



BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	Division Case No. 100419
)	
BRIAN T. ZIMMERMAN,)	ORDER AND CONSENT
NPN 277058,)	TO ORDER
DOB 03/24/XXXX,)	
Respondent)	

NOW THEREFORE, upon motion of the Iowa Insurance Division (“Division”) and by the consent of Respondent Brian T. Zimmerman, pursuant to the provisions of Iowa Code Chapter 507B—Insurance Trade Practices, Iowa Code Chapter 522B—Licensing of Insurance Producers, Iowa Administrative Code Chapter 15—Unfair Trade Practices, and Iowa Administrative Code Chapter 16—Replacement of Life Insurance and Annuities, the Commissioner enters the following Order and Consent to Order (“Consent Order”):

I. PARTIES AND JURISDICTION

1. The Commissioner of Insurance, Douglas Ommen, directly and through his designees, administers and enforces Iowa Code Chapter 507B—Insurance Trade Practices, Iowa Code Chapter 522B—Licensing of Insurance Producers, Iowa Administrative Code Chapter 15—Unfair Trade Practices, and Iowa Administrative Code Chapter 16—Replacement of Life Insurance and Annuities pursuant to Iowa Code § 505.8.
2. Brian T. Zimmerman (“Respondent”) is an individual with a last-known residence address of 10611 Oakwood Drive, Urbandale, Iowa 50322.
3. Respondent is and has been licensed in the state of Iowa as a resident insurance producer since November 20, 1973. He is licensed under National Producer Number 277058.
4. Pursuant to Iowa Code § 505.28, Respondent has consented to the jurisdiction of the Commissioner of Insurance by committing acts governed by chapters 507B and 522B.

5. From on or about July 1, 2012 to about August 2, 2012 Respondent engaged in acts and practices within the state of Iowa constituting cause for probation, suspension, or revocation of his insurance producer license; cease and desist orders; restitution; and civil penalties or other relief under Iowa Code §§ 505.8(10), 507B.3, 507B.6, 507B.7, 522B.11 and 522B.17, and rules adopted pursuant to these chapters.

II. FINDINGS OF FACT

6. Respondent applied for a resident insurance producer license with the Division and the Division issued Respondent a license as an insurance producer on November 20, 1973 and assigned to him National Producer Number 277058.

7. Respondent renewed his resident insurance producer license with the Division on March 13, 2017 by submitting an application for renewal through the National Insurance Producer Registry. In this renewal application, Respondent designated the Commissioner as an agent for service of process.

8. JBJ Associates, Inc. is registered as an Iowa corporation. Respondent is the registered agent, president, treasurer, and director of JBJ Associates, Inc.

American National Application

9. An annuity application for Consumer ET, dated June 30, 2011, was submitted to American National Insurance Company (“American National”) by Roger Duane Goodwin (“Goodwin”), an individual who was a licensed insurance producer under National Producer Number 55996 at that time. Goodwin’s insurance producer license was revoked by the Division on October 4, 2018.

10. An equity indexed deferred annuity was issued on July 8, 2011 based upon the June 30, 2011 application. The annuity had an initial value of \$100,000.00 and a policy number ending in 1536.
11. The annuity had a ten year surrender period.
12. Respondent was contacted by Goodwin on or about July 2012 regarding an annuity referral involving Consumer ET.
13. A surrender request was submitted to American National on July 25, 2012.
14. Respondent's name is signed as a witness on the surrender request. Respondent acknowledged the signature as his own during an interview with a Division investigator.
15. At the time of the surrender, the annuity had a surrender benefit of \$103,000.00, surrender charge of \$11,124.00, and a negative market value adjustment of \$4,649.48 resulting in a payout by American National of \$96,525.48 on July 30, 2012 to Consumer ET.

Phoenix Application

16. Goodwin contacted Respondent with the referral on or about July 2012 because Goodwin was not appointed with Phoenix Life Insurance Company ("Phoenix") and he asked Respondent, who was appointed with Phoenix, to submit an annuity application for Consumer ET.
17. Respondent received the annuity application and related paperwork from Goodwin's wife. The suitability and financial information was completed prior to Respondent receiving the forms.
18. An annuity application for Consumer ET, dated July 25, 2012, was submitted to Phoenix by Respondent. The Phoenix application for Consumer ET was submitted on the same day as the surrender request for Consumer ET's American National annuity.

19. The following answers were provided in paperwork submitted with the Phoenix application:

- a. No issue date was provided to the directive “If this purchase is replacing another insurance product, please provide the issue date of the product being replaced.”
- b. “Checking/Savings/Money Market Account” was checked to the question of “What is the source of premium for this annuity?”
- c. None of the subsequent replacement questions on the annuity suitability questionnaire, required to be completed in the instance when an annuity is the source of premium for the annuity being applied for, were filled out.
- d. “No” was checked 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 checked 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. “No” was checked to the question of “Will this annuity replace any existing life insurance or annuity contract?”

20. The Phoenix annuity suitability questionnaire included an explanation of the term “source of the premium.” This explanation states that it refers to where the funds will come from to purchase the applied for annuity and includes an existing annuity or life insurance contract.

21. The Phoenix Notice of Replacement states, in part, that a replacement occurs when a new contract is purchased, and in connection with the sale, the consumer surrenders an existing contract or uses an existing contract in a financed purchase.

22. Respondent is the agent of record on all of the Phoenix application paperwork. Respondent applied his signature to the annuity application form, annuity suitability questionnaire, replacement notice, and customer identification form.
23. Respondent acknowledged, in the “Agent’s Confirmation” section of the annuity suitability questionnaire, that he made a reasonable effort to obtain suitability information from Consumer ET, Respondent accurately recorded the information on the questionnaire, has verified the identity of Consumer ET, and is not aware of any discrepancies or misrepresentations in the recorded information.
24. Respondent certified on the customer identification verification form submitted with the Phoenix application that he personally met with Consumer ET and reviewed the identification documents.
25. Respondent never met or spoke with Consumer ET.
26. Respondent never confirmed with Consumer ET that the information on the application and related paperwork was true and accurate.
27. Respondent never asked Goodwin, in reference to the sections of paperwork that came to him already completed, whether Consumer ET or Goodwin recorded the information.
28. Consumer ET wrote a check dated August 1, 2012, made payable to Phoenix, in the amount of \$96,525.48. The source of funds was the surrender of Consumer ET’s American National policy.
29. The annuity was issued on August 2, 2012 based upon the July 25, 2012 application. The annuity had an initial value of \$96,525.48 and a policy number ending in 4257.
30. Consumer ET was seventy-eight (78) years old when the Phoenix policy was applied for and issued.

31. Respondent received a 5.75% commission for the submission of the Phoenix application.

32. Respondent split the commission for the submission of the Phoenix application with Goodwin.

33. Respondent had no records regarding Consumer ET's surrender of the American National policy to which he signed as a witness nor Consumer ET's application for a Phoenix annuity for which Respondent was the agent of record.

34. Respondent cooperated with the Division's investigator.

III. CONCLUSIONS OF LAW

COUNT I

Misrepresentation in Insurance Application

35. 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.”

36. Respondent misrepresented in both the Phoenix application and related replacement notice form that a replacement was not occurring.

37. Respondent misrepresented the source of premium for the Phoenix annuity as being “Checking/Savings/Money Market Account.”

38. Respondent misrepresented in the Phoenix application annuity suitability questionnaire that no surrender charges would be incurred.

39. Respondent misrepresented in the Phoenix application annuity suitability questionnaire that he recorded and obtained suitability information from Consumer ET.

40. Respondent misrepresented that he personally met with Consumer ET and reviewed identification documents.

41. Respondent received a commission from Phoenix for the submission and issuance of the Phoenix annuity.

42. Respondent's acts and practices have been in violation of Iowa Code § 507B.4(3)(n) 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 acts or practices, the imposition of costs of the investigation and prosecution of the matter, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 507B.7 and 505.8.

COUNT II
Replacement of Life Insurance and Annuities

43. 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. . .”

44. Iowa Administrative Code rule 191—16.24(2) requires producers to present and read a notice regarding replacements to the applicant if the applicant has an existing policy. The notice must be signed by both the applicant and producer.

45. Furthermore, under Iowa Administrative Code rule 191—16.24(2), the notice must also list all insurance policies or annuities proposed to be replaced or whether a policy will be used as a source of financing for the new policy.

46. Under Iowa Administrative Code rule 191—16.29, it is a violation of Iowa Administrative Code rules 191—15.7 and 15.8 to fail to ask the applicant pertinent questions regarding the possibility of financing or replacement while completing the application or to intentionally record an incorrect answer.

47. Respondent assisted in facilitating the surrender of the American National policy to fund the Phoenix policy.

48. Respondent did not present or read the notice regarding replacements, as required by Iowa Administrative Code rule 191—16.24, to Consumer ET.

49. The notice regarding replacements did not disclose the American National annuity, or any other existing insurance policies or annuities, nor did the notice indicate that the American National policy would be used to purchase the new Phoenix policy.

50. Respondent failed to personally ask Consumer ET any pertinent questions regarding the possibility of financing or replacement.

51. Respondent did not indicate that a replacement was occurring despite signing as a witness on the American National surrender form on the same day that he also signed as producer of record on the Phoenix application and related forms.

52. The amount paid out from the surrender of the American National policy, \$96,525.48 was the exact amount of the originated Phoenix policy.

53. Respondent's acts and practices have been in violation of Iowa Administrative Code rules 191—16.24 and 16.29 and Iowa Code Chapter 507B subjecting Respondent to 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, an order requiring Respondent to cease and desist from engaging in such acts or practices, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 505.8(1), 507B.7, and Iowa Administrative Code rule 191—16.29.

COUNT III
Producer Recommendation Duties

54. Under Iowa Code § 507B.4B(1), a producer shall not recommend the purchase, sale, or exchange of any annuity contract, or any rider, endorsement, or amendment unless the person has reasonable grounds to believe the recommended product is suitable for the consumer based upon the consumer's financial status, investment objectives, and other relevant information.

55. Under Iowa Administrative Code rule 191—15.75(1), in recommending the purchase or exchange of an annuity, the insurance producer must have a reasonable basis to believe that the particular consumer has been reasonably informed of the various features of the recommended annuity and would benefit from the annuity as a whole based upon the specific consumer's suitability information.

56. Additionally, under Iowa Administrative Code rule 191—15.75(1)(d), in the case of an exchange or replacement of an annuity, the producer must have a reasonable basis to believe the recommended product is suitable considering factors including, but not limited to, any surrender charge, the commencement of a new surrender period, loss of benefits, increased fees, and whether the consumer would benefit from any product enhancements or improvements.

57. Respondent did not personally meet or speak with Consumer ET to gather or verify her financial status, investment objectives, and other relevant suitability information. Respondent did not confirm with Consumer ET that the Phoenix paperwork accurately reflected her suitability information. Therefore, Respondent had no reasonable basis to believe the Phoenix annuity was a suitable product for Consumer ET.

58. Respondent did not inform Consumer ET of the various features of the Phoenix annuity.

59. Without meeting with or speaking to Consumer ET, Respondent had no way of verifying that anyone else had informed Consumer ET of the various features of the Phoenix annuity.

60. Respondent failed to identify the Phoenix annuity as a replacement in both the replacement section of the Annuity Suitability Questionnaire and the replacement notice form.

61. Respondent did not evaluate the suitability of replacing an annuity that had a ten year surrender period and that had been in force for merely one year.

62. There is no indication that Respondent evaluated any factors to determine if the Phoenix replacement annuity was suitable for Consumer ET, who was seventy-eight years old at the time the annuity was applied for and issued. Nor is there any indication that Respondent ensured that Consumer ET understood the disadvantages, including a hefty surrender charge, of replacing her American National annuity.

63. Respondent's acts and practices have been in violation of Iowa Code § 507B.4B(1) and Iowa Administrative Code rule 191—15.75 subjecting Respondent to an order requiring the producer to take reasonably appropriate corrective action for any consumer harmed by the producer's violation, the 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 acts or practices, the imposition of costs of the investigation and prosecution of the matter, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 505.8(10), 507B.7, and Iowa Administrative Code rule 191—15.77.

COUNT IV

Using Fraudulent or Dishonest Practices and Demonstrating Untrustworthiness or Incompetence

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

65. The acts and practices of Respondent in paragraphs 13 through 27 constitute dishonest practices and demonstrate untrustworthiness in violation of Iowa Code § 522B.11(1)(h).
66. Respondent assisted in facilitating the surrender of Consumer ET's American National policy which resulted in the loss of thousands of dollars in surrender charges.
67. Additionally, Respondent failed to ensure that the American National policy surrender was disclosed to Phoenix, despite signing as a witness on the American National surrender form and signing as the agent of record on the Phoenix application documents on the same day.
68. Respondent signed as a witness on the American National surrender form despite not having actually witnessed Consumer ET sign the form.
69. Respondent demonstrated incompetence and did not act with reasonable skill, care, and diligence when he failed to meet with or even speak to Consumer ET to ensure that the information, including suitability information, recorded on the Phoenix application and related forms was true and complete.
70. Respondent demonstrated incompetence when he failed to verify Consumer ET's identity.
71. Respondent's acts and practices have been in violation of Iowa Code § 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, an order of restitution, the imposition of costs of the investigation and prosecution of the matter, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 522B.11, 522B.17, and 505.8(10).

COUNT V
Failure to Maintain Records

72. Under Iowa Administrative Code rule 191—15.78, a producer shall maintain records of information obtained from the consumer and other information used in making the recommendation for ten years after the transaction is completed.

73. Respondent did not maintain records related to the American National policy surrender or the Phoenix policy application.

74. Respondent's acts and practices have been in violation of Iowa Administrative Code rule 191—15.78 and Iowa Code Chapter 507B subjecting Respondent to an order requiring the producer to take reasonably appropriate corrective action for any consumer harmed by the producer's violation, the 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 acts or practices, the imposition of costs of the investigation and prosecution of the matter, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 505.8(10), 507B.7, and Iowa Administrative Code rule 191—15.77.

IV. ORDER

WHEREFORE, IT IS ORDERED pursuant to the powers granted to the Commissioner of Insurance by Iowa Code Chapters 507B and 522B:

- A. 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;
- B. Respondent shall immediately cease and desist from engaging in the practice of insurance in this state; and

C. Respondent shall, within twenty (20) days from the date of this signed Order, pay as restitution the amount of \$6,474.52, payable to the order of the Iowa Insurance Division, to be credited to the Settlement Fund and distributed Consumer ET. This order may be enforced under Iowa Code §§ 505 and 522B, including but not limited to Iowa Code § 522B.17(3), and additionally, by any collection remedies available to the State of Iowa Department of Revenue for any unpaid ordered monetary amounts.

SO ORDERED on the 10th day of January, 2019.



DOUGLAS M. OMMEN
Iowa Insurance Commissioner

Respectfully submitted,



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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

January 10, 2019

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

Signature: Hilary Foster
Hilary Foster

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 OF FINAL ORDER IMPACT

A final order of license revocation or a cease and desist order may adversely affect other existing business or professional licenses and may result in license revocation or disciplinary action.

A final order in an administrative action does not resolve any potential criminal or civil violations or causes of action that might arise from the same or similar conduct that is the subject of this this order. It may result in criminal law enforcement authorities, including the fraud bureau of the Iowa Insurance Division, pursuing a criminal investigation or prosecution of potential criminal law violations.

CONSENT TO ORDER AND AGREEMENT

I, Brian T. Zimmerman, 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 § 505.8(8)(d). I also understand that this Order will be posted to the Division's website and a notation will be made to the publicly available website record that administrative action has been taken against me.

Dated: January 2, 2019

Brian T. Zimmerman
Brian T. Zimmerman, Respondent

10005 IDAHO RD #32 APACHE JUNCTION, AZ 85119
Address of Signatory

Subscribed and sworn before me by Brian T. Zimmerman on this 2 day of January, 2019

[Signature]
Notary Public for the State of Arizona

