STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION

IN THE MATTER OF:	)	
	)	FINDINGS, RULINGS AND ORDER
Gary Arthur Gahan,	)	
Seniors Financial Strategies, Inc.	)	COM05-028
& Gahan Associates, Inc.	)	

Procedural History

On November 26, 2007, the N.H. Bureau of Securities Regulation (hereinafter referred to as the "Bureau") filed a Staff Petition for Relief in the matter of Gary Arthur Gahan (hereinafter "Gahan"), Seniors Financial Strategies, Inc. (hereinafter SFS) and Gahan Associates, Inc. An Order to Cease and Desist was issued on December 3, 2007. On December 21, 2007 a request for hearing was received from Seniors Financial Services through its president Stephen Bennett. A hearing order was issued by this examiner on December 28, 2007 establishing January 4, 2008 as the hearing date for the above captioned matter. Later that same day, the Bureau filed a Motion to Continue requesting said hearing be continued to January 28 2008. On December 31, 2007 Respondent SFS filed an Objection to Hearing Date, Motion to Dismiss, and Notice of Non-Appearance. A hearing on the Bureau's Motion to Continue and SFS's Motion to Dismiss was held on January 11, 2008. Neither Gahan nor Gahan Associates, Inc. appeared at the January 11, 2008 hearing. During said hearing, it was learned that Respondent SMS's availability to participate at a hearing at some later date would largely depend on his work schedule as he may be is deployed out of country on military matters. SMS's Motion Dismiss, and Objection to Hearing Date was denied. The Bureau's request for a continuance was granted. A hearing date was set for March 20, 2008 with notice to all parties. The Bureau then filed an assented to Motion to Continue on March 18, 2008, and said hearing was rescheduled for April 29, 2008.

Synopsis of Testimony

This matter was heard at the N.H. Department of State, State House Annex on April 29, 2009. Representing the Bureau was Staff Attorney Kevin Moquin and Deputy Director Jeffrey Spill. Also present were Gary Arthur Gahan and his counsel Joseph Mitchell, Esquire; and Stephen Bennett, Esquire and President of Seniors Financial Strategies ("SFS"). This matter involves allegations by the Bureau that Gahan and SFS were collectively involved in the sale of viatical investment contracts to certain N.H. investors; that the investment contracts which are the subject of the Bureau's petition are securities; that the securities were not registered with the

N.H. Bureau of Securities, and that the Respondents were not properly licensed in N.H. to sell these securities products.

When the hearing was called to order, SFS renewed its Motion to Dismiss initially filed on December 31, 2007. The Respondent's motion was denied by this examiner at a separate hearing on January 11, 2008. At that hearing conducted via telephone, SFS claimed that its rights of due process were being impinged upon by not being heard within 10 days following its request for hearing, or in this case December 31, 2007. The respondent was serving duty in Germany at the time of this hearing as was not expected to return to the U.S. until January 24, 2008 or thereabouts. Counsel for the Bureau (Kevin Moquin) stated that he had received a call from Gahan's counsel that they were actively looking for a securities lawyer to assist with the case and needed additional time. This examiner denied Respondent's Motion on the basis that the case involves multiple parties, and the facts presented in the Bureau's Staff Petition for Relief suggest the legal and factual issues are so intertwined that all Respondents must be present at the same time for this hearing. No new facts or evidence in support of the Respondent's motion to dismiss were presented at the April 29, 2008 hearing. Therefore, Respondent's renewed Motion to Dismiss is denied.

Testimony of Attorney Kevin Moquin

Attorney Moquin as principal investigator for the Bureau was sworn as a witness. At the outset of the Bureau's presentation of evidence, counsel for Gahan objected to the introduction of Bureau's evidence on grounds that all causes of action in this matter are barred by the statute of limitations. Further, counsel for Gahan asserts that the causes of action are likewise barred as the Bureau issued an Interpretive Order on October 25, 2004, several months after the period where Gahan sold the viatical contracts to N.H. investors. Gahan contends that the present causes of action should be barred as the law relied upon by the Bureau is retrospective and violative of Part I, Article 23 of the N.H. Constitution. Both objections were so noted and the Bureau was permitted to proceed. Counsel for Gahan renewed it objection throughout the course of the Bureau's presentation of evidence. Again, the objections were so noted.

Attorney Moquin provided testimony relative to his investigation involving the alleged sale of viatical settlement contracts to New Hampshire residents. Various documents were introduced into evidence including correspondence and reports as well as a CD-ROM from a Roberto Martinez, Receiver for Mutual Benefits Corporation, a Florida corporation (hereinafter MBC) containing a list of MBC viatical contracts sold to investors with New Hampshire addresses. The list also contained the names of sales agents connected to each sale. [Bureau's Exhibit 1].

Mr. Moquin stated that he examined documents filed with the N.H. Secretary of State Corporations Division and found that Gary A. Gahan, having previously registered the name Seniors Financial Strategies with the State, authorized Mr. Stephen Bennett to use of the trade name "Seniors Financial Strategies in the State of New Hampshire. [Bureau's Exhibit 2]. Seniors Financial Strategies was registered as company with the State on April 2, 2003.

Mr. Moquin testified that the Bureau issued a subpoena to Gary Gahan, Seniors Financial Strategies, Inc and Gahan Associates in August, 2006 requesting production of certain documents involving the sale of viatical investment contracts [Bureau's Exhibits 3&4] and that

Bureau later deposed Gahan on March 23, 2007 [Bureau's Exhibit 5]. Mr. Moquin referred to pages 13 & 14 of the deposition transcript and noted statements made by Gary Gahan that Gahan and Seniors Financial Strategies were operating as the same business. Mr. Moquin further noted that throughout the deposition, Gahan refused to answer questions relative to his business activities and involvement in the sale of viatical settlement products through Mutual Benefits Corporation and to certain investors, asserting his rights under the N.H. and U.S. Constitution. Citing the case Fisher v. Hooper 143 N.H. 585, Moquin stated that this Examiner could draw a negative inference from Gahan's invocation of his right against self-incrimination as he refused to answer the Bureau's questions throughout the course of the deposition.

Moquin then presented a Memorandum of Law to this examiner in support of the Bureau's position that viatical investments sold by the Respondents were securities under the N.H. Uniform Securities Act RSA 421-B and subject to regulation by the Bureau, relying on the "Howey Test" as established in the case of W.J. Howey Co. et al., 328 U.S. 293 (1948) and adopted by the N.H. Supreme Court in the case State v. Hennault 121 N.H. 497 (1981).

It was Mr. Moquin testimony that he saw no evidence that the viatical investment contracts were registered as securities in N.H. or subject to any claimed exemption from registration, nor any evidence that the Respondents were licensed to sell these securities in N.H.

During cross examination, counsel for Gahan questioned Mr. Moquin regarding the Bureau's Viatical Settlement Interpretive Order dated October 25, 2004 [marked Gahan's Exhibit A]. When asked whether viatical contracts became securities in the State of N.H. effective on October 25, 2004, Mr. Moquin replied no. When asked if there was a statute of limitations that would limit the time period in which an action can be brought by the Bureau, Mr. Moquin noted that it was not specifically referenced in the N.H. Securities Act.. During cross examination by Seniors Financial Strategies, Mr. Bennett focused his questions on why the Interpretive Order was written and whether it would be clear or unclear to citizens as to whether and when viaticals would be considered securities. SFS then inquired as to whether MBC provided the Bureau with any agency contracts between MBC and Gahan, for which the Mr. Moquin answer "no". SFS also raised a question as to the authenticity of the documents obtained from the MBC database. This examiner has deemed these records as authentic and reliable.

Testimony of Bruce Atkinson

The Bureau then called Mr. Bruce Atkinson (Atkinson) of Stratham, N.H. as a witness. Atkinson testified that he first met Gary Gahan at a financial seminar and had several subsequent meetings with him "working towards a path for retirement." Atkinson stated that Gahan sold him annuities and viaticals. Over objections by Gahan's counsel and SFS, the Bureau presented a copy of a Mutual Benefits Corporation Viatical and Life Settlement Purchase Agreement signed and dated by Atkinson on December 22, 2003 [Bureau's Exhibit 6], and a letter dated January 21, 2004 from Mutual Benefits Corp welcoming Atkinson to the MBC viatical and life settlement program, and further indicating $106,263 as being received by its escrow agent. [Bureau's Exhibit 7]. The Bureau presented a letter for Atkinson's inspection dated October 21, 2003, printed on Seniors Financial Strategies Inc. letterhead from Gary A. Gahan to Mr. & Mrs. Bruce Atkinson regarding personal and business matters [Bureau's Exhibit 8]. It was Atkinson's testimony that he invested a total of $400,000 with

Gahan, $100,000 of which were in viaticals, and that the viatical investment return would be paid out in 36 months with a return of 42%. Mr. Atkinson stated he recalled telling Gahan that he wanted to purchase viaticals on people over the age of 80 years. The Bureau introduced other documents [Bureau's Exhibits 10, 11, 12 & 13] from MBC to Atkinson containing information regarding individual policies purchased; and email correspondence between Gahan and Atkinson regarding the status of the viatical contracts and news of MBC having gone into receivership [Bureau's Exhibits 14, 15 &16]. The Bureau also presented into evidence an email from Gahan to Atkinson regarding the viatical purchases and where Gahan writes "Yes, Bruce I did make a commision (sic) on the sale...".

During cross examination, Gahan's counsel inquired about Atkinson's previous investments and mutual fund losses in 1999. Atkinson acknowledged that he did not invest in any other viaticals other than those previously mentioned. Counsel then asked Atkinson to review the MBC Viatical & Life Settlement Purchase Agreement and asked if he (Atkinson) completed and initialed the pages of the agreement, for which Atkinson replied yes [Gahan Exhibit B]. Counsel further asserts that the contract was sold by MBC to Atkinson and did not mention Gary Gahan. In addition, Counsel presented a copy of a check dated December 5, 2003 in the amount of $106,263 issued by Fidelity Investments payable to Retirement Accounts, Inc. in support of the Respondent's position that the financial transaction was uniquely between Atkinson and MBC. Counsel also inquired about Gary Gahan's email of September 20, 2004 (Bureau's Exhibit 14, Gahan Exhibit D). When asked if Atkinson has experienced any losses under the policies, Atkinson replied "no".

Atkinson was then crossed examined by SFS's Stephen Bennett. Referring to Bureau's Exhibit 6, Mr. Atkinson was asked if the document indicates any commissions or fees being paid to Gary Gahan or if the document was signed by Gahan as agent. Atkinson responded "no".

It is SFS's position that there was no written authorization for Gahan to act as agent for these sales. Bennett asked if Atkinson ever met him (Bennett) before, for which Atkinson replied "no". Bennett asked Atkinson when was the first time he ever heard of Seniors Financial Strategies. Atkinson replied that he "wasn't paying any attention to the names".

Testimony of Donald Winn

The Bureau called Mr. Donald Winn (hereinafter "Winn") of Nashua, N.H. as a witness. Winn testified that Gary Gahan became his financial advisor and sold him "stepped annuities and viaticals." The Bureau presented a copy of a letter dated July 11, 2003 printed on Seniors Financial Strategies letterhead from Gary Gahan to Mr. and Mrs. Donald Winn regarding plans for a future meeting to discuss financial planning, and included information regarding Mutual Benefits Corporation products [Bureau's Exhibit 18]. The Bureau also presented a copy of a Mutual Benefits Corporation Viatical & Life Settlement Purchase Agreement signed and dated by Donald Winn and Maureen Winn on September 8, 2003 [Bureau's Exhibit 19], and a letter dated September 24, 2003 from Mutual Benefits Corp welcoming the Winns to the MBC viatical and life settlement program, and confirming that $70,000 as received by its escrow agent. [Bureau's Exhibit 20]. When asked by the Bureau who he believed he was doing business with, Winn stated that it was not his understanding that he was dealing with Seniors Financial Strategies, rather understood it to be Gahan Associates, Inc., and that he

(Gary Gahan) and Gahan Associates were authorized sales representatives for MBC. "I had no interface with anyone else" said Winn. When asked why he purchased the viaticals , Winn stated that he did so "because the downside risk was manageable, and the rate of return." The Bureau further introduced documents from MBC to Donald and Maureen Winn relative to the various viatical contracts and policies purchased (Bureau's Exhibits 21 through 28). When ask by the Bureau how the contracts were chosen, Winn replied "by MBC". When asked by the Bureau who he understood to be the one that would handle the investments, Winn replied "MBC and Gary Gahan". Winn further stated he expected a 46% return and that it would be "three years minimum before we get any return" and it was his understanding no future payments (to MBC) were due. Winn testified that it was his understanding Mr. Gahan had other viatical clients. Further, after learning about the MBC receivership, Winn testified that he asked Gahan if was paid commissions (for the viatical sales) and Gahan replied "yes".

During cross examination by Gahan's counsel, Winn was asked if he had copies of any checks involving the purchases. Winn replied that he did not, but thought the checks were made out to MBC. Winn was then asked to review Bureau's Exhibit 19 and the purchase options contained in Section 25 of the agreement bearing Winn's initials. Counsel asked Winn to review Section 9 of the contract entitled Risk of Purchase. When asked if he agreed to that provision by signing the contract, Winn replied "we relied upon Mr. Gahan." Counsel then reviewed and compared the Bureau's Exhibits 24 through 27 with Winn and noted that the MBC purchase agreement was dated September 8, 2003,and that all subsequent contracts and correspondence were by and between MBC and Winn, and do not reference Gary Gahan.

Testimony of Stephen Bennett

Stephen Bennett, President of Seniors Financial Strategies (SFS) provided testimony regarding his business relationship with Gary Gahan, and Gahan Associates. Bennett stated he initially formed a company called Netaero in Texas and later acquired the right to use the name Seniors Financial Strategies from Gary Gahan. According to Bennett, Netaero (now SFS) and Gahan developed a business relationship and Gahan began to work for SFS, having executed a formal agreement on January 8, 2004. SFS did not produce a copy of this agreement at the hearing. According to Bennett, Gahan was a salaried employee during the first month. However, shortly thereafter Gahan was involved in an accident and unable to work for a period and was experiencing financial difficulties. As Gahan recovered and returned to work, SFS (through Bennett) established a financial arrangement with Gahan whereby Gahan's income on business would go to SFS to cover the office expenses. Further, Bennett indicated that military duty required that he be out of the country for extended periods and that he was not present at times to oversee the business. As for Gahan's use of SFS letterhead while corresponding with Atkinson and Winn, Bennett asserts that Gahan used it without authorization and did not discover its use until November, 2003. Further Bennett testified that he instructed his secretary not to use SFS letterhead for Gahan's correspondence. To show that the viatical contracts were not effected through SFS, Bennett produced a photocopy of a letter dated November 9, 2004 from Polly and Bruce Atkinson addressed to MBC regarding their viatical contract. The letter to MBC states in part "On or about January 5, 2004 my wife and I invested $106,263 with a Mr. Gary Gahan of Gahan Associates of Merrimack, N.H."

The Bureau briefly cross examined Bennett about Gahan's role at SFS. Bennett testified that he first found out about Gahan's viatical sales in December,2007 when the Bureau filed its petition.

Testimony of Gary Gahan

Gahan refused to answer all questions presented by this examiner, invoking his constitutionally protected right against self incrimination.

Findings of Fact

1. The respondents are all persons as within the meaning of RSA 421-B:2 XVI.
2. Gary Gahan was employed as a life and health agent doing business as Gahan Associates, Inc. and later employed by Seniors Financial Services during which time viatical investment contracts were sold to investors Atkinson and Winn.
3. Gary Gahan and Gahan Associates were not licensed in any capacity as a broker dealer or broker-dealer agent with the N.H. Department of State Bureau of Securities Regulation during the period September 1, 2003 through August 29, 2006.
4. Stephen Bennett, President of Seniors Financial Services, initially employed Gahan – and shortly thereafter established a business relationship with Gahan based at the offices of SFS in Merrimack, N.H.
5. The investors Bruce & Polly Atkinson, and Donald and Maureen Winn are, and all times pertinent to this matter were residents of the State of New Hampshire.
6. The testimony of the investors in this matter was credible and believable.
7. Investment contracts are securities within the meaning of RSA 421-B:2, XX(a).
8. Viaticals are investment contracts and deemed securities within the meaning of RSA 421-B:2, XX(a).
9. The offer and sale of viatical investment contracts constitutes the offer and sale of investment contracts.
10. N.H. RSA 421-B authorizes the Secretary of State to issue Orders relative interpretation of the N.H. Securities Act. On October 25, 2004 such an order was issued regarding viatical investments as securities within the meaning of the N.H. Securities Act.
11. The Bureau's memorandum of law correctly states the Howey Test emanates from a U.S. Supreme court decision in 1946 and is a relied upon methodology to determine what constitutes a security.
12. The Bureau's Interpretive Order INT04-003 recognizes viatical settlements as securities. The order did not change the status of viaticals as investment contracts under the Howey Test prior to the issuance of said order.
13. The Bureau's interpretive order did not have the effect of exempting viatical contracts from registration or regulation sold in N.H. prior to October 25, 2004.
14. Although Gahan sold viatical investment contracts several months prior to the issuance of the interpretive order, he was still subject to the statutory provisions of the N.H. Securities Act that defines the term security. As such, the Bureau's interpretive order is not to be construed as a retrospective law in the context of this case. The interpretive order is not necessarily a prohibition on the sale of viatical investment contracts. Rather, it is intended to insure that investors receive the same types of protections that investors purchasing other types of securities would receive.

15. The testimony of the investors in this matter was credible and believable.
16. Gahan engaged in the business of effecting transactions in securities for the accounts of others and acted as agent for Bruce and Polly Atkinson and Donald and Maureen Winn.
17. The aforementioned investors purchased viatical investment contracts from Mutual Benefits Corporation with Gahan acting as the agent for MBC. Documents and testimony presented by the Bureau show an agent relationship between Gahan and MBC to the extent that Gahan provided clients with MBC sales material, provided clients MBC purchase agreement forms, and reports from MBC's receiver indicate Gahan as selling agent for the viatical investment contracts.
18. The securities sold by Gahan and issued by MBC were not registered with the N.H. Department of State Bureau of Securities.
19. Gahan mislead the Bureau in his response to the subpoena requesting from Gahan all records in connection with viatical or life settlement contracts. Gahan represented to the Bureau that the Gahan businesses were only involved in one viatical contract.
20. The evidence as presented does not suggest that Stephen Bennett or SFS were involved in the sale of viatical investment contracts to investors Atkinson and Winn.
21. The viatical investment contracts were purchased by the Atkinson in April, 2004, and by the Winn in September, 2004. The Bureau likely initiated its investigation prior to the issuance of its subpoena in August 2006. The present adjudicative proceeding was initiated by way of an Order to Cease and Desist issued on December 3, 2007. Although the N.H. Securities Act is silent with respect to a statute of limitations period, the actions were brought within a reasonable period of time and therefore not barred by RSA 508:4. See Appeal of Plantier 126 N.H. 500 (1985).

Rulings of Law

1. The respondents are persons within the meaning of RSA 421-B:2,XVI.
2. Gary Gahan is a broker-dealer within the meaning of RSA 421-B:2,III.
3. Gahan is an agent within the meaning of RSA 421-B:2,II.
4. Gahan was, at all times pertinent to this matter, an agent of Gahan Associates within the meaning of RSA 421-B:2,II, and agent for Mutual Benefits Corp.
5. A viatical investment contract is a security within the meaning of RSA 421-B:2,XX, having met the definition of investment contract established under SEC v. W.J. Howey Co., 328 U.S. 293 (1946).
6. Pursuant to RSA 421-B:23, whenever it appears to the Secretary of State that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule under this chapter, he shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter.
7. Pursuant to RSA 421-B:6,I, it is unlawful for any person to transact business in this state as a broker-dealer or agent unless such person is licensed under this chapter.
8. Pursuant to RSA 421-B:11, I, it is unlawful for any person to offer or sell any security in this state unless it is registered under this chapter, the security or transaction is exempted under RSA 421-B:17, or it is a federal covered security for which the fee has been paid and documents have been filed as required by paragraph I-a of this section.
9. Pursuant to RSA 421-B:6,II, it is unlawful for any broker-dealer to employ an agent unless the agent is licensed. An agent's license is only in effect when such agent is associated with a particular broker-dealer. When an agent begins or terminates those

activities that make the person an agent, the broker-dealer shall promptly notify the secretary of state.

10. Pursuant to RSA 421-B:19, it is unlawful for any person to make or cause to be made in any document filed under the N.H. Uniform Securities Act or in any proceeding under the N.H. Uniform Securities Act any statement which is, at the time and in light of the circumstances under which it is made, false or misleading in any material respect or, in connection with such statement, to 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.
11. Pursuant to RSA 421-B:26,III, any person who, either knowingly or negligently violates any provisions of the N.H. Uniform Securities Act may, upon hearing and in addition to any other penalty provided for by law, be subject to such suspension, revocation or denial of any registration or license, or an administrative fine not to exceed $2,500, or both.
12. Pursuant to RSA 421-B:26,III-a, every person who directly or indirectly controls a person liable under paragraph I, II, or III, every partner, principal executive officer, or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the acts or transactions constituting the violation, either knowingly or negligently, may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or an administrative fine not to exceed $2,500 or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties imposed pursuant to RSA 421-B:24 or civil liabilities imposed pursuant to RSA 421-B:25. No person shall be liable under this paragraph who shall sustain the burden of proof that such person did not know, and in the exercise of reasonable care could have known, of the existence of facts by reason of which the liability is alleged to exist.
13. Pursuant to RSA 421-B:26, V, after notice and hearing, the secretary of state may enter an order of rescission, restitution, or disgorgement directed to a person who has violated the N.H. Uniform Securities Act, or a rule or order under this chapter. Rescission, restitution or disgorgement shall be in addition to any other penalty provided for under this chapter.
14. Pursuant to RSA 421-B:26,VI, the secretary of state may order any person who violates RSA 421-B:3, 421-B:4, 421-B:5, 421-B:19 and 421-B:23, upon hearing, and in addition to any other penalty provided for by law, to make a written offer to the purchaser of the security to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid for the security together with interest at the legal rate, less the amount of any income received by the purchaser on the security, or if the purchaser no longer owns the security, an offer to pay an amount in cash equal to consideration paid for the security together with interest at the legal rate, less the amount the purchaser received on disposition of the security and less the amount of any income received by the purchaser of the security.

Discussion

It is the opinion of this examiner that Gahan solicited and engaged in the sale of four (4) viatical investment contracts to Bruce & Pauline Atkinson, and four (4) viatical investment contracts to Donald and Maureen Winn. Gahan was not licensed with the State of New Hampshire as a broker dealer or broker-dealer agent at the time of the solicitation and sale of these contracts and was negligent in his failure to obtain proper licensure. As a result, Gahan violated the N.H. Securities Act and each sale made by Gahan constitutes a separate violation of the N.H. Securities Act. Gahan and Gahan Associates, Inc. acted as agents for MBC and effected the solicitation and sale of viatical investment contracts on behalf of MBC. In addition, this examiner finds that Gahan and Gahan Associates engaged in misleading conduct while responding to the Bureau's request for information and records in connection with the respondent's sale of viatical or life settlement contracts. Gahan represented to the Bureau that the Gahan businesses were only involved in one viatical contract.

With regard to Seniors Financial Service and Stephen Bennett, this examiner finds that neither SFS or Bennett were directly involved in the sale of viatical investment contracts effected by Gary Gahan and Gahan Associates Inc. Gahan was working in some capacity with SFS and did in fact hold himself out at times as associated with SFS. However, this examiner finds the testimony of Stephen Bennett credible and truthful to the extent that he did not authorize Gahan to use SFS letterhead nor was he aware that Gahan was selling viatical investment contracts. No evidence was presented to suggest that SFS or Bennett were involved together in the solicitation or sale of the contracts nor did SFS or Bennett receive compensation for the viatical sales. Therefore, SFS and Stephen Bennett are dismissed from this proceeding.

Of primary concern of this examiner is the status of those investors who purchased the viatical investment contracts from Mutual Benefits Corp through its agent Gahan and Gahan Associates, Inc. Although MBC was placed into receivership some time ago, the investors indicated during the hearing that the contracts are still in place. In fact, it is entirely possible that one or more of these contracts may have paid a death benefit at this point and generated returns to the investors. This examiner can only speculate as to the current value of these investments.

The Bureau seeks an order of restitution, rescission and disgorgement whereby the Respondents would be ordered to jointly and severally return to investors all monies paid plus statutory interest. However, neither Gary Gahan or Gahan Associates, Inc. are in possession of the funds. Rather, MBC through its transfer agent received and currently manages the contracts. It does not seem reasonable to enter an order of restitution and rescission against Gahan and Gahan Associates when the actual funds presently reside with the issuer of the securities. Although MBC and its receiver were *not* named as a party to this action, it is this examiner's finding that MBC issued the viatical investment contracts to N.H. residents without obtaining proper licenses and registration. This examiner could order Gahan and Gahan Associates, Inc. to offer rescission and restitution and make the investors whole, but at the same time this would have no effect on the status of the contracts currently being held by the investors. This examiner cannot order the investors

to surrender any of the investment contracts. This examiner views Gahan and MBC as intertwined actors. Gahan sold the products, MBC received the funds, issued the contracts and its Receiver continues to manage them. The transactions must be unwound by MBC. Armed with this Order, the investors may pursue any right of rescission with MBC.

Order

WHEREAS, finding it necessary and appropriate and in the public interest and for the protection of investor and consistent with the intent and purpose of the New Hampshire securities laws, it is hereby ORDERED, that:

1. The Respondents Gary Arthur Gahan and Gahan Associates Inc. shall cease and desist from violating RSA 421-B.

2. Respondent Senior Financial Strategies is dismissed a party to this action.

3. The Respondents Gary Arthur Gahan and Gahan Associates are hereby jointly and severally liable and assessed a penalty of $20,000 for eight separate violations of RSA 421-B:6,I ; a $2,500 penalty for violation of RSA 421-B:19; and a penalty of $2,500 for violation of RSA 421-B:26,III. Said penalties totaling $25,000 shall be made payable to the State of New Hampshire by U.S. postal money order, certified check, bank cashier's check or bank money order, and hand delivered or mailed to the Bureau of Securities Regulation, State House Room 204, Concord, N.H. 03301 within 90 days from entry of this order.

SIGNED,
WILLIAM M. GARDNER
SECRETARY OF STATE
BY HIS DESIGNEE:

12 30 08

BARRY J. GLENNON
Hearings Examiner
N.H. Department of State

DATE