FILED
COURT OF APPEALS
DIVISION II

2017 NOV -6 PM 2:22

STATE OF WASHINGTON
BY CLD
DEPUTY

Court of Appeals No. 49903-7-II

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON

2017 NOV -3 PM 3:03

IN THE WASHINGTON STATE COURT OF APPEALS, DIVISION II

RENT-A-CENTER, INC., RENT-A-CENTER WEST, INC., BENEFIT MARKETING SOLUTIONS, LLC and BENEFIT SERVICES ASSOCIATION, Appellants,

v.

WASHINGTON STATE OFFICE OF THE INSURANCE COMMISSIONER, Respondent.

REPLY BRIEF OF APPELLANTS

Gulliver Swenson, WSBA #35974
Ryan, Swanson & Cleveland, PLLC
1201 Third Avenue, Suite 3400
Seattle, WA 98101
(206) 464-4224
swenson@ryanlaw.com
Attorney for Appellants

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. ARGUMENT 1

A. The OIC's response does not establish that Rent-A-Center solicited insurance under RCW 48.17.060. 1

B. The OIC does not have authority to fine the Appellants because Appellants neither solicited nor transacted insurance in Washington. 3

C. The Paid-Out Account benefit is not insurance under RCW 48.04.010 5

III. CONCLUSION 6

TABLE OF AUTHORITIES

Page

Cases

Erickson v. Sentry Life Insurance Company, 43 Wn.App. 651, 654, 719 P.2d 160 (1986) 2

Statutes

RCW 48.01.250 4

RCW 48.02.080 4

RCW 48.04.010 ..... 1, 5, 6

RCW 48.15.020 2

RCW 48.15.023(5)(a)(ii) 3

RCW 48.17.060 1

RCW 48.17.060(1) 3

RCW 48.17.063(4)(a) 3

I. INTRODUCTION

The Respondent's response fails to establish that (1) Appellants solicited and transacted insurance in Washington state under RCW 48.17.060, (2) the Paid-Out Account benefit is "insurance" as defined RCW 48.04.010, or (3) the Respondent has the statutory authority under the Insurance Code to fine the Appellants for the violations alleged in this matter.

II. ARGUMENT

A. The OIC's response does not establish that Rent-A-Center solicited insurance under RCW 48.17.060.

The evidence and the findings of fact in this matter are unequivocal that Rent-A-Center simply provided customers with a membership application and brochure. CP 6, 77. There is no evidence that Rent-A-Center did anything beyond handing a piece of paper and pen to its customers. *Id.* Even if the Court were to determine that one of the benefits of the RAC Benefits Plus program was "insurance," handing a brochure to a customer is not solicitation. There is no evidence that was submitted by the OIC, nor is there any finding of fact that indicates RAC "urged",

"attempted to sell", or "asked" its customers to apply for a particular type of insurance as would be necessary to establish a solicitation under RCW 48.15.020. CP 6, 38.

Similarly, the OIC failed to identify how an out-of-state association that provides benefits to its members is "transacting" insurance in Washington. The AD&D policy and the other benefits provided under the RAC Benefits Plus membership were all delivered to BMS in Oklahoma. CP 5-6, 79-92. The insurance at issue in this matter was solicited by the AD&D carrier who sold a group policy to a member association located in Oklahoma. Similarly, any other benefits that the OIC is arguing is "insurance" is a group benefit that is applied to all RAC Benefit Plus members; it is not some individual policy for which any of the Appellants solicit the sale of an insurance policy.

The Appellants' position is consistent with Washington authority that holds that in group insurance settings, that the law of the state where the master policy is delivered controls the

interpretation of the policy. *See Erickson v. Sentry Life Insurance Company*, 43 Wn.App. 651, 654, 719 P.2d 160 (1986). There simply is no solicitation of insurance in the group policy setting once the master policy is delivered. This is consistent with the provision of AD&D or other insurance-like benefits through memberships in associations such as AAA, labor unions, bar associations where benefits are provided as part of becoming a club member.

This Court should reverse the Superior Court and set aside Conclusions of Law 15, 18, and 27 because there was no evidence to support the Conclusions that Rent-A-Center "solicited" insurance under RCW 48.17.060(1).

B. The OIC does not have authority to fine the Appellants because Appellants neither solicited nor transacted insurance in Washington.

The OIC relies on two sections of the Insurance Code – RCW 48.15.023(5)(a)(ii) and RCW 48.17.063(4)(a) – for the proposition that it has the statutory authority to fine Appellants $50,000. However, both of these sections rely on violation of the

Insurance Code that require transacting or soliciting insurance in Washington, which as discussed above, did not happen.

Instead, the OIC must look to the section of the Insurance Code that was specifically drafted to specifically deal with membership associations providing AD&D insurance to its members: RCW 48.01.250. RCW 48.01.250 requires member associations that provide AD&D policies to obtain a certificate of authority from the OIC. Appellants admittedly did not obtain a certificate of authority but the OIC is limited to the statutory remedies provided for by RCW 48.01.250.

RCW 48.01.250 expressly states that a "violation of this section is subject to the enforcement provisions of RCW 48.02.080. RCW 48.02.080 limits the Respondent to issuing a cease and desist order or seeking an injunction from a competent court. It does not allow the Respondent to issue a fine of any amount. This court should reverse the Superior Court and hold that the only remedy that is available to the Respondent in this matter are those contained in RCW 48.02.080.

C. The Paid-Out Account benefit is not insurance under RCW 48.04.010.

To qualify as insurance under the catch-all provision of the Insurance Code, RCW 48.04.010, there must be a contract to pay a "specified amount." The OIC's response blurs these statutory terms and ignores all case law on statutory interpretation that all words must be given meaning and that unambiguous terms be given their plain meaning. The OIC is bound by RCW 48.04.010. This statutory provision unequivocally provides that to qualify as insurance a contract must state an amount that will be paid and that this amount must be specified. The OIC does not identify an "amount" and it certainly does not identify a "specified" amount in its response that was part of any benefit.

Further, the Respondent mischaracterizes the nature of the Paid-Out Account benefit in an effort to squeeze it into its definition of "indemnify." The benefit allows the member to bring a defective product back to Rent-A-Center (the seller) for repair or replacement. CP 7, ¶ 11. The benefit does not come as an additional charge to the consumer as the consumer can have

one product covered by the benefit or 1000 and there is no change in the membership fee. CP 7, ¶ 12. It is simply a portion of the bundle of benefits that members receive. Also, the benefits can be added or removed at the discretion of the association, so the member is not paying for any specific benefit, they are simply paying for a membership and whatever benefits may be part of the bundle associated with the membership. CP 77.

This Court should reverse the Superior Court and set aside Conclusions of Law 10, 11, 27 and the associated portion of the Findings of Fact, Conclusions of Law, and Final Order, because none of the benefits offered in the RAC Benefits Plus qualify as "insurance" under RCW 48.04.010.

III. CONCLUSION

The Appellants are entitled to the relief they have requested in their appeal because the Respondents lack the statutory authority and the factual basis to support the relief obtained in the administrative hearing and affirmed by the Superior Court.

RESPECTFULLY SUBMITTED this 3rd day of November, 2017.

By _____

Gulliver A. Swenson, WSBA #35974
Attorneys for Appellants
RYAN, SWANSON & CLEVELAND, PLLC
1201 Third Avenue, Suite 3400
Seattle, Washington 98101-3034
Telephone: (206) 464-4224
Facsimile: (206) 583-0359
swenson@ryanlaw.com

FILED
COURT OF APPEALS
DIVISION II
2017 NOV -6 PM 2:22
STATE OF WASHINGTON
BY DEPUTY

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the state of Washington that on the 3rd day of November, 2017, I caused to be served the foregoing document on counsel for Respondents, as noted, at the following addresses:

Marta DeLeon Assistant Attorney General Office of the Attorney General Government Compliance & Enforcement Division PO Box 40100 Olympia, WA 98504 Phone: (360) 753-3168 Fax: (360) 664-0229 martad@atg.wa.gov rosej1@atg.wa.gov GCEEF@atg.wa.gov ChihiroC@atg.wa.gov *Attorney for Respondent*	☒ U.S. Mail ☐ Hand Delivery ☒ E-mail ☐ Facsimile ☐ Federal Express

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2017 NOV -3 PM 3:03

DATED this 3rd day of November, 2017, at Seattle, WA.

Valerie Dominique, Legal Assistant