

1 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
2 DIVISION OF FINANCE AND CORPORATE SECURITIES
3 SECURITIES SECTION

4 BEFORE THE DIRECTOR OF THE DEPARTMENT OF
5 CONSUMER AND BUSINESS SERVICES

6 In the Matter of:)

7 OMNI ADVISOR GROUP, INC., BRIAN)
8 P. MCGUANE, KEVIN E. SULLIVAN,)
9 BRENT BURKE, CHRIS DUDA, NORA)
10 FILECCIA, BERNIE LEMKE and GUS)
11 THOMAS,)

12 Respondents.)

S-03-0039

STIPULATED ORDER AS
TO RESPONDENTS OMNI
ADVISOR GROUP, INC. AND
BRIAN P. MCGUANE

13 WHEREAS the Director of the Department of Consumer and Business
14 Services ("Director") has conducted an investigation of certain business activities
15 conducted by Omni Advisor Group, Inc. ("Omni"), and has determined that it offered
16 and sold what the Director has determined are unregistered securities in Oregon in
17 violation of the Oregon Securities Laws; and

18 WHEREAS the Director has also determined that Omni employees have
19 acted as salespersons in the offer and/or sale of what the Director has determined
20 are unregistered securities without holding salesperson licenses; and

21 WHEREAS the parties wish to resolve and settle this matter,

22 NOW THEREFORE, as evidenced by the authorized signature(s) subscribed
23 on this Order, Omni and Brian P. McGuane ("McGuane") CONSENT to entry of this
24 Order upon the Director's Findings of Fact and Conclusions of Law as stated
25 hereinafter.

26 FINDINGS OF FACT

The Director FINDS that:

1. Omni is a North Carolina business corporation with a principal place of





1 business at 8015 West Kenton Circle, Suite 105; Huntersville, North Carolina 28078.
2 McGuane is the incorporator, president and a director of Omni. Kevin E. Sullivan
3 ("Sullivan") is vice-president and chief operating officer of Omni.

4 2. The business of Omni is the sale of fractional interests in assignments
5 of life insurance policy proceeds otherwise commonly referred to as "viatical
6 settlement investments" or "life settlement investments." (Hereafter referred to as
7 "viatical settlement investments.")

8 3. During the period April 1, 2002 through September 30, 2002, Omni
9 advertised and sold viatical settlement investments to Oregon residents.

10 4. The Oregon purchasers of Omni's viatical settlement investments
11 purchased their interests with an expectation of profit.

12 5. On June 5, 2002, in response to an inquiry by the Director, Omni
13 incorrectly notified the Director that it had "ceased all advertising efforts in the State
14 of Oregon and [had] not accepted any funds from or entered into any contracts with
15 Oregon residents for viatical or life settlements."

16 6. Omni had entered into contracts and obtained funds from Oregon
17 residents for the purchase of viatical settlement investments prior to June 5, 2002
18 and afterward.

19 7. Omni employees Sullivan, Brent Burke ("Burke"), Chris Duda ("Duda"),
20 Nora Fileccia ("Fileccia"), Bernie Lemke ("Lemke"), and Gus Thomas ("Thomas")
21 offered and/or sold Omni viatical settlement investments in Oregon during the period
22 April 1, 2002 to September 30, 2002.

23 8. Omni employees Sullivan, Burke, Duda, Fileccia, Lemke, and Thomas
24 were not licensed to sell securities in the State of Oregon.

25 9. Omni's viatical settlement investments were not registered with the
26 Director as securities for sale in Oregon.

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350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387



1 10. The Director has concluded that viatical settlement investments have
2 the indicia of a security that should be registered with the Director for sale in Oregon
3 and that individuals involved in the sale of viatical settlement investments in Oregon
4 should be licensed to sell securities in Oregon. Omni and McGuane believed that
5 viatical settlement investments were not securities governed by Oregon laws dealing
6 with securities. As a consequence of this, Omni did not believe it necessary to have
7 its salespersons licensed in Oregon to sell securities.

8 CONCLUSIONS OF LAW

9 The Director **CONCLUDES** that:

10 1. The viatical settlement investments marketed and sold by Omni in
11 Oregon during the period April 1, 2002 to September 30, 2002 are investment
12 contracts and are therefore securities as defined in ORS 59.015(19).

13 2. Omni, through its employees identified above, offered and/or sold
14 unregistered securities in Oregon in violation of ORS 59.055.

15 3. The Omni employees identified above offered and/or sold securities in
16 Oregon without valid securities licenses in violation of ORS 59.165.

17 4. Omni made false statements to the Director in violation of ORS
18 59.135(4) and ORS 59.451.

19 ORDER

20 NOW THEREFORE, the Director, Omni and McGuane hereby stipulate to the
21 following **ORDER**:

22 1. That Omni Advisor Group, Inc. ("Omni"), Brian P. McGuane
23 ("McGuane"), and any successor business entity or any business entity owned,
24 operated or controlled by McGuane shall not, from this date forward, offer or sell
25 viatical settlement investments in Oregon without registering them as securities
26 pursuant to ORS Chapter 59.

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1 2. That sales of viatical settlement investments in Oregon shall be made
2 by Omni or McGuane solely through individuals or organizations licensed pursuant
3 to ORS Chapter 59 to sell securities in Oregon.

4 3. That Omni and McGuane shall not violate any of the provisions of the
5 Oregon Securities Law, ORS Chapter 59 or Oregon Administrative Rules Chapter
6 441.

7 4. That any business entity owned, operated or under the control of
8 McGuane shall not be allowed the use of any securities licensing or registration
9 exemptions contained in the Oregon Securities Law, including ORS Chapter 59 and
10 ORS Chapter 441.

11 5. As part of the settlement of this matter, Omni and McGuane agree that
12 Omni shall offer rescission to all Oregon residents who purchased Omni viatical
13 settlement investments from April 1, 2002 to the date of this Stipulated Order. The
14 rescission offer shall be filed with the Director and be subject to the review of the
15 Securities Section of the Division of Finance and Corporate Securities and
16 authorization by the Director. As part of the rescission offer, Omni will send each
17 Oregon investor a notice that the rescission offer is being made at the direction of
18 the Director, who has determined that the sales of Omni viatical settlement interests
19 were made in violation of the Oregon Securities Law, ORS Chapter 59, and OAR
20 Chapter 441, and that such conclusion is disputed by Omni and McGuane.

21 All mailings prepared in conjunction with the rescission shall also be subject
22 to review of the Director. Omni shall submit a final accounting within 180 days from
23 the date of this Stipulated Order. The final accounting shall include a list of those
24 Oregon investors who elected to accept the rescission offer, the total amount of the
25 money rescinded, including purchase price and statutory interest of nine (9) percent
26 from the original date of purchase, and photocopies of the front and back of payment



1 checks.

2 6. The Director assesses a civil penalty of \$100,000 against Omni and
3 McGuane, jointly and severally. In consideration of the offer of rescission addressed
4 in paragraph 5 of this Stipulated Order, the Director suspends \$85,000 of the penalty
5 providing Omni and McGuane commit no future violations of the Oregon Securities
6 Law or this Stipulated Order. The penalty will be payable thirty (30) days from the
7 date of the last payment to investors, but not later than one hundred eighty (180),
8 days from the date of this Stipulated Order.

9 The Director reserves the right to immediately impose the suspended portion
10 of this civil penalty upon a determination that Respondents Omni or McGuane have
11 violated any term of this Stipulated Order, or any provision of the Oregon Securities
12 Law, ORS Chapter 59, or the administrative rules adopted thereunder, OAR Chapter
13 441.

14 7. As part of the settlement of this matter, all civil penalties proposed and
15 administrative charges levied against Omni employees Kevin E. Sullivan, Brent
16 Burke, Chris Duda, Nora Fileccia, Bernie Lemke, and Gus Thomas are withdrawn
17 and dismissed.

18 8. The entry of this Stipulated Order in no way limits further remedies
19 which may be available to the Director under Oregon Law relating to any future
20 violations.

21 Dated this 24th day of February 2004 at Salem, Oregon.

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23 Handwritten signature of Cory Streisinger in black ink.

24 CORY STREISINGER, DIRECTOR
25 DEPARTMENT OF CONSUMER & BUSINESS SERVICES

26 ////

1 APPROVED AS TO FORM:

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Dated: _____

John A. Bennett, OSB #75040
Attorney for Omni and McGuane

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CORPORATE STIPULATION TO ENTRY OF ORDER
(for Omni Advisor Group, Inc.)

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I, Brian P. McGuane, state that I am an officer of Omni Advisor Group, Inc. ("Omni"), and I am authorized to act on its behalf; that I have read the foregoing Stipulated Order and that I know and fully understand the contents hereof; that I and this entity have been advised of the right to a hearing and of the right to be represented by counsel in this matter; that Omni, voluntarily and without any force or duress, stipulates to the entry of this Stipulated Order, expressly waiving any right to a hearing in this matter; that Omni neither admits nor denies liability with respect to the Findings of Fact and Conclusions of Law in the foregoing Stipulated Order; that Omni, executes this Stipulated Order as a settlement of the matters referred to in the foregoing Stipulated Order; that Omni, understands that the Director reserves the right to take further actions to enforce this Stipulated Order or to take appropriate action upon discovery of other violations of the Oregon Securities Law; and that Omni will fully comply with the terms and conditions stated herein.

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Omni further assures the Director that neither Omni, nor its officers, directors, employees or agents, will effect securities transactions in Oregon unless such activities are in full compliance with Chapter 59 of the Oregon Securities Revised Statutes.

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Omni understands that this Stipulated Order is a public document.

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Dated this 11 day of February, 2004.

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By: Brian P. McGuane
Brian P. McGuane

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Office Held

Division of Finance and Corporate Securities
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387



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2 **CORPORATE ACKNOWLEDGMENT**

3 There appeared before me this 11 day of FEBRUARY, 2004, Brian
4 P. McGuane, who was first duly sworn on oath, and stated that he was and is an
5 officer of Omni, and that he is authorized and empowered to sign this Stipulated
6 Order on behalf of Omni, and to bind Omni to the terms hereof.

7 
8 _____
9 Signature of Notary

10 CHRISTINA M. NEIWIRTH
11 _____
12 Printed Name of Notary Public

13 Notary Public for the State of: CALIFORNIA

14 My commission expires: 11/27/05

15 **STIPULATION TO ENTRY OF ORDER**
16 (for Brian P. McGuane individually)

17 I, Brian P. McGuane, state that I am a resident of the State of California, that I
18 have read the foregoing Stipulated Order and that I know and fully understand the
19 contents hereof; that I neither admit nor deny liability with respect to the Findings of
20 Fact and Conclusions of Law in the foregoing Stipulated Order; that I execute this
21 stipulation as a settlement of the matter referred to in the Stipulated Order; that I
22 have been advised of my right to a hearing, and that I have been represented by
23 counsel in this matter; that I voluntarily consent to the entry of this Stipulated Order
24 without any force or duress, expressly waiving any right to a hearing in this matter;
25 that I understand that the Director reserves the right to take further actions against
26 me to enforce this Stipulated Order or to take appropriate action upon discovery of
other violations of the Oregon Securities Law not addressed by this Stipulated
Order, and that I will fully comply with the terms and conditions stated herein.

I further assure the Director that I will not engage in the activities of a
broker-dealer, investment adviser, or mortgage broker, or act as a salesperson for



1 any of these unless such activities are in full compliance with Chapter 59 of the
2 Oregon Revised Statutes.

3 I understand that this Stipulated Order is a public document.

4 Dated this 11th day of FEBRUARY, 2004.

5 Brian P. McGuane
6 Brian P. McGuane

7 SUBSCRIBED AND SWORN to before me this 11th day of February,
8 2004.

9 Christina M. Neiwirth
10 Signature of Notary Public

11 CHRISTINA M. NEIWIRTH
12 Printed Name of Notary Public)

13 Notary Public for the State of: CALIFORNIA

14 My commission expires: 11/27/05

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