

MIKE KREIDLER  
STATE INSURANCE COMMISSIONER



OFFICE OF  
INSURANCE COMMISSIONER

P.O. BOX 40255  
OLYMPIA, WA 98504-0255  
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File No: 1380025-7000

In the Matter of

FIDELITY & GUARANTY LIFE  
INSURANCE COMPANY,

An authorized insurer.

ORDER NO. 13-0336  
SIMBA NO. 1107247

NOTICE OF REQUEST FOR HEARING  
FOR IMPOSITION OF FINES

WAOIC No. 445  
NAIC No. 63274

TO: Fidelity & Guaranty Life Insurance Company, by and through its attorney of record:

Brian Kreger  
999 Third Avenue, Ste. 3000  
Seattle, WA 98104-4088  
Email: [BK@kregerbeeghly.com](mailto:BK@kregerbeeghly.com)

The Washington state Office of the Insurance Commissioner (“OIC”) has requested that a hearing be set in this matter by the OIC’s Hearings Unit.

**A. BASIS**

1. Fidelity & Guaranty Life Insurance Company (“F&G Life”), formerly known as OM Financial Life Insurance Company, is a Life and Disability company domiciled in Maryland and duly authorized to engage in the business of insurance in Washington.
2. On July 6, 2011, OIC received a complaint from consumer “FLR,” who alleged that two Producers had sold her a number of inappropriate policies.
3. FLR alleged that she went to Insurance Producer Steven Minnich seeking financial planning for retirement. FLR met in person with Mr. Minnich several times. During at least two of those meetings, they had telephone conference calls or webinars with Charles Oliver, who was

providing back-office support and mentoring to Mr. Minnich about a process they call "Missed Fortune" or the "Max Funded" concept.

4. As part of that process, Mr. Minnich and Mr. Oliver sold FLR one life insurance policy with OM Financial Life Insurance Company ("OM Financial") with a death benefit of \$1,093,027.

5. The Producers shared the commission for the sale of the F&G Life policy.

6. Mr. Minnich and FLR were in Washington for the entirety of the soliciting, negotiating, and selling of the F&G Life policy. Mr. Oliver did his share of the soliciting, negotiating, and selling while he was physically in Florida, but speaking to FLR in Washington via phone and webinar.

7. Mr. Oliver and Mr. Minnich settled with the Commissioner and acknowledge that Mr. Minnich agreed he would meet FLR in Idaho for the purpose of signing the application for the OM Financial policy. Idaho was chosen, among other reasons, because Mr. Oliver was not licensed in Washington, but was licensed in Idaho. He was not appointed by OM Financial in Washington, but was appointed in Idaho.

8. Mr. Minnich was licensed and appointed by F&G Life in Washington.

9. The OM Financial policy was delivered in Washington.

10. The Company admitted in writing that the sale to FLR of policy no. L2092011 was made by Mr. Oliver, but erroneously believed that the sale had been made in Idaho, not Washington.

11. FLR lives full-time in Washington. She sells prepaid legal plans and occasionally learns through her Washington contacts of a potential customer in Idaho. She estimates that she has sold approximately one prepaid legal plan per year to an Idaho resident. The rest are sold in Washington.

12. The Washington replacement form, which is to accompany each completed application for life insurance, is a statement signed by the applicant as to whether such proposed insurance or annuity will replace existing life insurance or annuity. It lists a number of questions with blanks to be checked "yes" or "no." On the Washington replacement form accompanying FLR's application for F&G Life policy no. L2092011, there are no answers to any of the questions

about consequences of replacement. The boxes are simply blank.

13. OIC communicated with F&G Life directly and through its attorney as part of its investigation of this complaint. On May 3, 2013, OIC sent F&G Life an Order Suspending its Certificate of Authority which OIC proposed to enter. The Order outlined the violations alleged against F&G Life, and OIC's proposed enforcement action.

14. OIC agreed not to enter this proposed Order if F&G Life would rescind the policy and refund FLR's premiums with interest, pursuant to RCW 48.23.015(6). In or about July, 2013, F&G Life rescinded the policy and refunded FLR's premiums with interest as agreed between F&G Life and FLR. OIC did not enter the Order Suspending F&G Life's Certificate of Authority.

15. The above-described insurance transactions are governed by Washington Law because every material part of the transactions occurred in this state, and the insurance covered the life of a full-time Washington resident.

16. ~~An insurance transaction includes the solicitation, negotiations preliminary to execution, execution of the insurance contract, transaction of matters subsequent to execution of the contract and arising out of it, and the insuring. RCW 48.01.060. The only part of the transaction involving FLR that did not occur in Washington was the execution of the insurance application. That was intentional; the agents specifically asked FLR to travel to Idaho to sign the application because one of the products being sold was not approved for sale in Washington, and because Mr. Oliver was not licensed in Washington. This stratagem was insufficient to remove the transaction from the purview of Washington Law.~~

## **B. PENALTIES AND RELIEF REQUESTED**

The OIC seeks to impose a fine against Fidelity and Guaranty Life Insurance Company in the amount authorized by law for the following violations:

1. By allowing Mr. Oliver to act as an agent of F&G Life in Washington without the

Company having appointed him as such, F&G Life violated of RCW 48.17.160(1)<sup>1</sup>.

2. By accepting policy No. L2092011 without ensuring that the selling agent, Mr. Oliver, was licensed for the proper line of authority to sell that policy, F&G Life violated WAC 284-17-429(4).

3. By recommending and accepting policy No. L2092011 despite its unreasonableness under the circumstances actually known to the insurer and Insurance Producers, F&G Life violated RCW 48.23.015.

4. Mr. Minnich and Mr. Oliver, as F&G Life's agents, knew or should have known that FLR would be surrendering one policy of life insurance and borrowing against another to pay the premiums on the F&G Life policy. The sale of the F&G Life policy to FLR by the agents constituted a replacement under WAC 284-23-410.

5. WAC 284-23-450(2) and WAC 284-23-455(1) require an insurer to require with, or as part of, each completed application for life insurance a statement signed by the applicant as to whether such proposed insurance or annuity will replace existing life insurance or annuity.

WAC 284-23-455 includes several additional requirements, none of which were followed. By accepting a replacement form on which no answers to any of the questions about consequences of replacement were given, F&G Life violated these regulations.

6. By accepting this business but failing to require its agents to complete the Washington replacement form related to these transactions (including a list properly and fully identifying all existing life insurance and/or annuity contracts to be replaced), explain it and provide a copy to FLR, F&G Life violated WAC 284-23-440.

7. OIC's notice to F&G Life of the violations found and OIC's proposed enforcement action served to toll the Statute of Limitations on this matter on or about May 3, 2013.

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<sup>1</sup> RCW 48.17.160(2) does allow an insurer to appoint an insurance producer as its agent by filing a notice of appointment within fifteen days from the date the producer submits his first insurance application for that insurer. However, that statute became effective after the events at issue. Moreover, Mr. Oliver did not have a Washington appointment with OM Financial at the time of these sales or within fifteen days thereafter.

**C. NOTICE OF HEARING**

1. The Insurance Commissioner will convene a hearing at a date, location, and time to be determined, to consider the allegations above and the sanctions to be imposed upon F&G Life pursuant to RCW 48.17.560 and RCW 48.30.010(6). At the hearing, the OIC will present evidence showing that F&G Life violated the Insurance Code as summarized above and that the sanctions requested above are authorized under the law. F&G Life may cross-examine OIC witnesses and present any defenses, evidence, or arguments it may have in opposition.

2. The Insurance Commissioner's staff will participate in this matter through its designated representative, Andrea L. Philhower, P.O. Box 40255, Olympia, Washington, 98504-0255, [AndreaP@oic.wa.gov](mailto:AndreaP@oic.wa.gov), (360) 725-7063. The Insurance Commissioner has been informed that F&G Life is represented by attorney Brian Kreger. Pursuant to RCW 34.05.428 and WAC 10-08-083, OIC requests that, should this information be or become inaccurate, the Company provide the Chief Presiding Officer and Ms. Philhower with written notification of the person who will appear at all conferences and hearings, including the person's name, address, e-mail address, and telephone number.

SIGNED this 4<sup>th</sup> day of June, 2014.

MIKE KREIDLER  
Insurance Commissioner

BY Andrea L. Philhower  
Andrea L. Philhower  
OIC Staff Attorney  
Legal Affairs Division

CERTIFICATE OF MAILING

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing NOTICE OF REQUEST FOR HEARING FOR IMPOSITION OF FINES on the following individual via US Mail and e-mail at the below indicated addresses:

Hearings Unit  
Office of Insurance Commissioner  
5000 Capitol Blvd.  
Tumwater, WA 98502

Brian Kreger  
999 Third Avenue, Ste. 3000  
Seattle, WA 98104-4088  
Email: [BK@kregerbeeghly.com](mailto:BK@kregerbeeghly.com)

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SIGNED this 4<sup>th</sup> day of June, 2014, at Tumwater, Washington.

  
Christine Tribe