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COMMISSION OF INSURANCE
INSURANCE DIVISION OF IOWA

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	Division Case No. 92618
)	
MATTHEW G. WINGERD)	FINDINGS OF FACT,
NPN 6123855,)	CONCLUSIONS OF LAW, AND
DOB 11/14/XXXX,)	ORDER
Respondent)	

DECISION

The insurance producer license of Matthew G. Wingerd (“Respondent” or “Wingerd”), national producer number (“NPN”) 6123855, is revoked and restitution, fines and costs are ordered to be paid because Wingerd submitted false and misleading information in insurance applications for the intentional purpose of evading consumer protections found in the annuity replacement rules.

A contested case hearing was held in the above-captioned matter on December 7, 2016 at 10:00 a.m. before Deputy Commissioner Douglas Ommen. The hearing was held at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust St., 4th Floor, Des Moines, Iowa. The Respondent was not present. The Iowa Insurance Division was represented by Enforcement Attorney Tracy Swalwell.

On November 20, 2016, the Iowa Insurance Division (“Division”) filed a Statement of Charges against Respondent for alleged violations of Iowa Code Chapters 507B and 522B. Respondent answered the Statement of Charges by email which was subsequently filed. Respondent confirmed at the pre-hearing conference that this email was Respondent’s Answer to the Statement of Charges. A Notice of Hearing filed on November 20, 2016 set a hearing on this matter for December 7, 2016. Respondent sent an email on December 6, 2016 to Deputy Commissioner Douglas Ommen requesting that the hearing date be moved. This request was

taken up for consideration at the December 7, 2016 hearing and the request to continue the hearing was denied. The Division filed a Motion for a Protective Order to place under seal all exhibits and hearing testimony. This motion was granted at the hearing.

Respondent was not present at the hearing and the Deputy Commissioner found him in default and deemed allegations contained in the Statement of Charges to be found in favor of the Division.

At hearing, the following witness appeared and was examined: Craig Hayden, Compliance Investigator, Iowa Insurance Division.

At hearing, the following exhibits were entered into the record for the Division:

1. February 24, 2016 Order (14 pages)
2. Athene Application for Policy (23 pages)
3. Business Record Affidavit of Athene (1 page)
- 3A. Athene Request for Surrender Recorded Call (CD)
4. Athene Policy Surrender Documents (8 pages)
5. Fidelity & Guaranty Application for Policy L9252603 (14 pages)
6. Fidelity & Guaranty Application for Policy L9279049 (15 pages)
7. Fidelity & Guaranty Annuity Deposits (7 pages)
8. C.L. Bank Records (22 pages)
9. Clinton County Sheriff's Office Report of Randy Meier and Affidavit (4 total pages)
10. Affidavit of C.L. (1 page)
11. American Equity Application for Policy (14 pages)
12. American Equity Withdrawals (11 pages)
13. Iowa Insurance Division Cost Accounting (1 page)

On December 24, 2016, Deputy Commissioner Ommen became Interim Commissioner of Insurance.

NOW THEREFORE, after reviewing the pleadings submitted in this case and the evidence received, the Commissioner of Insurance issues the following findings of fact, conclusions of law, and orders:

I. FINDINGS OF FACT

1. The Commissioner of Insurance administers Iowa Code Chapter 507B—Insurance Trade Practices, Iowa Code Chapter 522B—Licensing of Insurance Producers, and Iowa Administrative Code Chapter 16—Replacement of Life Insurance and Annuities pursuant to Iowa Code § 505.8. The Commissioner of Insurance designated the Iowa Insurance Division to seek enforcement of these provisions. (Statement of Charges ¶ 1)
2. Matthew G. Wingerd, (“Respondent”), is an individual with a last-known residence address of 1904 Danbury Dr., Bettendorf, IA 52722. (Statement of Charges ¶ 2)
3. Respondent has been licensed in the state of Iowa as a resident insurance producer since August 7, 2008. He is licensed under National Producer Number 6123855. (Statement of Charges ¶ 3)
4. Respondent applied for a nonresident 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, Respondent designated the Commissioner as an agent for service of process. (Statement of Charges ¶ 5)
5. The Division issued Respondent a license as a resident insurance producer on August 7, 2008 under National Producer License number 6123855. (Statement of Charges ¶ 6)
6. Respondent’s license was suspended on March 21, 2016 for violations of Iowa statutes and regulations pursuant to an order filed on February 24, 2016. (Statement of Charges ¶ 7, Exhibit 1)

7. In the February 24, 2016 order, it was found that Respondent had failed to disclose that a transaction was a replacement and made numerous misrepresentations in the policy application.

(Statement of Charges ¶ 8, Exhibit 1)

8. In the February 24, 2016 order, Respondent was ordered to pay \$3,000.00 in civil penalties and \$1,342.00 in costs within 45 days. (Statement of Charges ¶ 1, Exhibit 1)

9. Respondent did not pay the civil penalties and costs within 45 days of the order as required but has paid the full amount ordered. (Statement of Charges ¶ 10, Respondent's Answer)

10. The Division incurred \$2,756.00 during the course of the investigation and prosecution of the Respondent. (Exhibit 13)

11. Respondent has been an insurance agent for C.L., an Iowa consumer, since at least June 2011. (Statement of Charges ¶ 11, Testimony of Craig Hayden, Exhibit 9, Exhibit 10)

12. Respondent encouraged C.L. to cash out existing annuities to fund new annuities. (Exhibit 10)

13. C.L. did not fully understand surrender fees, penalties, or bonuses. (Testimony of Craig Hayden, Exhibit 9, Exhibit 10)

14. C.L. took Respondent at his word and trusted that he knew what he was doing. (Testimony of Craig Hayden, Exhibit 3A, Exhibit 9, Exhibit 10)

Athene Application

15. Respondent submitted an annuity application dated June 23, 2011 for C.L. to Aviva Life and Annuity Company, now known as Athene Annuity and Life Company ("Athene").

(Statement of Charges ¶ 12, Testimony of Craig Hayden, Exhibit 2)

16. When Respondent submitted the June 23, 2011 application, Respondent had not taken all required trainings and was required to submit the application form again. (Statement of Charges ¶ 13, Testimony of Craig Hayden, Exhibit 2)

17. After completing the required training, Respondent submitted an annuity application dated July 8, 2011 to Athene. (Statement of Charges ¶ 14, Testimony of Craig Hayden, Exhibit 2)

18. In the paperwork submitted to Athene as part of the application, under “Source of Funds,” it was indicated that the source of funds was an annuity, but no penalty charge was associated with the source of funds. (Statement of Charges ¶ 15, Testimony of Craig Hayden, Exhibit 2)

19. According to the 1035 exchange documentation from New York Life Insurance and Annuity Corporation (“New York Life”) to Athene, \$1,173.97 in surrender penalties and fees were deducted from the annuity that was being used as the source of funds for the new Athene annuity. (Statement of Charges ¶ 16, Testimony of Craig Hayden, Exhibit 2)

20. Athene issued an annuity to C.L. based on this application on July 20, 2011. (Statement of Charges ¶ 17; Testimony of Craig Hayden)

American Equity Application

21. Respondent submitted an annuity application dated August 22, 2011 for C.L. to American Equity Investment Life Insurance Company (“American Equity”). (Statement of Charges ¶ 18, Testimony of Craig Hayden, Exhibit 11)

22. The following answers were provided in paperwork submitted with the American Equity Application: (Statement of Charges ¶ 19, Testimony of Craig Hayden, Exhibit 11)

- a. "No" was checked to the question of "Do you have any existing insurance or annuities in this or any other company?"
- b. "No" was checked to the question directed to the agent of "Do you have any reason to believe that applicant has any existing insurance or annuities?"
- c. "Fixed Annuities/Indexed Annuities" was not checked in answer to the question of "Please indicate if you currently own or have owned or have experience in purchasing or maintaining any of the following."
- d. "0" was answered to the question of "Do you currently own any other annuities in deferral or are you in the process of purchasing another annuity at another company? If yes, please give the amount."

23. On August 29, 2011, American Equity issued an annuity to C.L. based on the August 22, 2011 application and subsequently delivered to C.L. on September 7, 2011. (Statement of Charges ¶ 20, Testimony of Craig Hayden, Exhibit 11)

Fidelity & Guaranty Application

24. Respondent submitted an annuity application dated February 12, 2013 for C.L. to Fidelity & Guaranty Life Insurance Company ("Fidelity & Guaranty"). (Testimony of Craig Hayden, Exhibit 5)

25. Respondent submitted an annuity application dated May 9, 2014 for C.L. to Fidelity & Guaranty. (Statement of Charges ¶ 21, Testimony of Craig Hayden, Exhibit 6)

26. The following answers were provided in paperwork submitted with the Fidelity & Guaranty Application: (Statement of Charges ¶ 22, Testimony of Craig Hayden, Exhibit 6)

- a. "No" was answered to the question of "Will the annuity applied for replace or change an existing life insurance or annuity policy?"

- b. Next to the amount of the “Initial/Single Premium Paid: (premium paid with application)” answer of “\$35,000 ±” is stamped “No Check.”
 - c. “No” was answered to the question directed to the agent of “To the best of your knowledge, does this application replace or change existing life insurance or annuities?”
 - d. “No” was answered to the question of “Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract?”
 - e. “No” was answered to the question of “Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract?”
 - f. “Mutual Fund Redemption” was checked for the source of funds for the annuity purchase.
 - g. “No” was answered to the question of “Will you have to pay any surrender charge or penalty to withdraw funds from your current financial product?”
 - h. “Source of funds is not an annuity or life insurance policy” was checked to the question of “If source of funds is an annuity or life insurance policy, indicate whether you replaced or exchanged any life or annuity contracts within the past 36 months.”
27. No replacement paperwork was completed for the May 9, 2014 application to Fidelity and Guaranty. (Statement of Charges ¶ 23, Testimony of Craig Hayden, Exhibit 6)
28. On May 9, 2014 C.L., with Respondent present, called into Athene customer service using Respondent’s phone. (Statement of Charges ¶ 24, Testimony of Craig Hayden, Exhibit 3, Exhibit 3A)

29. In the May 9, 2014 call, C.L. requested the surrender of the Athene contract which had been issued approximately three years prior on July 20, 2011. (Statement of Charges ¶ 25, Testimony of Craig Hayden, Exhibit 3A)

30. During the phone call, the Athene representative informed C.L. that there would be a loss of approximately \$7,994.76 in order to surrender the contract. (Exhibit 3A)

31. During the phone call, C.L. admitted she had never surrendered a contract before and expressed that she was glad that Respondent knew what he was doing. (Exhibit 3A).

32. During the phone call, C.L. asked Respondent how much of a loss was occurring on the contract due to the surrender. (Statement of Charges ¶ 26, Exhibit 3A)

33. During the phone call, Respondent told C.L. she was not really incurring a \$7,000 loss due to the bonus on the new product, he would explain it later, and everything would work out fine. (Statement of Charges ¶ 27, Exhibit 3A)

34. A letter dated May 9, 2014 addressed to C.L. from Athene indicated the accumulated value, market value adjustment, and withdrawal charge as of that date. (Statement of Charges ¶ 28, Testimony of Craig Hayden, Exhibit 4)

35. On May 19, 2014, C.L. signed an Athene "Surrender Authorization" form to proceed with the surrender of the contract. (Statement of Charges ¶ 29, Testimony of Craig Hayden, Exhibit 4)

36. Athene sent a letter dated May 21, 2014 to C.L. indicating a check in the amount of \$36,711.62 was being issued and that a surrender charge of \$7,993.91 and a market value adjustment of \$311.43 had reduced the value of the contract. (Statement of Charges ¶ 30, Testimony of Craig Hayden, Exhibit 4)

37. On May 29, 2014, the Athene check in the amount of \$36,711.62 was deposited in C.L.'s bank account. (Statement of Charges ¶ 31, Testimony of Craig Hayden, Exhibit 8)

38. The next day, a letter dated May 30, 2014 was sent to Fidelity and Guaranty along with a check written by C.L. in the amount of \$40,000 to Fidelity & Guaranty to fund the new annuity. (Statement of Charges ¶ 32, Testimony of Craig Hayden, Exhibit 6, Exhibit 8)

39. On June 3, 2014, Fidelity & Guaranty issued an annuity to C.L. based on the May 9, 2014 application. (Statement of Charges ¶ 33, Testimony of Craig Hayden)

40. The money from the surrendered Athene annuity was used to fund the new Fidelity & Guaranty contract. (Testimony of Craig Hayden; Exhibit 3A, Exhibit 8)

Additional Withdrawals and Deposits

41. On February 10, 2015, C.L. wrote a check from her bank account to Fidelity & Guaranty in the amount of \$10,000 to be added to her annuity issued on June 3, 2014. (Statement of Charges ¶ 34, Testimony of Craig Hayden, Exhibit 7, Exhibit 8)

42. On February 20, 2015, \$11,306.55 was withdrawn from C.L.'s American Equity annuity issued on August 29, 2011. The withdrawal consisted of the \$10,000 requested withdrawal, \$746.42 in surrender charges, and \$559.83 in unearned bonus. (Statement of Charges ¶ 35, Testimony of Craig Hayden, Exhibit 12)

43. On April 23, 2015, \$24,325.90 was withdrawn from C.L.'s American Equity annuity issued on August 29, 2011. The withdrawal consisted of the \$20,000 requested withdrawal, \$2,747.91 in surrender charges, and \$1,853.99 in unearned bonus. (Statement of Charges ¶ 36, Testimony of Craig Hayden, Exhibit 12)

44. On April 28, 2015, C.L. deposited into her bank account a check from American Equity in the amount of \$20,000. (Statement of Charges ¶ 37, Testimony of Craig Hayden, Exhibit 7, Exhibit 8)

45. On May 4, 2015, C.L. wrote a check from her bank account to Fidelity & Guaranty in the amount of \$20,000 to be added to her annuity issued on June 3, 2014. (Statement of Charges ¶ 38, Testimony of Craig Hayden, Exhibit 8)

46. The two withdrawals from the America Equity annuity were deposited into a Fidelity & Guaranty contract. (Testimony of Craig Hayden, Exhibit 8)

47. As a result of surrenders and withdrawals from the Athene and American Equity annuities and the New York Life policy, C.L. lost \$12,662.21 in surrender charges, \$311.43 in market value adjustment, and \$2,413.82 in unearned bonus. (Statement of Charges ¶ 39; Testimony of Craig Hayden; Exhibits 2, 4, 12)

II. CONCLUSIONS OF LAW

COUNT 1

Misrepresentation in Insurance Applications

48. Under Iowa Code § 507B.4(3)(n) a person is prohibited from “[m]aking false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual.”

49. Respondent violated Iowa Code § 507B.3(n) by misrepresenting in the Athene application that no surrender penalties would be incurred.

50. Respondent violated Iowa Code § 507B.3(n) by misrepresenting in the American Equity application that C.L. had no annuities.

51. Respondent violated Iowa Code § 507B.3(n) by misrepresenting in the Fidelity & Guaranty application that a replacement was not occurring.

52. The violations of Iowa Code § 507B.3(n) are grounds for suspension or revocation of Respondent's insurance producer license, the imposition of a civil penalty, and an order requiring such person to cease and desist from engaging in such act or practice pursuant to Iowa Code § 507B.7.

COUNT II
**Using Fraudulent, Coercive, or Dishonest Practices or
Demonstrating Untrustworthiness**

53. Under Iowa Code § 522B.11(1)(h), a producer is prohibited from using fraudulent, coercive, or dishonest practices or demonstrating untrustworthiness in the conduct of business.

54. Respondent violated Iowa Code § 522B.11(1)(h) by facilitating the surrender of multiple policies which resulted in the loss of thousands of dollars in surrender charges, market value adjustments, and loss of unearned bonuses.

55. The violations of Iowa Code § 522B.11(1)(h) are grounds for probation, suspension, or revocation of Respondent's insurance producer license, the imposition of a civil penalty, and an order requiring Respondent to cease and desist from engaging in such acts or practices pursuant to Iowa Code §§ 522B.11 and 522B.17.

COUNT III
Replacement of Life Insurance and Annuities

56. Iowa Administrative Code rule 191—16.22 defines “replacement” as

[A] transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, . . . , that by reason of the transaction, an existing policy or contract has been or is to be:

1. Lapsed, forfeited, surrendered, or partially surrendered, assigned to the replacing insurer or otherwise terminated.”

57. Under Iowa Administrative Code rule 191—16.24, if an applicant has an existing policy, the producer is required to present and read to the applicant the notice regarding replacements and this notice must be signed by the applicant and the producer.

58. The notice must also list all life insurance policies or annuities that are proposed to be replacement. Iowa Administrative Code r. 191—16.24(2)(b).

59. Under Iowa Administrative Code rule 191—16.27, it is a violation of Iowa Administrative Code rules 191—15.7 and 15.8 to intentionally record an incorrect answer or to advise an applicant to respond “negatively to any question regarding replacement in order to prevent notice to the existing insurer.”

60. Iowa Administrative Code rule 191—16.29(2) states,

Policy and contract owners have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract owners of the same producer shall be deemed prima facie evidence of the producer’s knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the producer’s intent to violate these rules.

61. Respondent facilitated the surrender of the New York Life policy to fund the Athene policy.

62. Since Respondent indicated on the American Equity application that C.L. did not have any existing annuities, he did not read the notice as required by Iowa Administrative rule 191—16.24.

63. Respondent facilitated the surrender of the Athene policy in order to fund the Fidelity & Guaranty policy but did not disclose this was a replacement and did not complete the required paperwork.

64. Over the course of a three year time period, Respondent facilitated the purchase of four annuities for C.L., two of which involved replacements.

65. Respondent was also found to have undisclosed replacements in the February 14, 2016 order.

66. Respondent has engaged in a pattern of replacing annuities in knowing violation and disregard of Iowa Administrative Code rules 191—15.7, 15.8, 16.27, and 16.29(2) and their related consumer protection requirements.

67. Through the actions listed in paragraphs 61-66, Respondent violated Iowa Administrative Code rule 191—16.29(4) and Iowa Code Chapter 507B and these violations are grounds for suspension or revocation of Respondent's insurance producer license, the imposition of a civil penalty, the forfeiture of any commissions or compensation paid to the producer as a result of the transaction in connection with which the violations occurred, and an order requiring Respondent to cease and desist from engaging in such acts or practices pursuant to Iowa Administrative Code rule 191—16.29 and Iowa Code § 507B.7.

COUNT IV
Violating an Order of the Commissioner

68. Under Iowa Code § 522B.11(1)(h), a producer is prohibited from violating an order of the commissioner.

69. In the February 24, 2016 order, Respondent was ordered to pay \$3,000.00 in civil penalties and \$1,342.00 in costs within 45 days.

70. Respondent violated Iowa Code § 522B.11(1)(b) by failing to make timely payment of the ordered civil penalties and costs, although he has since paid the full amount ordered.

71. Respondent's acts and practices have been in violation of Iowa Code § 522B.11(1)(b) subjecting Respondent to probation, suspension, or revocation of Respondent's insurance

producer license, the imposition of a civil penalty, and an order requiring Respondent to cease and desist from engaging in such acts or practices pursuant to Iowa Code §§ 522B.11 and 522B.17.

III. ORDERS

IT IS THEREFORE ORDERED that Wingerd's Iowa resident insurance producer license is revoked effective immediately pursuant to Iowa Code §§ 507B.7 and 522B.11.

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.

IT IS FURTHER ORDERED that Wingerd shall pay to the State of Iowa, Insurance Division, costs of investigation and prosecution in the amount of \$2,756.00 payable to the Iowa Enforcement Fund to provide funds for insurance enforcement and education pursuant to Iowa Code § 505.8.

IT IS FURTHER ORDERED that Wingerd shall pay to the State of Iowa, Insurance Division a civil penalty in amount of \$5,000 payable to the Iowa Enforcement Fund to provide funds for insurance enforcement and education pursuant to Iowa Code §§ 507B.7 and 522B.11.

IT IS FURTHER ORDERED that Wingerd shall pay to the State of Iowa, Insurance Division restitution in amount of \$12,662.21 payable to the Settlement Fund of the Iowa Insurance Division for the amount of surrender charges incurred by C.L. in surrendering multiple policies, pursuant to Iowa Code § 505.8. Upon receipt, the Division may distribute these funds to the consumer as appropriate to further the purposes of Iowa Code § 505.8(10).

Dated this 6th day of January, 2017.

A handwritten signature in black ink, appearing to read 'Douglas Ommen', written over a horizontal line.

DOUGLAS OMMEN
Interim Insurance Commissioner

Copy to: (by certified and first class mail)
Matthew Wingerd
1904 Danbury Dr.
Bettendorf, IA 52722

NOTICE OF PENALTIES FOR WILLFUL VIOLATION OF THIS ORDER

YOU ARE 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.

CERTIFICATE OF SERVICE

County of Polk)
)
State of Iowa)

The undersigned affiant certifies under penalty of perjury that she has entered the above order into the records of the Iowa Commissioner of Insurance; and on the 9th day of January, 2017, the foregoing order was delivered to the United States Postal Service, postage prepaid, for first class and certified mail to:

Matthew Wingerd
1904 Danbury Dr.
Bettendorf, IA 52722

I further certify that the foregoing order was sent by email to:

Counsel for the Division:
Tracy Swalwell
Tracy.Swalwell@iid.iowa.gov



Tammi L. Green
Iowa Insurance Division