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Office of the Commissioner of Securities and Insurance
Montana State Auditor
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Attorney for the Securities and Insurance Departments

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE STATE AUDITOR
STATE OF MONTANA

IN THE MATTER OF:	)	CASE NO. INS-2010-138
	)	
BYRON UDELL & ASSOCIATES, INC. d/b/a ACCUQUOTE, 1400 South Wolf Road, Bldg 500 Wheeling, IL 60090-6588 in its capacity as a licensed agency,	)	NOTICE OF PROPOSED AGENCY DISCIPLINARY ACTION AND OPPORTUNITY FOR HEARING
	)	
BARBARA SACHS individually and in her capacity as licensed insurance producer, Producer License # 936124,	)	
	)	
Respondents.	)	

Staff of the Insurance Department (Department) of the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI), pursuant to the authority of the Insurance Code of Montana, Mont. Code Ann. § 33-1-101, *et seq.*, (Insurance Code) is proposing to the Commissioner that she take specific action against BYRON UDELL & ASSOCIATES, INC., d/b/a ACCUQUOTE (Byron Udell d/b/a AccuQuote), and BARBARA SACHS (Sachs) for violations of the Insurance Code. The Commissioner has authority to take such action under the provisions of Mont. Code Ann. §§ 33-1-102, 33-1-301, 33-1-311, 33-1-317, 33-1-318, 33-17-102, 33-17-211, 33-17-231, 33-17-1001 and 49-2-309.

In particular, the Department recommends specific action against the named Respondents including imposition of appropriate fines and appropriate restitution with interest.

Service of process is pursuant to Mont. Code Ann. § 33-1-314.

REASONS FOR ACTION

There is probable cause to believe that the following facts, if true, justify and support such specific action. Furthermore, there is reason to believe that the following facts will be proven true and, therefore, justify and support immediate issuance of an order requiring Respondents to cease and desist their activities in violation of the Insurance Code.

ALLEGATIONS OF FACT

1. Accuquote is the assumed business name for Byron Udell & Associates, Inc. insurance agency. Byron Udell & Associates, Inc. is licensed in Montana as an insurance producer. While the Department was aware of the assumed business name "AccuQuote," that name does not appear on the Byron Udell & Associates, Inc., insurance agency license. AccuQuote's registration with the Montana Secretary of State lapsed on or about September 3, 2007 and has not been renewed.

2. Sachs is a licensed insurance producer in Montana. She is not affiliated with Byron Udell d/b/a AccuQuote.

3. The Department learned through a radio advertisement that Byron Udell d/b/a AccuQuote was offering life insurance premiums that discriminated based on gender, offering lower rates for female applicants. The Department's investigator, Neil Brunett (Brunett) contacted Byron Udell d/b/a AccuQuote and was put into contact with Sachs. Brunett's contact with Sachs was conducted via email, with an address of bsachs@accuquote.com, and through U.S.P.S. mail. The

regular mail correspondence from Sachs was on AccuQuote letterhead and included a return envelope addressed to AccuQuote at the Byron Udell d/b/a AccuQuote address.

4. Brunett indicated to Sachs he wanted quotes for life insurance for both he and his wife. Sachs provided applications for Brunett and his wife, which were completed and submitted for a premium quote. Acting in her role as a Byron Udell d/b/a AccuQuote agent, Sachs offered Brunett a $200,000 life policy underwritten by Genworth Life Insurance Company for a monthly premium of $35.51 per month. Acting in her role as a Byron Udell d/b/a AccuQuote agent, Sachs offered Brunett's wife a similar Genworth Life Insurance Company life policy of $200,000 for a monthly premium of $22.13 per month. Sachs indicated to Brunett the reason for the discrepancy in premium was gender-based as determined by actuaries.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to the Insurance Code's provisions applicable to insurance producers, Mont. Code Ann. § 33-17-102, *et seq.*

2. Pursuant to Mont. Code Ann. § 49-2-309(1), it is unlawful to discriminate solely on the basis of gender in the issuance or operation of any type of insurance policy, including with regard to rates or premiums.

3. Respondents Sachs and Byron Udell d/b/a as AccuQuote violated Mont. Code Ann. § 49-2-309(1), by offering disparate premium rates to Brunett and his wife based solely on gender.

4. Pursuant to Mont. Code Ann. § 33-17-201(2), the commissioner may prescribe by rule forms required in connection with licensing. Pursuant to Mont. Admin. R. 6.6.102, insurance producers are required to be acquainted with the Insurance Code and this rule is reflected on the application for licensure.

5. Respondents Sachs and Byron Udell d/b/a as AccuQuote violated Mont. Code Ann. § 33-17-201 and Mont. Admin. R. 6.6.102 by failing to be acquainted with Montana's prohibition on gender discrimination in insurance.

6. Respondents Sachs and Byron Udell d/b/a as AccuQuote violated Mont. Code Ann. § 33-18-203, by engaging in advertising that is untrue, deceptive and misleading when they advertised on a local radio station that Accuquote offered life insurance premiums that were lower for female applicants, illegal discrimination on the basis of gender.

7. Pursuant to Mont. Code Ann. § 33-17-211(3)(e)(ii), an insurance producer that is a corporation must either file its articles of incorporation with the secretary of state pursuant to the provisions of Mont. Code Ann. § 35-1-1312, or seek the issuance of a certificate of existence from the secretary of state pursuant to the provisions of Mont. Code Ann. § 35-1-220.

8. Respondent Byron Udell d/b/a AccuQuote violated Mont. Code Ann. § 33-17-211 for the past three years when it allowed the assumed business name registration with the secretary of state to lapse in 2007 and failed to renew it.

9. Pursuant to Mont. Code Ann. § 33-17-214, the license of a business entity must state the name of each individual authorized to exercise the license powers.

10. Respondents Sachs and Byron Udell d/b/a AccuQuote violated Mont. Code Ann. § 33-17-214(4), when Sachs offered insurance quotes to Brunett and his wife under the name of AccuQuote, thereby exercising Byron Udell d/b/a AccuQuote's license powers without being named on the entity's producer's license.

11. Pursuant to Mont. Code Ann. § 33-17-1001(1)(c) and (2), the Commissioner may take action against the license of an insurance producer, including a business entity, when the insurance producer fails to comply with any provision of the Insurance Code.

12. Respondents have failed to comply with the Insurance Code, availing themselves of the provisions in Mont. Code Ann. § 33-17-1001.

PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Montana insurance consumers to:

1. immediately issue a cease and desist order barring Respondents from further violations of the Montana Insurance Code;

2. order Respondents to pay an administrative fine in an amount and upon such terms and conditions as supported by the evidence and determined at a hearing of this matter; and

3. take such other actions which may be in the public interest and necessary and appropriate for the protection of Montana insurance consumers.

RELIEF REQUESTED

WHEREFORE, the Department seeks the following relief:

1. pursuant to Mont. Code Ann. § 33-1-318, issuance of a temporary cease and desist order;

2. pursuant to Mont. Code Ann. §§ 33-1-317 and 33-1-1211, imposition of a fine not to exceed $5,000 for each violation of the Insurance Code committed by Respondents;

3. pursuant to Mont. Code Ann. §§ 33-1-317 and 33-17-1001, imposition of a fine not to exceed $5,000 for each violation of the Insurance Code committed by Respondents;

4. pursuant to Mont. Code Ann. § 33-17-1001, imposition of a suspension or revocation of Respondents' insurance producer licenses;

5. a finding that all sanctions and remedies detailed and described here are in the public interest and necessary for the protection of Montana insurance consumers; and

6. any further action as deemed just and appropriate for the protection of Montana insurance consumers.

STATEMENT OF RIGHTS

You are entitled to a hearing to respond to this notice, present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, Mont. Code Ann. § 2-4-601, *et seq.*, including § 2-4-631. If you demand a hearing, you will be given notice of the time, place and the nature of the hearing.

If you want to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within 15 days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by writing to Roberta Cross Guns, State Auditor's Office, 840 Helena Avenue, Helena, MT 59601. Your letter must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for disposition of this case. Pursuant to Mont. Code Ann. § 2-4-603(2), you may not request to proceed informally if the action could result in suspension, revocation or any other adverse action against a professional license. Should you request a hearing on the matters raised in this Notice, a hearing must be held within 45 days of the request, unless postponed by mutual consent of the parties, pursuant to Mont. Code Ann. § 33-1-701(2).

Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of ***Application of American Smelting***

and Refining Co., 164 Mont. 139, 520 P.2d 103 (1973), and ***Montana Supreme Court Comm'n on the Unauthorized Practice of Law v. O'Neil***, 2006 MT 284, 334 Mont. 311, 147 P.3d 200.

CONTACT WITH SECURITIES COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Roberta Cross Guns, legal counsel for the Insurance Department, at 840 Helena Avenue, Helena, MT 59601, (406) 444-2040 or, within Montana, (800) 332-6148. If an attorney represents you, please make any contacts with this office through your attorney.

POSSIBILITY OF DEFAULT

Failure to give notice or to advise of your demand for a hearing or informal procedure within 15 days will result in the entry of a default order imposing the disciplinary sanctions against you and your license without further notice to you, pursuant to Mont. Admin. R. 6.2.101, and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 7th day of January 2011.

Roberta Cross Guns
Roberta Cross Guns
Attorney for the Insurance Department

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on the 7th day of January 2011, by US mail, certified, first-class postage paid, to the following:

Barbra Sachs
4501 W. Westchester
Libertyville, IL 60048

Byron Udell & Associates Inc.
1400 South Wolf Road, Building 500
Wheeling, IL 60090-6588