

BEFORE THE INSURANCE COMMISSIONER  
FOR THE STATE OF ARKANSAS

IN THE MATTER OF  
ANDREW PAUL GAMBER,  
LICENSE NO.255440

A.I.D. NO. 2009-

053

EMERGENCY CEASE AND DESIST ORDER  
AND NOTICE OF HEARING TO SHOW CAUSE

On this day, the matter of Andrew Paul Gamber ("Respondent") came before Jay Bradford, Arkansas Insurance Commissioner ("Commissioner"). The Arkansas Insurance Department ("Department") was represented by Nina Carter, Associate Counsel. From the facts before the Commissioner, it is found:

1. That the Commissioner has jurisdiction over this matter under Ark. Code Ann. § 23-65-101(b)(1)(A) which authorizes the Commissioner to issue a cease and desist order against persons or entities conducting unauthorized insurance business in this State without first obtaining appropriate licensure with the Department. The Commissioner also has authority to set a hearing if there is reason to believe that any person has been engaged or is engaging in any unfair method of competition or any unfair or deceptive act or practice and that a proceeding by the Commissioner would be to the interest of the public, pursuant to Ark. Code Ann. § 23-66-209(a).

2. On or about April of 2009, the Respondent contacted Florean Kellerman regarding her annuities with Allianz. According to Kellerman, Respondent advised her that her money was not safe with Allianz due to lawsuits over the products and that she needed to get out of the S&P (equity indexed annuity). He further advised her that she needed to take her money out of the Allianz annuities and place it in CDs. Respondent did not advise Kellerman that he did not have an Arkansas Insurance producer's license.

3. Kellerman later received notification from Allianz stating that her annuities totaling about \$57,000 had been moved to Liberty Life Insurance Company into an equity indexed annuity instead of being placed in a CD. Respondent was never appointed with Liberty Life Insurance Company.

4. When questioned by the Department regarding this transaction, Respondent told the Department that he was not involved in this transaction and that Agent William Gay had actually handled it.

5. Agent William Gay advised the Department that Respondent had contacted him about selling the policy. Gay stated that Respondent sold the policy to Kellerman and then submitted the application to Gay for Gay's signature. Respondent previously had advised Gay that though he was not licensed, he was currently able to solicit insurance business and was awaiting a "solicitor's license" from the Department that would allow him to sell insurance products, but would not allow him to submit the products to the companies. Gay stated, but later retracted, that he had signed several policies submitted to him by Respondent.

6. The Department was able to intervene and have the transaction reversed and restore consumer with her previous policies.

7. At the time of Respondent's advice and solicitation of Kellerman and at the time of the purported issuance of the above described annuities, the Respondent did not have an insurance producer's license at the Department. Respondent had been licensed with the Department under license #25540 as a resident life and accident and health insurance producer. This license expired on March 17, 2009. In Respondent's procurement of the above described annuities, Respondent was engaged in conducting insurance business in this State.

8. The Department has previously issued a Consent Order on April 14, 2008, against Respondent, AID Order No. 2008-028, which alleged that Respondent violated Ark. Code Ann. § 23-64-512(a)(5), § 23-64-512(a)(10), § 23-64-512(a)(8), §23-66-206(2), § 23-66-206(8), § 23-66-305, § 23-66-307(a)(1), § 23-66-307(a)(2) and § 23-66-307(a)(3). This Order placed Respondent on probation for a period of two (2) years, ordered Respondent to take one additional hour of Ethics Continuing Education in his first year of probation, and ordered Respondent to pay an administrative penalty in the amount of \$2,000.00. The Order also provided that if Respondent violated the terms of the probation or any provision of the Insurance Code during the probation period, Respondent's license would be suspended and a revocation hearing would be set and result in statutorily imposed sanctions.

9. The Department avers that conducting insurance business without a valid insurance producer license results in actions that are deceptive and misleading to consumers in this State, in violation of Ark. Code Ann. § 23-65-101(a)(2)(A) and § 23-66-205.

10. Prior to the discovery that Respondent was conducting insurance business without a valid insurance producer license, the Department was in the process of entering into a consent revocation of Respondent's insurance producer license based on an investigation of a previous complaint made against the Respondent. Said complaint was received after the April 14, 2008 Consent Order referenced above was entered and while Respondent was on probation.

11. According to the complaint received by the Department, Respondent misrepresented the interest rate and surrender period of an Allianz Life Insurance Company annuity policy during the sales presentation. It is alleged that Respondent told the complainant that the policy would earn 6.5% interest for 7 years; however, the policy

actually earned 3.25%. Upon receipt of the annual statement from Allianz, the complainant realized the difference in the interest rate and questioned Respondent. Respondent then provided the complainant with a new annual statement which reflected the promised interest rate of 6.5%. Respondent provided complainant with a second statement one month later, which also reflected 6.5% interest earned. Later, complainant called the home office for Allianz in order to change his address and asked for his account value. At that time, complainant learned that the value of his policy was much less than what the statements provided by Respondent indicated and that the surrender period was actually 14 years, not 7 as Respondent had indicated. The complainant asked Respondent about the discrepancies and Respondent advised that he had been misinformed as to the interest rates, thus the policy had been misrepresented. Respondent wrote a letter to Allianz requesting that the premium be refunded to the complainant.

12. In response to this complaint, Respondent alleges that his Manager at GamePlan Financial Marketing (“GamePlan”) misinformed him as to the rates of the policy and that his Manager also provided Respondent with the account statements to provide to the complainant. However, Respondent’s manager denies those allegations and indicated that Respondent sold several of these policies prior to the sale to the complainant, and after checking with the consumers who previously purchased those policies, found that those consumers understood their policies and the correct interest rates, which indicated that Respondent knew or should have known the correct interest rates and surrender periods for this policy when presenting it to the complainant.

13. When asked, Respondent could not remember in what form (facsimile, email, regular mail, etc.) he received the statements from his manager. GamePlan conducted a search of all emails sent to Respondent for this time period, and there were no emails to Respondent with regard to this matter for this time period. Further, GamePlan confirmed

that they do not have authority to generate any Allianz account statements for policyholders thus, would not have generated this document.

14. The complainant was refunded all premiums, plus interest for the policy as a result of the alleged misrepresentation by Respondent.

15. The Department avers that the actions of Respondent, as described in the preceding paragraphs, are in violation of the Insurance Code for: Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance, in violation of Ark. Code Ann. § 23-64-512(a)(5); Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, lack of good personal or business reputation or financial irresponsibility, in violation of Ark. Code Ann. § 23-64-512(a)(8); Misrepresenting the benefits, advantages conditions, or terms of any insurance policy is an unfair method of competition and unfair or deceptive act or practice in the business of insurance, in violation of Ark. Code Ann. § 23-64-512(a)(8)(a); Churning of business by replacing an existing policy that is not for the benefit and betterment of the insured, in violation of Ark. Code Ann. § 23-66-206(2); Making false or fraudulent statements or representations in, or relative to, an insurance policy, in violation of Ark. Code Ann. § 23-66-206(8); Making false or fraudulent statements or representations in, or relative to, an application for insurance, in violation of Ark. Code Ann. § 23-66-305; Failing to provide reasonable and professional service to each insured or prospective insured, in violation of Ark. Code Ann. § 23-66-307(a)(1); Failing to exercise discretion and good faith in the insurance sales presentation of transaction, in violation of Ark. Code § 23-66-307(a)(2); and Failing to improve upon existing insurance by provide better coverage or a more suitable product for the needs of the insured, their family, or business, in violation of Ark. Code Ann. § 23-66-307(a)(3).

16. In light of the foregoing facts, a public emergency exists for an immediate cease and desist order on the activities of Respondents.

**IT IS THEREFORE ORDERED AND ADJUDGED, as follows:**

Pursuant to Ark. Code Ann. § 23-65-101 (a)(2)(A) and § 23-66-209(a), the Commissioner hereby orders:

1. The Respondent shall immediately cease and desist any and all activities involving the sale or transaction of insurance business in this State, pending an administrative hearing on this matter.

2. The Respondent is ordered to appear at an administrative proceeding at the First Floor Hearing Room of the Department on June 29, 2009, at 10:00 a.m. to show cause why Respondent should not be permanently prohibited from engaging in insurance activities or business in this State. Pursuant to Ark. Code Ann. § 23-65-101 (b)(2)(d), the Respondent shall have the burden of proving: “(i)that the actions, methods or practices described in the order are not in violation of the Arkansas Insurance Code and (ii) the grounds upon which the commissioner should modify or vacate an order issued under this section.”

IT IS SO ORDERED THIS 22<sup>nd</sup> DAY OF MAY, 2009.

  
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JAY BRADFORD  
INSURANCE COMMISSIONER  
STATE OF ARKANSAS