MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON

OFFICE OF
INSURANCE COMMISSIONER

Phone (360) 725-7000
www.insurance.wa.gov

~~12/29/09~~
01/15/2010
extension granted

December 8, 2009

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

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

Dear Mr. Brown:

This letter is regarding the OIC's investigation of your conduct in replacing an annuity for Ms. Sue Ann Crandall. As you know, Ms. Crandall filed a complaint with the OIC and you were asked to respond to that complaint. Please see the enclosed proposed Stipulation and Consent Order Levying a Fine for the details. As a result of the investigation, OIC has determined that you have violated the following statutes and regulation:

RCW 48.30.090 Misrepresentation of Policies.
RCW 48.30.180 Twisting.
WAC 284-23-440, (1) (a), Replacement Violation.

We have determined that the appropriate penalties for these violations are to place your insurance producer's license on probation with requirements for reporting to OIC on the matters that are the basis of the probation, as well as a fine of $3,000. This office is willing to resolve the matter by an agreement under which you acknowledge the violations and agree to obey the laws and rules of this state in the future. You may resolve this matter now without further administrative or judicial proceedings by entering into the enclosed Stipulation and Order. Signing the Stipulation and Order will result in the following: 1) your license being placed on probation, 2) a requirement to report certain information yearly for the next two years, 3) a requirement for twelve hours of continuing ethics education credit prior to August 30, 2010, and 4) a requirement to pay a fine in the sum of $3,000. This proposed resolution is in lieu of other action relative to your insurance producer's license.

Enclosed are two originals of the proposed Stipulation and Order. If you wish to terminate this matter on the basis of the Stipulation and Order, please sign and date both enclosed documents, **ONLY** in the indicated spaces, and return **BOTH**

to this office. Please do **NOT** staple or write anything on the documents other than **YOUR** signature and the corresponding date.

Upon our receipt of the signed documents, the Order will be signed by the Deputy Insurance Commissioner for Consumer Protection and one duplicate original will be sent back to you. You will then have thirty days from entry of the Order in which to pay the fine. Entry of the Order occurs when we receive your signed copies and the order is signed by the Deputy Insurance Commissioner for Consumer Protection.

If this office has not received the signed documents by **December 29, 2009**, the offer is withdrawn and formal action will be taken relative to your license. If you believe this letter does not state the facts correctly, or you would like to discuss this matter further, please contact me at (360) 725-7263.

Sincerely,

for Vicki Estrada

Tom Talarico, Manager
Investigations & Enforcement

Enclosures (2)

cc: John Hamje
Victor Overholt

Sub for signing
12/8/09.
R.e.

In the Matter of	)	
	)	No. 09 – 0147
	)	
Leondard 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:

STIPULATED 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) On November 18th, 2008, Mr. Brown held a dinner seminar at the Vashon Golf and Country Club wherein he advertised his investment product services. The Complainant attended that seminar. At the seminar, th e Complainant expressed interest in meeting with Mr. Brown so he could review her investments and make recommendations to help her. She was concerned that her investment accounts were reducing in value. The Complainant met with Mr. Brown 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 Mr. Brown that she was concerned that the Annuity had lost approximately $35,000 in cash value over the last 40 months.

v) The Complainant gave Mr. Brown 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.
- A guaranteed death benefit in the amount of her original investment - $250,000.
- A Minimum Guaranteed Income Benefit Rider ("MGIBR") which guaranteed a minimum amount of income regardless of how the investment options performed. 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) Mr. Brown did not advise the Complainant of any of this information other than the contract surrender value. Instead, he recommended that she replace the Annuity with another product. Mr. Brown 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." He did not offer OIC an explanation of his failure to inform her of the loss of death benefits her beneficiaries would incur.

vii) Mr. Brown 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.

viii) In replacing the ING Annuity with the EquiTrust annuity, Mr. Brown 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. Mr. Brown stated to OIC that he 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.

ix) As part of this transaction, Mr. Brown 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, creating a $34,711.81 loss.

x) 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.

xi) 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.

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

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

STIPULATED 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.

ii.) By failing to inform the Complainant that 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.

ii) By failing to disclose the above on the Washington-required replacement form, the Licensee violated WAC 284-23-485.

STIPULATION AND CONSENT TO ORDER

Licensee hereby stipulates to the foregoing Stipulated 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, the Insurance Commissioner may revoke his license pursuant to RCW 48.17.540(2).

SIGNED this _____ day of _____ 2010.

_____

Leonard W. Brown, Jr.

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. Mr. Brown'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. Pursuant to RCW 48.17.530(5)(a):

(1) At the end of twelve months following entry of this Order, Licensee shall provide to the OIC a list of consumer names, addresses, phone numbers, company names and policy numbers for all life insurance and annuity sales during the preceding twelve months.

(2) At the end of twenty-four months following entry of this Order, Licensee shall provide to the OIC a list of consumer names, addresses, phone numbers, company names and policy numbers for all life insurance and annuity sales during the preceding twelve months.

ii) 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.

iii) Fine. A fine of Three Thousand Dollars ($3,000.00) is imposed on the following conditions:

(1) Three Thousand Dollars ($3,000.00) shall be paid on or before thirty days following entry of this Order.

(2) Licensee shall satisfactorily complete twelve (12) hours of continuing ethics education credit prior to August 30, 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) and (ii) of this Order.

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

MIKE KREIDLER
Insurance Commissioner

By

John F. Hamje
Deputy Insurance Commissioner
Consumer Protection Division

cc: Victor Overholt, Investigator

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: _____ _____
At Tumwater, Washington Victoria Estrada