

FINDINGS OF FACT, CONCLUSIONS OF LAW
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FINDINGS OF FACT

1. On July 23, 2014, the Office of the Insurance Commissioner ("OIC") issued an Order Revoking License, No. 14-0153 ("Order Revoking"), effective August 11, 2014, revoking Mr. Dennis' Washington State insurance producer's license.
2. The Order Revoking was pursuant to RCW 48.17.530(1)(b), (h), and (m), based upon allegations that Mr. Dennis: 1) borrowed \$210,000 from a 79-year old insurance client, signing a promissory loan agreement in which he promised to secure the loan by means of a deed of trust on his residence, but did not secure the loan in this or any other manner; and 2) in violation of RCW 48.23.015 and WAC 284-23-390, sold annuities to the client that were unsuitable replacements for two annuities the client surrendered that were outside the surrender penalty period and accessible without penalty, with better guaranteed minimum rate of return, and failed to advise the client of the negative consequences of the exchange.
3. On August 7, 2014 Mr. Dennis submitted a Demand for Hearing ("Demand"), which asserted that the information set forth in the Order Revoking "is incomplete does not begin to tell the whole or truly accurate story."
4. On September 10, 2014, I held a first prehearing conference, at which time the evidentiary hearing on Mr. Dennis' Demand was set for November 24, 2014. By Order filed November 14, 2014, the Hearing was continued at Mr. Dennis' request, to December 9, 2014.

Promissory Note.

5. On February 10, 2012, Mr. Dennis and his insurance client, Margaret Barrett, an 80 year old widow, executed a Promissory Note, OIC Ex. 2 herein ("O-2"), whereby Mr. Dennis promised to repay a \$210,000 loan from Ms. Barrett to him, at \$2,368.98 per month for 96 months, beginning April 15, 2012. The payments were "based on an amortized annual interest rate of 2.00%." The loan was to "be secured by a Mortgage Deed secured by real estate situated at 1113 A Ave. S, Edmonds, WA 98020," Mr. Dennis' residence. Mr. Dennis acknowledged that he had received the full \$210,000 on January 14, 2012, by checks in the amount of \$30,000 and \$180,000. *See*, O-3. The loan was a significant share of Ms. Barrett's net worth.
6. Mr. Dennis kept \$30,000 of the loan proceeds, and all or most of the remainder was deposited into new Wells Fargo Bank accounts, as to which Ms. Barrett was sole owner and Mr. Dennis had sole power of attorney. (Ms. Barrett had not previously had Wells Fargo accounts.) Wells Fargo mailed the account statements to Mr. Dennis (addressed to "Margaret A Barrett and Earl C Dennis POA"). O-4.
7. The Promissory Note did not permit Mr. Dennis to defer execution of a Mortgage Deed. Mr. Dennis testified that he intended to execute a Deed, but he neither did so, nor provided other security.

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8. The interest rate of 2.00% payable on the Promissory Note was far below the rate that would have been required by a bank or other arm's length lender for an unsecured Note, assuming a willing lender had existed.

9. Mr. Dennis made several scheduled monthly payments. However, after Ms. Barrett's daughter, Barbara Peterson, became concerned with possible irregularities and caused the withdrawal of the remaining balance of approximately \$108,000 from the Wells Fargo account, Mr. Dennis discontinued payments, and he now has an outstanding loan balance of approximately \$90,000.

10. RCW 48.17.530(1) provides, in pertinent part, that the commissioner may place on probation, suspend, or revoke an insurance producer's license and/or levy a civil penalty for a cause or causes including (m): "Obtaining a loan from an insurance client that is not a financial institution and who is not related to the insurance producer by birth, marriage, or adoption, except the commissioner may, by rule, define and permit reasonable arrangements."

11. Mr. Dennis is an insurance producer licensed in Washington. He obtained a loan from Ms. Barrett, his insurance client, who was not related to him. The loan was not a reasonable arrangement permitted by the commissioner. Mr. Dennis' loan from Ms. Barrett was in violation of RCW 48.17.530(1)(m).

12. No sanction for this violation less serious than revocation of Mr. Dennis' producer's license would be appropriate. My reasons for this determination include:

13. Although Ms. Barrett was of sound mind at the time she made the loan, and she was able to manage her financial affairs (as is no longer true), she was an elderly, financially unsophisticated, high school graduate, she trusted Mr. Dennis and was vulnerable to him, and the loan was not arm's-length.

14. The 2% interest rate was much lower than would have been required by a bank or other arm's length lender, to Mr. Dennis' advantage.

15. Mr. Dennis promised to execute a Mortgage Deed, but did not do so, nor did he provide other security. Ms. Barrett was at risk of losing all or part of the loan if Mr. Dennis went through bankruptcy, died, or stopped making payments.

16. Mr. Dennis failed without reasonable excuse to repay the funds he received.

17. The loan represented a significant portion of Ms. Barrett's net worth.

18. The loan was not in Ms. Barrett's best interests.

19. Mr. Dennis' actions pose a threat to consumers.

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Forethought annuities.

20. On May 12, 2011 and May 20, 2011, February 13, 2012, when Ms. Barrett was 79, then 80, years old, she purchased, on Mr. Dennis' recommendation, three Forethought Life annuities bearing minimum guaranteed interest rates of 2%, and providing for limited penalty-free withdrawals and surrender penalties (with exceptions, including disability). *See*, O-5, O-6, O-7, O-8, R-20.

21. To fund the purchase of the Forethought annuities, Ms. Barrett surrendered two Western National annuities with minimum guaranteed interest rates of 3%, which were outside their surrender penalty periods.

22. RCW 48.23.105 and WAC 284-23-390 require that prior to the execution of a purchase or exchange of an annuity recommended by an insurance producer, the producer must obtain detailed "suitability information" concerning the client, must advise the client as to factors including surrender charges and interest, and must make a recommendation that is reasonable under all circumstances known to the producer at the time.

23. Mr. Dennis asserts that the Forethought annuities had an "upside" not available to Ms. Barrett through her Western National annuities, that she wished to access that upside, that she received 5% initiation bonuses, and that withdrawal and surrender issues were not of practical significance for her, given that she would not need to access principal. *See*, R-18. However, given that the surrendered Western National annuities provided higher guaranteed interest rates than the Forethought annuities, that Western National annuities were free of the potential limitations and penalties of the Forethought annuities, and that Ms. Barrett might need to access substantial principal in the relatively near future, I do not believe Mr. Dennis' recommendation to Ms. Barrett that she exchange her Western National annuities for Forethought annuities was reasonable under all the circumstances.

24. Mr. Dennis was the subject of a May 17, 2011, Consent Order Imposing Fine, No. 11-0051, based on his deliverance to a Washington consumer of an annuity insurance policy form not filed with and approved by the commissioner, in violation of RCW 48.18.100.

25. RCW 48.17.530(1)(b) gives the commissioner authority to revoke a producer's license for violating any insurance laws or the rule of the commissioner. Mr. Dennis violated RCW 48.23.105 and WAC 284-23-390. Revocation of Mr. Dennis' producer license, or a lesser sanction, is authorized by law.

26. If Mr. Dennis' only present violations related to the Forethought annuities, I would find revocation of his producer license to be too severe a sanction, particularly given that those annuities appear to have included benefits that may not have been available under the Western National annuities. (Because the record does not include the pertinent policies, detailed evaluation of the policies' merits and risks is not possible.)

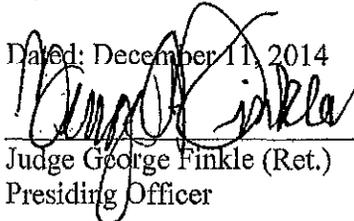
CONCLUSIONS OF LAW

1. This adjudicative proceeding was properly convened, and all substantive and procedural requirements under the laws of Washington have been satisfied. This Order is entered pursuant to Title 48 RCW, specifically RCW 48.04; Title 34 RCW; and regulations pursuant thereto.
2. Mr. Dennis obtained a loan from an individual insurance client who is not related to him, in violation of RCW 48.17.530(1)(m). Revocation of Mr. Dennis' insurance producer license is the appropriate sanction for such violation. RCW 48.17.530(1).

ORDER

Mr. Dennis' insurance producer's license is revoked.

Dated: December 11, 2014



Judge George Finkle (Ret.)
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.

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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: Earl C. Dennis, Mike Kreidler, James T. Odiorne, John F. Hamje, AnnaLisa Gellermann, Esq., and Darryl Colman.

DATED this 11th day of December, 2014.



KELLY A. CAIRNS