

Part VI

Ethical Problems and Their Resolutions

This section presents six real-life ethical problems and their actual resolutions. All involved the author or colleagues known to the author at the time of the events. No essential facts have been altered. Some offer ethical dilemmas for the agent; others confront him with problems caused by the ethical transgressions of others.

The False Claim

The agent, new in his career, was active in the family market. He was referred to an ambitious young couple and eventually sold them a major medical plan and a disability income plan covering the husband in his occupation. The major medical plan was issued by a company the agent represented sporadically; the disability plan was issued by the agent's primary company.

A critical issue in the decision about the major medical plan was whether it would cover maternity benefits. The plan would, but only after a 10-month waiting period. The couple completed the application, indicating that the wife was not pregnant at that time.

Five months later the couple had a healthy baby and filed a claim for maternity benefits. When the claim was denied because the mother had been pregnant at the time the policy was issued, the couple threatened to sue. They claimed they had not been informed about the 10-month waiting period and would not have bought the policy had they known because they were aware the wife was pregnant. They claimed the agent falsified the application.

Since the policy was not written through the agent's primary insurer, his company's E&O policy was not obligated to defend him.

Resolution

The primary company decided to defend its agent since the case also called into question the validity of its own disability insurance policy. During the course of its investigation the company learned that the applicants had a history of filing dubious insurance claims. Even so, it offered to rescind the premium for the disability policy and to pay \$1000 in compensation.

However, the agent refused any accommodation, citing a clause in the E&O policy that required the agent's consent for any settlement. The company withdrew its offer, and the couple eventually dropped their claim.

The False Name

The agent, a recognized professional, was newly arrived in a city with two major military installations and a university. Although licensed, he was working as a consultant to the U.S. Army's Community Services program and a lecturer for the university. Many of his classes were scheduled at the two military installations and he had an open pass to both.

His agreement with the Army permitted him to advise soldiers about their military benefits and personal insurance needs, provided that he made no attempt to sell any products himself. In a short while his reputation grew as an honest and reliable source of impartial advice.

One day the agent discovered that another agent in the city had appropriated his name and professional designations for himself, having cards printed with the agent's name and the imposter's address and company affiliations. Before the agent could act, the imposter was arrested on one of the military bases for attempting to solicit military personnel on duty. (He had been under observation for some time.)

The MPs seized the imposter's materials, including the false business cards. The next day the FBI visited the agent in his home demanding to know what part he played in the criminal conspiracy. Meanwhile, the imposter fled the area after being released on his own reconnaissance.

Resolution

The agent's protestations of innocence were greeted with skepticism. The only factor which probably saved him was that he was able to prove conclusively that he had been teaching a university seminar in a distant city at the exact time the imposter had committed an egregious violation. Eventually, the FBI officially cleared the agent but his pass for the base where the violations had occurred was never restored.

Interesting, the university and the Army never doubted the agent's true story and never restricted his teaching or his contracted services in any way. Two years later, however, the agent moved to another city.

The Rejected Applicants

The agent was working as a consultant to a financial planning group eager to expand its insurance sales. In that capacity the agent contracted the group with a major life insurer and began to recruit and train agents who could also be registered as securities representatives.

The first two recruits offered excellent potential, but each had a major consideration, too. One had a severely disabled child and had been forced to file personal bankruptcy in order to qualify the boy for Medicaid. The other had been convicted of armed robbery 21 years earlier when he waited outside a convenience store while two colleagues went inside with a gun. After serving a 1-year sentence, he was paroled; he had never been charged with any criminal offense in the intervening 21 years.

While both issues presented problems, the broker-dealer investigated carefully and appointed both men. However, the insurance company refused to contract either, citing corporate prohibitions against both bankruptcy and criminal records.

Since the financial planning group required all its employees to be contracted by the insurer in addition to being appointed by the broker-dealer, the two men could not be hired unless the insurer could be persuaded to make an exception.

Resolution

The insurer wouldn't budge, despite a personal appeal from the agent to the president of the company. Faced with this intransigence, the financial planning group terminated its master contract with the insurer and the agent resigned from the group as its recruiting consultant.

The General Agent and the Doctor

The agent was now working as a business development consultant for a leading general agency of a major company. He was contracted by the company but permitted to write business with other carriers and paid by the company for his consulting services.

In this capacity the agent was working on a complex case, securing a large single-premium annuity to fund a severance package for a large corporation. The primary company was not admitted in the corporation's home state and the annuity would have to be placed with another insurer.

Meanwhile the general agent, who would receive no compensation for the annuity unless it was placed through his company, approached the agent with an unusual offer. He offered to match the agent's own selling commission for the annuity, if the agent would sign an affidavit that a local doctor was engaged in unethical medical practices.

(The General Agent was suing the doctor for malpractice and knew the agent was also a patient.) The General Agent also implied that the consulting contract would be cancelled if the agent did not cooperate. The agent had no knowledge of any unethical practices by the doctor.

Resolution

The agent refused to cooperate with the General Agent, who retaliated by breaking into the agent's office and stealing his files on the corporate single-premium annuity. Confronted by the corporation's own attorney, the General Agent returned the files and the agent left the agency, and the consulting contract. The General Agent's suit against the doctor was eventually dropped.

The Unregistered Security

The agent again was working as consultant, this time on an equity basis for a group that provided tax-planning services. The group began promoting a unique tax-advantaged product, backed by a Letter of Opinion from a prominent law firm. Several contracts were sold.

However, the agent became concerned when he observed the principal of the group passing a commission check for the unique product to one of the persons who had purchased it, a person was not licensed as an agent.

His concern grew when he discovered the group was utilizing one member who was registered through the NASD as its agent-of-record for the product since it might be ruled a "security." (The registered rep's broker-dealer was an outside firm; the principal of the tax-planning group had no connection to the broker-dealer and was not registered with the NASD himself.)

The agent cautioned the registered representative that he might be guilty of selling away, after verifying his suspicions with the NASD. He also urged him not report the conversation to the principal of the group, because the agent also had discovered the principal was under investigation by the criminal section of the IRS, but instead to contact his broker-dealer immediately.

Resolution

The registered rep cautioned by the agent when directly to the principal of the tax-planning group and tipped him off to the agent's suspicions.

The agent was dismissed immediately, leaving behind a substantial amount of undistributed income. However, his testimony to the NASD and the state insurance department were significant in having the principal banned for life and the registered rep fined and terminated by his broker-dealer. The unique tax-advantaged product was later determined to be fraudulent.

The Phony CE Course

The agent was teaching pre-licensing and continuing education courses for a local provider when he was contacted by a national firm, offering him an opportunity. While negotiating, the agent was granted permission to attend a day-long continuing education program presented by the national firm in a near-by city, although he was required to sign a non-disclosure agreement before doing so.

At the class the agent discovered that the CE program offered was a sham. Agents paid their fee, sat for the contracted duration of the class and received a signed certificate of completion--but no course material was offered. Instead, the agents watched sports on TV or read the newspaper; the "instructor" merely collected the money and signed the certificates. At the end of each 2-hour "class" he announced one CE program was over and another would begin, with a new fee.

Later the "instructor" told the agent the situation was "a sweet deal" and the agent could make a lot of money with the national firm--if he didn't "blab to anybody" about what was going on.

Resolution

The agent reported the incident to the national provider, assuming it was unaware of its instructor's behavior. Instead, the provider reminded the agent about the non-disclosure agreement and threatened to sue if he revealed anything to anyone.

The agent notified the state department of insurance and the provider's approved status was revoked. Later, another state banned the national provider when it was discovered the group was using its own instructors to take pre-licensing exams for its students.