

FILED

BEFORE THE OFFICE OF THE INSURANCE COMMISSIONER

2011 OCT 26 P 2:52

In the Matter of

RICK L. CLATFELTER,

Respondent

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Order No. 11-0178

Hearing Officer
Richard D. Palmen
Chief Hearing Officer

OIC HEARING MEMORANDUM

FACTS

Licensee Rick L. Clatfelter held a Washington resident producer license that he canceled on December 22, 2006 when he moved out of state. Mr. Clatfelter was the President of American Insurance Solutions, Inc. (AIS) in 2005, which also held a producer license that is still active. James D. Cooper also was an agent with AIS, and both he and Mr. Clatfelter were appointed by American National Insurance Company for life and disability lines. The OIC received a consumer complaint against Mr. Clatfelter on May 8, 2008. The consumer felt that Mr. Clatfelter had sold him unsuitable insurance products, including an annuity. Ultimately the complaint was closed as unfounded. However, in the course of the investigation, it was revealed that while Mr. Clatfelter was the agent who dealt with the consumer, his name did not appear on the consumer's insurance application, but that of fellow agent James D. Cooper did.

According to Mr. Clatfelter, Mr. Cooper's contract with American National Insurance Company provided a higher override on sales made by him than those sales made by Mr. Clatfelter. Mr. Clatfelter is no longer affiliated with AIS, as AIS did not request that his license be renewed on May 17, 2005. In its renewal, submitted on May 7, 2007, AIS did not request that Agent James D. Cooper's life and disability license be renewed, and it expired on July 20, 2007. Mr. Cooper is now deceased.

Mr. Clatfelter explained the signature as a mere expedient. He stated that on or about February 18, 2005, Mr. Clatfelter completed the application with the consumer for the purchase of a Universal Life policy from American National Insurance Company. In the spaces provided for the agent's signature, Mr. Clatfelter used a rubber signature stamp bearing Mr. Cooper's name, rather than his own signature (Exhibit 1). Mr. Clatfelter thus received the commission from the sale, rather than Mr. Cooper, pursuant to an Assignment of Commissions from Mr. Cooper (Exhibit 2). Mr. Cooper denies having signed the Assignment document, and the only witness to Mr. Cooper's purported signature was Mr. Clatfelter himself, the assignee.

Mr. Cooper denied any knowledge of the Assignment and claims that Mr. Clatfelter

stole the rubber stamp of his signature from a locked desk and used it both to sign the application for life insurance, but the Assignment of Commissions, as well (Exhibit 3). The signature on the assignment document looks identical to the rubber stamp signature and little like Mr. Cooper's true signature on his letter to Vic Overholt. In any event, there is no explanation as to why Mr. Cooper had a stamp for his signature made or why American National Insurance Company would honor an assignment witnessed only by the assignee himself. Mr. Clatfelter responded to Mr. Cooper's allegations in a letter to the OIC Investigator (Exhibit 4). Mr. Clatfelter avers that Mr. Cooper was in on the Assignment of Commissions and that the rubber stamp was not only easily retrieved from the secretary's desk, but used by Mr. Clatfelter with Mr. Cooper's consent. It is unknown if Mr. Clatfelter used the rubber stamp other times and places or if so, how often. Mr. Clatfelter was not asked about using the signature stamp on the assignment document.

The OIC issued an Order Not To Renew License on August 4, 2011, advising Mr. Clatfelter that the OIC would refuse to issue a new license if Mr. Clatfelter if he ever requested it to do so. Mr. Clatfelter requested a hearing on the Order on August 30, 2011(Exhibit 5).

ARGUMENT AND AUTHORITY

I. Grounds for Revocation

RCW 48.17.530(1) authorizes the Commissioner to refuse to issue a producer license pursuant for any one or more of the following causes:

- (e) intentionally misrepresenting the terms of an actual application for insurance;
- (g) having admitted committing any insurance unfair trade practice or fraud; or
- (j) forging another's name to an application for insurance.

RCW 48.30.210 states that knowingly making a false or misleading statement or impersonation in or relative to an application for insurance to an insurer is an unfair trade practice or fraud and a gross misdemeanor.

II. Argument

Mr. Clatfelter admits using the rubber stamp of Mr. Cooper's signature to witness as the agent of record the application involved with the consumer complaint. In his letter to the undersigned, dated August 31, 2011, Mr. Clatfelter does not seem to appreciate the gravity of using someone else's name of an insurance application, with or without that person's permission. He states that only in retrospect does he acknowledge that so doing "was not the way to do business," rather than behavior that renders him unfit to be a licensee under subsections (e), (g),

and (j) of RCW 48.17.530(1).

The Washington legislature states, in the first chapter of the Insurance Code that,

“The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, their providers, and their representatives rests the duty of preserving inviolate the integrity of insurance.” RCW 48.01.030.

Other causes that justify refusal to issue a producer license listed in RCW 48.17.530(1) are by definition, serious enough breaches of integrity and honesty to also justify suspension, revocation, or placement on probation of an existing license. These causes include conviction of a felony, theft of premium funds, having a license revoked in another state, cheating on the licensing test, or lying on a license application.

III. Exhibits to be Presented

- Exhibit 1 Application for Life Insurance from American National Insurance Company dated February 18, 2005, Beneficiary's SSN redacted. (2 pgs.)
- Exhibit 2 Absolute Assignment of Commissions from James Cooper to Rick Clatfelter dated March 10, 2005. (1 pg.)
- Exhibit 3 Statement from James D. Cooper dated July 29, 2008 to OIC Investigator. (1 pg.)
- Exhibit 4 Statement from Rick Clatfelter dated June 28, 2011 give to OIC Investigator. (1 pg.)
- Exhibit 5 Request for Hearing dated August 30, 2011 from Mr. Clatfelter. (1 pg.)

Respectfully Submitted this 26th day of October 2011.

Marcia G. Stickler
Legal Affairs Division
Office of the Insurance Commissioner
(360) 725-7048 or MarciaS@oic.wa.gov



APPLICATION FOR LIFE INSURANCE Part 1

0000590

Issue Date MARCH 1st

Franchise Number _____

1. Employer Air Force Service Plan/Dept _____

PRIMARY PROPOSED INSURED (Employee)

LEONARD JANDREK Male Female Employee Social Security No. _____

Home Address Street 1364 4th City Lawrence State KS ZIP 66044 Telephone No. (785) 834-7115 Home

Occupation Engineering Annual Income _____ Date Employed (Mo./Year) 6-85 () Work

Date of Birth 7-4-44 Age 60

2. Plan of Insurance: UL 96 Specified Amount \$ 65,740 per month (include any riders)

Death Benefit Option A B Dividend Option _____ Premium \$ 185.740

3. Beneficiary - Name and Relationship. If none, beneficiary will be Owner or Owner's Estate. Denita G. Jandrek _____

4. RIDERS: Spouse Term Rider \$ _____ Children's Term Rider \$ _____ Level Term Rider

ADB - Death Benefit \$ _____ Other \$ _____

Complete if spouse's or children's rider is applied for

Name	Son/Daughter/Spouse	Date of Birth (Mo./Day/Year)	Name	Son/Daughter	Date of Birth (Mo./Day/Year)

5. Is this insurance intended to replace or change any existing life insurance or annuity in any company, association or society? Yes No

6. a. Has any person proposed for insurance missed 3 or more consecutive days of work or normal activity due to illness or injury during the last 120 days? Yes No

b. Has any person proposed for insurance been diagnosed by a medical doctor as having an Impaired Deficiency Disorder, AIDS, AIDS Related Complex, (ARC) or tested positive on a HIV related blood test? Yes No

c. Is the employee actively at work as of this date? Yes No

d. Has any person proposed for insurance used tobacco in any form during the past 12 months? Yes No

If yes when _____

BEST COPY

EXHIBIT 1 p. 1

RECEIVED
MAR 02 2005
LIFE NEW BUSINESS

BEST COPY

If 6a or 6b is answered "Yes" or 6c is answered "No," for any Proposed Insured, complete Application For Life Insurance Part 2 for that Proposed Insured. (If Part 2 is completed, Primary Proposed Insured (Employee) will sign Part 2 Declaration.)

DECLARATION

I acknowledge that the statements and answers given are true and correct for all Proposed Insureds. The insurance applied for will be effective upon the issue date of the policy. Providing there is no material misrepresentation in the application, if the payroll deduction is authorized, effective immediately, interim life insurance equal to the lesser of the amounts applied for or \$100,000 is provided on all applicants unless the answer to question 6a or 6b is "Yes," or 6c is "No." This coverage continues until this application has been approved for issue, or until you are notified that no insurance will be issued. I understand that only an officer of the Company's Home Office may make or modify contracts or waive any rights or requirements and then only in writing. No change may be made in the amount of insurance, premium, classification of risk, plan of insurance, or benefits, without written consent of the Primary Proposed Insured and Owner. Agent's Report: Do you have knowledge or reason to believe that replacement of existing insurance may be involved? Yes No If "Yes," explain by memorandum.

I hereby certify that I have personally asked each question on the application to the Primary Proposed Insured (Employee), and I have truly and accurately recorded on the application the information supplied by him/her.

Dated at Memphis GA on Feb 18 05
City State Month Day Year

Rick Clatfelter Jim Cooper
Signature of Primary Proposed Insured (Employee) Primary Business Member
Signature of Witness (Agent)

Branch Office No F-BHU-00 Agent P.C. No. H6480 License I.D. # _____
Form 3995

Signature of Owner/Trustee of Qualified Plan
Signature of Primary Proposed Insured (Employee)

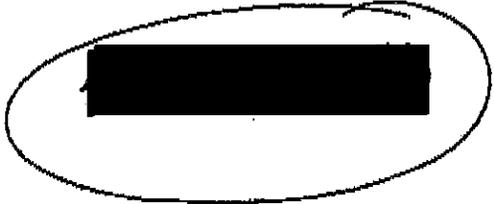
AUTHORIZATION TO OBTAIN, RELEASE AND DISCLOSE INFORMATION

I hereby authorize any physician, medical practitioner, hospital, clinic or other medical or medically related facility, insurance company, the Medical Information Bureau, or other organization, institution or person that has any records or knowledge of the health of any proposed insured, to give to American National Insurance Company or its Reinsurers any such information about any proposed insured with reference to our health and medical history and any hospitalization, advice, diagnosis, treatment, disease or ailment. I have received notification describing the Medical Information Bureau, and this authorization will be valid for two (2) years from its date.

To facilitate rapid submission of such information, I authorize all the above sources, except the Medical Information Bureau, to give such records or knowledge to any agency employed by American National Insurance Company to collect and transmit such information. A photocopy of this authorization shall be as valid as the original

27/8-05 Rick Clatfelter
Date Signature of Primary Proposed Insured (Employee)
Witness

EXHIBIT 1 p. 2



ABSOLUTE ASSIGNMENT OF COMMISSIONS

CITY OF Vancouver
COUNTY OF Clark
STATE OF Washington

For good and valuable consideration, receipt of which is hereby acknowledged, I hereby sell, assign and transfer unto Rick Claffelter (Assignee), absolutely and irrevocably, all my right, title and interest in and to any and all first year and renewal commissions now due or which may in the future become due to me, under the terms and provisions of a certain Agency Contract entered into between American National Insurance Company and me, dated 3-10-05, and any and all prior and supplemental contracts, if any.

American National Insurance Company is hereby irrevocably authorized and empowered to pay over to the said Rick Claffelter (Assignee) any and all first year or renewal commissions which are now due or which may become due under said contracts.

It is expressly agreed by and between the undersigned and the said assignee that this agreement is made subject to and shall be subordinated to any and all indebtedness by me to the said American National Insurance Company, previously or hereafter incurred. And it shall be subject to all terms and provisions of said written Agency Contracts and other contracts which are hereby referred to and made a part hereof; and said assignee evidences his (its) agreement thereto by acceptance of this assignment.

It is understood and agreed that by giving its consent to the making of this assignment, American National Insurance Company does not thereby guarantee its validity.

IN WITNESS WHEREOF, I have hereunto set my hand this 10 day of March, 05

WITNESS James Cooper (Assigner)
[Signature]
PC # / Social Security # H6480

ACCEPTANCE OF ASSIGNMENT:
Rick Claffelter (Assignee)
Social Security # (Assignee) [Redacted]

CONSENT TO THE ASSIGNMENT
AMERICAN NATIONAL INSURANCE COMPANY

BY: _____

FOR YOUR OWN PROTECTION ALL PARTIES MUST SIGN EACH COPY OF THIS FORM AS AN ORIGINAL

TLO
3/10/05

EXHIBIT 2

James D. Cooper
P.O. Box 1632
Kalama, WA 98625

Mr. Victor E. Overholt
Office of the Insurance Commissioner
Consumer Protection Division
P.O. Box 40256
Olympia, WA 98504-0256

RECEIVED

AUG 05 2008

Investigations & Enforcement

July 29, 2008

OIC Case: 1016912

Dear Mr. Overholt,

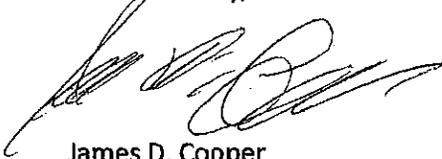
I am writing in response to your inquiry regarding my relationship as agent with Leonard Tandberg and have to admit that I am a little troubled. As an officer at American Insurance Solutions, Incorporated, I kept a signature stamp locked in the CEO's desk. We know for a fact that Mr. Clatfelter accessed the locked drawer and used the CEO's signature without permission (the subject of another complaint made to your fine office) and, it appears, Mr. Clatfelter also used my signature stamp without my knowledge in connection with the policy(ies) issued to Mr. Leonard Tandberg.

To clarify this issue, I have never met Leonard Tandberg either in person or over the phone or by any other medium. This is clearly the work of Mr. Clatfelter alone and my signature attached to any form or application was attached without my knowledge and should be treated as a forgery. Moreover, as was the subject of the complaint that American Insurance Solutions filed against Mr. Clatfelter, I have received no commissions from any sale made to Mr. Tandberg as commissions due American Insurance Solutions from Midland National, American National, and Government Personnel Mutual were diverted to Mr. Clatfelter's personal account for a period of time until the embezzlement was detected. It was during this period of time that the large "up-front" commissions would have been paid.

To sum up, I have no knowledge of the policies issued to Mr. Tandberg, do not know Mr. Tandberg, and have received no commissions from any sale made Mr. Tandberg.

Please feel free to contact me if you have any other question or if I may be of further assistance.

Most sincerely,



James D. Cooper

EXHIBIT 3

Mr. Overholt

June 28th 2011

OIC

RE: Response to Mr. Cooper's comments and our conversation today.

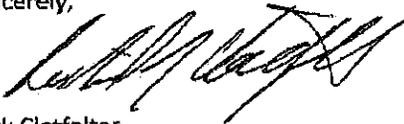
Mr. Cooper is correct in that he never met Mr. Tandberg in connection with this sale and did not receive any commissions for his cases. I was the soliciting agent and Mr. Cooper was only the agent of record. He was aware of this arrangement since we (AIS) had just gotten a new contract in Mr. Cooper's name that allowed us a little more compensation than the agency contract. (Details of exact amounts fuzzy since this was 6 years ago). Mr. Cooper was simply to be a pass through to the company or to me personally for sales I made. He was aware of this as he signed the assignment of commissions form on file with American National.

If you look on the application it says Witness (agent). So I put his stamp there. No, I did not steal his stamp. There was no need to. It was an understanding that he would be agent of record and the stamp was not locked in the CEO's desk. It was in the secretary's top drawer. Both I and the secretary had access to it. I was the President of the company. Doesn't make sense that it would be locked in the CEO's drawer and why would I have to steal it. I was a dually appointed active agent of American national. I could have just written it under my own name.

As far as the circumstance of writing the apps in Boise: The Tandbergs were going to be there anyway returning from a trip and I was going to be there to visit my grandmother. The circumstances were a convenience only. I initiated the sales in ID therefore when more paperwork was needed we went back to ID. I loaned \$500 to Mr. and Mrs. Tandberg because I felt sorry for them and they have not yet paid back a dime.

I hope this helps answer any questions you have. Please call me or email me if you have anything else you want to discuss.

Sincerely,



Rick Clatfelter

EXHIBIT 4

Stickler, Marcia (OIC)

From: Rick Clatfelter [rick@american-benefitsgroup.com]
Sent: Tuesday, August 30, 2011 3:29 PM
To: Stickler, Marcia (OIC)
Subject: Request for hearing 11-0178

Importance: High

Hello. I would like to request a hearing on the matter 11-0178 regarding the notice I received to not renew my license. I am preparing a statement now and a document that I hope will allow me to explain the circumstances a little better and be reappointed so that I can pursue business activities in WA state.

Thank you so much for your consideration in this regard.

American Benefits Group
Senior Consultants

Rick Clatfelter
Benefits Consultant

2345 S. Alma School Rd.
STE 106
Mesa, AZ 85210