

**BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS**

**IN THE MATTER OF
KEVIN MICHAEL MCNAY
LICENSE NO. 259838**

A.I.D. NO. 2008- 0 2 0

CONSENT ORDER

On this day Julie Benafield Bowman, Insurance Commissioner for the State of Arkansas ("Commissioner"), and Kevin Michael McNay ("Respondent"), reached an agreement concerning the resident insurance producer's license issued to Respondent by the Arkansas Insurance Department ("Department"). The Department was represented by Robert Alexander, Associate Counsel. The Respondent voluntarily and intelligently waived his right to a hearing and consented to the entry of this Consent Order. The parties agreed as follows:

FINDINGS OF FACT

1. Respondent holds an active resident Arkansas insurance producer license granted by the Insurance Commissioner for the State of Arkansas. Respondent's last address of record at the Department is 13310 Cedar Point Drive, Little Rock, Arkansas 72211.
2. In June of 2005, Respondent caused an annuity issued by Bankers Life to be cancelled. The annuity had previously been issued to Bernie Horton. The proceeds of this annuity were used to purchase a new annuity from Bankers Life. Respondent had notified the Horton's that the annuity number 7,798,786 had been lost and a new annuity had to be issued. In fact a duplicate copy of the annuity could have been obtained and the annuity could have remained in force. The new annuity, policy number 7,819,877, did not include equal or better benefits than the old annuity. A comparison form was not provided to the Hortons.

3. In July of 2005, Respondent replaced an existing annuity owned by R. Inez Godwin with a new annuity issued by Bankers Life. The replaced annuity was issued in 1994 by John Alden Life and had a minimum guaranteed interest rate of 4%. This annuity did not have any surrender fees at the time it was replaced. The new Bankers Life annuity had a minimum guaranteed interest rate of 3% and was subject to a surrender fee for 9 years. Ms. Godwin was not provided a comparison form for this replacement.
4. In July of 2005, Respondent replaced an existing annuity owned by Podge and Shirley Ellenburg with a new annuity issued by Bankers Life Insurance Company. The replaced annuity had a minimum guaranteed interest rate of 4%. The new annuity had a minimum guaranteed interest rate of 3%. When the Ellenburgs surrendered the old annuity, they experienced a surrender fee in the amount of \$7777.78. The Ellenburgs were not provided a comparison form for this replacement.

CONCLUSIONS OF LAW

1. That the Commissioner has jurisdiction over the parties and the subject matter herein pursuant to Ark. Code Ann. § 23-61-103.
2. Respondent has violated Ark. Code Ann. § 23-66-206 (2) which prohibits the replacement of life insurance policies when the replacement is not for the benefit or betterment of the insured. Respondent has violated Ark. Code Ann. § 23-66-307 (a)(1) and (2) by failing to provide reasonable and professional service and failing to improve upon existing insurance by providing better coverage or a more suitable product for the needs of the insured, their family or business.

3. Respondent has violated Ark. Code Ann. § 23-66-307(c) which requires insurance producers to provide the policyholder with a written comparison of the existing and proposed life insurance coverage.
4. That pursuant to Ark. Code Ann. § 23-64-512(a) and § 23-64-216(d)(1), if the Commissioner finds that one or more grounds exist for the probation, suspension, or revocation of any license, the Commissioner in her discretion may impose upon the licensee an administrative penalty in the amount of up to five thousand dollars (\$5,000) per violation if willful misconduct on the part of the licensee is found.
5. The Respondent has been made fully aware of his rights to a hearing and has voluntarily and intelligently waived said rights and consents to the entry of this Consent Order. In doing so, Respondent neither admits to any allegations contained herein, nor makes any admissions related to the allegations or complaints filed herein.

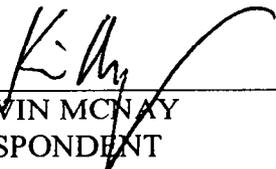
THEREFORE, in consideration of these Findings of Fact and Conclusions of Law, it is hereby ordered and agreed that:

1. Respondent's resident Arkansas insurance producer's license is placed in probationary status for two years from the date of this Order.
2. Respondent shall also pay a civil penalty of \$1500.00 within 90 days from the entry of this Order.
3. Respondent is advised that probationary status means that the imposition of insurance license sanctions that the Commissioner may impose by law or by informed consent upon him is being suspended and is contingent upon his

compliance and good conduct during this probationary period. See Ark. Code Ann. § 23-64-216 and §23-64-512.

- 4. If Respondent violates the terms of his probation or any provision of the Arkansas Insurance Code during the probation period, Respondent's license will be suspended and a revocation hearing will immediately be set and will result in statutorily imposed sanctions.

DATED this 13th day of March, 2008.
17th



KEVIN MCNAY
RESPONDENT



JULIE BENAFIELD BOWMAN
INSURANCE COMMISSIONER
STATE OF ARKANSAS

APPROVED AS TO FORM:



JOEL HOOVER
ATTORNEY FOR RESPONDENT

3/12/08
DATE