

Arkansas Insurance Department

Mike Beebe
Governor



Jay Bradford
Commissioner

October 16, 2013

Via US Mail and Certified Mail Return Receipt No. 7009 1680 2604 4083

Mike Gann
2048 Riverwood Drive
Nixa, MO 65714

Re: Complaint File 2012-120

LETTER OF REPRIMAND

Dear Mr. Gann:

As you are aware, the Arkansas Insurance Department ("Department") received a complaint from New York Life that you improperly replaced annuity policies for a couple of your senior citizen clients. Further investigation performed by Department revealed that the consumers have been your clients since 2004 and you assisted in surrendering their annuities in 2006 and 2012 resulting in a substantial loss in surrender fees to your clients as well as a decrease in interest rate earned each time the funds were moved. You were also paid a commission with each transaction.

Pursuant to A.C.A. §23-64-512(a), the Insurance Commissioner may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license...for any one (1) or more of the following causes:

(2) Violating any of the following that calls into question the insurance producer's fitness to hold a license. (A) A law; or (B) A regulation... In the replacement transactions at issue, there was no objective demonstration by you to the consumers comparing their existing annuity contract with the proposed replacement. This conduct is considered the "churning of business" and is an unfair trade practice under Ark. Code Ann. §23-66-206(2). Additionally, Arkansas law requires that in the replacement of one policy with another, it must be for the purpose of providing either better coverage or coverage more suitable to the needs of the insured. Ark. Code Ann. §23-66-307(a)(3). The Department has found that the replacements did not place the consumers with better or more suitable products. Further, the replacements were not done in conformity with the provisions of Ark. Code Ann. §23-66-307(c), which requires a written comparison of the existing and the proposed coverage. No such documentation was discovered during this Department's investigation.

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance. It was found that you misrepresented the terms

of an actual/proposed application of insurance by providing incorrect information on various forms including the source of funds for the policies and that there were no replacements taking place.

In 2007, a warning letter was issued to you as a result of the Department receiving several complaints against you. The letter advised you of precautions to take with consumers regarding replacement and suitability activities. During your investigative conference on August 1, 2013, you stated that you had no recollection of receiving the letter of warning, which causes the Department concern.

In dealing with consumers, particularly senior citizens, it is extremely important that you exercise an abundance of caution. Pursuant to the above statutory provisions and applicable Department Rules, comparison documentation must be completed and furnished to both the consumer and the insurance company. It is of critical importance that, when replacing one policy with another, you are bettering the consumer's position and marketing a product that is suitable for the consumer based upon his or her individual and family needs.

In view of the foregoing facts, please be advised that this **Letter of Reprimand** will be placed in your license file as a permanent record for referral should any other related complaints be received by this Department. Additionally, this **Letter of Reprimand** will be forwarded to the National Association of Insurance Commissioners ("NAIC") for publication on the NAIC website.

The Department reserves all rights and remedies under the Arkansas Insurance Code with regard to any continuing or additional investigation into your conduct as a licensee.

Sincerely,



Ashley Fisher
Associate Counsel