STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE OFFICE OF INSURANCE COMMISSIONER

FILED

2010 MAY 24 A 10: 49

Hearings Unit, OIC
Patricia D. Petersen
Chief Hearing Officer

In the Matter of:	Docket No. 2010-INS-0001
LEONARD W. BROWN, JR.	INITIAL ORDER OF DISMISSAL
Respondent,	

1. DISCUSSION

1.1 The parties stipulated to the entry of a Stipulation and Order Levying a Fine, attached and incorporated herein as Attachment A. The terms and conditions agreed upon are set forth in Attachment A.

1.2 Leonard W. Brown, Jr., Licensee, signed the Stipulation and Consent to Order on April 27, 2010. John F. Hamje, Deputy Insurance Commissioner, Consumer Protection Division, signed the Order on April 28, 2010. Patricia D. Petersen, Chief Hearing Officer, Office of the Insurance Commissioner, signed the Order Terminating Proceedings on April 28, 2010.

2. ORDER

2.1 NOW THEREFORE, it is hereby ordered that this matter is dismissed pursuant to Washington Administrative Code (WAC) 10-08-230.

Dated and Mailed this 19th day of May 2010 from Olympia, Washington.
WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS

Terry A. Schuh
Administrative Law Judge
Office of Administrative Hearings
2420 Bristol Ct SW
PO Box 9046
Olympia, WA 98507-9046

PETITION FOR REVIEW

Pursuant to RCW 34.05.464 and WAC 10-08-211, any party to an adjudicative proceeding may file a Petition for Review of an Initial Order. The Petition for Review shall be filed with the agency head with **twenty (20) days** of the date of service of the Initial Order. Copies of the Petition must be served upon all other parties or their representatives at the time the Petition for Review is filed. The Petition for Review must specify the portions of the Initial Order to which exception is taken and must refer to the evidence of record which is relied upon to support the Petition.

The Petition for Review must be mailed to:

Office of Insurance Commissioner
c/o Patricia Petersen
Chief Hearing Officer
Hearing Unit, OIC
PO Box 40255
Olympia, WA 98504-0255

Certificate of Service

I assert that true and exact copies of the **Initial Order of Dismissal** were mailed to the following parties, postage prepaid this 19th day of May 2010 at Olympia, Washington.

Margaret Simmons
Legal Secretary

Leonard W Brown Jr.
The Brown Agency, Inc.
17205 Vashon Hwy SW, Suite A-1
Vashon, WA 98070-4674

Leonard W Brown Jr.
9638 SW Bunker Trail
Vashon, WA 98070

Jason W Anderson
Carney Badley Spellman, P.S.
701 - 5th Ave., Suite 3600
Seattle, WA 98104-7010

Andrea Philhower
Staff Attorney
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Patricia D Petersen
Chief Hearing Officer
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON

OFFICE OF
INSURANCE COMMISSIONER

Phone (360) 725-7000
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In the Matter of	)	
	)	No. 09-0147
	)	
Leonard W. Brown, Jr.	)	**STIPULATION AND ORDER**
	)	**LEVYING A FINE**
Licensee.	)	
	)	

Pursuant to RCWs 34.05.060, 48.17.530, and 48.17.560 and WAC 10.08.230(2)(b), the parties hereby stipulate to the entry of the following Stipulation and Order in resolution of this matter as follows:

FACTS

i) Leonard W. Brown, Jr. ("Licensee") holds a resident insurance license issued on June 11, 1993, by the Washington State Office of the Insurance Commissioner (OIC).

ii) This matter came about as a result of a consumer complaint received by OIC on December 31, 2008.

iii) The Complainant attended a retirement planning seminar held by Licensee in November 2008. At the seminar, the Complainant expressed interest in meeting with Licensee so he could review her financial circumstances, including her ING annuity, and make recommendations to help her. She was concerned that her annuity contract was reducing in value due to market volatility. The Complainant met with Licensee at his office on Vashon Island on November 24, 2008.

iv) At the time of this meeting, the Complainant owned an ING USA Individual Flexible Premium Deferred Variable Annuity ("the ING Annuity" or "Annuity"). The initial premium paid for the ING Annuity was $250,000. The Complainant advised Licensee that she was concerned that the Annuity had lost over $45,000 during just the first nine months of 2008. She stated that her primary objective was to reduce the risk of loss of the principal contract amount.

v) The Complainant gave Licensee a copy of her Quarterly Annuity Statement ("the quarterly statement") as of September 30, 2008, for his review and to assist him in making recommendations. The quarterly statement showed:

- A cash surrender value of $215,288.19.

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Street Address: 5000 Capitol Blvd. • Tumwater, WA 98501

Attachment A

- A guaranteed death benefit in the amount of her original deposit- $250,000.
- A Minimum Guaranteed Income Benefit Rider ("MGIBR") which guaranteed a minimum amount of income regardless of performance. Under this rider, after the 10th contract anniversary, the Complainant could have converted her annuity to a guaranteed amount of monthly income based upon a benefit base. That benefit base was earning an annual guaranteed 7% (compounded annually) and was currently at $319,645.26. It would have been $481,788 on the 10-year anniversary in 2014. If she had deferred election of the monthly income after 2014, the benefit base would have continued to increase at a guaranteed 7% to a maximum of $750,000.
- No surrender charges.

vi) By the terms of the Complainant's existing annuity, she was eligible to move her deposit into a "guaranteed interest division," which is a "safe harbor" division that would have guaranteed a minimum interest rate of 3%. By moving her annuity funds to the guaranteed interest division, the Complainant could have stopped any further loss of her investment while avoiding the loss of her $250,000 guaranteed death benefit and the accumulated Minimum Guaranteed Benefit base of $319,645.26, as well as the imposition of new surrender charges. If she had done this, Licensee would not have been entitled to any commission on the transaction.

vii) Licensee did not advise the Complainant of any of this information other than the contract surrender value. Instead, he recommended that the Complainant replace the Annuity with another product. Licensee informed OIC that he did not tell the Complainant about the loss of MGIBR benefit base she would incur if she followed his advice because "she did not express a desire or show a need to annuitize this annuity for income," and because "she would not have been eligible for it until 2014."

viii) Licensee recommended that the Complainant surrender the ING Annuity and purchase an EquiTrust Life Insurance ("EquiTrust Life" or "EquiTrust") fixed annuity that offered index-linked earnings. The Complainant accepted that recommendation.

ix) In replacing the ING Annuity with the EquiTrust Annuity, Licensee did not utilize what is called a "1035 exchange," which allows the transaction without tax consequences. Instead, when filling out the EquiTrust transfer / 1035 exchange form, he left the 1035 exchange portion blank and completed the transfer section, requesting full value liquidation (a "non-qualified transfer"). He obtained the Complainant's signature on this form but did not provide any information to her about this choice. Licensee stated to OIC that he

Attachment A

did not use a 1035 exchange because without it, the Complainant could write off her current investment loss. However, the Complainant advised that Mr. Brown never mentioned taxes in regard to this transaction, and did not advise her that she could write off any loss.

x) As part of this transaction, Licensee filled out and the Complainant signed the replacement form required by the State of Washington. Question 8 on that form asks, "Are there other short or long term effects from the replacement that might be materially adverse?" This question was left unanswered. It should have been answered "yes," with an explanation that by surrendering her ING Annuity, the Complainant would lose (a) the approximate MGIBR benefit base value of $319,645.29 and (b) her standard guaranteed death benefit of $250,000 in the event of her death, creating a $34,711.81 loss.

xi) After this transaction, the Complainant was contacted by her financial adviser at LPL Financial, the broker/dealer that managed the investments held in her ING Annuity. The financial adviser told her about the loss of MGIBR base rate she would sustain if she surrendered her ING Annuity. The Complainant maintains that this is the first she became aware of this issue.

xii) The Complainant called EquiTrust Life and requested that the ING Annuity not be cancelled and that EquiTrust Life not cash the ING check. She states she was told that the process could not be stopped, but that if she wanted the funds refunded to her and the application withdrawn, EquiTrust needed a letter to this effect. The Complainant sent EquiTrust a letter asking that her application be withdrawn and her funds be returned to ING. She also faxed a letter to LPL Financial requesting that her ING accounts not be transferred to EquiTrust Life.

xiii) The Complainant states that she was told that, because Licensee had requested the transaction as a non-qualified transfer rather than a 1035 exchange, ING would not reinstate her ING Annuity. At the Complainant's request, the funds were returned to her.

xiv) The Licensee, Leonard W. Brown, Jr., was the subject of a prior investigation by OIC, Case File No. 1020230. That case involved an allegation that Licensee had sold unsuitable annuities to two Washingtonians, an 88 and an 89 year-old. The annuity company refunded the consumers' $58,038.24. Licensee was issued a technical assistance letter instructing him to avoid this conduct in the future.

CONCLUSIONS OF LAW

i.) On the date of sale, agent Leonard W. Brown, Jr. and The Brown Agency, Inc., were properly licensed to do business in Washington State and were properly appointed agents of the EquiTrust Life Insurance Company.

Attachment A

ii.) By failing to inform the Complainant that she could use the "safe harbor" provision of her existing annuity, and that by replacing her existing annuity she would lose:

- a guaranteed death benefit of $250,000 and
- a MGIBR benefit base of $319,645.16 as of November 24, 2008 and $481,788 when it vested in 2014,

the Licensee violated RCW 48.30.090 - misrepresentation of the benefits or advantages of a policy or a contract - and RCW 48.30.180 - twisting.

iii.) By failing to complete Question 8 on the Washington-required replacement form and by failing to disclose the information required to be disclosed on the Washington-required replacement form, the Licensee violated WAC 284-23-440(2)(a).

STIPULATION AND CONSENT TO ORDER

For the purpose of resolving this administrative matter, Licensee hereby stipulates to the foregoing Facts and Conclusions of Law which shall be entered forthwith and without further proceedings. Licensee enters into this Stipulation voluntarily and foregoes the right to an administrative hearing. Licensee acknowledges that if the conditions set forth in the Order are not fully met, including payment of restitution, payment of the fine, and any other conditions, the Insurance Commissioner may revoke his license.

SIGNED this 27 day of April, 2010.

Leonard W. Brown, Jr., Licensee

ORDER

It is ORDERED that pursuant to RCW 48.17.530 and the foregoing Stipulated Facts and Law and Consent to Order that:

i.) Probation of License. Licensee's Insurance Producer's license is hereby placed on probation pursuant to RCW 48.17.530(1)(b), (e), and (h) for a period of two years following entry of this Order.

ii.) Reporting Requirement. Pursuant to RCW 48.17.530(5)(a), for twelve months following entry of this Order, Licensee shall provide to the OIC at the end of each month a list of every company he transacted business with during that month which involved the replacement of one company's life insurance and/or annuity product with another company's product. The list will include the name of both companies in each

Attachment A

transaction—the consumer's old company and the new company with which the Licensee placed the business.

iii.) Future Actions. Licensee shall not repeat any of the violations that are the subject of this Order. Any repeat of the practices alleged in this Order during the two (2) years following entry of this Order may result in license revocation or suspension as provided by RCW 48.17.530.

iv.) Fine. Pursuant to RCW 48.17.560, a fine of One Thousand Dollars ($1,000.00) is imposed and $1,000 of that is suspended on the following conditions:

(1) The Licensee makes restitution directly to the Complainant in the amount of Two Thousand Dollars ($2,000 .00) on or before thirty days following entry of this Order.

(2) Licensee satisfactorily completes ten (10) hours of continuing ethics education credit prior to December 31, 2010. This continuing education shall be "live" education, not mail order or internet courses, and shall be in addition to any other required continuing education credits.

(3) Licensee complies with paragraphs (i), (ii), and (iii) of this Order.

ENTERED at Tumwater, Washington, this 28th day of April, 2010.

MIKE KREIDLER
Insurance Commissioner

By: _____
John F. Hanne
Deputy Insurance Commissioner
Consumer Protection Division

DECLARATION OF MAILING

I certify under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery of a true copy of this document to ***Leonard W. Brown, Jr.***

Dated: April 28, 2010
At Tumwater, Washington

Victoria Estrada
Victoria Estrada

Attachment A

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON

OFFICE OF
INSURANCE COMMISSIONER

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ORDER TERMINATING PROCEEDINGS

This matter having come before OIC Chief Hearing Officer Patricia Petersen pursuant to the foregoing Stipulation and Order, and the Chief Hearing Officer deeming herself fully advised, it is hereby ordered pursuant to RCW 48.17.530 and 48.17.560 that OIC Docket No. 09-0147and OAH Docket No. 2010-INS-0001 are hereby closed and dismissed as settled.

SIGNED AND ENTERED at this 28th day of April, 2010.

Patricia D. Petersen
Chief Hearing Officer
Office of the Insurance Commissioner

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Attachment A