



DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

P.O. Box 690, Jefferson City, Mo. 65102-0690

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DEPT. OF INSURANCE
FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

In the Matter of:)
William R. Talburt,) Case No. 130819501C
Respondent.)

CONSENT ORDER

John M. Huff, Director of the Department of Insurance, Financial Institutions and Professional Registration takes up the above matter for consideration and disposition. The Consumer Affairs Division, through legal counsel Kelly A. Hopper, and Respondent William R. Talburt, have reached a settlement in this matter and have consented to the issuance of this Consent Order.

1. John M. Huff is the duly appointed Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration ("Director" of the "Department") whose duties, pursuant to Chapters 374 and 375, RSMo,¹ include the supervision, regulation and discipline of insurance producers.

2. The Consumer Affairs Division ("Division") has the duty of conducting investigations into the acts of insurance producers under the insurance laws of this state and is

¹ All statutory references are to the 2012 Supplement to the Revised Statutes of Missouri unless otherwise noted.

authorized by the Director to investigate and to recommend enforcement action for violations of the insurance laws of this state.

3. The Department originally issued Respondent William R. Talburt ("Talburt") an insurance producer license (No. 0216723) on August 16, 1979. The license remains active and is set to expire on August 16, 2015.

4. The Division seeks to discipline Talburt's insurance producer license and alleges the following paragraphs 5 through 18 regarding Talburt.

5. In April 2011, Talburt contacted Donald and Claire Goss to discuss withdrawing some of the cash value from Donald Goss's life insurance policy (policy no. xxxxxxx456) (hereafter, the "Life Policy") through The Paul Revere Variable Annuity Insurance Company (hereafter, "Paul Revere"), and using that withdrawn money to purchase an Ultra-Income Single Premium Immediate Annuity (policy no. xxxxxx206) (hereafter, the "Annuity") through United of Omaha Life Insurance Company (hereafter, "United of Omaha"), a subsidiary of Mutual of Omaha Insurance Company (hereafter, "Mutual of Omaha").

6. This process of directly transferring accumulated funds in a life insurance policy, endowment policy, or annuity policy to another life insurance policy, endowment policy, or annuity policy without creating a taxable event is known as a 1035 exchange (hereafter, "1035 Exchange"). *See* 26 U.S.C. § 1035 (2006).

7. At the request of Donald Goss, Talburt wrote out his recommendation that the Gosses "roll \$21,000.00 of [their] Paul Revere cash value into Mutual's Ultra Income Annuity which will yield an immediate income to you of \$145.10/month – the balance at 2½ % int. growing taxfree." On the second page of the handwritten note, Talburt wrote the following: "If

you died premature, the death benefit would be \$111,285.60 from Paul Revere, and \$21,000.00 from Mutual of Omaha plus whatever interest you had made on the annuity ... all paid taxfree.”

8. This handwritten note was an estimate or illustration of an insurance policy.

9. The Annuity offered by United of Omaha was a non-qualified annuity. Non-qualified annuities are tax-free up to the amount of investment by the annuity owner, and taxable for any interest or return paid beyond that investment. See PUBLICATION 939 (04/2003), GENERAL RULE FOR PENSIONS AND ANNUITIES, <http://www.irs.gov/publications/p939/ar02.html> (last visited Oct. 2, 2013).

10. The percentage of each monthly payment exempt from taxation is known as the “Exclusion Ratio,” and is listed prominently on the Annuity “Comparison of Benefit Payment Options” documents that Talburt presented to the Gosses. For every “Benefit Payment Option” listed therein, the Exclusion Ratio was less than 100%. Therefore, every monthly payment from any potential Benefit Payment Option was guaranteed to be partially taxable. Additionally, any lump sum paid upon Donald Goss’s death was guaranteed to be partially taxable.

11. On or about May 17, 2011, United of Omaha sent a letter requesting a 1035 Exchange to Paul Revere. The letter stated, in relevant part, that “[i]t is intended that this letter be sufficient to permit the immediate payment of the entire cash surrender value, dividend accumulations or additions, termination dividends, and any unearned premiums by check to United of Omaha without the need for other forms.”

12. On the second page of the Internal Revenue Code Section 1035 Exchange Assignment Form submitted by Talburt to United of Omaha, and in turn forwarded to Paul Revere (hereafter, “1035 Exchange Form”), the “Approximate Cash Surrender Value – Old

Contract" was listed as \$41,187.69, the full cash value of the Paul Revere Life Policy at that time.

13. The 1035 Exchange Form did not allow for a partial 1035 Exchange. The 1035 Exchange Form read, in relevant part:

I also acknowledge that:

- (a) upon approval of the issue of the new policy, United will request the surrender of the old policy(ies) for its (their) cash value:
 - (1) the entire proceeds may be applied either as an initial premium or as additional premium for the new policy, or
 - (2) if the proceeds exceed the amount which can be accepted as premium for the new policy, the excess will be paid to me.

14. Based on the language in the May 17, 2011 letter from United of Omaha, and the \$41,187.69 figure and signatures of Talburt and Donald Goss on the 1035 Exchange Form, Paul Revere processed a surrender of the entire cash value of the Life Policy and executed a 1035 Exchange with United of Omaha. Once the 1035 Exchange was processed, the Life Policy was surrendered and provided no further value or benefit going forward.

15. When contacted by Talburt on June 29, 2011, Paul Revere informed Talburt that Paul Revere does not process partial 1035 Exchanges. Paul Revere also informed the Division of this policy in response to a Division inquiry.

16. The complete surrender of the Paul Revere Life Policy through the 1035 Exchange resulted in the loss of a \$100,000 tax-free death benefit for Donald and Claire Goss. Donald Goss passed away on October 24, 2012.

17. The preparation, discussion, and sale of the Annuity, and the preparation and submission of paperwork related to the 1035 Exchange, individually and collectively qualify as the conduct of business in this state or elsewhere.

18. Talburt was paid \$1,248.91 as first year commission on the United of Omaha Annuity.

19. Talburt acknowledges and understands that under § 375.141.1(2) the Director may revoke his insurance producer license because Talburt violated a Missouri insurance law when he made or issued an estimate, illustration, or statement which misrepresented the benefits, advantages, conditions, or terms of a policy, in violation of § 375.936(6)(a). Such violation was committed in conscious disregard of §§ 375.930 to 375.948, as required by § 375.934(1).

20. Talburt acknowledges and understands that under § 375.141.1(5) the Director may revoke his insurance producer license because Talburt intentionally misrepresented the terms of an actual or proposed insurance contract or application for insurance.

21. Talburt acknowledges and understands that under § 375.141.1(8) the Director may revoke his insurance producer license because Talburt's actions and conduct with regard to the Goss transaction demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

22. On or about March 19, 2014, counsel for the Consumer Affairs Division sent documentation to Talburt which described the specific conduct for which discipline was sought and citations to the laws allegedly violated, along with documents which were the basis thereof. Talburt was advised that he had 60 days to review the documents and consider the proposed settlement offer.

23. Talburt acknowledges and understands that he has the right to consult counsel at his own expense.

24. Talburt acknowledges and understands that he has been advised that he may, either at the time the settlement agreement is signed by all parties, or within 15 days thereafter,

submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement constitute grounds for disciplining or refusing to renew Talburt's insurance producer license.

25. Except as provided in paragraph 24, above, Talburt stipulates and agrees to waive any waivable rights that he may have to a hearing before the Administrative Hearing Commission, the Director, and any rights to seek judicial review or other challenge or contest of the terms and conditions of this Consent Order and forever releases and holds harmless the Department, the Director and his agents, and the Consumer Affairs Division from all liability and claims arising out of, pertaining to, or relating to this matter.

26. Each signatory to this Consent Order certifies by signing that he or she is fully authorized, in his or her own capacity, or by the named party he or she represents, to accept the terms and provisions of this Consent Order in their entirety, and agrees, in his or her personal or representative capacity, to be bound by the terms of this Consent Order.

Conclusions of Law

27. The actions admitted by Talburt are grounds to revoke his Missouri insurance producer license pursuant to § 375.141.1(2), (5), and (8).

28. The Director may impose orders in the public interest under § 374.046.

29. The terms set forth in this Consent Order are an appropriate disposition of this matter and entry of this Consent Order is in the public interest.

Settlement Terms

30. IT IS ORDERED that Respondent William R. Talburt shall remain in possession of insurance producer license No. 0216723, subject to the conditions set forth herein.

31. IT IS FURTHER ORDERED that Respondent William R. Talburt shall pay the amount of one thousand two hundred and forty-eight dollars and ninety-one cents (\$1,248.91) as a forfeiture authorized by § 374.046.15, and pursuant to § 374.280 made payable to the State School Moneys Fund for the above-described violations, after being afforded the opportunity to consult legal counsel, in accordance with §§ 374.049.11 and 374.280.2, and Article IX, Section 7 of the Missouri Constitution.

32. IT IS FURTHER ORDERED that such payment shall be due immediately by money order or cashier's check made payable to the State School Moneys Fund, and shall be forwarded with this executed Consent Order to the attention of Kelly Hopper, Missouri Department of Insurance, Financial Institutions and Professional Registration, P.O. Box 690, Jefferson City, Missouri 65102. Any correspondence and/or money order or cashier's checks shall reference the case name and number appearing at the top of this Consent Order.

33. IT IS FURTHER ORDERED that Respondent William R. Talburt shall be prohibited from marketing, soliciting, transferring, or selling any annuity product in the state of Missouri, including but not limited to fixed and/or variable types of immediate and deferred annuities.

34. IT IS FURTHER ORDERED that Respondent William R. Talburt shall report to the Department any administrative action taken against Talburt in another jurisdiction or by another governmental agency in this state within five business days after he receives notification of the initiation of such administrative action.

35. IT IS FURTHER ORDERED that Respondent William R. Talburt shall respond to all inquiries and consumer complaints forwarded or otherwise communicated to him by the Department or a consumer within five (5) business days of receipt. If Talburt receives a

complaint directly from a consumer, whether written or oral, Talburt shall report the complaint in writing to the Consumer Affairs Division within five (5) days of receipt. Talburt shall include in such report: 1) a copy of the complaint, if written, or a brief, accurate description of the complaint, if oral; 2) a detailed explanation of the circumstances surrounding the complaint; and 3) any measures taken or planned to address the conduct described in the complaint.

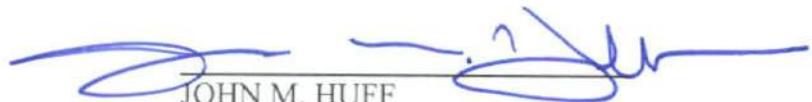
36. IT IS FURTHER ORDERED that Respondent William R. Talburt shall report to the Consumer Affairs Division any violation of or failure to comply with the laws set forth in Chapters 374 and 375, and in the insurance regulations, within five business days of such violation or failure to comply.

37. IT IS FURTHER ORDERED that the special conditions listed in paragraphs 30 through 36 will expire five years from the date this Consent Order is issued.

38. IT IS FURTHER ORDERED that the Director may pursue additional legal remedies, as necessary and without limitation, as authorized by Chapters 374 and 375, RSMo.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 2ND DAY OF APRIL, 2014.




JOHN M. HUFF
Director, Missouri Department of Insurance,
Financial Institutions and Professional
Registration

CONSENT AND WAIVER OF HEARING

The undersigned persons understand and acknowledge that Respondent William R. Talburt may have the right to a hearing, but that Talburt has waived the hearing and consented to the issuance of this Consent Order.

William R. Talburt

William R. Talburt
3277 S. Farm Rd. 203
Springfield, MO 65809
Respondent

3/24/2014
Date

Counsel for Respondent
Name: _____
Missouri Bar No. _____
Address: _____

Telephone: _____

Date

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4/1/2014
Date