



FILED

MAR 15 2016

OFFICE OF INSURANCE REGULATION

**OFFICE OF
INSURANCE REGULATION**
Docketed by: DSS

KEVIN M. MCCARTY
COMMISSIONER

IN THE MATTER OF:

CASE NO.: 188018-16

WESTPORT HOLDINGS TAMPA,
LIMITED PARTNERSHIP
d/b/a UNIVERSITY VILLAGE
_____ /

INITIAL ORDER OF SUSPENSION

TO: Westport Holdings Tampa, Limited Partnership
d/b/a University Village
12401 North 22nd Street
Tampa, Florida 33612

THIS CAUSE came on for consideration as a result of an ongoing examination of WESTPORT HOLDINGS TAMPA, LIMITED PARTNERSHIP d/b/a UNIVERSITY VILLAGE ("WESTPORT") pursuant to Section 651.105, Florida Statutes. The FLORIDA OFFICE OF INSURANCE REGULATION ("OFFICE"), having considered the matter and otherwise being advised in the premises, finds as follows:

1. The OFFICE has jurisdiction over WESTPORT and the subject matter of this proceeding.
2. The OFFICE is an agency of the state of Florida and regulates insurers and other risk-bearing entities as provided in the Florida Insurance Code.
3. Continuing Care Retirement Communities ("CCRC") are regulated by the OFFICE as "specialty insurers" pursuant to Chapter 651, Florida Statutes.

4. Florida law requires that every CCRC be operated by a provider approved by the OFFICE to hold a Certificate of Authority. § 651.021, Fla. Stat.

5. WESTPORT is a limited partnership formed in 2000 and existing under the laws of the state of Delaware.

6. In 2000, WESTPORT was approved by the OFFICE to be the provider for the University Village CCRC in Hillsborough County, Florida, and to hold a Certificate of Authority pursuant to Chapter 651, Florida Statutes.

7. WESTPORT is subject to regulation by the OFFICE, pursuant to Chapter 651, Florida Statutes.

8. WESTPORT has two partnership interests: a ninety-nine percent (99%) limited partnership interest and a one percent (1%) general partnership interest. From 2000 until March 31, 2014, those interests were held by two entities, Westport Senior Living Investment Fund, L.P (the ninety-nine percent (99%) limited partnership interest) and Westport Holdings University Village, LLC (the one percent (1%) general partnership interest).

9. On March 31, 2014, BVM University Village, LLC obtained from Westport Senior Living Investment Fund, L.P. the ninety-nine percent (99%) limited partnership interest of WESTPORT. BVM University Village, LLC is a Florida limited-liability company formed in August 2013. BVM University Village, LLC accomplished its limited partnership takeover by retiring some minor debts and restructuring the remainder through two loans.

10. BVM University Village, LLC retained thirty-nine and six-tenths percent (39.6%) of the limited partnership interest and simultaneously assigned the remainder of that interest to three other companies as follows: JF Consultants, LLC (thirteen and two-tenths percent

(13.2%)); BHMSILF, LLC (twenty-six and four-tenths percent (26.4%)); and IMH Healthcare, LLC (“IMH”) (nineteen and eight-tenths percent (19.8%)).

11. Subsequently, on or about June 30, 2015, BHMSILF, LLC transferred all of its limited partnership interest to JF Consultants, LLC.

12. Effective December 29, 2014, the general partner of WESTPORT, Westport Holdings University Village, LLC, resigned. The new limited partners exercised control over WESTPORT until Compliance Concepts, LLC (“Compliance Concepts”) was elected as the new general partner, effective January 26, 2015.

13. Subsequently, on March 2, 2015, IMH was elected and replaced Compliance Concepts as general partner of WESTPORT.

14. By virtue of these actions and continuing to the present, IMH, JF Consultants, LLC and BVM University Village, LLC own 100% of WESTPORT.

15. Section 628.4615(2), Florida Statutes, provides in full as follows:

A person may not, individually or in conjunction with any affiliated person of such person, directly or indirectly, conclude a tender offer or exchange offer for, enter into any agreement to exchange securities for, or otherwise finally acquire, 10 percent or more of the outstanding voting securities of a specialty insurer which is a stock corporation or of a controlling company of a specialty insurer which is a stock corporation; or conclude an acquisition of, or otherwise finally acquire, 10 percent or more of the ownership interest of a specialty insurer which is not a stock corporation or of a controlling company of a specialty insurer which is not a stock corporation, unless:

(a) The person or affiliated person has filed with the office and sent by registered mail to the principal office of the specialty insurer and controlling company a letter of notification regarding the transaction or proposed transaction no later than 5 days after any form of tender offer or exchange offer is proposed, or no later than 5 days after the acquisition of the securities or ownership interest if no tender offer or exchange offer is involved. The notification must be provided on forms prescribed by the commission containing information determined necessary to understand the transaction and identify all purchasers and owners involved;

(b) The person or affiliated person has filed with the office an application signed under oath and prepared on forms prescribed by the

commission which contains the information specified in subsection (4). The application must be completed and filed within 30 days after any form of tender offer or exchange offer is proposed, or after the acquisition of the securities if no tender offer or exchange offer is involved; and

(c) The office has approved the tender offer or exchange offer, or acquisition if no tender offer or exchange offer is involved.

16. To date, the OFFICE has not approved the acquisition of WESTPORT.

17. IMH filed an application to acquire the general partnership interest of WESTPORT pursuant to section 628.4615, Florida Statutes. The OFFICE denied that application by Final Order issued in IMH Healthcare, LLC. v. Office of Insurance Regulation, DOAH Case No. 15-2495, OIR Case No. 171773-15 (March 11, 2016).

18. Section 628.4615(12)(a), Florida Statutes, provides in full as follows:

The office shall, if necessary to protect the public interest, suspend or revoke the certificate of authority of any specialty insurer or controlling company acquired in violation of this section.

19. The acts and actions described above constitute the unlawful acquisition of WESTPORT without approval of the OFFICE in violation of Section 628.4615, Florida Statutes.

20. Notwithstanding this unlawful acquisition, IMH as general partner of WESTPORT, through its sole member Elijahu Freiden, has exercised control over WESTPORT and the provision of continuing care to the residents of University Village as though it possesses legal authority to act as the CCRC provider.

21. As part of its illegal operation of University Village, IMH as general partner of WESTPORT, through Mr. Freiden, is entering into contracts with new CCRC residents.

22. Undertaking these activities without a lawfully obtained Certificate of Authority violates the Florida Insurance Code. See § 651.021, Fla. Stat. (“No person may engage in the business of providing continuing care . . . [or] issuing contracts for continuing care . . . without a certificate of authority obtained from the office as provided in this chapter.”).

23. The provisions of the Florida Insurance Code relating to CCRCs were enacted and exist to protect the senior population from the historic scams and economic vicissitudes of the industry.

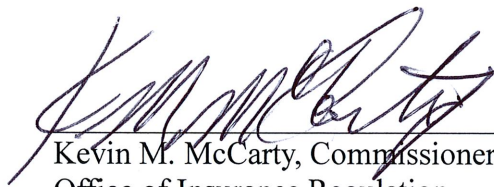
24. The ongoing illegal operation of a specialty insurer in violation of laws enacted to protect the public health, safety and welfare—specifically that of Florida’s senior population—is directly contrary to the State’s manifested intent to protect this class.

25. Suspension of the Certificate of Authority held by WESTPORT is necessary to arrest this violation and protect the public interest.

WHEREFORE, you, WESTPORT, are hereby notified, pursuant to Sections 628.4615(12) and 120.57, Florida Statutes, that, based upon the foregoing allegations, the OFFICE intends to enter a Final Order of Suspension suspending the Certificate of Authority of WESTPORT. WESTPORT is further notified that it has twenty-one (21) days from the date of receipt of this Initial Order of Suspension to file a proceeding to contest this action in accordance with the attached Notice of Rights.

DONE and ORDERED this 15th day of March, 2016.




Kevin M. McCarty, Commissioner
Office of Insurance Regulation

NOTICE OF RIGHTS

Pursuant to Sections 120.569 and 120.57, Florida Statutes and Rule Chapters 28-106, Florida Administrative Code (F.A.C.), you have a right to request a proceeding to contest this action by the Office of Insurance Regulation (hereinafter the "Office"). You may request a proceeding by filing a Petition. Your Petition must be in writing and must be filed with the General Counsel acting as the Agency Clerk, Office of Insurance Regulation. If served by U.S. Mail the Petition should be addressed to the Florida Office of Insurance Regulation at 647 Larson Building, Tallahassee, Florida 32399-4206. If Express Mail or hand delivery is utilized, the Petition should be delivered to 647 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0300. The written Petition must be received by, and filed in the Office no later than 5:00 p.m. on the twenty-first (21) day after your receipt of this notice. Unless your Petition challenging this action is received by the Office within twenty-one (21) days from the date of the receipt of this notice, the right to a proceeding shall be deemed waived. Mailing the response on the twenty-first day will not preserve your right to a hearing.

If a proceeding is requested and there is no dispute of material fact the provisions of Section 120.57(2), Florida Statutes would apply. In this regard you may submit oral or written evidence in opposition to the action taken by this agency or a written statement challenging the grounds upon which the agency has relied. While a hearing is normally not required in the absence of a dispute of fact, if you feel that a hearing is necessary one will be conducted in Tallahassee, Florida or by telephonic conference call upon your request.

If you dispute material facts which are the basis for this agency's action you may request a formal adversarial proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes. If you request this type of proceeding, the request must comply with all of the requirements of Rule Chapter 28-106.2015, F.A.C., including but not limited to:

- a) A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so state; and
- b) A statement of when the respondent received notice of the agency's action.

These proceedings are held before a State Administrative Law Judge of the Division of Administrative Hearings. Unless the majority of witnesses are located elsewhere the Office will request that the hearing be conducted in Tallahassee.

In some instances, you may have additional statutory rights than the ones described herein.

Failure to follow the procedure outlined with regard to your response to this notice may result in the request being denied. Any request for administrative proceeding received prior to the date of this notice shall be deemed abandoned unless timely renewed in compliance with the guidelines as set out above.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Initial Order of Suspension was sent by Certified Mail, Return Receipt Requested to the following:

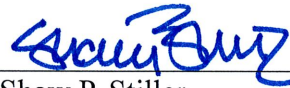
Westport Holdings Tampa, Limited Partnership
d/b/a University Village
12401 North 22nd Street
Tampa, Florida 33612

Mr. Eli Freiden
IMH Healthcare, LLC
7000 W. Camino Real, Suite 240
Boca Raton, Florida 33433

and sent via e-mail and U.S. Mail to the following:

M. Stephen Turner, Esq.
Broad and Cassel
215 South Monroe Street, Suite 400
Tallahassee, Florida 32301
E-mail: sturner@broadandcassel.com

on this 15th day of March, 2016.



Shaw P. Stiller
Chief Assistant General Counsel
Office of Insurance Regulation
200 East Gaines Street
Tallahassee, Florida 32399
Telephone: (850) 413-4317
Facsimile: (850) 922-2543
E-Mail: Shaw.Stiller@flor.com