

MELANIE SENTER LUBIN
Securities Commissioner
for the State of Maryland

Plaintiff,

v.

EDWIN C. HIRSCH et al.

Defendants.

* IN THE
* CIRCUIT COURT FOR
* BALTIMORE CITY
*
Case No. 24C-02-006515

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CONSENT ORDER FOR PERMANENT INJUNCTION AS TO ROBERT J. BROWN

Upon consideration of the Maryland Securities Commissioner's ("Commissioner's") request for an order finding that Robert J. Brown ("Brown" or "defendant Brown") violated provisions of the Maryland Securities Act, Title 11, Md. Code Ann, Corps. & Ass'ns. (1999 Repl. Vol. and Supp. 2003) (the "Act") and for a permanent injunction as to defendant Brown in this matter; and

Acknowledging that Brown consents to this Court's jurisdiction and admits that the viatical settlement contracts sold on behalf of Imtek Funding Corporation, Beneficial Assurance, Ltd. and Beneficial Funding Corporation (the "Beneficial companies" or "Beneficial") are investment contract securities solely for the purposes of the Commissioner's claims against him and for any action to enforce the terms of this order, that defendant Brown neither admits nor denies other findings of fact or conclusions of law but consents to entry of the findings and conclusions, and that defendant Brown consents to the terms of the Order; and

Further acknowledging that defendant Brown agrees to this Consent Order for Permanent Injunction for purposes of resolving disputed claims and avoiding the expense of further litigation without compromising his right to deny this Order's findings and conclusions in litigation in the Bankruptcy Court for the District of Columbia relating to the Beneficial companies and in other

litigation to which the Maryland Securities Division (“Division”) or the Commissioner is not a party, and

Further acknowledging that the Division has relied upon the completeness and accuracy of Brown’s representations to the Division concerning his assets, income, liabilities and net worth, as described in his sworn Affidavit of Financial Condition and Other Information, in seeking payment of fines and other monetary relief; and

Further, acknowledging that Brown agrees that if he is found to have violated the terms of this Consent Order for Permanent Injunction or if his sworn Affidavit of Financial Condition and Other Information is determined to be false in any material respect, the Division may institute administrative or judicial proceedings against Brown to enforce this Order and may take any other action authorized under the Act or any other applicable law, including the issuance of fines or penalties as provided by the Act. For the purpose of determining those sanctions, the Findings of Facts below shall be deemed admitted, and may be introduced into evidence against Brown; and

Further acknowledging that this Consent Order for Permanent Injunction constitutes a final judgment as to Brown who, with the advice of counsel, waives his right to appeal; and

The Court being advised of the basis of the Commissioner’s motion for permanent injunction and good cause for granting that Motion shown,

THE COURT FINDS that this Order is necessary to protect the public interest;

THE COURT FURTHER FINDS that:

1. Defendant Brown served as an officer and director of the Beneficial companies. From approximately April 2000 until about April 2001 when other officers and directors left the

Beneficial companies, Brown was among those responsible for the operations of Beneficial's overall business, including its viatical business. From about April 2001 until the Beneficial companies, their parent and affiliates filed for bankruptcy in November 2002, Brown and defendant Edwin Hirsch ("Hirsch") were responsible for the viatical business of the Beneficial companies.

2. The Beneficial companies provided their sales agents with solicitation material that was materially false. For example, the sales and other solicitation material:

- a. Promised investors "safe, high return assets for [their] portfolio" so that with the purchase of a Beneficial viatical contract, they could "be on [their] way to financial security;"
- b. Falsely informed investors that the escrow agent is independent, when the companies controlled the escrow agent;
- c. Provided materially misleading figures on the performance of the portfolio of life insurance policies and the maturities of those policies; and
- d. Failed to inform investors that funds in the premium escrow accounts were not sufficient to pay premium obligations.

3. Defendants Brown and Hirsch used their control over the escrow agents and escrow accounts to direct funds set aside to pay premiums for purposes other than payment of premiums. They directed payment of \$760,000 from premium funds to purchase a life insurance policy and titled that policy in the name of an entity that they controlled. They also directed \$702,000 from premium funds to Beneficial Funding Corporation, a company that they controlled.

4. The success of the viatical investments sold by Beneficial is substantially dependant on the efforts of Beneficial, its employees and agents. Beneficial chose the viators,

the medical consultants, the escrow agents, the investors and the insurance companies. In addition, if Beneficial and/or its escrow agents did not continue to service the viaticals by paying premiums, tracking the viators, and distributing proceeds, the viatical contracts could be worthless. Thus, defendants operated and controlled the Beneficial companies and performed managerial activities necessary to the success or failure of the investment program.

5. The viatical settlement contracts that Beneficial sold are investment contract securities under the analysis set forth in *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 299 (1946), and in *Aks Daks Communications, Inc. v. Maryland Securities Division*, 138 Md. App. 314, *cert. denied*, 365 Md. 473 (2001). This Court rejects the analysis of the United States Court of Appeals in *S.E.C. v. Life Partners, Inc.*, 87 F. 3d 536, *pet. for reh. denied*, 102 F.3d 587 (D.C. Cir. 1996).

6. Beneficial used agents, many of whom were insurance agents, to sell their viatical investments. The agents generally were not registered with the Division.

7. The Division's records support a finding that Beneficial violated the Act by offering and selling unregistered securities in or from Maryland, by failing to register as a broker-dealer, by employing unregistered broker-dealer agents, and by making material misrepresentations and omissions in connection with the offer and sale of viatical settlement contracts.

8. Brown violated Sections 11-501, 11-401, 11-402, and 11-301 of the Act.

THEREFORE, it is hereby:

ORDERED that defendant Brown be permanently enjoined from engaging in acts and practices that violate the Act and from engaging in the securities or investment advisory business

in Maryland or from being or acting as a principal, officer, director or control person in Maryland in any company engaged in such activities; and it is further

ORDERED that defendant Brown pay a fine of \$50,000 to the Division prior to filing this Consent Order for Permanent Injunction.

The Court retains jurisdiction of this matter to enforce this Consent Order.

Dated: _____, 2004

Kaye A. Allison
Judge of the Circuit Court
Circuit Court for Baltimore City

By Consent:

Lucy A. Cardwell
Assistant Attorney General
Maryland Division of Securities
200 St. Paul Place - 25th Floor
Baltimore, Maryland 21202-2020
410-576-6337

By Consent as to entry of the findings and the relief set forth:

Robert J. Brown

On this _____ day of _____, 2004, personally appeared Robert J. Brown, signer of the foregoing Consent Order for Permanent Injunction, who did duly acknowledge his signature to be his free act and deed.

Notary Public

My Commission Expires: _____

Seal: