

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner of Banking)
and Insurance, State of New Jersey, to fine) **CONSENT**
David Fan, Reference No. 9842791) **ORDER**
REVISED

To: David Fan
108 Sleepy Hollow Lane
Belle Mead, NJ 08502-4553

This matter, having been opened by the Commissioner of Banking and Insurance (“Commissioner”), State of New Jersey, upon information that David Fan (“Respondent”), currently licensed as a resident insurance producer pursuant to N.J.S.A. 17:22A-32, may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Respondent is subject to the provisions of the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 et seq.; and

WHEREAS, pursuant to N.J.S.A. 17:22A-32b, a business entity acting as an insurance producer shall obtain an insurance producer license; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(2), an insurance producer shall not violate any insurance law, regulation, subpoena or order of the Commissioner or of another state’s insurance regulator; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(8), an insurance producer shall not use fraudulent, coercive or dishonest practices, or demonstrate incompetence, untrustworthiness or financial irresponsibility in the conduct of insurance business in this State or elsewhere; and

WHEREAS, pursuant to N.J.S.A. 17B:30-4, no person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance and annuities or with respect to any person in the conduct of his insurance and annuity business, which is untrue, deceptive or misleading; and

WHEREAS, pursuant to N.J.A.C. 11:2-23.4(a), advertisements shall be truthful and not misleading in fact or by implication; words or phrases the meaning of which is clear only by implication or by familiarity with insurance terminology shall not be used; the form and content of an advertisement of a policy shall be sufficiently complete and clear so as to avoid deception, and the advertisement shall not have the capacity or tendency to mislead or deceive; and

WHEREAS, pursuant to N.J.A.C. 11:2-23.4(b), whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the Commissioner from the overall impression that the advertisement may be reasonably expected to create

upon a person of average education or intelligence within the segment of the public to which it is directed; and

WHEREAS, pursuant to N.J.A.C. 11:2-23.5(b), no advertisement shall omit material information or use words, phrases, statements, references, or illustrations if such omission or such use has the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, premium payable, or State or Federal tax consequences; and

WHEREAS, pursuant to N.J.A.C. 11:2-23.6(a), the name of the insurer shall be clearly identified, and if any specific individual policy is advertised it shall be identified either by form number or other appropriate description; and an advertisement shall not use a trade name, an insurance group designation, name of parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol, or other device or reference without disclosing the name of the insurer, 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; and

WHEREAS, pursuant to N.J.A.C. 11:17-2.9(a), except for licensees with authority in only ticket insurance, group mortgage cancellation insurance, legal insurance, credit insurance, car rental insurance, travel insurance or self-storage personal property insurance, licensees shall file with the New Jersey Department of Banking and Insurance ("Department"), by hard copy or electronic means, a branch office registration form within 30 days before business is first conducted there, along with the processing fee specified in N.J.A.C. 11:17-2.13; and

WHEREAS, the Respondent on or about August 22, 2015 placed an advertisement in the Global Chinese Times for fixed annuities, which did not fully describe the operation of the bonus features of the lifetime payment rider, in violation of N.J.S.A. 17:22A-40a(2) and (8), N.J.S.A. 17B:30-4, N.J.A.C. 11:2-23.4(a) and (b), and N.J.A.C. 11:2-23.5(b), and

WHEREAS, the advertisement in the Global Chinese Times failed to identify North American Company for Life and Health Insurance as the insurance company that offered the advertised annuity by name, form number or other appropriate description, in violation of N.J.S.A. 17:22A-40a(2) and (8) and N.J.A.C. 11:2-23.6 (a); and

WHEREAS, the Respondent conducted insurance business out of 390 Amwell Road, Hillsborough NJ 08844, which was not a registered branch office, in violation of N.J.A.C. 11:17-2.9(a); and

WHEREAS, on or after November 1, 2009 the Respondent conducted insurance business through a business entity, Pan's Financial and Insurance, even though the business entity's producer license expired on October 31, 2009, in violation of N.J.S.A. 17:22A-32b; and

WHEREAS, the Respondent:

- 1) Has admitted responsibility for the aforementioned violations; and
- 2) Has cooperated with the investigation conducted by the Department; and
- 3) Has asserted that the violations cited in this Consent Order were not willful;

and

WHEREAS, cause does exist under N.J.S.A. 17:22A-40a and N.J.S.A. 17:22A-45c, to impose a fine; and

WHEREAS, the Respondent has waived his right to a hearing on the aforementioned violations and consented to the payment of a fine in the amount of \$7,500.00 and;

WHEREAS, this matter should be resolved upon the consent of the parties without resort to a formal hearing;

NOW, THEREFORE, IT IS on this 1st day of December
2017

ORDERED AND AGREED, that the Respondent pay a fine in the amount of \$7,500.00 to the Department; and

IT IS FURTHER ORDERED AND AGREED, that said fine shall be paid by certified check, cashier's check or money order made payable to the "State of New Jersey, General Treasury," which shall be paid upon execution of this Consent Order by Respondent; and

IT IS FURTHER ORDERED AND AGREED that the signed Consent Order, together with the fine payment of \$7,500.00, shall be remitted to:

New Jersey Department of Banking and Insurance
Attention: Virgil Downtin - Chief of Investigations
9th Floor, Consumer Protection Services, Enforcement
P. O. Box 329
Trenton, New Jersey 08625

and

IT IS FURTHER ORDERED AND AGREED, that in the event full payment of the fine is not made, the Commissioner may exercise any and all remedies available by

law, including but not limited to, recovery of any unpaid penalties in summary proceedings, in accordance with the penalty enforcement law, N.J.S.A. 2A:58-10 et seq; and

IT IS FURTHER ORDERED AND AGREED, that the provisions of this Consent Order represent a final agency decision and constitute a final resolution of the violations contained herein; and

IT IS FURTHER ORDERED AND AGREED, that the Respondent shall cease and desist engaging in the conduct that gave rise to this Consent Order.



Peter L. Harit
Director of Insurance

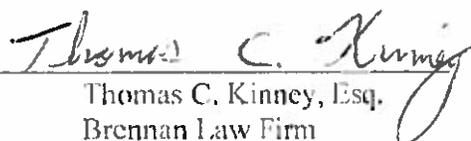
Consented to as to Form,
Entry and Content:

By: 

David Fan

11/20/2017

Date

By: 

Thomas C. Kinney, Esq.
Brennan Law Firm
Attorneys for David Fan

11/20/2017

Date