

APR 28 2005

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

FILED

IN RE: THE MATTER OF ENTERPRISE	)	CAUSE NO.: I-58
RENT-A-CAR COMPANY OF DAKOTAS/	)	
NEBRASKA; ENTERPRISE RENT-A-CAR	)	
COMPANY OF MIDWEST; AND	)	SUMMARY ORDER TO
ENTERPRISE RENT-A-CAR COMPANY	)	CEASE AND DESIST
OF MONTANA AND WYOMING	)	AND NOTICE OF RIGHTS
(collectively "ENTERPRISE")	)	

The Department of Insurance (herein the "Department"), by and through its Director, L. Tim Wagner, hereby orders ENTERPRISE to immediately CEASE AND DESIST from any and all solicitation effected by or on behalf of ENTERPRISE, and from any and all acts deemed to constitute the transaction of an insurance business in the State of Nebraska pursuant to *Neb. Rev. Stat. §44-2002* (Reissue 2004). Specifically, pursuant to *Neb. Rev. Stat. §44-2003 (2)* (Reissue 2004), the Director orders ENTERPRISE to immediately CEASE AND DESIST solicitation efforts to Nebraska residents and/or customers renting ENTERPRISE vehicles in Nebraska. NOTICE IS HEREBY GIVEN:

1. That the Director of Insurance is charged with enforcement of the insurance laws of the State of Nebraska. See *Neb. Rev. Stat. §44-101 et seq.*, including the unauthorized activities of insurers;
2. That *Neb. Rev. Stat. §44-2002(2)* defines an insurer to include all corporations, associations, partnerships, and individuals engaged as principals in the business of insurance;

3. That *Neb. Rev. Stat.* §44-303 provides that an insurer must obtain a certificate of authority before transacting the business of insurance in the State of Nebraska;

4. That *Neb. Rev. Stat.* §44-201(10) defines liability insurance to mean “[i]nsurance against legal liability for the death, injury, or disability of any person, for injury or damage to any person, or for damage to property, and the providing of medical, hospital, surgical or disability benefits to the injured persons . . .”

5. That the Unauthorized Insurers Act, *Neb. Rev. Stat.* §44-2001 et seq., provides that “[i]t shall be unlawful for any insurer to transact insurance business in this state, as set forth in subsection (2) of this section, without a certificate of authority from the director.” Subsection (2) provides that “[a]ny of the following acts in this state effected by mail or otherwise by or on behalf of an unauthorized insurer shall constitute the transaction of an insurance business in this state . . .

- (a) The making of or proposing to make, as an insurer, an insurance contract;
- (b) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not mere incidental to any other legitimate business or activity of the guarantor or surety;
- (c) The taking or receiving of any application for insurance;
- (d) The receiving or collection of any premium, commission, membership fees, assessments, dues, or other consideration for any insurance or any part thereof;
- (e) The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state;
- (f) Directly or indirectly acting as an agent for other otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement, or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contract, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract

and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state. This subsection shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer;

- (g) The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance; or
- (h) The transacting or proposing to transact any insurance business in substance equivalent to any of the provisions of subdivisions (a) through (g) of this subsection in a manner designed to evade the provisions of the statutes”;

6. That ENTERPRISE is not licensed as an insurer in the State of Nebraska;

7. That following a review into this matter, the Department of Insurance has reasonable cause to believe that ENTERPRISE is engaged in the business of transacting insurance in the state without a license, in particular, is violating and has violated *Neb. Rev. Stat. §44-2002 (a), (c), (d), (e), (g)* in that ENTERPRISE is soliciting, conducting and transacting motor vehicle liability insurance in the State of Nebraska by soliciting or offering motor vehicle liability insurance for sale to its customers through verbal presentation by its counter employees and its car rental contracts as part of its car rental program.

8. That pursuant to *Neb. Rev. Stat. §44-4067 (7)*, a rental car company may hold a limited license to act as an insurance producer and solicit the sale of motor vehicle liability insurance to its customers *for an authorized insurer*. (Emphasis added).

9. That ENTERPRISE is not soliciting the sale of motor vehicle liability insurance on behalf of an authorized insurer and that, in fact, ENTERPRISE does not have an appointment with an authorized insurer to sell any such product on its behalf.

10. That insurance companies transacting business in Nebraska must pay a tax (hereinafter "premium tax") of one percent of the gross amount of direct writing premiums received for business done in this state. *Neb.Rev.Stat. §77-908* (Reissue 2003). Premiums shall mean the consideration paid to insurance companies for insurance and shall include policy fees, assessments, dues, or other similar payments. *Neb.Rev.Stat. §77-907(4)* (Reissue 2003). Premium tax is due on or before March 1 of each year for premiums received during the preceding calendar year. *Neb.Rev.Stat. §77-908* (Reissue 2003). Insurers who fail to pay any premium tax when due shall pay interest at the rate prescribed by *Neb.Rev.Stat. §45-104.02* until such tax is paid. *Neb.Rev.Stat. §77-918* (R.R.S. 2003).

11. That ENTERPRISE failed to report and remit premium tax on its insurance business in Nebraska in violation of *Neb.Rev.Stat. §77-907 et seq.*

12. That the aforementioned facts constitute violations of the Unauthorized Insurers Act, the Insurance Producers Licensing Act, and premium tax requirements which fall within the purview of the Department's authority to exercise its powers to protect rental car customers who are renting vehicles within the State of Nebraska.

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED that ENTERPRISE immediately CEASE AND DESIST from further solicitation efforts in the State of Nebraska, and immediately CEASE AND DESIST from transacting the business of insurance in the State of Nebraska.

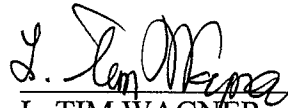
IT IS FURTHER ORDERED that ENTERPRISE shall provide a report of and pay premium tax on all Nebraska business transacted in 2004 and shall do so no later than thirty (30) days from the date of this Order. The Nebraska Department of Insurance shall

retain jurisdiction of this matter for the purpose of enabling the Department or ENTERPRISE to make application for such further orders as may be necessary.

A hearing on this matter may be requested in writing within ten (10) business days after received of this Order. Such hearing will be held in accordance with the Administrative Procedure Act.

Dated this 28<sup>th</sup> day of April, 2005.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE



\_\_\_\_\_  
L. TIM WAGNER  
DIRECTOR OF INSURANCE

#### CERTIFICATE OF SERVICE

I hereby certify that the foregoing Summary Order to Cease and Desist is served upon Enterprise by mailing a copy to Nancy McDonald, N.C. McDonald Consulting, Inc., P.O. Box 271076, Flower Mound, TX 75027; to Brian Campbell, Esq., Faegre & Benson LLP, Suite 1300, 801 Grand Avenue, Des Moines, IA 50309-8002; to Enterprise Rent-A-Car Company of Dakotas/Nebraska at 1010 South 12<sup>th</sup> Street, Bismark, ND 58504; to Enterprise Rent-A-Car Company of Midwest at 4509 Brady Street, Davenport, IA 52806; and to Enterprise Rent-A-Car Company of Montana and Wyoming at 1200 Bozeman Street, Helena, MT 59601, by certified mail, return receipt requested, on this 28<sup>th</sup> day of April, 2005.

