

BEFORE THE INSURANCE COMMISSIONER  
FOR THE STATE OF ARKANSAS

IN THE MATTER OF  
ANDREW PAUL GAMBER  
LICENSE NO. 255440

A.I.D. NO. 2009-053A

CONSENT ORDER

On this day Jay Bradford, Arkansas Insurance Commissioner ("Commissioner"), and Andrew Paul Gamber, ("Respondent"), reached an agreement concerning the resident insurance producer's license issued to Respondent by the Arkansas Insurance Department ("Department"). The Commissioner was represented by Nina Samuel Carter, 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 was licensed in Arkansas as a resident life and accident and health insurance producer, license number 255440. Respondent let his license lapse on March 17, 2009. Respondent's last address of record at the Department is 2702 S. Culberhouse, Jonesboro, AR 72401.

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. Further, the Department does not issue any type of license called a "solicitor's license."

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 by consumer Carlos Davis 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 complainant Davis 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, Davis realized the difference in the interest rate and questioned Respondent. Respondent then provided Davis 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, Davis called the home office for Allianz in order to change his address and asked for his account value. At that time, he 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 fourteen (14) years, not seven (7) as Respondent had indicated. Davis 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 Davis.

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 Davis. However, Respondent's manager denies those allegations and indicated that Respondent sold several of these policies prior to the sale to Davis, 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).

#### CONCLUSIONS OF LAW

1. That the Commissioner has jurisdiction over the parties and over the subject matter herein pursuant to Ark. Code Ann. § 23-61-103.

2. 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 suspension or revocation of any license under § 23-64-216(a)(1), the Commissioner in his or her discretion may impose upon the licensee an administrative penalty in the amount of up to one thousand dollars (\$1,000) per violation or up to five thousand dollars (\$5,000) per violation if willful misconduct on the part of the licensee is found.

3. That Respondent has been made fully aware of his right to a hearing and has voluntarily and intelligently waived said right and consents to the entry of this Consent Order.

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

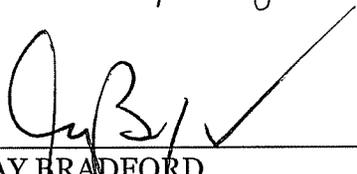
A. Respondent's resident Arkansas insurance producer's license(s) is hereby voluntarily surrendered and will be treated as a license revocation by the Arkansas Insurance Commissioner.

B. Pursuant to Ark. Code Ann. § 23-64-216, Respondent shall also pay an administrative penalty of \$25,000. The administrative penalty shall be paid according to the payment schedule as established by a separate letter agreement.

C. Pursuant to Ark. Code Ann. § 23-64-218(a)(1), Respondent shall immediately forward to the Insurance Commissioner all insurance producer licenses.

D. The Commissioner will not consider re-licensure until the expiration of three (3) years from the date of this Order and thereafter not until Respondent has paid all administrative penalties or restitution in accordance with the provisions under Ark. Code Ann. § 23-64-217(b).

IT IS SO ORDERED THIS 1<sup>st</sup> day of July, 2009.

  
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JAY BRADFORD  
INSURANCE COMMISSIONER  
STATE OF ARKANSAS

  
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Andrew Paul Gamber