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HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

September 14, 2015

41764

Via Email and First Class Mail

Drew Stillman
Insurance Enforcement Specialist
Legal Affairs Division
PO Box 40258
Olympia, WA 98504-0258
drewst@oic.wa.gov

Via First Class Mail

Office of the Insurance Commissioner
Attn: Hearing Unit
PO Box 40255
Olympia, WA 98504-0255

**Response to OIC Proposed
Consent Order and Written
Request for Administrative
Hearing**

RE: David W. Pelz / OIC Case No. 1248336

Dear Mr. Stillman:

As you know, this office represents David W. Pelz. It was a pleasure speaking with you about the above-referenced matter last month and I thank you again for your willingness to grant us a short extension to respond to your proposed Consent Order and correspondence dated July 20, 2015. After careful review of the facts and circumstances surrounding the transaction that gives rise to the proposed Consent Order, as well as the applicable authority cited by the OIC, Mr. Pelz disagrees with the OIC's conclusion that he violated the law in any way. Accordingly, he is unable to stipulate to the proposed Consent Order, as written, and respectfully requests an administrative hearing on the matter, if necessary.

FACTS

As you know, the proposed Consent Order arises out of a lifetime income annuity that was purchased by Howard Harris from David Pelz in 2014. At the time Mr. Pelz established Mr. Harris's annuity and filled out the required replacement and suitability forms (both dated January 7, 2014). The amount of money in the variable annuity account from which the \$400,000 lifetime income annuity was to be funded was sufficient to allow the \$400,000 partial withdrawal to occur without any surrender charge. However, between the time Mr. Harris and Mr. Pelz filled out the

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replacement form and the time the actual transfer was processed, there was a decline in the global market that reduced the total value of the variable annuity being used to fund the \$400,000 lifetime income annuity. This decline ended up triggering a surrender charge of approximately ¼ of 1% of the transfer amount, totaling \$1,018.43.

As you know, WAC 283-23-440(2)(a) provides that:

“Where replacement is involved, the insurance producer shall [p]resent to the applicant, not later than at the time of taking the application, a completed notice regarding replacement in the form as described in WAC 2840230485...Answers must be succinct and nontechnical language. They should fairly and adequately highlight the points raised by the questions.”

Washington’s Administrative Code requires that written notice, pursuant to the above requirements, be issued to applicants at the time policy transactions are initiated, and, in fact, “not later than at the time of taking the application.” In this case, that took place on January 7, 2014. At that time, the information on the replacement form was accurate given the amount of the variable annuity from which the lifetime income annuity was to be funded. Accordingly, Mr. Pelz complied with both the letter and the spirit of the applicable administrative code at the time of taking of the application and does not believe that he violated any provision of law or other obligation as a licensee.

We respectfully request that you re-consider the findings articulated in your July 20, 2015 correspondence to Mr. Pelz under the facts and circumstances of the subject transaction and the applicable law. In the event that you continue to believe a violation occurred, Mr. Pelz hereby requests an administrative hearing on the issue.

In support of his request for an administrative hearing, Mr. Pelz provides the following information:

- Mr. Pelz is a conscientious licensee who prides himself on his reputation, credibility, and long-term service to his clients, including Washington consumers. Mr. Pelz does not believe that he violated any provision of the law or his licensing expectations with regard to the subject transaction, and that agreeing to the proposed consent order, as written, would be not only erroneous, but also detrimental to his reputation and standing in the community that he has worked many years to develop.
- Mr. Pelz believes that no action by the Office of the Insurance Commissioner is warranted in this case as no misrepresentations or violations of law occurred with respect to the subject transaction.
- Mr. Pelz’ contact information is as follows:

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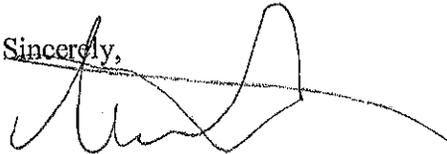
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David Pelz
c/o Cliff J. Wilson
Smith Freed Eberhard PC
111 SW 5th Ave. Suite 4300
Portland, Or 97204
cwilson@smithfreed.com
503-227-2424

Mr. Pelz and I sincerely hope that you reconsider the OIC's findings under the facts and circumstances surrounding the subject transaction and conclude that no IOC action is warranted in this matter. In the event you need any additional information from me or Mr. Pelz to complete or supplement your investigation, please feel free to contact me.

In any event I look forward to continuing to work with you to bring about an expeditious and just resolution to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cliff J. Wilson', written over the word 'Sincerely,'.

Cliff J. Wilson

CJW/lid

Enclosure

cc: David Pelz

**STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER**

In the Matter of

DAVID PELZ,

Licensee.

Order No. 15-0179

WAOIC No. 30992

NPN/FEIN 674677

**CONSENT ORDER LEVYING
A FINE**

This Consent Order Levying a Fine ("Order") is entered into by the Insurance Commissioner of the state of Washington ("Insurance Commissioner"), acting pursuant to the authority set forth in RCW 48.02.060, RCW 48.17.530 and RCW 48.17.560 and Licensee David Pelz. This Order is a public record and will be disseminated pursuant to Title 48 RCW and the Insurance Commissioner's policies and procedures.

BASIS:

1. David Pelz ("the Licensee") is a nonresident insurance producer licensed to do business in the state of Washington and has been licensed in Washington State since 1976.
2. In January 2014, the Licensee sold an annuity to a client who funded the annuity with a withdrawal from a variable annuity. Due to this withdrawal, the client incurred a \$1,018.43 surrender charge. Yet, the Licensee provided the client with both a replacement and a suitability form that indicated the client would incur no surrender penalty for the withdrawal.
3. RCW 48.17.530(1)(b) allows the Insurance Commissioner to place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license or levy a civil penalty for violating any insurance laws, or violating any rule, subpoena, or order of the Insurance Commissioner or of another state's insurance commissioner.

CONSENT ORDER LEVYING A FINE
ORDER NO. 15-0179

1248336

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

4. RCW 48.30.090 prohibits the misrepresentation of the terms of any policy or the benefits or advantages promised thereby, or the dividends or share of surplus to be received from the policy. By engaging in the conduct described above, the Licensee violated RCW 48.30.090, justifying the imposition of a fine.

5. WAC 284-23-440(2)(a) requires the insurance producer, where a replacement is involved, to present to the applicant a completed notice regarding replacement in the form with succinct answers in simple nontechnical language and that fairly and adequately highlight the points raised by the questions, without overwhelming the applicant with verbiage and data. An answer may include a reference to the contract or another source, but it must be essentially complete without the reference. By engaging in the conduct described above, the Licensee violated WAC 284-23-440(2)(a), justifying the imposition of a fine.

CONSENT TO ORDER:

The Insurance Commissioner of the state of Washington and the Licensee agree that the best interest of the public will be served by entering into this Order. NOW, THEREFORE, the Licensee consents to the following in consideration of his desire to resolve this matter without further administrative or judicial proceedings. The Insurance Commissioner consents to settle this matter in consideration of the Licensee's payment of a fine, and upon such terms and conditions as are set forth below:

1. The Licensee acknowledges his duty to comply fully with the applicable laws of the state of Washington.

2. The Licensee consents to the entry of this Order, waives any and all hearing or other procedural rights, and further administrative or judicial challenges to this Order.

3. By agreement of the parties, the Insurance Commissioner will impose a fine of \$500.00 (Five Hundred Dollars) to be paid by **August 18, 2015**.

4. The Licensee understands and agrees that any further failure to comply with the statutes and/or regulations that are the subject of this Order constitutes grounds for further penalties, which may be imposed in direct response to further violations.

5. This Order and the violations set forth herein constitute admissible evidence that may be considered in any future action by the Insurance Commissioner involving the Licensee. However, the facts of this Order, and any provision, finding or conclusion contained

herein does not, and is not intended to, determine any factual or legal issue or have any preclusive or collateral estoppel effects in any lawsuit by any party other than the Insurance Commissioner.

EXECUTED this _____ day of _____, 2015.

DAVID PELZ

Signature: _____

AGREED ORDER:

Pursuant to the foregoing factual Basis and Consent to Order, the Insurance Commissioner of the state of Washington hereby Orders as follows:

1. The Licensee shall pay a fine in the amount of \$500.00 (Five Hundred Dollars), receipt of which is hereby acknowledged by the Insurance Commissioner.

2. This Order and the violations set forth herein constitute admissible evidence that may be considered in any future action by the Insurance Commissioner involving the Licensee. However, the facts of this Order, and any provision, finding or conclusion contained herein does not, and is not intended to, determine any factual or legal issue or have any preclusive or collateral estoppel effects in any lawsuit by any party other than the Insurance Commissioner.

ENTERED at Tumwater, Washington, this _____ day of _____, 2015.



MIKE KREIDLER
Insurance Commissioner

By and through his designee

Drew Stillman
Insurance Enforcement Specialist
Legal Affairs Division