

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,)
suspend, and/or revoke the insurance producer)
license of Seixas G. Milner III, Reference No.)
1145542; and to fine North American Senior)
Benefits)

ORDER TO SHOW CAUSE

TO: Seixas G. Milner III
833 Hurricane Shoals Rd. NE
Lawrenceville, GA 30043

North American Senior Benefits
c/o Seixas G. Milner III
833 Hurricane Shoals Rd. NE
Lawrenceville, GA 30043

This matter, having been opened by the Commissioner of Banking and Insurance (“Commissioner”), State of New Jersey, upon information that Seixas G. Milner III (“Milner”) and North American Senior Benefits (“NASB”) (collectively, “Respondents”), may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Respondents are subject to the provisions of the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 to -48 (“Producer Act”), the New Jersey

Trade Practices Act, N.J.S.A. 17:29B-1 to -19 ("Trade Practices Act"), and the regulations governing Insurance Producer Standards of Conduct, N.J.A.C. 11:17A-1.1 to 11:17D-2.8; and

WHEREAS, Milner is currently licensed as a nonresident insurance producer, pursuant to N.J.S.A. 17:22A-34(a); and

WHEREAS, NASB is a nonresident business entity insurance producer not licensed in this State; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(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-40(a)(5), an insurance producer shall not intentionally misrepresent the terms of an actual or proposed insurance contract, policy or application for insurance; and

WHEREAS, pursuant to N.J.S.A. N.J.S.A. 17:22A-40(a)(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. 17:22A-40(a)(12), an insurance producer shall not knowingly accept insurance business from an unlicensed insurance producer; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(16), an insurance producer shall not commit any fraudulent act; and

WHEREAS, pursuant to N.J.S.A. 17:22A-29, a person shall not sell, solicit or negotiate insurance in this State unless the person is licensed for that line of authority in accordance with the Producer Act; 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. The advertisement shall not have the capacity or tendency to mislead or deceive; and

WHEREAS, pursuant to N.J.A.C. 11:2-23.5(a), all information required to be disclosed by N.J.A.C. 11:2-23.1 to -23.10 shall be set out conspicuously and in close conjunction with the statements to which such information relates or under appropriate captions of such prominence that it shall not be minimized, rendered obscure, or presented in an ambiguous fashion, or intermingled with the context of the advertisements so as to be confusing or misleading; 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. 11:2-23.5(h), an advertisement shall not use as the name or title of a life insurance policy any phrase which does not include the words "life insurance" unless accompanied by other language clearly indicating that it is life insurance; and

WHEREAS, pursuant to N.J.A.C. 11:2-23.5(i), an advertisement shall prominently describe the type of policy advertised, such as group, term, whole life, etc.; and

WHEREAS, pursuant to N.J.A.C. 11:2-23.5(k)(8), an advertisement shall not state or imply that an insurer, policy or contract, or any type or line of insurance has been approved or endorsed by any individual, group of individuals, society, association, organization, governmental agency or other entity, unless such is the fact and any proprietary relationship between such individual(s) or entity and the insurer is disclosed and the prior written approval of the individual, group of individuals, society, association, organization, governmental agency or other person has been secured. Prior written approval shall not be required in cases where the endorsing individual is a company officer, company director or employee; and

WHEREAS, pursuant to N.J.A.C. 11:2-23.5(m)(2), an advertisement shall not state or imply that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy; 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. An advertisement shall not use a trade name, an insurance group designation, name of a 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. 11:2-23.6(b), no advertisement shall use any combination of words, symbols, or physical materials which by their content, phrasology, shape, color or other characteristics are so similar to a combination of words, symbols, or physical materials used by a governmental program or agency or otherwise appear to be of such a nature that they tend to mislead prospective insureds into believing that the solicitation is in some manner connected with such governmental program or agency; and

WHEREAS, pursuant to N.J.A.C. 11:2-23.6(c), when a choice of the amount of benefits is referred to, an advertisement shall disclose that the amount of benefits provided depends upon the plan selected and that the premium will vary with the amount of the benefits; and

WHEREAS, pursuant to N.J.A.C. 11:17A-1.4(a), no person shall solicit, negotiate or sell an insurance contract in New Jersey unless he or she is a licensed insurance producer; and

WHEREAS, pursuant to N.J.A.C. 11:17A-2.6(a), an insurance producer who solicits insurance shall be required to identify the following information to the person he or she is soliciting prior to commencing his or her solicitation: (1) his or her name as it appears on his or her insurance

producer license; (2) the name of the insurer, if known, or insurance producer, that he or she is representing; and (3) the nature of the relationship between the insurance producer and the insurer or insurance producer being represented; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a, the Commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license for violating the Producer Act; and

WHEREAS, pursuant to N.J.S.A. 17:22A-45c, any person violating the Producer Act is subject to a penalty not exceeding \$5,000.00 for the first offense and not exceeding \$10,000.00 for each subsequent offense; moreover, the Commissioner may order restitution of moneys owed any person and reimbursement of costs of the investigation and prosecution; and

FACTS COMMON TO ALL COUNTS

IT APPEARING, that at all relevant times Milner was the CEO of NASB; and

IT FURTHER APPEARING, that at no time was NASB licensed as a business entity insurance producer in this State; and

IT FURTHER APPEARING, that NASB contracts with independent insurance agents for marketing and lead generating services for the purpose of advertising insurance products including life insurance intended to cover burial expenses; and

IT FURTHER APPEARING, that at all relevant times Program Processing Center, d/b/a Mid-Atlantic Marketing ("MAM"), was a marketing company specializing in direct mail advertising; and

IT FURTHER APPEARING, that NASB contracted with MAM in 2016 for the mailing of 92,957 copies of an advertisement to New Jersey residents which states:

NEW 2016 BENEFIT UPDATE

FOR NJ CITIZENS ONLY

This is a personal announcement to all NJ citizens age 50-85.

You may qualify for a NEW state-regulated program to pay for your Final Expenses, REGARDLESS OF YOUR MEDICAL CONDITION. WE COVER: CANCER, HEART ATTACK, STROKE, DIABETES, AND COPD SURVIVORS.

Return this card today and you will receive the latest information on how this Special Program will pay 100% of all funeral expenses, up to \$50,000.00 (Tax Free), for each NJ citizen covered.

It is VERY IMPORTANT THAT YOU KNOW all the benefits available to you. To receive complete NO-COST information on this newly approved plan DESIGNED FOR ALL NJ CITIZENS, return this postage-paid card TODAY.

TO SEE IF YOU QUALIFY, MAIL THIS POSTAGE-PAID CARD TODAY TO RECEIVE THIS VITAL INFORMATION... REQUESTS WILL BE PROCESSED IN THE ORDER THEY ARE RECEIVED.

; and

IT FURTHER APPEARING, that the advertisement on the opposite side states:

**NEW SUPPLEMENTAL INSURANCE BENEFITS FOR NJ
CITIZENS**

OPEN IMMEDIATELY – DO NOT DELAY

Don't delay: Request will be processed in the order received.

Please Return Today!

[a copy of the advertisement with personal information redacted is appended to this Order to Show Cause].

; and

IT FURTHER APPEARING, that the return address on the advertisement is “Program Processing Center, 2020 Pennsylvania Ave NW Suite 973, Washington DC 20077-2446”; and

IT FURTHER APPEARING, that the advertisement does not provide the name of any individual insurance producer, business entity insurance producer, insurance agency, or insurer; and

COUNT ONE

IT FURTHER APPEARING, that the advertisement sent to 92,957 New Jersey residents misleadingly implied a relation to a government program or benefit, when, in fact NASB was soliciting final expense life insurance policies issued by insurance carriers, constituting 92,957 violations of N.J.S.A. 17:22A-40(a)(2), (5), (8), (16), N.J.S.A. 17B:30-4, N.J.A.C. 11:2-23.4(a), N.J.A.C. 11:2-23.5(h), and N.J.A.C. 11:2-23.6(b).

COUNT TWO

IT FURTHER APPEARING, that the advertisement misleadingly implied that only a specific number of these policies would be sold, and failed to qualify that the \$50,000 benefit is contingent on the plan selected, constituting 92,957 violations of N.J.A.C. 11:2-23.5(m)(2) and N.J.A.C. 11:2-23.6(c); and

COUNT THREE

IT FURTHER APPEARING, that the advertisement failed to disclose the information required in a conspicuous and unambiguous fashion, such as the name of the insurer and the type of policy advertised, constituting 92,957 violations of N.J.S.A. 17:22A-40(a)(2), (5), (8), and (16), N.J.A.C. 11:2-23.5(a), (b), and (i), and N.J.A.C. 11:2-23.6(a); and

COUNT FOUR

IT FURTHER APPEARING, that prior to commencing its solicitation, Respondents failed to identify to the persons being solicited the identity of any individual insurance producer, business entity insurance producer, insurance agency, or insurer and the nature of the relationship between the producer and the insurer or insurance producer being represented, constituting 92,957 violations of N.J.A.C. 11:17A-2.6(a); and

COUNT FIVE

IT FURTHER APPEARING, that at all relevant times NASB was not a licensed insurance producer in this State; and

IT FURTHER APPEARING, NASB engaged in 92,957 instances of solicitation of insurance without being licensed as an insurance producer in this State, constituting 92,957 violations of N.J.S.A. 17:22A-29, N.J.S.A. 17:22A-40(a)(2), (8), and (12), and N.J.A.C. 11:17A-1.4(a); and

COUNT SIX

IT FURTHER APPEARING, that NASB drafted the advertisement; and

IT FURTHER APPEARING, that on August 7, 2017, NASB stated to the Department that it purchased from MAM 3,000 copies of the advertisement; and

IT FURTHER APPEARING, that MAM later stated to the Department that NASB contracted with MAM to have copies of the advertisement sent to 92,957 New Jersey residents; and

IT FURTHER APPEARING, that this misrepresentation by NASB to the Department regarding the quantity of advertisements mailed to New Jersey residents constitutes a violation of N.J.S.A. 17:22A-40(a)(2), (8), and (16); and

NOW, THEREFORE, IT IS on this 25th day of February, 2019

ORDERED, that Milner appear and show cause why his New Jersey insurance producer license should not be suspended or revoked pursuant to N.J.S.A. 17:22A-40(a); and

IT IS FURTHER ORDERED, that Respondents appear and show cause why the Commissioner should not assess a civil penalty of up to \$5,000.00 for the first violation and \$10,000.00 for each subsequent violation of the Producer Act and order Respondents to pay restitution of moneys owed to any person, pursuant to the provisions of N.J.S.A. 17:22A-45(c); and

IT IS FURTHER ORDERED, that Respondents appear and show cause why they should not be required to reimburse the Department for the cost of the investigation and prosecution, including attorneys' fees, as authorized pursuant to N.J.S.A. 17:22A-45(c); and

IT IS PROVIDED, that Respondents have the right to request an administrative hearing, to be represented by counsel or other qualified representative, at their own expense, to take testimony, to call or cross-examine witnesses, to have subpoenas issued, and to present evidence or argument if a hearing is requested; and

IT IS FURTHER PROVIDED, that unless a request for a hearing is received within twenty (20) days of the service of this Order to Show Cause, the right to a hearing in this matter shall be deemed to have been waived by Respondents, and the Commissioner shall dispose of this matter in accordance with law. A hearing may be requested by mailing the request to Virgil Downtin, Chief

of Investigations, Department of Banking and Insurance, P.O. Box 329, Trenton, New Jersey 08625, or by faxing the hearing request to the Department at (609) 292-5337. A copy of the request for a hearing shall also be sent to Deputy Attorney General Ryan S. Schaffer at Division of Law, Banking and Insurance Section, 25 Market Street, P.O. Box 117, Trenton, NJ 08625-0117, or by faxing the hearing request to (609) 777-3607. The request shall contain the following:

- (a) Respondent's full name, address, and daytime telephone number;
- (b) A statement referring to each charge alleged in this Order to Show Cause and identifying any defense intended to be asserted in response to each charge. Where the defense relies on facts not contained in the Order to Show Cause, those specific facts must be stated;
- (c) A specific admission or denial of each fact alleged in this Order to Show Cause. Where Respondent has no specific knowledge regarding a fact alleged in the Order to Show Cause, a statement to that effect must be contained in the hearing request. Allegations of this Order to Show Cause not answered in the manner set forth above shall be deemed to have been admitted; and
- (d) A statement requesting the hearing.



Marlene Caride
Commissioner