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2006 OCT 20 P 2:46

OFFICE OF
INSURANCE COMMISSIONER

Hearings Unit, DIC
Patricia D. Petersen
Chief Hearing Officer

In the Matter of

)
) No. D 06 - 246

Fran E. Austin,

)
) ORDER REVOKING LICENSE

Licensee.

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To: Fran E. Austin
5431 S. Quail Ridge Circle
Spokane, WA 99223

IT IS ORDERED AND YOU ARE HEREBY NOTIFIED that your license is **REVOKED**, effective October 2, 2006, pursuant to RCW 48.17.530 and RCW 48.17.540(2).

THIS ORDER IS BASED ON THE FOLLOWING:

1. In 2003, the licensee sold a fixed annuity policy to Spokane resident who was born November 4, 1917, and was an unsophisticated investor. This annuity had a nominal contract value of approximately \$67,000 and comprised the bulk of the consumer's estate and life savings.
2. In 2004 the licensee induced the consumer to surrender this annuity and to entrust the proceeds to the licensee pursuant to an agreement between the consumer and the licensee under which licensee falsely represented and guaranteed that the consumer would earn a minimum return of ten percent per year and the right to return of her principal at the end of one year.
3. In reliance upon licensee's advice and representations, the consumer surrendered the annuity, incurring surrender charges of approximately \$7,000, and entrusted the net proceeds of \$60,000 to the licensee in March 2004. The consumer died in September 2004.
4. The licensee commingled the consumer's funds with his own. Licensee and his wife used approximately \$10,000 of the consumer's money for their own personal expenditures, and licensee transferred the rest to a brokerage account in his own name to conduct highly risky and speculative options trades online.

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5. By June 2004, the licensee had lost or spent all of the consumer's money that was entrusted to him and he has failed to make restitution to the consumer's estate.
6. In July 2004, the licensee approached an 82 year old resident in an assisted living facility in Spokane who had been a client of licensee's former firm. Licensee induced this consumer to invest \$5,000 by falsely promising and guaranteeing him an annual return of 8.75% and return of his principal within one year. The licensee deposited this money into his personal account, used the funds for personal expenses, and depleted the funds within one month of their receipt.
7. In August 2004, the licensee obtained \$31,000 from another Spokane resident, an 84 year old widow in poor health with limited assets who was inexperienced in investing. This consumer was a former insurance client of the licensee, and \$6,000 of the amount she invested with the licensee came from proceeds withdrawn from an annuity the licensee had sold the consumer in the 1990s. The licensee induced the consumer to withdraw these funds by falsely representing and guaranteeing that she would earn an 11.25% annual return on her investment and receive her principal back after two years.
8. The licensee commingled this consumer's funds with his own. Licensee and wife used \$11,000 for personal expenses, and licensee invested the remaining \$20,000 in highly speculative and risky online options trades. The licensee spent or lost all of the consumer's money that had been entrusted to him by September 2004 and has not made restitution.
9. By final Order Number S-06-0221-06-FO01, which Order is incorporated by this reference as though fully set forth herein, the State of Washington Department of Financial Institutions Securities Division determined that the above-reference investment contracts are securities and that licensee committed multiple violations of Washington's Securities Act, including violations of the securities registration requirements of RCW 21.20.140, the securities salesperson and broker-dealer requirements of RCW 21.20.040, and the anti-fraud provisions of RCW 21.20.010.
10. The licensee's conduct and misrepresentations in inducing consumers to surrender or convert annuities also constitute twisting in violation of RCW 48.30.180.
11. The licensee's fraud and conversion of funds held in a fiduciary capacity violated RCW 48.17.530(1)(d) and (e).
12. The licensee's conduct demonstrates that he is untrustworthy and a source of injury and loss to the public under RCW 48.17.530(1)(h).

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By reason of his conduct, and his violations of the Insurance Code, Fran E. Austin has shown himself to be, and is so deemed by the Commissioner, untrustworthy and a source of injury and loss to the public and not qualified to be an insurance agent in the State of Washington. Accordingly, Fran E. Austin's license is revoked pursuant to RCW 48.17.530 and RCW 48.17.540.

IT IS FURTHER ORDERED that you return your insurance agent's license certificate to the Commissioner on or before the effective date of the revocation or your license, as required by RCW 48.17.530(4).

NOTICE CONCERNING YOUR RIGHT TO A HEARING. Please note that a detailed summary of your right to contest this Order is attached. Briefly, if you are aggrieved by this Order, RCW 48.04.010 permits you to demand a hearing. Pursuant to that statute and other: You must demand a hearing, in writing, within 90 days after the date of this Order, which is the day it was mailed to you, or you will waive your right to a hearing. Your demand for a hearing must specify briefly the reasons why you think this Order should be changed. If your demand for a hearing is received by the Commissioner before the effective date of the revocation, then the revocation will be stayed (postponed) pending the hearing, pursuant to RCW 48.04.020. Upon receipt of your demand for hearing, you will be contacted by an assistant of the Chief Hearing Officer to schedule a teleconference with you and the Insurance Commissioner's Office to discuss the hearing and the procedures to be followed.

Please send any demand for hearing to Insurance Commissioner, attention John Hamje, Deputy Insurance Commissioner, Office of the Insurance Commissioner, P.O. Box 40257, Olympia, WA 98504-0257.

ENTERED AT TUMWATER, WASHINGTON, this 12th day of September, 2006.

MIKE KREIDLER
Insurance Commissioner

By

JOHN F. HAMJE
Deputy Insurance Commissioner
Consumer Protection Division

Investigator: Tom Talarico

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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 **Fran E. Austin**.

Dated: September 12, 2006
At Tumwater, Washington


Victoria Estrada

NOTICE OF YOUR RIGHT TO A HEARING

You have the right to demand a hearing to contest this Order. During this hearing, you can present your argument that the Order should not have been entered for legal and/or factual reasons and/or to explain the circumstances surrounding the activities which are the subject of this Order. You may be represented by an attorney if you wish, although in some hearings before this agency parties do choose to represent themselves without an attorney.

Your Demand for Hearing should be sent to John F. Hamje, Deputy Insurance Commissioner, Office of the Insurance Commissioner, P.O. Box 40257, Olympia, WA 98504-0257, and must briefly state how you are harmed by this Order and why you disagree with it. You will then be notified both by telephone and in writing of the time and place of your hearing. If you have questions concerning filing a Demand for Hearing or the hearing process, please telephone the Hearings Unit, Office of the Insurance Commissioner, at 360/725-7002.

Your Demand for Hearing must be made within 90 days after the date of this Order, which is the date of mailing, or your Demand will be invalid and this Order will stand. If your Demand for Hearing is received before the effective date of this Order, the penalties contained in the Order will be stayed (postponed) until after your hearing.

It is important to know that if you demand a hearing, you will have two options for how it will be handled:

Option 1: Unless you specifically request Option 2, your hearing will be presided over by an administrative law judge from the Office of the Insurance Commissioner. Under this option, upon receipt of your Demand for Hearing, the Insurance Commissioner may refer the case to an administrative law judge. The administrative law judge is an individual who has not had any involvement with this case. The administrative law judge will hear and make the final decision in the case without any communication, input or review by the Insurance Commissioner or staff or any other individual who has knowledge of the case. This administrative law judge's final decision may uphold or reverse the Commissioner's action or may instead impose any penalties which are less than those contained in the Order.

Option 2: If you elect, your hearing will be presided over by an administrative law judge from the Office of Administrative Hearings. That administrative law judge will issue an initial or recommended decision which will then be sent to the Insurance Commissioner. The Insurance Commissioner, or his designee, will review the initial decision and make the final decision. The Insurance Commissioner's final decision in the case may uphold, reverse or modify the initial decision, thereby changing the penalty which is recommended in the initial decision. In writing the final decision, the Insurance Commissioner is not bound by the findings of facts or conclusions of law which were made in the initial decision.