and dishonest practices and demonstrates untrustworthiness in the conduct of business in this state, which are violations of former Ohio Revised Code § 3905.49(B)(18) and Ohio Revised Code § 3905.14(B)(9).
8. The conduct of Grady described in Conclusion of Law No. 4, above, constitutes using fraudulent, coercive, and dishonest practices and demonstrates untrustworthiness in the conduct of business in this state, which are violations of former Ohio Revised Code § 3905.49(B)(18) and Ohio Revised Code § 3905.14(B)(9).
9. Ohio Revised Code § 3901.22(D)(3) permits the Superintendent, upon finding a person has violated Ohio Revised Code § 3901.20, to "order the person to return any payments received by the person as a result of the violation." In this case, GEI has violated Ohio Revised Code § 3901.20, and may be ordered to return to CPS the compensation it was paid by CPS. In addition, GEI may be ordered to return to UHC the compensation it was paid by UHC. The Superintendent finds that any return of payment to UHC would not be appropriate because the circumstances in this case do not warrant it.
10. Ohio Revised Code § 3901.22(D)(3) permits the Superintendent, upon finding a person has violated Ohio Revised Code § 3901.20, to "order the person to return any payments

received by the person as a result of the violation." In this case, Grady has violated Ohio Revised Code § 3901.20, and may be ordered to return to CPS the compensation he was paid by CPS. In addition, Grady may be ordered to return to UHC the compensation he was paid by UHC. The Superintendent finds that any return of payment to UHC would not be appropriate because the circumstances in this case do not warrant it.

11. Ohio Revised Code § 3901.22(D)(3) does not authorize the Superintendent to order Grady or GEI to pay to CPS any of the compensation they received from UHC.

I have considered the factors enumerated in Ohio Revised Code § 3905.14(E), which may be considered by the Superintendent in matters such as this.

The Hearing Officer recommended that Grady's insurance licenses be suspended for a period of two years. I hereby modify this recommendation. Grady engaged in a deliberate and ongoing pattern of misrepresentations and nondisclosures to CPS, arranging for and receiving compensation from UHC while he was purportedly acting in CPS's best interest. Grady breached his fiduciary duty to CPS. The egregious nature of Grady's conduct warrants a more substantial penalty.

The Hearing Officer recommended that GEI make restitution to CPS in the amount of \$127,000.00. The record shows that CPS paid GEI a total of \$137,000.00 for consulting services between 2001 and 2005. I conclude that the Hearing Officer made a mathematical error and the entire amount of the compensation paid by CPS was \$137,000.00.

The evidence supports Grady and GEI being prohibited from engaging in unfair and deceptive business practices.

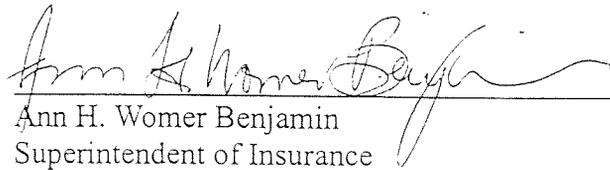
IT IS THEREFORE ORDERED that

1. **KEVIN P. GRADY** shall immediately and permanently cease and desist from engaging in the unfair and deceptive acts in the business of insurance that are the subject of this Order.
2. **GRADY ENTERPRISES, INC.** shall immediately and permanently cease and desist from engaging in the unfair and deceptive acts in the business of insurance that are the subject of this Order.
3. **KEVIN P. GRADY** and **GRADY ENTERPRISES, INC.** shall be jointly and severally liable to repay to the Columbus Public Schools the \$137,000.00 that was paid to them for consulting services, plus statutory interest, within 3 years of the execution of this Order.
4. **KEVIN P. GRADY** shall pay to the Superintendent a civil penalty in the amount of \$25,000.00, and administrative costs in the amount of \$4,300.00, within 60 days of the date of this Order.

5. **GRADY ENTERPRISES, INC.** shall pay to the Superintendent a civil penalty in the amount of \$25,000.00, and administrative costs in the amount of \$4,300.00, within 60 days of the date of this Order.
6. **KEVIN P. GRADY'S** insurance agent licenses shall be suspended for a period of not fewer than 3 years, and such suspension shall continue until such time as Grady's civil penalty and administrative costs have been paid and the repayment to CPS is complete, including all applicable statutory interest due.

This Order is effective immediately and is hereby entered into the Journal of the Ohio Department of Insurance.

Signed this 18TH day of August, 2006, at Columbus, Ohio.



Ann H. Womer Benjamin
Superintendent of Insurance

Endnotes

¹See State's Ex. 5.

²State's Ex. 1.

³State's Ex. 2.

⁴On December 10, 1999, Grady, as Chairman and CEO of GEI, wrote a letter to Buccilla stating in part as follows:

Dear Jerry,

. . . The union negotiations are critical to you and I believe in my heart that I would be able to bring the hot topic of insurance into harmony for all parties. Nothing is more important to you than to know that there is honesty, expertise, and ultimate savings in these negotiations and you know I would deliver in all three categories. Additionally I would not end up costing the district at the end of the day.

. . .

Finally Jerry, you know that I do not believe that the total compensation being paid out to the consultant has ever been disclosed. This is perhaps the greatest breach of trust being violated here, in my opinion. If I were to be placed in this position, my books would be open to anyone to observe that my word is good.

. . .

I would do a great job for Columbus Public Schools. Jerry, I wish I could have been situated here and now to deliver the tremendous cash amounts I've discussed with you. Lastly, Grady Enterprises would reestablish the policy of working with a firm with minority hiring practices, if this policy still exists. Thank you for your personal trust.

See State's Ex. 41. (Emphasis added.)

⁵See State's Ex. 17.

⁶Buccilla's letter of October 10, 2000 to Grady states, in part, as follows:

. . . I am responding to your October 10, 2000 request of being issued a consultants [sic] contract to represent the Columbus Public Schools interest in our employee insurance programs. I am not in a position to make a recommendation to the Board . . . to offer you a consultant's contract, at this time. As you are aware, I issued you an Agent of Record letter dated September 15, 2000 specifically "in bidding and evaluating the group medical plan for the district". It was my understanding from our discussions that you were willing to provide this service without expectation of a fee or commitment of being recommended as the district's insurance consultant, unless your efforts proved financially beneficial to the district . . .

See State's Ex. 73.

⁷The internal UHC e-mails read, in part, as follows:

Marie Zuniga to Joetta Fontaine, 11/3/00:

"Finally, the broker is asking for compensation of \$100,000 annually, [sic] in my calc this equates to \$1.11 pspm. They don't want this paid as commission, but as override, or some other form, like consulting, etc. . . .". See State's Ex. 20.

Daniel Hoemke to Joetta Fontaine, 11/4/00:

"Keep me in the loop on this one. My guess is that the broker doesn't want to have to deal with the account directly on a fee basis because of the amount of extortion, I mean commission being demanded . . .". See State's Ex. 20.

⁸See Tr. Vol. III, 12-15.

⁹The internal UHC e-mail stated, in part, as follows: "We have agreed to pay an override to Grady Enterprises for Columbus Public Schools...The agreement is to pay them \$8,333.33 per month beginning In March, 2001 [sic]." See State's Ex. 21.

¹⁰In addition, Zuniga testified, in part, as follows:

Q: Okay. So would that override be specific to Columbus Public Schools?

A: Yes.

Q: Okay. So it's actually a case specific commission?

A: Yes, his specific compensation.

Q: As opposed to a general book of business override?

A: That was my understanding. (Tr. Vol. III 20:5-13.)

¹¹See State's Ex. 8.

¹²See State's Ex. 11.

¹³See State's Ex. 15.

¹⁴See State's Ex. 9.

¹⁵See State's Ex. 22, 23, 24, 25, 26, 27, and 28.

¹⁶See Tr. Vol. VII 31:4-6.

¹⁷See Tr. Vol. II 241:14-20.

¹⁸See State's Ex. 41.

¹⁹See State's Ex. 41.

²⁰See State's Ex. 40.

²¹See Tr. Vol. IV 176-180.

²²See Tr. Vol. II 41-49.

²³CPS witnesses, including former Board President Stephanie Hightower, Buccilla, Bickley, and Garner, all testified to the importance of having knowledge of Grady's compensation from a third party. See Tr. Vol. I 45:7-20

(Hightower); Tr. Vol. VII 9:15-24; Tr. Vol. VII 10:1-3; Tr. Vol. VII 25:1-19 (Buccilla); Tr. Vol. II 43:3-23 (Bickley); and Tr. Vol. III 87:1-14 (Garner).

²⁴Bickley testified as follows:

- A. I just peered over the top of the reports and looked at Kevin Grady and asked, "You do all this for \$35,000 a year?"
- Q. And what was Mr. Grady's response?
- A. There was a pause and Mr. Grady looked at me and he said, "Yeah, we do this because we get a lot of extra business by being able to market the fact that we are Columbus Public Schools' broker." (Tr. Vol. I 42:8-15.)

²⁵Buccilla testified as follows:

Q. When was the first time that you heard that Mr. Grady and Grady Enterprises might be receiving compensation from a source other than Columbus Public Schools?

A. It was the day before the Gradys — or United Healthcare was coming in to interview with the insurance committee responding to the insurance proposal. It was out — it was October — mid-October, late October 2004. I received a phone call from Kevin, and Kevin was concerned that during that meeting there would be discussion about a program that he was involved with United Healthcare and wanted to know if we could meet to discuss that program and I told Kevin that I was not going to be — I am not part of that interview team, that Craig Bickley, our human resources director, was spearheading the interview group, the interview team. And if he wanted to meet and discuss that issue, that program, whatever that was, that he should call Craig and set up the meeting with Craig.

I mentioned what are you going to be speaking about in terms of a program and Kevin stated, well, it's a program, Jerry, we were involved with prior to Columbus Public Schools. It's a program that considers our whole book of business and has no impact on Columbus Public Schools. I stated again when [that] he wanted to talk to Mr. Bickley, if he wanted to talk to him prior to the meeting. And that was pretty much the context of that conversation.

Q. All right. During that conversation did you remember hearing the word override?

A. No.

Q. Do you remember hearing the word commission?

A. No, the word program.

Q. Okay. When did you first discover what this program was?

A. Early in January of 2005, I was down in Fort Myers, Florida, where I was

working at that time, the Columbus Dispatch ran an article that disclosed Grady Enterprises received a fee per employees and Kevin called my home to apologize to me about the context of the article, my wife answered the phone, and was upset because he felt the Dispatch misquoted him by making reference that I was aware of an arrangement and was upset and told that he would be calling the Dispatch to ask for them to correct the story or something like that. And my wife Lisa said don't worry about that, Kevin. The Dispatch misquotes a lot of things, but if you want to apologize, call Jerry. And he called me with the same type of conversation about the article was — he was misquoted.

At that particular time I was like, you know, Kevin, again, it's what occurs and pretty much had a short conversation and then I circled back with a call to my wife, got more context about the article, and that's the first time I had been made aware there was fees for employees being paid.

Tr. Vol. VII 17:3-24; Tr. Vol. VII 18:1-13; Tr. Vol. VII 19:1-24.

²⁶See State's Ex. 31.

²⁷See State's Ex. 37.

²⁸Spalding v. Coulson (Cuyahoga 1995), 104 Ohio App. 3d 62, 80; Roberto v. Brown Cty. General Hospital (Brown 1989), 59 Ohio App. 3d 84, 86 (citing Hey v. Cummer (Cuyahoga 1950), 89 Ohio App. 104, 139); Sadler-Cisar, Inc. v. Commercials Sales Network, Inc. (N.D. Ohio 1991), 786 F. Supp. 1287, 1300; Yeoman v. Lasley (1883), 40 Ohio St. 190, 200. See Restatement (Second) of the Law of Agency §§ 381,387, 389.

²⁹In Re Termination of Employment of Pratt (1974), 40 Ohio St. 2d 107, 115; Strock v. Pressnell (1988), 38 Ohio St. 3d 207, 216 (quoting Haluka v. Baker (1941), 66 Ohio App. 308, 312); Roberto v. Brown Cty. General Hospital (Brown 1989), 59 Ohio App. 84, 86 (citing Hey v. Cummer (Cuyahoga 1950), 89 Ohio App. 104, 139.). See Restatement (Second) of the Law of Agency §§ 381,387,389.

³⁰See State's Ex. 41.

³¹See State's Ex. 41.

CERTIFICATE OF SERVICE

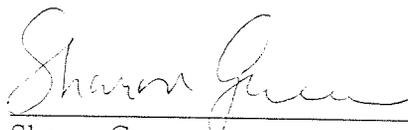
The undersigned hereby certifies that a true copy of the foregoing Order was served by certified mail, return receipt requested, this 13th day of August, 2006, upon:

Scott Myers, Assistant Attorney General
Health and Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3400
On behalf of Relator, The Ohio Department of Insurance

Kevin P. Grady
515 East Mound Street
Columbus, Ohio 43215
Respondent

Grady Enterprises, Inc.
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Columbus, Ohio 43215
Respondent

David W. Alexander, Esq.
Squire, Sanders & Dempsey L.L.P.
1300 Huntington Center
41 South High Street
Columbus, Ohio 43215-6197
On behalf of the Columbus City School District Board of Education



Sharon Green
Hearing Administrator