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INSURANCE COMMISSIONER
LEGAL AFFAIRS DIVISION



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KING COUNTY SUPERIOR COURT
STATE OF WASHINGTON

WILLIAM S. BENNETT, JR.,

Petitioner,

vs.

INSURANCE COMMISSIONER OF THE
STATE OF WASHINGTON,

Respondent.

NO.

PETITION FOR JUDICIAL REVIEW

COMES NOW the Petitioner William S. Bennett, Jr., by and through his attorney of record, Joseph O. Baker of Van Siclen, Stocks & Firkins, and hereby submits the following petition for judicial review of an agency action in accordance with RCW 34.05.510, *et seq.*:

1. Name and mailing address of petitioner:

William S. Bennett, Jr.
914 140th Ave. N.E. #202
Bellevue, WA 98005

2. Name and mailing address of petitioner's attorney:

Joseph O. Baker
Van Siclen, Stocks & Firkins
721 45th Street NE
Auburn, WA 98002
Tel.; 253-859-8899
Fax: 866-623-2421
Email: jbaker@vansiclen.com

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3. **Name and mailing address of the agency whose action is at issue:**

Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

4. **Agency action at issue:**

Order dated January 27, 2011 (attached) upholding Insurance Commissioner's Order Revoking License No. 10-0053 and requiring that the petitioner's insurance producer's license be surrendered to the Office of the Insurance Commissioner by the close of business on February 10, 2011. Please see attached order for details.

5. **Parties in any adjudicative proceedings leading to agency action:**

Mike Kreidler, Insurance Commissioner

6. **Facts demonstrating that petitioner is entitled to obtain judicial review:**

Page 6 of the attached order provides that judicial review is available.

7. **Petitioner's reasons for believing that relief should be granted:**

The Petitioner believes that several grounds set forth in RCW 34.05.570 apply in this case, including, but not limited to, the following: (a) the agency has erroneously interpreted or applied the law; (b) the order is not supported by substantial evidence when viewed in light of the agency record, supplemented by any additional evidence received under chapter 34.05 RCW; and (c) the order is arbitrary or capricious. The Petitioner has been substantially prejudiced by the

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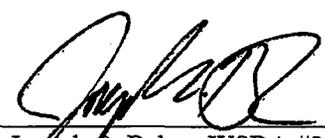
agency action at issue. The Petitioner reserves the right to amend his assignments of claimed error.

8. Request for relief:

The Petitioner respectfully requests that this Court set aside and enjoin the agency action. The Petitioner also requests that this Court award him fees and other expenses, including reasonable attorneys' fees, under RCW 4.84.350.

Respectfully submitted this 25th day of February, 2011.

VAN SICLEN, STOCKS & FIRKINS

By 
Joseph O. Baker, WSBA #32203
Attorneys for Petitioner

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON

Phone: (360) 725-7000
www.insurance.wa.gov



OFFICE OF
INSURANCE COMMISSIONER

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HEARINGS UNIT
Fax: (360) 664-2782

Hearings Unit, DIC
Patricia D. Petersen
Chief Hearing Officer

Patricia D. Petersen
Chief Hearing Officer
(360) 725-7105

Nicole Kelly
Paralegal
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nicolek@oic.wa.gov

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:)	
)	No. 10-0053
WILLIAM S. BENNETT, JR.,)	
)	FINDINGS OF FACTS, CONCLUSIONS
)	OF LAW AND FINAL ORDER
Licensee.)	ON HEARING
_____)	

TO: William S. Bennett, Jr.
914 - 140th Avenue, Suite 202
Bellevue, WA 98005

COPY TO: Mike Kreidler, Insurance Commissioner
Michael G. Watson, Chief Deputy Insurance Commissioner
Carol Sureau, Esq., Deputy Commissioner, Legal Affairs Division
Marcia G. Stickler, Esq., Staff Attorney, Legal Affairs Division
John F. Hamje, Deputy Commissioner, Consumer Protection Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Pursuant to RCW 34.05.434, 48.05.461, 48.04.010 and WAC 10-08-210, and after notice to all interested parties and persons, the above-entitled matter came on regularly for hearing before the Office of Insurance Commissioner for the state of Washington commencing at 10:00 a.m., on July 7, 2010. All persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. The Insurance Commissioner appeared pro se, by and through Marcia

Mailing Address: P. O. Box 40255 • Olympia, WA 98504-0255
Street Address: 5000 Capitol Blvd. • Tumwater, WA 98501



FINDINGS OF FACTS, CONCLUSIONS OF LAW
AND FINAL ORDER ON HEARING
William S. Bennett, Jr., Docket No. 10-0053 - Page 2

G. Stickler, Esq., Staff Attorney in his Legal Affairs Division. William S. Bennett, Jr. appeared pro se.

NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether the Insurance Commissioner's Order Revoking License, No. 10-0053, entered by the Insurance Commissioner on March 16, 2010, should be confirmed, set aside or modified. Said Order Revoking License revokes the insurance producer's license of William S. Bennett, Jr., based upon the fact that on March 8, 2010, he was convicted of one felony count of theft of government funds in United States District Court for the Western District of Washington based on his guilty plea therein and based upon his failure to report said conviction to the Insurance Commissioner. William S. Bennett, Jr. requested this hearing to contest the Order Revoking License.

FINDINGS OF FACTS

Having considered the evidence and arguments presented at the hearing, and the documents on file herein, the undersigned presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. This Order is entered pursuant to Title 48 RCW and specifically RCW 48.04; and Title 34 RCW and specifically, for good cause shown, RCW 34.05.461(8).

2. On March 16, 2010, the Insurance Commissioner ("OIC") entered an Order Revoking License, No. 10-0053, revoking the insurance producer's license of William S. Bennett, Jr. ("Licensee"), and pursuant to the terms of said Order the Licensee's producer's license has been revoked from April 5, 2010 to the current time. On June 4, the Licensee filed his Demand for Hearing to contest the subject Order Revoking License. Accordingly, on June 10, the undersigned mailed a Notice of Receipt of Demand for Hearing, which detailed the hearing procedures to be followed and scheduled a first prehearing conference. On June 16, the first prehearing conference was held, which included all parties. The OIC was represented by Marcia Stickler, Esq., Staff Attorney in the OIC Legal Affairs Division and William S. Bennett, Jr. represented himself. During said first prehearing conference, the undersigned outlined procedure to be expected at hearing, and answered all questions and concerns of the parties. At that time, the parties agreed that the hearing should commence on July 7, 2010.

3. The Licensee is an individual who has been licensed to sell life and disability insurance in Washington State since August 4, 1989. He was a career agent with New York Life Insurance Company (New York Life) for over twenty years. The Licensee has not been the subject of any prior disciplinary actions by the OIC. The Licensee has not been the subject of any consumer complaints made to the OIC. [As a result of a change in licensing rules, insurance agents' licenses were converted to "producer's licenses" on July 1, 2009, and therefore on July 1, 2009,

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as with other insurance agents, the Licensee's insurance agent's license was canceled and he was issued an insurance producer's license.]

4. In 1995, the Licensee sold a New York Life Insurance and Annuity Corporation universal life insurance policy with a \$600,000 benefit to his client T.D. Sam Baxter ("Baxter."). [OIC Hearing Memorandum, Ex. 4, New York Life policy.] In October 2009, the Licensee arranged for Baxter to replace the New York Life policy with a John Hancock Life Insurance Company universal life policy with the same \$600,000 benefit. When the policy application was written, the Licensee admits, and it is here found, that he informed Mr. Baxter that there would be no surrender charge associated with the replacement policy. [Testimony of Licensee; OIC Hearing Memorandum, Ex. 8, written statement of Baxter; Ex. 1 written statement of Baxter.] On the "Important Notice Regarding Replacement of Life Insurance - Washington" form, which the Licensee completed and gave to the client as required by Washington law, the Licensee represented to the client that he would incur no surrender charge. [OIC Hearing Memorandum, Ex. 4.] The policy did in fact carry a surrender charge if cancelled during the first fifteen years of its term. After further review of the old policy, and before delivering the new policy to Mr. Baxter, the Licensee informed Baxter that he had failed to disclose there would be a \$3,000 surrender charge. [Testimony of Licensee; OIC Hearing Memorandum, Ex. 8, written statement of Baxter; Ex. 1 written statement of Baxter.] The Licensee assured Baxter, however, that the \$3,000 surrender charge would be more than made up in future premium savings; he also emphasized that the new policy was guaranteed to continue to age 100 at the proposed premium, whereas the old policy would not have continued at the current premium due to interest rate reductions over the years; and the old policy was not guaranteed to continue to age 100 even at the new policy's premium amount. [Testimony of Licensee; OIC Hearing Memorandum, Ex. 8, written statement of Baxter; Ex. 1 written statement of Baxter.] Therefore, Mr. Baxter believes that he was left in a better position after having bought the new policy through the Licensee. [Id.]

5. In August 2006, the Licensee's mother died. At the time of her death, his mother had been receiving monthly federal survivorship benefit payments from the Veterans Administration ("VA"), more specifically called Dependency and Indemnity Compensation payments. While the Licensee promptly notified the Social Security Administration and New York Life of her death and therefore those benefits stopped the next month, the VA was not informed. Apparently the Licensee believed that notifying the Social Security Administration would be sufficient notification to the VA as well, but it was not. For this reason, the VA continued to send the Licensee's mother's monthly payments for deposit into his mother's bank account, to which the Licensee had access. The Licensee admits, and it is here found, that he did withdraw some of these funds and used these funds to pay for his own basic expenses, paid some of it back and then when he needed money again later he withdrew some more (eventually totaling approximately \$45,000 which the Licensee withdrew and used to pay for his own basic expenses). [Testimony of Licensee; OIC Hearing Memorandum Ex. 6, written statement of Licensee; Ex. 1, written statement of Licensee.] In July 2009, two federal agents from the VA visited the Licensee's office and at that time the Licensee gave them a written statement admitting what he had done and asked them how to repay it. They advised the Licensee that they would instruct him in the future how to handle repayment. Even though the VA was aware of

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the payments in July 2009 and the Licensee was charged with benefits fraud in September 2009, the VA benefits were still paid through December 2009 for a total of \$46,494.

6. The Licensee was instructed how to repay the funds to the VA in approximately December 2009 and shortly thereafter, on or about December 16, 2009, the Licensee mailed to the VA a cashier's check for \$50,444, which was the full amount due to repay these funds. [Testimony of Licensee; OIC Hearing Memorandum, Ex. 6, written statement of Licensee.]

7. On December 16, 2009, the Licensee pled guilty to one count of theft of government funds, a felony in violation of 18 U.S.C. Sec. 641. On March 8, 2010, he was sentenced in the U.S. District Court for the Western District of Washington and pursuant thereto is currently serving three years of probation and 120 hours of community service. [OIC Hearing Memorandum, Ex. 7, U.S. District Court Judgment dated March 8, 2010.]

8. The Licensee did not report the felony conviction to the OIC as required.

9. Effective March 1, 2010, after over twenty years with New York Life, the Licensee's affiliation with his broker-dealer, NYLIFE Securities, LLC was terminated based upon his conviction of the felony. Also at or about that time his contract to represent New York Life was terminated. [OIC Hearing Memorandum Ex. 6, written statement of the Licensee.]

10. William S. Bennett, Jr., the Licensee, appeared as a witness on his own behalf. Mr. Bennett presented his testimony in a clear and credible manner and exhibited a willingness to cooperate in every way throughout this proceeding.

11. Based upon the facts found above, it is reasonable that the OIC's Order Revoking License of William S. Bennett, Jr. should be upheld.

CONCLUSIONS OF LAW

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. This Order is entered pursuant to Title 48 RCW, Title 34 RCW and regulations applicable thereto.

2. Pursuant to the above Findings of Fact, on or about September 29, 2009, William S. Bennett, Jr., the Licensee, completed the "Important Notice Regarding Replacement of Life Insurance - Washington" form given to the client as required by WAC 284-23-440, but incorrectly stated thereon that the client would incur no surrender charges when in fact he would incur \$3,000 in surrender charges. Although the Licensee contacted his client and corrected this statement with the client before delivery of the new policy, and his client was not hurt thereby, in incorrectly completing said form, the Licensee violated WAC 284-23-440. Further, RCW 48.17.530(1)(b) authorizes the OIC to revoke an insurance producer's license for violating any insurance laws or rules of the OIC, and in so violating WAC 284-23-440 the Licensee violated a rule of the OIC as contemplated by RCW 48.17.530(1)(b).

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3. RCW 48.17.530(1)(f) authorizes the OIC to revoke an insurance producer's license for *having been convicted of a felony*. Pursuant to the above Findings of Fact, on March 8, 2010, William S. Bennett, Jr., the Licensee, was convicted of one count of felony theft of government funds in United States District Court for the Western District of Washington. Therefore, it is hereby concluded that upon learning of this conviction, the OIC properly revoked the insurance producer's license of William S. Bennett, Jr.

4. RCW 48.17.530(1)(h) provides that the OIC may revoke an insurance producer's license if the licensee is shown to have *us[ed] fraudulent, coercive, or dishonest practices, or demonstrat[ed] incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere;...* Given the totality of facts in this case, as found in Findings of Facts above, the undersigned cannot conclude that the incorrect statement on Baxter's replacement form was other than a mistake and, in itself, would not amount to sufficient reason for revocation. However, given the repeated acceptance of funds from the VA when the Licensee knew that they were no longer lawfully payable – and converting those funds for his personal use – makes it impossible to reach a conclusion which is less significant than that the Licensee has demonstrated financial irresponsibility in this state as contemplated by RCW 48.17.530(1)(h). Therefore, it is hereby concluded that the OIC properly revoked the insurance producer's license of William S. Bennett, Jr. pursuant to this statute.

5. RCW 48.17.540(2) provides that the OIC may revoke any producer's license *(a) by an order served ... upon the licensee not less than fifteen days prior to the effective date thereof...* Pursuant to the above Findings of Facts, the OIC properly revoked the producer's license of this Licensee as authorized by RCW 48.17.540(2).

6. RCW 48.17.597(2) requires an insurance producer to report to the commissioner *any criminal prosecution of the insurance producer...taken in any jurisdiction within thirty days of the initial pretrial hearing date, including a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents*. Pursuant to the above Findings of Facts, it is here found that, in his failure to report the fact of his criminal prosecution and conviction, the Licensee violated RCW 48.17.597(2). Further, RCW 48.17.530(1)(b) authorizes the OIC to revoke an insurance producer's license for violating any insurance laws or rules of the OIC., and in so doing violated a provision of the insurance code as contemplated by RCW 48.17.530(1)(b).

7. Based upon the above Finding of Fact, it is reasonable to conclude that the Insurance Commissioner's Order Revoking License, No. 10-0053, revoking the insurance producer's license of William S. Bennett, Jr., should be upheld.

ORDER

On the basis of the foregoing Findings of Facts and Conclusions of Law,

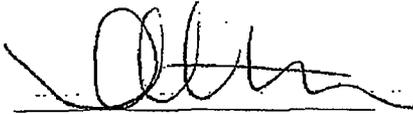
FINDINGS OF FACTS, CONCLUSIONS OF LAW
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IT IS HEREBY ORDERED that the Insurance Commissioner's Order Revoking License, No. 10-0053, to the effect that the insurance producer's license of William S. Bennett, Jr. is revoked, is upheld.

IT IS FURTHER ORDERED that the Licensee's insurance producer's license shall be surrendered to the Office of the Insurance Commissioner, P.O. Box 40255, Olympia, Washington 98504-0255 by close of business on February 10, 2011.

This Order is entered at Tumwater, Washington, this 27th day of January, 2011, pursuant to RCW 34.05, Title 48 RCW and regulations applicable thereto.



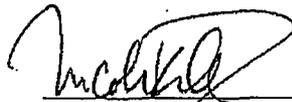
PATRICIA D. PETERSEN
PRESIDING OFFICER

Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General in the United States mail. If a party chooses to file a petition in the Superior Court, he or she may, but is not required to, first file a request for reconsideration. For further information or to obtain copies of the applicable statutes, the parties may contact the administrative assistant to the undersigned.

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: William S. Bennett, Jr., Mike Kreidler, Michael G. Watson, Carol Sureau, Esq., Marcia G. Stickler, Esq., and John F. Hamje.

DATED this 27th day of January, 2011.



NICOLE KELLY