



BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	Division Case No. 92950
)	
DOUGLAS A. HOWARD,)	ORDER AND CONSENT TO ORDER
NPN 56103,)	
CRD# 3099178)	
DOB 11/04/XXXX,)	
)	
Respondent)	

NOW THEREFORE, upon motion of the Iowa Insurance Division (“Division”) and consent of Respondent Douglas A. Howard, pursuant to the provisions of Iowa Code Chapter 502—Uniform Securities Act, Iowa Code Chapter 502A—Commodities Code, Iowa Code Chapter 507B—Insurance Trade Practices, Iowa Code Chapter 522B—Licensing of Insurance Producers, Iowa Administrative Code Chapter 191—15 Unfair Trade Practices, and Iowa Administrative Code Chapter 191—50 Regulation of Securities Offerings and Those Who Engage in the Securities Business, the Commissioner enters the following Consent Order (“Order”):

I. PARTIES AND JURISDICTION

1. The Commissioner of Insurance, Doug Ommen, directly and through his designees, administers and enforces Iowa Code Chapter 502—Uniform Securities Act, Iowa Code Chapter 502A—Commodities Code, Iowa Code Chapter 507B—Insurance Trade Practices, Iowa Code Chapter 522B—Licensing of Insurance Producers, Iowa Administrative Code Chapter 191—15 Unfair Trade Practices, and Iowa Administrative Code Chapter 191—50 Regulation of Securities Offerings and Those Who Engage in the Securities Business pursuant to Iowa Code § 505.8. Commissioner Ommen has designated Rosanne Mead as Securities Administrator.

2. Douglas A. Howard (“Respondent”) is an individual with a last-known residence address of 106 E. 18th Street, Atlantic, Iowa 50022.
3. Respondent was previously registered as a securities agent in Iowa from July 10, 1998 until his relationship with his broker-dealer was voluntarily terminated on March 17, 2014. Respondent was registered under Central Registration Depository number 3099178.
4. Respondent was previously licensed as an insurance producer in the state of Iowa as a resident insurance producer from October 4, 1994 until his license expired on November 30, 2016. He was licensed under National Producer Number 56103.
5. Pursuant to Iowa Code § 505.28, Respondent has consented to the jurisdiction of the Commissioner of insurance by committing acts governed by Chapter 502, 502A, 507B, and 522B.
6. From on or about November 1, 2012 to approximately May 2015, Respondent has engaged in acts and practices within the state of Iowa constituting cause for censure or a bar on Respondent’s securities agent registration; probation, suspension, or revocation of his insurance producer license; cease and desist orders; civil penalties or other relief under Iowa Code Chapters 502, 502A, 507B, 522B; restitution under Iowa Code Chapters 502, 502A, and 505; the costs of investigation and prosecution under Iowa Code Chapter 505 and Iowa Administrative Code Chapter 191—15; an order of disgorgement under Iowa Code Chapter 502A; and rules adopted pursuant to these chapters.

II. FINDINGS OF FACT

7. The Division issued Respondent a license as an insurance producer on October 4, 1994 and assigned to him National Producer Number 56103.

8. On December 13, 2001, Respondent filed an amended Form U-4 through the Financial Industry Regulatory Authority ("FINRA") to apply for securities agent registration in Iowa and was assigned Central Registration Depository (CRD) Number 3099178.
9. On June 29, 2007, Respondent, as securities agent and insurance producer, facilitated the purchase of a variable annuity ("Variable Annuity 1090¹"). issued by Jackson National Life Insurance Company ("Jackson National") to Consumer SI on July 31, 2007 and funded by an initial premium of \$19,938.54.
10. On June 29, 2007, as part of the application for the Variable Annuity 1090, a Customer Account Information form was completed, which indicated that Consumer SI's investment objective was growth and her time horizon was long-term. The form also indicated that Consumer SI's gross annual income at the time was \$12,000.00 and her net worth, at the time, excluding her residence was \$100,000.00.
11. The application for the Variable Annuity 1090 indicated that the source of the funds for the initial premium was the replacement of another life insurance policy or annuity from MetLife Investors. On the replacement paperwork submitted with the application, there was an indication that the total annual costs on the replacement contract were more than the MetLife Investors contract, but the new contract was more appropriate because it provided guaranteed withdrawals without annuitizing the contract, which she wanted.
12. On June 29, 2007, Respondent, as insurance producer and securities agent, facilitated the purchase of a variable annuity ("Variable Annuity 1074²") issued by Jackson National to Consumer SI on August 1, 2007 and funded by an initial premium of \$19,413.70.

¹ The last four account numbers on the Variable Annuity end in "1090."

² The last four account numbers on the Variable Annuity end in "1074."

13. On August 29, 2011, Respondent, as insurance producer and securities agent, facilitated the purchase of a variable annuity ("Variable Annuity 0553³"), issued by Jackson National to Consumer SI on September 19, 2011 and funded by an initial premium of \$219,418.52.

14. On August 29, 2011, as part of the application for the Variable Annuity 0553, a Customer Account Information form was completed, which indicated that her investment objectives were growth and income, her risk tolerance was moderate, and her time horizon was long-term, indicating 7 years or more. A Variable Annuity Disclosure Form was also completed indicating that the intended use of the contract was retirement income and tax-deferred growth. Consumer SI also purchased a rider that guaranteed income growth of 7% and allowed withdrawals based upon the income base. In the "Suitability Analysis" section, the disclosure indicated that the Variable Annuity 0553 would benefit Consumer SI's investment objectives because it would guarantee income for later use. The disclosure also indicated that Consumer SI's liquid net worth at the time, which included the other variable annuities, was \$40,000.00 and that Consumer SI intended to take distributions from Variable Annuity 0553 within the next one to five years.

15. In a recorded statement given to the Division, Respondent recalled that Consumer SI's primary objectives at the time of the purchase of the Variable Annuity 0553 were to preserve the principal and receive guaranteed growth for future income.

16. In the months that followed, Consumer SI made regular withdrawals from Variable Annuity 0553, often on a monthly basis, for amounts ranging from \$1,000.00 to \$3,500.00. A summary of Consumer SI's withdrawals from Variable Annuity 0553 is attached hereto as Exhibit A and incorporated herein, by reference.

³ The last four account numbers on the Variable Annuity end in "0553."

17. Respondent introduced Consumer SI to the opportunity to invest with an individual named Michael Graham who resided in Arizona, whom Respondent had known for 20 years and with whom Respondent had personally invested.
18. Respondent represented to Consumer SI that Graham was trading in futures and foreign currency.
19. Respondent represented to Consumer SI that he did not lose any money trading in Graham's robotic trading system.
20. Respondent represented to Consumer SI that Graham had developed a robot that was trading in futures and foreign currency 24 hours a day, 7 days a week.
21. Respondent represented to Consumer SI that she would double her money in 6 months and that on average she would earn \$2,000.00 some months and other months she would earn \$10,000.00.
22. Respondent represented to Consumer SI that if she invested with Graham, the principal of her investment would not be at risk.
23. Respondent omitted to state that Graham was not registered with the National Futures Association or the Commodities Future Trading Commission, and omitted to state that Graham is permanently barred as a principal of the National Futures Association.
24. In reliance upon the representations by Respondent, Consumer SI surrendered all of her Jackson National variable annuities and invested all of the funds received from the surrender, a total of \$250,270.13, with Graham.
25. Consumer SI's objective in investing with Graham was to preserve the principal of her investment and obtain monthly income.

26. The funds Consumer SI sent to Graham represented the entirety of what Consumer SI had accumulated in retirement savings and the entirety of what her parents had saved and gifted to Consumer SI in their wills.
27. After investing with Graham, Consumer SI continued to contact Respondent to inquire about the status of her money and her account.
28. Consumer SI received several monthly distributions from Graham totaling \$80,116.00.
29. Despite repeated requests by Consumer SI, she has not received a monthly distribution since April 2015.
30. Since April 2015, Consumer SI has been living off of charitable gifts from friends and by selling her furniture. Her home is in a state of disrepair as she does not have the funds to take care of her monthly expenditures. Additionally, she had to sell one of her homes and one of her vehicles.
31. On October 25, 2016, Graham was indicted by a grand jury alleging the operation of a Ponzi scheme, wire fraud, and mail fraud.
32. In total, Consumer SI lost \$170,154.13 in her investment with Graham.
33. Respondent failed to notify the Division within 30 days of the initial pretrial conference of the following criminal charges:
 - a. Felony operating a vehicle while intoxicated (3rd offense) on March 14, 2000;
 - b. Felony operating a vehicle while intoxicated (3rd offense) on March 26, 2000;
 - c. Theft in the fifth degree on July 9, 2000;
 - d. Consumption/intoxication on July 29, 2000;
 - e. Interference with official acts on July 29, 2000;
 - f. Assault on peace officers and others on September 9, 2000;

- g. Interference with official acts on September 9, 2000;
 - h. Disorderly conduct on September 9, 2000;
 - i. Controlled substance violation on September 21, 2015;
 - j. Failure to affix drug stamp on September 21, 2015;
 - k. Possession of controlled substance (2nd offense) on September 21, 2015;
 - l. Possession of controlled substance (marijuana-2nd offense) on September 21, 2015;
and
 - m. Violation of probation on June 22, 2016.
34. Respondent failed to disclose on his renewal application for insurance producer licensure the following convictions:
- a. Consumption/intoxication on July 31, 2000;
 - b. Theft in the fifth degree on August 29, 2000 (two counts);
 - c. Interference with official acts on October 24, 2000 (two counts);
 - d. Assault on peace officers and others on October 24, 2000; and
 - e. Possession of controlled substance (marijuana-2nd offense) on November 16, 2015.
35. During the time that Respondent was registered as a securities agent, he was affiliated with broker-dealer Transamerica.
36. Neither Respondent, Consumer SI, nor Transamerica are registered with the National Futures Association or the Commodity Futures Commission. Though Respondent was a securities agent affiliated with Transamerica, Transamerica's registration with the SEC and Respondent's activities in selling commodities to Consumer SI were not related to such registration with the SEC. Consumer SI is not affiliated with a broker-dealer. Neither

Respondent nor Consumer SI are members of a contract market, a financial institution, or registered as a securities broker-dealer under the laws of this state.

37. The commodities offered by Graham are of the type regulated by the Administrator under Iowa Code Chapter 502A.

38. Respondent has limited assets and is currently employed, earning a wage of \$12.50/hour.

III. CONCLUSIONS OF LAW

39. Under Iowa Code § 522B.11(5), any penalty or remedy authorized by Chapter 522B may be imposed even if the person's license has lapsed by operation of law.

COUNT 1

Fraudulent Commodity Conduct and Using Fraudulent, Coercive, or Dishonest Practices, Demonstrating Incompetence, Demonstrating Untrustworthiness

40. Under Iowa Code § 502A.6, a person is prohibited from, in connection with the sale of a commodity, doing, in relevant part, any of the following:

(1) Cheat or defraud, or attempt to cheat or defraud, another person or employ any device, scheme, or artifice to defraud another person.

....

(3) Make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

(4) Engage in a transaction, act, practice, or course of business, including, without limitation, any form of advertising or solicitation, which operates or would operate as a fraud or deceit upon any person.

(5) Misappropriate or convert the funds, security, or property of another person.

41. Under Iowa Code § 522B.11(1)(h), a license may be subject to probation, suspension, or revocation and civil penalties may be levied, as provided in Iowa Code § 522B.17, for using fraudulent, coercive, or dishonest practices or demonstrating incompetence or untrustworthiness.

42. Respondent employed the scheme of representing that Graham would use Consumer SI's funds for commodities purchases when in fact the funds were not used for such.

43. Respondent made untrue statements of material fact, including that Graham was trading in futures and would use Consumer SI's money to trade in futures, that Graham had developed a robot that was trading in futures and foreign currency 24 hours a day, 7 days a week, that Consumer SI would double her money in 6 months, and that the principal of Consumer SI's investment was not at risk. Respondent omitted to state that Graham was not registered with the National Futures Association or the Commodities Future Trading Commission, and omitted to state that Graham is permanently barred as a principal of the National Futures Association.

44. Respondent's acts and practices have been in violation of Iowa Code §§ 502A.6 and 522B.11(1)(h), 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 §§ 502A.12, 522B.11, and 522B.17, an action for restitution pursuant to Iowa Code §§ 505.8 and 502A.12; and an order of disgorgement pursuant to Iowa Code § 502A.12.

COUNT 2

Using Dishonest or Unethical Practices in the Securities, Commodities, Investment, and Insurance Business

45. Under Iowa Code § 512.412(4)(m), the Securities Administrator may deny the application for registration; may limit the registration; may revoke, suspend, bar, condition, or limit the registration of a registrant; and may impose civil penalties if a registrant "has engaged in dishonest or unethical practices in the securities, commodities, investment, or insurance business within the previous ten years.

46. Under Iowa Administrative Code 191—50.1, one definition of "investment contract" is:

Any investment by which an offeree furnishes initial value to an offerer, and a portion of this initial value is subjected to the risks of the enterprise, and the furnishing of the initial value is induced by the offerer's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise, and the offeree does not exercise practical and actual control over the managerial decisions of the enterprise.

47. Under Iowa Administrative Code 191—50.16(1)(c)(2), a person is prohibited from recommending a transaction or investment strategy involving a security or securities without a reasonable basis to believe that the transaction or investment strategy is suitable for the customer based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile.

48. Consumer SI offered initial value of \$250,270.13 to Respondent and Graham, which was subjected to the risks of the enterprise, was induced by promises that Consumer SI would double her money in six to eight months and that it would provide for growth and future income, and Consumer SI did not exercise practical or actual control over the managerial decisions of the enterprise.

49. Respondent, within the previous ten years, recommended the strategy of investing in the investment contract with Graham without having a reasonable basis to believe that the investment strategy was appropriate for Consumer SI given her investment objective of preserving the principal.

50. Respondent's acts and practices have been in violation of Iowa Code § 502.412(m), subjecting Respondent to denial, revocation, suspension, withdrawal, restriction, condition, or limitation of his securities agent registration, the imposition of a civil penalty, and an order requiring Respondent to cease and desist from engaging in such acts or practices, and an order for restitution pursuant to Iowa Code §§ 502.604.

COUNT 3
Unlawful Commodity Activities

51. Under Iowa Code § 502A.5, a person may not engage in a trade or business or otherwise act as a commodity merchant unless the person is registered or temporarily licensed with the commodity futures trading commission, or exempt from such registration.

52. Respondent is not registered with the National Futures Association, the Commodity Futures Trading Commission, and is not exempt from such registration.

53. Respondent acted as a commodity merchant and offered commodities to Consumer SI without being registered or licensed with the commodity trading commission, or being exempt from such registration requirement.

54. Respondent's acts and practices have been in violation of Iowa Code § 502A.5, subjecting Respondent to the imposition of a civil penalty, and an order requiring him to cease and desist from engaging in such acts and practices, the imposition of a civil penalty, an order of disgorgement, and an action for restitution pursuant to Iowa Code § 502A.12.

COUNT 4
Providing Incorrect, Misleading, Incomplete, or Materially Untrue Information on an Insurance Producer License Application, Having been Convicted of a Felony, Failure to Report a Criminal Prosecution

55. Under Iowa Code § 522B.11(1)(a), a license may be subject to probation, suspension, or revocation and civil penalties may be levied, as provided in Iowa Code § 522B.17, for providing incorrect, misleading, incomplete, or materially untrue information in a producer license application.

56. Under Iowa Code § 522B.11(1)(f), a license may be subject to probation, suspension, or revocation and civil penalties may be levied, as provided in Iowa Code § 522B.17, for being convicted of a felony.

57. Under Iowa Code § 522B.16, a producer must, within thirty (30) days of the initial prehearing date, report to the Commissioner any criminal prosecution of the insurance producer taken in any jurisdiction.

58. Respondent provided incorrect, misleading, incomplete, or materially untrue information on insurance producer applications by failing to disclose the convictions identified in Paragraph 33 of this Order, was convicted of several felonies, as enumerated in Paragraph 34 of this Order, and failed to report to the Commissioner within thirty (30) days, or ever, the convictions enumerated in that same paragraph.

59. Respondent's acts and practices have been in violation of Iowa Code §§ 522B.11(1)(a), 522B.11(1)(f), and 522B.16, subjecting Respondent to revocation or suspension of Respondent's insurance producer license, the imposition of a civil penalty, and an order requiring Respondent to cease and desist from engaging in the acts or practices alleged herein pursuant to Iowa Code §§ 522B.11 and 522B.17.

COUNT 5

Misrepresentations for the Purpose of Inducing or Tending to Induce the Surrender of an Insurance Policy

60. Under Iowa Code § 507B.4(3)(a)(6), a person is prohibited from making misrepresentations for the purpose of inducing or tending to induce the surrender of an insurance policy.

61. For the purpose of inducing Consumer SI to surrender her Jackson National Variable Annuities, Respondent made numerous misrepresentations to Consumer SI, omitted to state that Graham was not registered with the National Futures Association or the Commodities Future Trading Commission, and omitted to state that Graham is permanently barred as a principal of the National Futures Association.

62. Respondent's acts and practices have been in violation of Iowa Code § 507B.4(3)(a)(6) subjecting Respondent to suspension or revocation of Respondent's insurance producer license, the imposition of a civil penalty, an order requiring Respondent to cease and desist from engaging in such act or practice pursuant to Iowa Code § 507B.7, and payment of the costs of the investigation and administrative expenses related to the investigation, such administrative costs to include reasonable attorney fees, pursuant to Iowa Administrative Code 191—15.14(1)(e).

IV. ORDER

WHEREFORE pursuant to the powers granted the Commissioner of Insurance by Iowa Code Chapters 502, 502A, 505, 507B, and 522B:

- A. Respondent's Iowa securities agent registration is permanently revoked and Respondent is permanently barred from registration as a securities agent, investment adviser, or investment adviser representative in this state pursuant to Iowa Code §502.412;
- B. Respondent's Iowa resident insurance producer license is permanently revoked and Respondent is permanently prohibited from engaging in the business of insurance in this state pursuant to Iowa Code §§ 507B.7 and 522B.11;
- C. Respondent, pursuant to Iowa Code §§ 502.604, 502A.12, 507B.7, and 522B.17, shall immediately cease and desist offering commodities or securities, and shall cease and desist participating in the business of insurance in this state;
- D. Respondent, pursuant to Iowa Code §§ 502.604, 502A.12, and 505.8 shall pay restitution of \$2,025.00 as described in further detail, below:
 1. Restitution shall be remitted in 27 consecutive payments in the amount of \$75.00 each, due on the first of each month, with the first such payment being

due on August 1, 2017. Such payment shall be made payable to the order of the Iowa Insurance Division, to be credited to the Settlement Fund and distributed to Consumer SI as restitution. Restitution payments shall be considered late if not received by the 5th day of the month during which they are due;

2. Payments not received on or before the 5th day of the month in which they are due shall incur a late payment penalty of \$37.50. Late payment penalties shall become due on the first day of the month that immediately follows the day the restitution payment was due. Late payment penalties shall be made payable to the order of the Iowa Insurance Division, to be credited to the Iowa Enforcement Fund to provide funds for insurance enforcement and education;
3. Late restitution payments shall accrue interest from the date they were due at a rate of 5% per annum and shall be made payable to the order of the Iowa Insurance Division, to be credited to the Settlement Fund and distributed to Consumer SI as restitution;
4. Late payment penalties shall accrue interest from the date they were due at a rate of 5% per annum and shall be made payable to the order of the Iowa Insurance Division, to be credited to the Iowa Enforcement Fund to provide funds for insurance enforcement and education;
5. All payments shall be addressed to the Enforcement Filing Clerk at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, 4th Floor, Des Moines, Iowa 50309; and

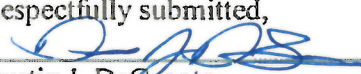
E. The Division may reopen this matter should it become aware that Respondent was dishonest in his representations to the Division about his assets.

SO ORDERED on the 29th day of June, 2017.



DOUGLAS M. OMMEN
Iowa Insurance Commissioner

Respectfully submitted,



Dustin J. DeGroote
Iowa Insurance Division
Two Ruan Center
601 Locust St. – 4th Floor
Des Moines, Iowa 50309-3738
Phone: 515-281-8160

Attorney for the Iowa Insurance Division

Copy by email to:
MICHAEL J. WINTER
541 Sixth Avenue
Council Bluffs, Iowa 51503
(712) 322-0133
(712) 322-9421 - fax
ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause, or their attorney, at their respective addresses disclosed on the pleadings on June 29, 2017.

- By: () First Class Mail () Personal Service
() Restricted certified mail, return receipt (x) Email, by consent
() Certified mail, return receipt () _____

Signature: 
Tammi L. Green

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, in violation of this Order, is a felony under Iowa Code § 507A.10, subjecting you to punishment of imprisonment, jail, fines, or any combination of custody and fines.

YOU ARE ALSO NOTIFIED that if you violate this order, you 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 you 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 revocation or a cease and desist order may adversely affect other existing business or professional licenses and result in license revocation or disciplinary action.

CONSENT TO ORDER AND AGREEMENT

I, Douglas A Howard, Respondent in this matter, have read, understood, and do knowingly consent to this Order in its entirety. By executing this consent, I understand that I am waiving my rights to a hearing, to confront and cross-examine witnesses, to produce evidence, and to judicial review.

I further understand that this Order is considered a final administrative action that may be reported by the Division to the National Association of Insurance Commissioners and to other regulatory agencies. I also understand that this Order is a public record under Iowa Code Chapter 22, which will be disclosed to other state regulatory authorities, upon request, pursuant to Iowa Code section 505.8(8)(d). I also understand that this Order will be posted to the Division's web site and a notation will be made to the publicly available web site record that administrative action has been taken against me.

Dated: 06-28-2017


Douglas A. Howard, Respondent

801 S. 10th St Council Bluffs, Ia 51501
Address of Signatory

Subscribed and sworn before me by Douglas A. Howard on this 28 day of June, 2016.


Notary Public for the State of Iowa

