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ADMINISTRATIVE HEARING COMMISSION

BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

DIRECTOR OF THE DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION STATE OF MISSOURI,	)	
Petitioner,	)	Case No.:
vs.	)	
JOHN MICHAEL SHAVER,	)	
Respondent.	)	
Serve: 3972 SW Canterbury Town Road Topeka, Kansas 66610	)	

COMPLAINT

The Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, through counsel, complains and requests the Administrative Hearing Commission find that cause exists to discipline the insurance producer license held by Respondent John Michael Shaver, because:

INFORMATION RELEVANT TO ALL COUNTS

1. Petitioner is the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration ("Director"). The Director has the duty to administer Chapters 374 and 375, RSMo, which includes the supervision, regulation, and discipline of insurance companies,

agencies, and producers licensed to operate and conduct business in the State of Missouri.

2. The Department of Insurance, Financial Institutions and Professional Registration ("Department") issued Respondent John Michael Shaver ("Shaver") a non-resident insurance producer license (No. 0333691) on August 5, 2004. Shaver's license is inactive because it expired on August 5, 2006, and Shaver did not apply for renewal. At all times relevant to this Complaint, Shaver was licensed as an insurance producer in Kansas.

3. On October 4, 2006, Shaver sold an equity indexed annuity, the Ultra Classic, with an initial $200,000 deposit to James E. Ellison and Mr. Ellison's spouse, Emma Jane Ellison, as joint owner. At that time, Mr. and Mrs. Ellison resided in Lee's Summit, Missouri and were both eighty-four years old.

4. The Ultra Classic is an insurance product issued by National Western Life Insurance Company ("National Western") of Austin, Texas that features a thirteen year surrender period. A surrender period requires the annuity holder to pay a percentage of the annuity contract to the insurance company if the annuity holder seeks to access the annuity funds before the expiration of the surrender period.

5. National Western issued Ultra Classic annuity #0101151586 to the Ellisons in October 2006.

6. National Western paid a commission to Shaver for the sale of the Ultra Classic annuity to the Ellisons.

7. Approximately seven weeks after he purchased the Ultra Classic, Mr. Ellison died. Mrs. Ellison then tried to exit the Ultra Classic but National Western would not allow Mrs. Ellison to exit the contract without realizing a double digit percentage surrender penalty.

8. An elder law group, Oelbaum Brown & Alsop LLC, complained to the Department on Mrs. Ellison's behalf.

9. Section 375.014.1 provides:

> No person shall sell, solicit or negotiate insurance in this state for any class or classes of insurance unless he or she is licensed for that line of authority as provided in this chapter.

10. Section 375.141.1 provides, in part:

> 1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:
>
> * * *
>
> (2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;
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> * * *
>
> (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
>
> * * *
>
> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

* * *

(12) Knowingly acting as an insurance producer when not licensed or accepting insurance business from an individual knowing that person is not licensed[.]

11. Section 375.144 provides, in part:

It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:

* * *

(2) As to any material fact, make or use any misrepresentation, concealment, or suppression;

* * *

(4) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person.

12. The Administrative Hearing Commission has jurisdiction over this Complaint pursuant to § 621.045, RSMo (Supp. 2009).[1]

COUNT I

13. Respondent Shaver engaged in an act, practice, or course of business which operated as a fraud or deceit upon any person in connection with the offer, sale, solicitation, or negotiation of insurance in violation of § 375.144(4), which is a ground to discipline his insurance producer license pursuant to § 375.141.1(2).

14. The facts are as follows:

a. The Ellison's Ultra Classic application states that the Ellisons signed the Ultra Classic application in Topeka, Kansas.

[1] All statutory references are to the 2009 Supplement to the Revised Statutes of Missouri, unless otherwise noted.

b. The Confirmation of Sale and Delivery document associated with the Ultra Classic application states: "This policy/contract was solicited and applied for in the state of Kansas and will be delivered in the state of Kansas." Respondent Shaver signed the Confirmation of Sale and Delivery.

c. The Ellisons did not sign the Ultra Classic application in Kansas.

d. The Ellisons signed the Ultra Classic at their home in Lee's Summit, Missouri.

15. Respondent Shaver engaged in an act which deceived National Western by stating that the Ultra Classic was sold and to be delivered in Kansas, when, in fact, the Ultra Class had been sold and was to be delivered to the Ellisons in Missouri.

16. Respondent Shaver's deceitful actions violated § 375.144(4) and are a ground to discipline his Missouri insurance producer license pursuant to § 375.141.1(2).

COUNT II

17. Respondent Shaver misrepresented a material fact in connection with the offer, sale, solicitation, or negotiation of insurance in violation of § 375.144(2), which is a ground to discipline his insurance producer license pursuant to § 375.141.1(2)

18. The facts alleged in paragraph 12, above, are incorporated as though fully stated here.

19. Respondent Shaver lied on the Ultra Classic application when he stated that the application was signed in Kansas, when, in fact, the Ellisons signed the application in Missouri.

20. The state of signing is material because in October 2006, Shaver was not licensed as an insurance producer in Missouri.

21. Shaver's misrepresentation is a violation of § 375.144(2) and a ground to discipline his Missouri insurance producer license pursuant to § 375.141.1(2).

COUNT III

22. Respondent Shaver intentionally misrepresented information on an insurance application which is a ground to discipline his insurance producer license pursuant to § 375.141.1(5).

23. Shaver intentionally stated on the Ellisons' Ultra Classic application that the application was signed in Topeka, Kansas, when, in fact, the Ellisons signed the application in Lee's Summit, Missouri.

COUNT IV

24. Shaver engaged in the sale, solicitation, or negotiation of insurance without a license in violation of § 375.014, which is a ground to discipline his insurance producer license pursuant to § 375.141.1(2).

25. Section 375.014.1 provides:

> No person shall sell, solicit or negotiate insurance in this state for any class or classes of insurance unless he or she is licensed for that line of authority as provided in this chapter.

26. A "license" for purposes of § 375.014 is:

> [A] document issued by the director authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself shall not create any authority, actual, apparent or inherent, in the holder to represent or commit an insurance company[.]

Section 375.012.1(7).

27. Shaver's Missouri insurance producer license expired on August 5, 2006. He did not apply for renewal.

28. Shaver acted as an insurance producer when he sold an insurance product to the Ellisons in October 2006.

29. Shaver's sale of an insurance product in October 2006 after his license expired in August 2006 to a Missouri consumer constitutes a violation of § 375.014.1 and is a ground to discipline his Missouri insurance producer license pursuant to § 375.141.1(2).

COUNT V

30. Shaver accepted a commission, service fee, brokerage or other valuable consideration for the selling, soliciting, or negotiating of insurance in this state when he was required to be licensed and when he was not so licensed in violation of § 375.076.2, and a ground to discipline Shaver's Missouri insurance producer license pursuant to § 375.141.1(2).

31. Section 375.076.2 provides:

> A person shall not accept a commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in this state if that person is required to be licensed and is not so licensed.

32. Shaver sold the Ultra Classic annuity #0101151586 to the Ellisons in October 2006 in Missouri.

33. Section 375.014 required that Shaver be licensed as an insurance producer to sell the Ultra Classic annuity in Missouri, but Shaver was not so licensed.

34. Shaver accepted a commission from National Western for the sale of Ultra Classic annuity #0101151586.

COUNT VI

35. Shaver knowingly acted as an insurance producer when not licensed which is a ground to discipline his insurance producer license pursuant to § 375.141.1(12).

36. The facts are as follows:

a. Approximately sixty days before Shaver's Missouri insurance producer license expired, the Department mailed a renewal notice to Shaver.

b. Shaver's Missouri insurance producer license expired in August 2006 and he did not renew his license.

c. Shaver knew in October, 2006, that he did not hold a Missouri insurance producer license.

d. Shaver knew he was not authorized to sell, solicit, or negotiate the annuity transaction with the Ellisons in Missouri.

e. Shaver knew that he was authorized to sell, solicit, or negotiate an annuity transaction in Kansas.

f. Shaver misstated the annuity contract situs on multiple documents.

37. The knowing nature of Shaver's actions is apparent because he misrepresented information on the annuity application and a form associated with the annuity transaction to state that the Ellisons applied for the annuity contract in Kansas – where Shaver was licensed, rather than Missouri – where Shaver's license had expired.

COUNT VII

38. Respondent Shaver used dishonest practices and demonstrated untrustworthiness in the conduct of business which are grounds to discipline his insurance producer license pursuant to § 375.141.1(8).

39. Dishonesty is a lack of integrity, a disposition to defraud or deceive. MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 359 (11th ed. 2004). Dishonesty also includes actions that reflect adversely on trustworthiness. *See In* re *Duncan*, 844 S.W.2d 443, 444 (Mo. banc 1992).

40. Any commissions paid by National Western to Shaver for the sale of a Missouri annuity may have violated § 375.076.1 which provides:

> An insurance company or insurance producer shall not pay a commission, service fee, brokerage or other valuable consideration

to a person for selling, soliciting or negotiating insurance in this state if that person is required to be licensed and is not so licensed.

41. Shaver's misrepresentations on an annuity application and Confirmation of Sale and Delivery form were dishonest practices and reflect adversely on his trustworthiness as an insurance producer in that he deceived National Western Life Insurance Company into paying Shaver a commission on the sale of a Missouri annuity when Shaver did not hold an active Missouri insurance producer license.

WHEREFORE, based on the foregoing, Petitioner respectfully requests that the Commission make findings of fact and conclusions of law stating that Petitioner has established cause to discipline Respondent John Michael Shaver's Missouri insurance producer license pursuant to §§ 375.141.1(2), (5), (8), and (12), RSMo (Supp. 2009).

Respectfully submitted,

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