

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	Division Case No. 89088
)	
MATTHEW G. WINGERD)	FINDINGS OF FACT,
NPN 6123855,)	CONCLUSIONS OF LAW AND
Respondent)	ORDER OF SUSPENSION,
)	SPECIAL CONDITIONS OF
)	LICENSURE AND OTHER RELIEF
)	

DECISION

The insurance producer license of Matthew G. Wingerd (“Wingerd”), national producer number (“NPN”) 6123855, is suspended for 180 days effective on March 21, 2016 and continuing through September 16, 2016 because Wingerd used a fraudulent practice of impersonating policyholders over the telephone, made false representations on annuity application, replacement notice and suitability acknowledgement forms, violated an insurance law of another state, and failed to report a revocation of his Kansas insurance producer license. As a matter of discretion, following the suspension, if Wingerd meets certain special conditions demonstrating his competence and trustworthiness, he will be able to avoid revocation of his license.

On November 12, 2015, the Iowa Insurance Division (“Division”) submitted a statement of charges against Wingerd for alleged violations of Iowa Code Chapters 507B and 522B. A contested case hearing was held on February 3, 2016 at 2:00 p.m. before Deputy Commissioner Douglas Ommen, as the Commissioner’s designee. Wingerd was present and represented himself. The Iowa Insurance Division was represented by Compliance Attorneys Tracy Swalwell

and Johanna Nagel. At the hearing, after Deputy Commissioner Ommen provided instruction to the parties on procedural matters, evidence was received.

1. The following witnesses appeared and were examined:

Witnesses for the Division:

Mechile Adams, Compliance Analyst, Special Investigation Unit, Athene USA

Witnesses for the Respondent:

Matthew Wingerd.

2. The following exhibits were marked and received into evidence:

Exhibits for the Division:

- Exhibit 1 Letter from Athene investigator Adams to Iowa Insurance Division dated May 29, 2015 (2 pages)
- Exhibit 2 Surrender Requests for Annuity contracts 72510, 129641, 75215, 75217, 107831, 132753 (8 total pages)
- Exhibit 3 Surrender value letters dated February 19, 2015 for contracts 72510, 75215, 75217, 107831, 129641, 132753 (18 total pages)
- Exhibit 4 Signed surrender authorization forms for contracts 72510, 75215, 75217, 107831, 129641, 132753 (6 total pages)
- Exhibit 5 Screenshots of Athene Policies for contracts 72510, 75215, 75217, 107831, 129641, 132753 (6 total pages)
- Exhibit 6 Fax from Vidricksen with attached decline surrender authorization forms for contracts 129641, 107831, 72510, 75215, 132753 (6 total pages)
- Exhibit 7 Elizabeth Johnson Fidelity & Guaranty Application (13 pages)
- Exhibit 8 Thomas Johnson Fidelity & Guaranty Application (13 pages)
- Exhibit 9 Letter from Kansas Insurance Department Hill to Midwest Senior Solutions dated March 9, 2015 with consumer complaint (3 pages)
- Exhibit 10 Kansas Final Order of Revocation against M. Wingerd dated July 28, 2015 (6 pages)

Exhibit 11 Kansas Administrative Regulation § 40-2-12 (4 pages)

Exhibit 12 Kansas Statute § 40-4909 (2 pages)

Exhibits for the Respondent:

Exhibit A Email from Matthew Wingerd to Attorney Tracy Swalwell of the Division Answering to Statement of Charges (2 pages)

Exhibit C IRS printed webpage on the topic of Rollovers of Retirement Plan and IRA Distributions (3 pages)

3. Respondent Exhibit B was marked but not admitted into evidence and not considered in this decision.

NOW THEREFORE, after reviewing the pleadings submitted in the case and the evidence received, we issue the following findings of fact, conclusions of law and orders:

I. FINDINGS OF FACT

1. The Commissioner of Insurance, Nick Gerhart, administers the Iowa Insurance Trade Practices Act—Iowa Code Chapter 507B and the Iowa Licensing of Insurance Producers Act—Chapter 522B pursuant to Iowa Code § 505.8. Commissioner Gerhart has designated the Iowa Insurance Division to seek enforcement of these provisions. (Statement of Charges ¶1 and Exhibit A, Wingerd’s Answer).

2. Matthew G. Wingerd is an individual with a last-known residence address of 1904 Danbury Dr., Bettendorf, IA 52722. (Statement of Charges ¶2 and Exhibit A, Wingerd’s Answer).

3. Wingerd is and has been licensed in the state of Iowa as a resident insurance producer since August 7, 2008. He is licensed under NPN 6123855. (Statement of Charges ¶3 and Exhibit A, Wingerd's Answer).

4. From on or about February 16, 2015 to on or about November 12, 2015, Wingerd engaged in acts and practices within the state of Iowa constituting cause for suspension or revocation of his insurance producer license, cease and desist orders, and civil penalties or other relief under Iowa Code §§ 507B, 522B, and rules adopted pursuant to Iowa Code Chapters 507B and 522B. (Statement of Charges ¶4 and Exhibit A, Wingerd's Answer).

5. Wingerd applied for a resident insurance producer license with the Division by submitting through the National Insurance Producer Registry a Uniform Application for Individual Producer License ("Uniform Application") on August 7, 2008. In submitting the Uniform Application, Wingerd designated the Commissioner as an agent for service of process. (Statement of Charges ¶5 and Exhibit A, Wingerd's Answer).

6. The Division issued Wingerd a license as an insurance producer on August 7, 2008 under NPN 6123855. (Statement of Charges ¶6 and Exhibit A, Wingerd's Answer).

7. On February 16, 2015, Wingerd contacted two Kansas consumers (E.J. and T.J.), whom he had known personally for several years and to whom he had previously sold annuities to, for his claimed purpose of reviewing their annuities. (Statement of Charges ¶7 and Exhibit A, Wingerd's Answer; Testimony of Mechile Adams; Exhibit 1)

8. Wingerd then recommended E.J. and T.J. cash surrender six of their Athene annuities and replace their Athene annuities with Fidelity & Guaranty annuities. ((Statement of Charges ¶8 and Exhibit A, Wingerd's Answer; Testimony of Mechile Adams and Wingerd).

9. Wingerd instructed E.J. and T.J. to cash surrender the Athene annuities and write checks payable to Fidelity & Guaranty for the new annuities with money received from the cash surrender. (Statement of Charges ¶9 and Exhibit A, Wingerd's Answer; Testimony of Mechile Adams and Wingerd; Exhibits 1, 2, 3, and 4)
10. Wingerd, at hearing, claimed that he recommended the cash surrender in order to expedite the process and because E.J. and T.J. would have 60 days to put the money back into a qualified annuity in order to avoid tax consequences. (Statement of Charges ¶¶10-11 and Exhibit A, Wingerd's Answer; Testimony of Wingerd)
11. The six annuities that were to be surrendered were three to six years old with a total withdrawal charge of approximately \$55,000. After the market value adjustment, the total amount that would be lost on the surrender of the six annuities was approximately \$44,000. (Testimony of Mechile Adams; Exhibits 1, 3, and 5)
12. Wingerd prepared applications for the Fidelity & Guaranty annuities that were signed by Wingerd, E.J. and T.J. on February 16, 2015, which misrepresented that these new annuities were not replacements. (Statement of Charges ¶10 and Exhibit A, Wingerd's Answer; Testimony of Mechile Adams and Wingerd; Exhibits 7 and 8).
13. Wingerd prepared a replacement notice for the Fidelity & Guaranty annuities that were signed by Wingerd, E.J. and T.J. on February 16, 2015, which misrepresented that these new annuities were not replacements. (Statement of Charges ¶10 and Exhibit A, Wingerd's Answer; Testimony of Mechile Adams and Wingerd; Exhibits 7 and 8).
14. Wingerd prepared suitability acknowledgement forms for the Fidelity & Guaranty annuities that were signed by Wingerd, E.J. and T.J. on February 16, 2015, which misrepresented that the source of funds for these new annuities were not from a life insurance or annuity policy,

but were from mutual funds, stocks and bonds. (Statement of Charges ¶10 and Exhibit A, Wingerd's Answer; Testimony of Mechile Adams and Wingerd; Exhibits 7 and 8).

15. Wingerd prepared suitability acknowledgement forms for the Fidelity & Guaranty annuities that were signed by Wingerd, E.J. and T.J. on February 16, 2015, which misrepresented that no surrender charges or penalties were to be paid to withdraw funds from current financial products. (Statement of Charges ¶10 and Exhibit A, Wingerd's Answer; Testimony of Mechile Adams and Wingerd; Exhibits 7 and 8).

16. Wingerd called Athene on February 23, 2015 from his personal cell phone number impersonating E.J. in order to inquire into the surrender of the Athene annuities. So that Wingerd could trick the Athene representative into believing that Wingerd was E.J., a female, Wingerd raised the pitch of his voice in order to sound like a female. (Statement of Charges ¶¶11 and 16 and Exhibit A, Wingerd's Answer; Testimony of Mechile Adams and Wingerd; Exhibit 1).

17. Wingerd, impersonating E.J., spoke to an Athene representative and asked that the surrender documents be sent to an email address that Winderd falsely identified as "her friend's email" by actually providing Wingerd's own personal email address. (Statement of Charges ¶¶11 and 16 and Exhibit A, Wingerd's Answer; Testimony of Mechile Adams and Wingerd; Exhibit 1).

18. Wingerd called Athene on February 23, 2015 from his personal cell phone number impersonating T.J. in order to inquire into the surrender of the Athene annuities. (Statement of Charges ¶¶12 and 16 and Exhibit A, Wingerd's Answer; Testimony of Mechile Adams and Wingerd; Exhibit 1).

19. Wingerd, impersonating T.J., spoke to an Athene representative and asked that the surrender documents be sent to an email address that Wingerd falsely identified as "his friend's

email” by actually providing Wingerd’s own personal email address. (Statement of Charges ¶¶12 and 16 and Exhibit A, Wingerd’s Answer; Testimony of Mechile Adams and Matthew Wingerd; Exhibit 1).

20. On February 24, 2015 T.J. and E.J. signed authorizations to cancel the surrender of the Athene annuities. (Testimony of Mechile Adams; Exhibit 6).

21. Wingerd again called Athene on March 3, 2015 from his personal cell phone number impersonating T.J. in order to inquire into the status of his requested surrenders of the Athene annuities. (Statement of Charges ¶¶12 and 16 and Exhibit A, Wingerd’s Answer; Testimony of Mechile Adams and Wingerd; Exhibit 1).

22. Wingerd knew that falsely representing himself as T.J. and E.J. was wrong. (Testimony of Wingerd)

23. E.J. and T.J. filed a complaint with the Kansas Insurance Department against Respondent and as a result of the investigation, Respondent’s Kansas nonresident insurance agent’s license was revoked for violation of Kansas law on July 10, 2015 with the final order effective July 28, 2015. (Statement of Charges ¶14 and Exhibit A, Wingerd’s Answer; Exhibits 9, 10, 11, and 12)

24. Wingerd received notice of the Kansas revocation no later than September, 2015. (Testimony of Wingerd)

25. Wingerd did not notify the Division of the Kansas non-resident insurance producer license revocation within 30 days receiving notice of the July 28, 2015 revocation. (Testimony of Wingerd).

26. Wingerd’s testimony revealed Wingerd made his misrepresentations and used deceit in conscious disregard of the basic consumer protection principles underlying insurance company controls and the state statutes and regulations governing annuity replacement and suitability.

27. Both Fidelity & Guaranty and Athene had annuity supervisory responsibilities over Wingerd. Wingerd's disregard of their supervisory controls created a real and substantial risk of harm to consumers.

28. We find Wingerd's professed contriteness at the hearing – only after being caught in his lies – to be no more sincere than his earlier impersonations of E.J and T.J.

II. CONCLUSIONS OF LAW

COUNT I

Using Fraudulent Practice in the Conduct of Insurance Business

29. Wingerd violated Iowa Code § 522B.11(1)(h) with each of the three calls he made impersonating E.J. and T.J. when calling from his personal cell phone to Athene in order to inquire into the surrender of the Athene annuities.

30. Wingerd violated Iowa Code § 522B.11(1)(h) in his false representations concerning contact information for E.J and T.J.

31. Wingerd violated Iowa Code § 522B.11(1)(h) in his numerous misrepresentations in the Fidelity & Guaranty applications, replacement notices and suitability acknowledgement forms, concerning the Athene annuity surrenders that were made to obtain funds for the Fidelity & Guaranty annuities.

32. The violations of Iowa Code § 522B.11(1)(h) are grounds for probation, suspension or revocation of Wingerd's insurance producer license, the imposition of a civil penalties, and an order requiring Wingerd to cease and desist from engaging in conduct resulting in the violation pursuant to Iowa Code §§ 507B, 522B.11, and 522B.17.

COUNT II

Violation of Insurance Laws of Kansas

33. Wingerd violated Iowa Code § 522B.11(1)(b) with the E.J. and T.J. Fidelity & Guaranty applications by falsely representing that the annuities applied for were not replacements in violation of Kansas Statute § 40-2-12, procedures for identification of replacement annuities.

34. The violations of Iowa Code §§ 522B.11(1)(b) are grounds for probation, suspension, or revocation of Wingerd's insurance producer license, the imposition of a civil penalties, and an order requiring Wingerd to cease and desist from engaging in conduct resulting in the violation pursuant to Iowa Code §§ 507B.7, 522B.11 and 522B.17.

COUNT III

Failure to Report Kansas Revocation

35. Wingerd violated Iowa Code § 522B.16 by failing to report to the Division within 30 days of notice that his non-resident insurance agent's license had been revoked by the Kansas Commissioner of Insurance on July 10, 2015 with the final order effective July 28, 2015.

36. The violation of Iowa Code § 522B.16 is grounds for the imposition of civil penalties pursuant to Iowa Code § 522B.17.

COUNT IV

Revocation of Kansas Non-Resident Producer License

37. Pursuant to Iowa Code § 522B.11(1)(i) the revocation of Wingerd's Kansas non-resident producer licensed is grounds for probation, suspension, or revocation of his Iowa resident insurance producer's license the imposition of a civil penalties, and an order requiring Wingerd to cease and desist from engaging in conduct resulting in the violation pursuant to Iowa Code §§ 507B.7, 522B.11 and 522B.17.

III. ORDERS

IT IS THEREFORE ORDERED that Wingerd's Iowa resident insurance producer license is suspended pursuant to Iowa Code §§ 507B.7 and 522B.11 for 180 days effective March 21, 2016 through September 16, 2016.

IT IS FURTHER ORDERED that Wingerd's Iowa resident insurance producer license shall be revoked on September 16, 2016 pursuant to Iowa Code §§ 507B.7 and 522B.11, unless Wingerd is able to meet the following special conditions to demonstrate his competence and trustworthiness prior to September 16, 2016:

1. Wingerd shall identify four separate continuing education or college level courses for each of the following subject matters:
 - A. Common features of fixed indexed annuities;
 - B. The Suitability or Know Your Customer Rule in a fixed index annuity transaction;
 - C. The life insurance or annuity replacement rule; and
 - D. Business misrepresentation, fraud and deception.
2. Wingerd shall submit to the Commissioner for review no later than April 15, 2015, the title, sponsor, instructor and date of the 4 courses meeting these requirements. A copy of this submission shall be sent to the counsel for the Division in this matter.
3. If any of the 4 courses are not disapproved by the Commissioner within 10 days of receipt of submission, Wingerd shall enroll in the courses that have

not been disapproved and submit to the Commissioner a certificate of completion for each course no later than September 16, 2016.

IT IS FURTHER ORDERED that the Division shall monitor Wingerd's compliance with the requirements ordered above and may seek modification of the time requirement in this Order if Wingerd is able to demonstrate good cause for an extension of time.

IT IS FURTHER ORDERED that Wingerd, pursuant to Iowa Code §§ 507B.6, 507B.7, 522B.11(1)(h) and 522B.17, is prohibited from using any fraudulent or dishonest practice, or engaging in any unfair or deceptive act or practice, or making any statement containing any assertion with respect to the business of insurance, which is untrue, deceptive or misleading, including, but not limited to any of the following, uses, acts or practices:

1. Impersonating or falsely pretending to be any other person;
2. Misrepresenting the source of funds or any other relevant suitability or replacement information in any application, replacement notice, suitability acknowledgement form, or any other material or documents associated with insurance transactions; or
3. Misrepresenting the identity of policyholder contact information in any communication with an insurance company.

IT IS FURTHER ORDERED that Wingerd, pursuant to Iowa Code §§ 522B.16 and 522B.17, is prohibited from failing to report to the Division within 30 days any administrative action taken against Wingerd by another state or another governmental agency in this state.

IT IS FURTHER ORDERED that Wingerd shall within 45 days of this order pay to the state of Iowa a civil penalty in amount of \$3,000.00 pursuant to Iowa Code §§ 507B.7 and 522B.11. Payment shall be made by check payable to the state of Iowa and received by the Iowa Insurance Division within forty-five days of this Order.

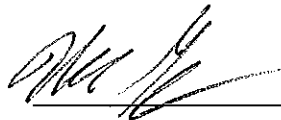
IT IS FURTHER ORDERED that Wingerd shall within 45 days of this order pay to the state of Iowa for costs of investigation and prosecution in the amount of \$1,342.00 pursuant to Iowa Code § 505.8. Payment shall be made by check payable to the state of Iowa and received by the Iowa Insurance Division within forty-five days of this Order. This payment may be paid with the payment of the civil penalty ordered above.



Douglas M. Ommen
Deputy Insurance Commissioner

IT IS ORDERED that I have reviewed the record in this matter and adopt these findings of fact, conclusions of law and order of suspension, special conditions of licensure and other relief as my own.

Dated this 24 day of February, 2016.



NICK GERHART
Insurance Commissioner

Copies of this order shall be sent by both certified and first class mail to:

Matthew Wingerd
1904 Danbury Dr.
Bettendorf, IA 52722

NOTICE OF FINAL ORDER

These Findings of Fact, Conclusions of Law and Order shall become final without further proceeding within thirty days of the date of issuance unless there is an appeal to, or review on the motion of, the Commissioner of Insurance pursuant to the provisions of Iowa Administrative Code § 191—3.26.

NOTICE OF PENALTIES FOR WILLFUL VIOLATION OF THIS ORDER

YOU ARE NOTIFIED that acting as an insurance producer, as defined in Iowa Code Chapter 522B, during the time of your licensure suspension or following revocation, is a felony under Iowa Code § 507A.10, subjecting you to punishment of imprisonment, jail, fines, or any combination of custody or fines.

YOU ARE ALSO NOTIFIED that any person who violates this order may be subject to administrative and civil penalties pursuant to Iowa Code § 522B.17(3). The commissioner may petition the district court to hold a hearing to enforce the order as certified by the commissioner. The district court may assess a civil penalty against the person in an amount not less than three thousand dollars but not greater than ten thousand dollars for each violation, and may issue further orders as it deems appropriate.

NOTICE REGARDING IMPACT OF ORDER ON EXISTING LICENSES

A final order of license suspension or revocation, or a cease and desist order may adversely affect other existing business or professional licenses and result in license revocation or disciplinary action. For example, a final cease and desist order issued to a licensed insurance agent may subject the insurance agent to insurance license revocation or other disciplinary action. Further notice is given that the Iowa Insurance Division may review this order for a potential license revocation or disciplinary action.