

## *OpJAGAF 2018-47, 18 December 2018, Commercial Sponsorship Agreements*

### Ability of Installation Commander to Regulate and Discipline Prohibited Practices in the Sale of Life Insurance Policies to Airmen Stationed at an Overseas Installation

This opinion discusses whether an Installation Commander has the authority to deny the ability of an approved vendor of life insurance policies to enter into Commercial Sponsorship Agreements with the installation's Morale, Welfare and Recreation (MWR) Program. Although the scenario discussed in this opinion is based on a real situation, the name of the company and installation involved are fictitious.

#### **Facts**

Greater Yosemite Life Insurance Company (GYL) has been approved by the Combatant Commander to conduct life insurance sales at all U.S. military installations in theatre. GYL has been engaging on Commercial Sponsorship (CS) Agreements at Madrid AFB for many years. Most of these agreements are the result of GYL's unsolicited offer of commercial sponsorship to support MWR programs such as a Military Family Day or a Strong Marriages Dinner Dance. Once these Commercial Sponsorship Agreements are entered, GYL sends agents onto Madrid AFB to participate in the events which the CS agreements are meant to support. While at these events on Madrid AFB, the agents then obtain Airmen's contact information, contact them, and encourage them to visit GYL's nearest office to discuss the Airmen's life insurance needs.

Because GYL sells insurance and investment products, it is regulated IAW DoDI 1344.07, *Personal Commercial Solicitation on DoD Installations*, 30 March 2006. Indeed, GYL seems to be aware of this because it has cited this DoDI in its application for approval to solicit sales of life insurance products. This approval was obtained from the Office of the Deputy Assistant Secretary of Defense for Military Community & Family Policy (Office of the Assistant Secretary of Defense for Manpower and Reserve Affairs) to solicit life insurance sales on overseas Department of Defense installations.

The Madrid AFB WG/JA has become concerned that at least one of GYL's products fails to comply with DoDI 1344.07. Specifically, Enclosure 3 of this DoDI mandates that an insurance product sold by a company allowed to engage in personal commercial solicitation on a DoD installation, among other things, must: (1) in plain and readily understandable language, and in type font at least as large as the font used for the majority of the policy, inform service members of the availability and cost of government subsidized Servicemen's Group Life Insurance (SGLI); (2) provide the address and phone number where consumer complaints are received by the State insurance commissioner for the State in which the insurance product is being sold; (3) inform service members that the U.S. Government has in no way sanctioned, recommended, or encouraged the sale of the product being offered. With respect to the sale or solicitation of insurance on Federal land or facilities located outside the United States, insurance products must contain the address and phone number where consumer complaints are received by the State insurance commissioner for the State which has issued the agent a resident license or the company is domiciled, as applicable. GYL's standard Adjustable Death Benefit Universal Life Insurance Policy has none of these provisions.

## **Issue**

While the installation pursues revocation (pursuant to DoDI 1344.07 and DoDI 1344.07\_AFI 36-2925, *Personal Commercial Solicitation on DoD Installations*) of GYL's permission to conduct life insurance sales in theatre, the Installation Commander would also like to ensure that she has sufficient legal grounds to deny GYL the ability to sponsor (via the installation MWR Commercial Sponsorship Marketing Office) any future events, since it was at such events that many of GYL's transgressions took place.

## **Law**

In addition to the authorities already cited, the pertinent regulation is AFI 34-108, *Commercial Sponsorship and Sale of Advertising*, 21 August 2018. We acknowledge the Staff Judge Advocate's concern that the denial of commercial sponsorship agreements to GYL may be tantamount to the immediate denial, suspension or withdrawal of installation solicitation privileges since it appears that GYL's business model relies on approaching potential customers at sponsored MWR events. While this is true, these are two different administrative actions with different standards of discretion.

The definitions of suspension and withdrawal in AFI 36-2925, Enclosure 2, clearly do not encompass denial of unsolicited offers of commercial sponsorship. DoDI 1344.07, paragraph 6.5.1., provides for a "best interests of the command" standard for suspension or withdrawal of Installation Solicitation Privileges (ISP) and offers a non-inclusive list of regulatory failures that may lead to ISP. AFI 34-108, paragraph 3.6., provides that off-limits establishments should not normally be granted CS agreements, but unsolicited offers of CS agreements may be denied because of no wrongdoing on the part of the offeror; it may just not make good business sense for the installation to enter into that particular CS agreement at that time.

## **Analysis**

In the current case, we do not have evidence that GYL has been put on notice of the perceived defects in their insurance agreements. In consideration of the lengthy relationship between GYL and Madrid AFB and in the interests of due process, we believe that GYL should be afforded notice of the defects in their insurance agreements and an opportunity to cure said defects. Such an administrative record will better support a later suspension or withdrawal of ISP should such actions be necessary.

It would certainly make good business sense that an installation commander not approve a tendered CS offer when the offeror is under investigation for offenses that might lead to it being placed off limits by the local Armed Forces Disciplinary Control Board. In the history of failed commercial solicitation relationships, it is often the course of events that transgressions by the agents of the approved solicitor lead to suspension of ISP; further violations lead to withdrawal of ISP; and even further violations lead to the employing company being placed off-limits and the agents barred from the installation. Certainly, it would be prudent for an installation commander faced with allegations that might lead to the suspension of ISP of an approved solicitor to deny, or at least hold in abeyance, any offers of CS from that company.

Although it is clear that denial of offers of CS is not a suspension or withdrawal of ISP, we are mindful that DoDI 1344.07, paragraph 6.5.5., requires that installation commanders, in a withdrawal action, permit the company to show cause why the withdrawal action should not be taken. Here, we have alleged regulatory infractions of GYL's insurance agreements in violation of DoDI 1344.07, paragraph E3.1.1. We do not have any allegations of deceptive or coercive practices on the part of GYL's agents. In its application to OSD Military Community & Family Policy, for example, GYL agreed to comply with the laws of the host nation, but has not provided proof that it has done so. In the absence of a particular licensing requirement in the host nation, we are unsure of how a company would provide proof of compliance with national and local laws.

### **Conclusion**

We do believe that the installation commander is warranted in denying or holding in abeyance all offers of unsolicited CS received from GYL for the duration of the notice and cure period. Since correction of the regulatory deficiencies will likely involve a change in original forms at HQ GYL, distribution to and training of GYL agents in theatre, and a spot-checking of GYL customers for compliance after the fact, we would recommend a minimum notice and cure period of six (6) months.