BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
FOR THE STATE OF TENNESSEE

IN THE MATTER OF:	)	
	)	
TENNESSEE SECURITIES DIVISION	)	**DOCKET NO. 12.06-014221J**
Petitioner	)	
	)	
v.	)	
	)	
ACCELERATED BENEFITS CORP.,	)	
21ST CENTURY PAY COMMUNICATIONS	)	
SANDRA KATHERINE SANDBERG, AND ,	)	
ELIZABETH GERTRUDE CHRISTMAS	)	
Respondents	)	

ORDER

THIS ORDER IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. PARTY FILES A WRITTEN APPEAL OR PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **October 10, 2001.**

OR

2. THE AGENCY FILES A WRITTEN NOTICE OF REVIEW WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **October 10, 2001.**

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION OR NOTICE OF REVIEW WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
312 EIGHTH AVENUE NORTH
8TH FLOOR, WILLIAM R. SNODGRASS TOWER
NASHVILLE, TN 37243

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, 615/741-7008 OR 741-2078 OR FAX 741-4472. PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

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BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE FOR THE STATE OF TENNESSEE

TENNESSEE SECURITIES DIVISION,	)	
Petitioner,	)	
	)	
vs.	)	**No.: 12.06.-014221J**
	)	
ACCELERATED BENEFITS CORP.,	)	
21ST CENTURY PAY COMMUNICATIONS,	)	
SANDRA KATHERINE SANDBERG, and,	)	
ELIZABETH GERTRUDE CHRISTMAS	)	
Respondents.	)	

NOTICE OF DEFAULT AND INITIAL ORDER

This matter came to be heard on September 24, 2001, before Thomas G. Stovall, an Administrative Judge assigned to the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Commerce and Insurance in Nashville, Tennessee. Kevin C. Bartels, Staff Attorney, Department of Commerce and Insurance, represented the State. Respondents Accelerated Benefits Corporation and 21st Century Pay Communications were not present at the hearing, nor did an attorney appear on their behalf. Respondents Elizabeth G. Christmas and Sandra K. Sandberg appeared at the hearing but were not represented by counsel.

By agreement, Respondents Elizabeth G. Christmas and Sandra K. Sandberg agreed to settle the above-styled matter with counsel for the State through the entry of an Agreed Order, which will be filed at a later date. Consequently, the subject of this Order concerns only Respondents Accelerated Benefits Corporation and 21st Century Pay Communications.

On September 7th, 2001, the State filed a Motion for Summary Judgment against the Respondents Accelerated Benefits Corporation and 21st Century Pay Communications. As of the date of the hearing, neither Respondent had filed a response to the State's motion with the undersigned Judge.

In support of its motion, the Division has shown that as a matter of law, it is entitled to such judgment in its favor and that there are no genuine issues of material fact concerning the factual allegations and counts set forth in the Division's Petition as to the Respondents. *Taylor v. Nashville Banner Publishing Company*, 575 S.W.2d 476 (Tenn. 1978), *cert. denied*, 441 U.S. 923 (1979). The pleadings, and the August 22, 2001, Order of the undersigned Judge in the matter of *Tennessee Securities Division vs. Accelerated Benefits Corp., et al.*, No. 12.06-014221J, and the entire record in this matter as a whole, show that there are no issues of material fact as to the issue of whether the Respondents have violated the Tennessee Securities Act of 1980, as amended, at Tenn. Code Ann. § 48-2-101 *et al.* ("Act") and specifically whether the Respondents have violated Tenn. Code Ann. §§ 48-2-104, 109 and 121(a).

For these reasons and pursuant to Rule 56.01 of the Tennessee Rules of Civil Procedure, the Division's Motion for Summary Judgment as to Respondents Accelerated Benefits Corporation and 21st Century Pay Communications was argued by counsel for the State and subsequently **GRANTED** by the undersigned Judge.

ORDER OF DEFAULT

This matter was heard upon the Petitioner's Motion for Default due to a failure of the Respondents to appear or to be represented at the hearing on September 24th, 2001, after receiving proper notice thereof. The record indicates that the Respondents, Accelerated Benefits Corporation

and 21st Century Pay Communications were properly served under the provisions of Tenn. Code Ann. § 48-2-121(f). After consideration of the record, it was determined that the Petitioner's motion was proper. The Respondents Accelerated Benefits Corporation and 21st Century Pay Communications were held in **DEFAULT**, and the Petitioner was permitted to proceed with an uncontested case.

INITIAL ORDER

The subject of this hearing was the proposed issuance of a Cease and Desist Order for alleged sales of securities by the Respondents without having first registered said securities, without first having registered as a broker-dealer or agent of a broker-dealer, and for fraud in connection with the sale of said securities.

On September 7th, 2001, the State filed a Motion for Summary Judgment against the Respondents Accelerated Benefits Corporation and 21st Century Pay Communications. As of the date of this hearing, Accelerated Benefits Corporation and 21st Century Pay Communications had not filed a response to the State's motion with the undersigned Judge. Thereafter, after the argument of counsel for the State in favor of its Motion, the undersigned Judge orally granted the State's motion for Summary Judgment at the hearing as to the matters raised in the Petitioner's Petition with regard to Respondents Accelerated Benefits Corporation and 21st Century Pay Communications.

Accordingly, after consideration of the argument of counsel, the entry of the Order granting the State's motion for Summary Judgment and the record as a whole in this matter, it is the determination of this Administrative Judge that the Respondents have violated several provisions of the Tennessee Securities Act of 1980, as amended, at Tenn. Code Ann. § 48-2-101 *et al.* and have specifically violated Tenn. Code Ann. §§ 48-2-104, 48-2-109(a), and 48-2-121.

Therefore, in view of the foregoing, it is the determination of this Administrative Judge that Respondents Accelerated Benefits Corporation and 21st Century Pay Communications are hereby ordered to cease and desist from all further violations of the Tennessee Securities Act of 1980 ("Act"), as amended, at Tenn. Code Ann. § 48-2-101 *et al.*

FINDINGS OF FACT

1. The Act assigns the responsibility for administration of the Act to the Commissioner. The Division is the lawful agent through which the Commissioner administers the Act, and is authorized to bring this action for the protection of investors and the public. The Division's official residence and place of business is in Nashville, Davidson County, Tennessee 37243.

2. Accelerated Benefits Corporation ("ABC") is a business entity with its principal place of business located at 105 E. Robinson Street, 2nd Floor, Orlando, Florida 32801. ABC has never been registered with the Division as a broker-dealer or agent of a broker-dealer.

3. 21st Century Pay Communications ("CPC") is a business entity with its principal place of business located at 3649 W. Beechwood, Suite 103, Fresno, California 93711. CPC has never been registered with the Division as a broker-dealer or agent of a broker-dealer.

4. Elizabeth "Libby" Gertrude Christmas ("Christmas") is a citizen and resident of Tennessee whose home address is located at 5209 Kentucky Avenue, Nashville, Tennessee 37209. Christmas, CRD #1295169, had a Tennessee registration as an agent of a broker-dealer which terminated on June 6, 1990. Christmas was not, at all times relevant to the events described herein, registered with the Division as a broker-dealer or agent of a broker-dealer.

5. Sandra Katherine Sandberg ("Sandberg") is a citizen and resident of Tennessee with addresses located at 3912 Park Avenue, Nashville, Tennessee 37209 and 5209 Kentucky Avenue, Nashville, Tennessee 37209. Sandberg, CRD # 1557201, had a Tennessee registration as an agent of a broker-dealer which terminated on September 22, 1986. Sandberg was not, at all times relevant to the events described herein, registered with the Division.

6. A viatical settlement is a transaction whereby the owner (commonly referred to as the "viator") of a life insurance policy covering the life of a terminally ill person sells the life insurance policy to a third party (commonly referred to as the "viatical settlement provider") in exchange for a cash payment which is less than the death benefit of the policy. The cash payment is typically used to pay for the medical and living expenses of the insured.

7. Many viatical settlement providers either solicit investors to purchase interests in the viaticated policies, or sell the viaticated policies to another party who solicits investors to purchase interests in the policies.

8. Interests in viatical settlements are investment contracts as defined by *State v. Brewer*, 932 S.W.2d 1, 11 (Tenn. Crim. App. 1996), and are therefore securities requiring registration under the Act. In addition, Tenn. Code Ann. § 48-2-102(12) defines a security to include "a life settlement contract, as defined in § 56-50-102, or any fractional or pooled interest in a life insurance policy or life settlement contract. . . ." Respondents have never registered any securities related to viatical settlements with this Division.

9. In the latter part of 1996, James E. Nelson ("Nelson"), a citizen and resident of Tennessee, and his wife were contacted several times by two (2) "financial planners" from Nashville, Tennessee. The contacts were the result of Nelson sending in a mailer in response to a magazine

advertisement regarding financial planners. The "financial planners," as they represented themselves, were Sandberg and Christmas.

10. On or about December 18, 1996, Sandberg sold Nelson three (3) premium annuities ("annuity contracts") without disclosing to Nelson that the terms of the annuities were unusually long—i.e., between 80 to 85 years—and therefore an unsuitable investment for Nelson. Additionally, according to Nelson, Nelson has to date never received the annuity contracts.

11. According to Nelson, Sandberg introduced him to Christmas who told Nelson that she was a financial planner who could help Nelson get his financial affairs in order. It was Nelson's understanding that Christmas would provide Nelson with the following services: (1) review the Nelsons' financial records; (2) organize the Nelsons' financial records; (3) prepare a report summarizing their financial status; and (4) prepare a financial plan for investing their money in the future. Nelson also understood the arrangement with Christmas to include Christmas' assistance in preparing and filing the Nelsons' federal income tax returns and to provide him with audit protection if the Internal Revenue Service audited his returns. Shortly thereafter, Nelson took custody of the Nelsons' records and tax information. Christmas has not returned the aforesaid records to Nelson, despite his repeated attempts to contact her by mail and by telephone.

12. On or about November 12, 1996, Nelson purchased a 12 month viatical contract ("Viatical #1") through ABC on behalf of his wife. Nelson funded the purchase of Viatical #1 through an IRA Rollover, with Pensco becoming the custodian of the investment. Nelson invested a total of forty-seven thousand two hundred nine dollars ($47,209) in Viatical #1.

13. On or about April 23, 1997, Nelson purchased several ABC viatical contracts with funds from his existing investments. Nelson funded the purchases through an IRA Rollover, with Pensco becoming the custodian. Nelson invested ten thousand dollars ($10,000) in a thirty (30) month contract ("Viatical #2"), ten thousand dollars ($10,000) in a twenty-four (24) month contract ("Viatical #3"), twenty-four thousand dollars ($24,000) in an eighteen (18) month contract ("Viatical #4"), and ten thousand dollars ($10,000) in a twenty-four (24) month contract ("Viatical #5). The total amount of Nelson's investments with ABC made through Christmas totaled one hundred thousand two hundred nine dollars ($101,209). To date, Nelson has only received one payment of fourteen thousand one hundred seventy-nine dollars and sixty-nine cents from his investments with ABC. Nelson has repeatedly inquired about receiving returns on his investments and has sought the return of his principal from ABC with no success.

14. On or about December 18, 1997, Nelson purchased two (2) Modified Units of 21st Century Pay Communications ("CPC") from Christmas at seventy-five hundred dollars ($7,500) each for a total of fifteen thousand dollars ($15,000). The Modified Units from CPC were "modified" pay phones, which an unsigned memo from Christmas states are "to provide a 5-year [sic] stream of income with principal back at end [sic] of period" and which Christmas further states will provide income "with tax benefits and. . tax credits available." The date Christmas indicated on the memo is "12/22/97." To date, Nelson has received neither the promised return from his investment nor the return of his principal from CPC.

15. According to a memo signed by Christmas that is addressed to Larry Hawkins ("Hawkins"), a relative of Nelson's who attempted to assist Nelson in obtaining information from Christmas, Nelson invested ten thousand dollars ($10,000) in The People's Network ("TPN"), which

purported to be a business that Christmas would start, over a six month period. TPN "never got off the ground," according to Christmas and, to date, Nelson has not received the return of his principal from Christmas.

16. Christmas and Sandberg, as former agents, understood that the sales of the long-term annuities, the viatical settlements, and the telephone leaseback contracts were high risk investments and were therefore unsuitable for elderly persons of limited means, such as the Nelsons. Furthermore, Christmas failed to disclose the nature and risk of the above-mentioned investments to the Nelsons and knew that the failure to do so constituted a material omission which was necessary in order to make her statements to Nelson regarding the investments in ABC and CPC not misleading.

17. ABC was the subject of a Final Order, dated February 5, 2001 ("Final Order"), issued by the Treasurer of the State of Florida acting in his capacity as Insurance Commissioner, that revoked ABC's license and its eligibility for licensure as a viatical settlement provider for multiple violations of the Florida Insurance Code, Fl. Stat. §§ 626.9914(1)(b) and 626.989(6).

18. ABC was found, in the Final Order, to have violated provisions of the Florida Insurance Code for effectuating viatical settlement agreements in the presence of circumstances whereby ABC knew, or the exercise of reasonable diligence should have known, that the underlying insurance policies had been procured through fraud, dishonesty, or misrepresentations made by the viator to the insurance company issuing the policy and that ABC entered into a course of conduct intentionally designed to conceal that fraud, dishonesty, or misrepresentation from the insurance carriers and the Florida Department of Insurance.

19. Furthermore, ABC was the subject of a March 13, 2001, Findings of Fact, Conclusions of Law and Order by the District Court of Oklahoma County, Oklahoma, finding ABC to be in violation of the Oklahoma Securities Act and granting the Oklahoma Department of Securities ("OK Division") judgment on its Petition that it had filed against ABC.

CONCLUSIONS OF LAW

1. Pursuant to Tenn. Code Ann. § 48-2-116, the Commissioner may make, promulgate, amend and rescind such orders as are necessary to carry out the provisions of the Act provided that such order is in the public interest, necessary for the protection of investors and consistent with the purposes fairly intended by the policy and provision of the Act. Cease and Desist Orders have been held to be proper orders issued under this part. *See Wolcotts Financial Services, Inc., v. McReynolds*, 807 S.W.2d 708 (Tenn.App. 1990).

2. Tenn. Code Ann. § 48-2-104 provides that it is unlawful for any person to offer and/or sell any security in this state unless it is registered under this part, the security transaction is exempted under Tenn. § 48-2-103, or the security is a covered security.

3. Tenn. Code Ann. § 48-2-109 provides, in pertinent part, that it is unlawful for any person to transact business in this state as a broker-dealer or agent unless such person is registered as a broker-dealer or agent under this part.

4. Tenn. Code Ann. § 48-2-121(a) states, in pertinent part, that it is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, directly or indirectly, to employ any device, scheme, or artifice to defraud, make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or engage in any act, practice or

course of business which operates or would operate as a fraud or deceit upon any person.

5. The State has met its burden of proof by a preponderance of the evidence that the Respondents Accelerated Benefits Corporation and 21st Century Pay Communications conducted sales of securities without first having registered as a broker-dealer or agent of a broker-dealer with the Division.

6. The State has met its burden of proof by a preponderance of the evidence that the Respondents Accelerated Benefits Corporation and 21st Century Pay Communications sold securities in this State without having first registered said securities with the Division.

7. The State has met its burden of proof by a preponderance of the evidence that Respondents Accelerated Benefits Corporation and 21st Century Pay Communications employed an artifice to defraud Nelson in connection with the sale of the unregistered securities.

It is therefore **ORDERED** that Respondents Accelerated Benefits Corporation and 21st Century Pay Communications shall hereby cease and desist from any further violation(s) of the Act.

It is further **ORDERED** that Respondents Accelerated Benefits Corporation and 21st Century Pay Communications shall not make any offer or sales of securities in this State without first having lawfully registered with the Division as a broker-dealer or agent thereof and without having first lawfully registered said securities.

This Initial Order entered and effective this 25th day of September, 2001.

Thomas G. Stovall

Thomas G. Stovall
Administrative Judge

SUBMITTED FOR ENTRY:

Kevin C. Bartels (BPR # 020018)
Staff Attorney
Department of Commerce and Insurance
William R. Snodgrass Tower, Twenty-Fifth Floor
312 Eighth Avenue, North
Nashville, Tennessee 37243-0569
615 741 2199

Filed in the Administrative Procedures Division, this 25th day of September, 2001.

Charles C. Sullivan, II TRD
Charles C. Sullivan, II, Director
Administrative Procedures Division

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon all parties, by delivering the same to them, or to their counsel, at their address of record, or by placing a true and correct copy of same in the United States mail, postage prepaid.

This 25th day of September, 2001

Tracy Duffy

Administrative Procedures Division
Office of the Secretary of State

APPENDIX A TO INITIAL ORDER

NOTICE OF APPEAL PROCEDURES

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) Either party files a petition for appeal to the agency or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occur, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Eighth Avenue N., Nashville, Tennessee, 37243. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, (stating the specific reasons why the Initial Order was in error) within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within ten (10) days after the Initial Order becomes a Final Order, or within ten (10) days after the entry date of a Final Order by the agency, a party may petition the agency for reconsideration of the Final Order. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.