

No. 2019- 5939

**Official Order
of the
Texas Commissioner of Insurance**

Date: APR 16 2019

Subject Considered:

ManhattanLife Assurance Company of America
10777 Northwest Fwy
Houston, Texas 77092

Consent Order
SOAH Docket No. 454-19-0758.C
TDI Enforcement File No. 9365

General remarks and official action taken:

The subject of this order is whether disciplinary action should be taken against ManhattanLife Assurance Company of America formerly known as Central United Life Insurance Company (the Company).

Waiver

The Company acknowledges that the Texas Insurance Code and other applicable law provide certain rights. The Company waives all of these rights, and any other applicable procedural rights, in consideration of the entry of this consent order.

Pursuant to TEX. INS. CODE § 82.055(b), the Company agrees to this consent order with the express reservation that the Company does not admit to a violation of the Texas Insurance Code or of a rule of the Texas Department of Insurance, and the Company maintains that the existence of a violation is in dispute.

Findings of Fact

1. The Texas Department of Insurance (TDI) certified the Company, organization identification No. 947, as a life, accident, or health insurer effective December 8, 1980.
2. TDI received a complaint from an individual who owned a whole life policy issued by the Company. The policyholder was complaining about correspondence from the Company that stated his premium had not increased according to the terms of the policy. The correspondence said his premium would be increasing and that the total of the amounts the Company had failed to charge over the years would be deducted from any benefits to be paid in the future. The complainant did not think it was fair for his premium to be increasing, and he was opposed to being charged for something that was the Company's fault, not his own.

Policy Acquisition and Administration Issues

3. In 1993, the Company acquired a book of 56 whole life policies (the policies), which were originally sold by People's Life Insurance Company (People's Life). People's Life sold the policies to Texas consumers between 1981 and 1987. In 1990, People's Life dissolved and the policies were reinsured by Life of America Insurance Company (Life of America). Then in 1993, Life of America merged with Central United Life Insurance Company (Central United). On June 28, 2017, Central United changed its name in TDI's records to ManhattanLife Assurance Company of America.
4. Per the terms of the policies, the Company may increase or decrease a policyholder's premiums after year one, as long as the premium stays compliant with the policy's specification tables. The policies contain two specification tables that relate to premium dollar amounts—the "Total Premium" and the "Guaranteed Maximum Premiums All Face Amounts" tables.
5. The policies contain a provision that creates a cash surrender value, which gives a policyholder the opportunity to receive a cash return upon surrender after year 21. Generally, a policy's cash surrender value is \$0 until the policy's 20th year and would increase annually thereafter. Each policy contained a "Table of Cash, Loan and Non-Forfeiture Benefits" that set out the annual cash surrender value amounts. These tables varied per policy depending on various personal factors.
6. When the Company bought the policies, it converted them to an administrative system that did not have the capacity to automate the contracted annual premium

increases. The Company intended to manually implement premium increases on these policies.

7. During its administration of the policies, the Company learned that its administration processes were not consistently making annual premium increases to certain policies.
8. The Company continued to afford full coverage on the policies without increasing premiums.
9. Many of the policies did not have a single premium increase between 1995 and 2014. The Company did not increase a single policy's premiums in accordance with the amounts listed in the "Total Premiums" specifications table.

Policy Language and Premium Schedules

10. The policies state that premiums are payable "as set forth in the Premium Schedule and subject to the Change of Premium Section." There is no section titled "Premium Schedule" in the form.
11. The "Total Premiums" specifications table lists the policy's anticipated premium amounts, charting annual increases for each anniversary of the policy, with the last increase in the column labeled "21 YR. & thereafter."
12. The "Change of Premium Section" states, "We may raise or lower 'Total Premiums' after one year."

2002 Review and Letters

13. In 2002, the Company reviewed at least eight of the 40 active policies. The Company sent letters to those policyholders that included the following:
 - a. "During a recent audit we discovered that you have not been billed correctly for the above reference life insurance policy;"
 - b. "According to the policy provisions, the premium increases for the first 21 years, and then it remains level for the rest of the policy years;"
 - c. the amount his or her premium would increase to in 2002; and
 - d. his or her projected annual premium amounts for each year remaining until the policy's 21st year.

14. The 2002 letters did not mention any decreases to future benefits or any collection of the difference between what the Company had collected as premiums to date and the amounts listed in the "Total Premiums" specification table (amount not charged).
15. The Company did not implement the increases as stated in the 2002 letters.

2014 Review and Letters

16. In July 2014, the Company reviewed the 13 remaining, active policies, and sent letters notifying 12 policyholders:
 - a. "This policy is an Increasing Premium Whole Life policy issued by People (sic) Life Insurance Company, which has increasing premiums during the first twenty one (sic) years and a level premium thereafter;"
 - b. the date of the policyholder's last premium increase;
 - c. the policyholder's new premium amount;
 - d. the date the premium increase would occur; and
 - e. "We will not collect the difference in premiums" of the amount not charged.
17. The 12 policies had reached year 21 in or before 2008. Those policies had received relatively few of the 20 scheduled premium increases, and therefore their premiums increased sharply in 2014.
18. The remaining 13th policy did not receive this correspondence because it had been previously approved for reentry. In exercising the policy's reentry option, the policyholder and the Company had agreed to modify the original insurance contract. The policyholder was allowed to renew his existing coverage at a lower premium amount, and no longer adhere to the "Total Premiums" specification table, for the consideration of extending his timeline for accruing cash surrender value.
19. Two policyholders surrendered their policies within a week of receiving the July 2014 letter. The Company's initial response to both policyholders was that due to the amount not charged, their policies had no values or benefits upon surrender.
20. However, about a month after its initial response, the Company paid each of these policyholders a cash surrender payment of the amount listed in their policies' "Table of Cash, Loan and Non-Forfeiture Benefits."

21. In August 2014, the Company sent a follow-up communication to the policyholders, clarifying that while the amount not charged would not be invoiced upfront, it would be deducted from any benefit paid, including cash surrender value and death benefits.
22. For most of the remaining policies, the amount not charged was greater than the cash surrender amount as of August 2014. This meant policyholders who had made all payments as charged for 21 years would not receive any cash value should they choose to surrender. For some, this also meant the policyholder's estate would receive less than half of the policy's stated death benefit.
23. The policies do not expressly include any provisions that provide the Company the authority retroactively collect amounts that were not charged due to the Company's oversight in not increasing the premiums in accordance with the policy "Total Premiums" specifications table.
24. Since July 2014:
 - a. two policyholders surrendered and received a cash surrender payment of the amount listed in their policies' "Table of Cash, Loan and Non-Forfeiture Benefits;"
 - b. one policyholder surrendered and received a cash surrender payment less than the amount listed in his policy's "Table of Cash, Loan and Non-Forfeiture Benefits;"
 - c. two policyholders canceled or surrendered after year 21 and received no cash surrender payment;
 - d. one policyholder canceled or surrendered, was told he would receive no cash surrender value, then instituted a civil suit to recover under the terms of the policy, which resulted in a settlement;
 - e. two policyholders declined to pay the increased premiums and their policies lapsed, at a time when their policies had attained a cash surrender value according to their policies' "Table of Cash, Loan and Non-Forfeiture Benefits;"
 - f. one policy filed a claim for death benefits, and the Company paid the policy's face value; and
 - g. four policyholders continued their policies, paying the increased premiums.
25. Each of the four active policies are in full force as of the date of this order.
26. The Company substantially undercharged the policyholder, however at all times, the policyholders were fully covered.

Communications with Policyholders

27. During the terms of the policies, the Company went years without sending any communications to the policyholders.
28. The Company sent written communications to policyholders that included inaccurate premium amounts, inaccurate cash surrender values, and incorrect dates regarding when premium increases would cease.
29. On September 1, 2011, the Company sent Policyholder J.K. a letter informing him that his premium would be increasing from \$55 to \$1,447.73 a month. Because this policy had previously been reinstated, the premium that should have been charged at that time per the terms of the policy was much lower, around \$280. J.K. informed the Company that he could not afford the \$1,447.73 monthly premium and allowed his policy to lapse.

Failure to Update Policyholder's Address

30. In a document dated July 24, 2001, policyholder B.G. notified the Company of a change of address. The Company failed to make that change in its system.
31. After the requested change, the Company sent two letters to the former address—a 2002 letter and a 2013 notice. The Company sent the 2013 notice to inform the policyholder that her policy was in danger of lapsing due to a problem with the automatic drafts that had maintained the policy until that date.
32. After the 2013 notice, the policy lapsed for lack of premium payment. At the time of lapse, the policyholder's cash surrender value according to her "Table of Cash, Loan and Non-Forfeiture Benefits" was in excess of \$12,666.67.

Failure to Respond to Request for Information

33. On November 29, 2016, TDI emailed the Company requesting information that had been previously verbally discussed. On December 8, 2016, the Company emailed TDI a clarification question regarding the request. On December 13, 2016, TDI emailed the Company to clarify the request. TDI received the requested information on March 21, 2017 — 82 days after the response was due to TDI.

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 81.002, 82.051-82.055, 84.021-84.022, 541.051, and 801.051; 28 TEX. ADMIN. CODE § 21.5; and TEX. GOV'T CODE §§ 2001.051-2001.178.
2. The commissioner has the authority to dispose of this case informally pursuant to TEX. GOV'T CODE § 2001.056, TEX. INS. CODE §§ 36.104 and 82.055, and 28 TEX. ADMIN. CODE § 1.47.
3. The Company has knowingly and voluntarily waived all procedural rights to which it may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intention to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.
4. The Company violated TEX. INS. CODE § 541.051(1) by making, issuing, or circulating statements misrepresenting the terms, benefits, or advantages promised by policies.
5. The Company violated TEX. INS. CODE § 541.051(5) by making misrepresentations to policyholders for the purpose of inducing or that tended to induce the policyholders to allow an existing policy to lapse or to forfeit or surrender the policy.
6. The Company violated TEX. INS. CODE § 38.001 by failing to timely respond to a reasonable inquiry in writing.

Order

It is ordered that ManhattanLife Assurance Company of America comply with the following:

1. The Company must cease and desist from making misrepresentations to its policyholders.
2. The Company must not reduce any death benefits to be paid after the date of this order on any of the policies described in Finding of Fact No. 3, for any reason related to the collection of premiums before the date of this order.

3. The Company must not reduce any cash surrender values to be paid after the date of this order for any reason related to the collection of premiums before the date of this order.
4. Within 30 days of the date of this order, the Company must send correspondence to all active policyholders, by certified mail and by first-class mail or e-mail, if the policyholder prefers, providing them with the following options:
 - a. Continue Coverage — A policyholder may maintain the coverage afforded by the policy by continuing to pay their current rates. As long as a policyholder does not request reentry or reinstatement in the future, the annual premium amount will not increase for the life of the policy. If the policyholder continues to pay the current premium in full, the Company will pay the full death benefit, or the full cash surrender value listed in the "Table of Cash, Loan and Non-Forfeiture Benefits" for the corresponding time of the surrender in accordance with the policy; or
 - b. Cancel as of July 2014 — A policyholder may surrender the policy and the Company will pay the full cash surrender value listed in the "Table of Cash, Loan and Non-Forfeiture Benefits" for his or her policy as of July 2014. Additionally, the Company will reimburse the total premiums paid on the surrendered policy from July 2014 to present.
5. The correspondence to active policyholders must also include:
 - a. a statement that the option to Cancel as of July 2014 will expire 60 days after the date of the correspondence;
 - b. an acknowledgment that the Company has made erroneous statements to policyholders that contained inaccurate information;
 - c. the current annual premium;
 - d. the current premium payment frequency;
 - e. if not paying annually, the amount due for each installment payment;
 - f. a statement affirming that, unless the policyholder chooses to request reentry or reinstatement, the premium amount will not increase for the life of the policy;
 - g. the value of the policy's death benefit;
 - h. a statement that the death benefit of this policy will not be decreased for any reason related to the failure to collect premium before the date of this order;
 - i. the current cash surrender value;

- j. a statement that the cash surrender value of this policy will not be decreased for any reason related to the failure to collect premium before the date of this order;
 - k. a statement that the cash surrender value and death benefit are subject to reduction for failure to pay premiums and policy loans that occur after the date of this order in accordance with the terms of the policy;
 - l. the procedures for surrendering the policy, should the policyholder so choose; and
 - m. the contact information for a specific employee of the Company who understands the intricacies of the policies and can answer any policyholder questions.
6. Upon each anniversary of a policy's effective date, the Company must send active policyholders annual statements by first-class mail or e-mail, if the policyholder prefers, to include:
- a. the annual contract premium;
 - b. the net cash surrender value;
 - c. the death benefit;
 - d. the total amounts that have been credited or debited to the policy value during the previous year;
 - e. the amount of any outstanding loans, as of the end of that report period; and
 - f. the contact information for a specific employee who understands the intricacies of the policies and can answer any questions the policyholder may have.

It is further ordered that ManhattanLife Assurance Company of America must pay restitution totaling \$104,035.38, to the six policyholders who surrendered or terminated their policy but did not receive the full cash surrender value listed in the "Table of Cash, Loan and Non-Forfeiture Benefits" for the corresponding time of the surrender.

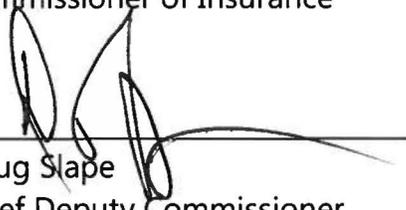
1. Restitution must be paid by company check, cashier's check, or money order within 30 days from the entry date of this order.
2. Any restitution checks that are returned to the Company with an address correction must be promptly resent to the correct address. Funds from any restitution checks that are returned for incorrect addresses without a forwarding address and from checks that are not negotiated prior to one year after the date of the issuance of the check will be presumed abandoned and delivered to the comptroller pursuant to the

- procedures set forth in the TEX. PROP. CODE §§ 72.001 *et. seq.* The Company must copy TDI on any correspondence pertaining to abandoned funds that is sent to the comptroller.
3. Within 14 days of sending restitution payments, the Company must send TDI written proof of payment of restitution in full. This proof must be accompanied by a sortable, electronic spreadsheet containing
 - a. the policyholder name;
 - b. policy number;
 - c. the amount paid;
 - d. the date the restitution was sent to the policyholder; and
 - e. the address that the restitution payment was sent to.
 4. All submissions to TDI related to restitution payments must be sent by email to EnforcementReports@tdi.texas.gov.

It is further ordered that ManhattanLife Assurance Company of America must pay an administrative penalty of \$100,000 within 30 days of the date of this order. The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas" and sent to the Texas Department of Insurance, Attn: Enforcement Section, Division 60851, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.

Kent C. Sullivan
Commissioner of Insurance

By: _____


Doug Slape
Chief Deputy Commissioner
Commissioner's Order No. 2018-5528

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Recommended and reviewed by:



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Enforcement Section



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