



2008 MAY -2 P 2: 27

OFFICE OF
INSURANCE COMMISSIONER

Hearings Unit, DIC
Patricia D. Petersen
Chief Hearing Officer
In the Matter of

GARY VAN LANDINGHAM,

Licensee.

) **No. D 08-0008**

) **STIPULATION AND CONSENT**
) **ORDER LEVYING A FINE**

The parties hereby stipulate to the entry of the following Stipulation and Order in resolution of this matter:

STIPULATED FACTS AND LAW

1. Gary Van Landingham is licensed to sell life and disability insurance in Washington and at all times material hereto was appointed as an agent of Bankers Life and Casualty Company (Bankers).
2. In October 2005, Mr. Van Landingham sold three Bankers Life and Casualty Company annuities and one Bankers Life and Casualty Company Single Premium Life Insurance policy to Washington residents, Ernest Haney and Coyla Haney. The initial deposit of these four contracts was \$335,009.48. Of this amount, \$77,771.51 was to come from the liquidation of two single premium whole life insurance policies issued to the Haney's by Jackson National Life Insurance Company, \$61,738.84 was to come from the liquidation of a Kemper Investors variable annuity held by the Haney's, and the remainder was to come from liquidation of securities and other investments held by the Haney's.
3. In replacing the Haney's' Jackson National Life and Kemper Investors contracts, Mr. Van Landingham did not utilize an Internal Revenue Code §1035 exchange, but instead had the Haney's sign letters surrendering the contracts for their cash surrender value. Mr. Van Landingham represented to the Haney's that they were not eligible to utilize Internal Revenue Code §1035 exchanges, which representation was false. By failing to utilize Internal Revenue Code §1035 exchanges, the Haney's incurred substantial and unnecessary income tax liability and Mr. Van Landingham avoided alerting Jackson National Life, Kemper Investors and Bankers Life and Casualty that replacements were involved.
4. The Haney's' Kemper Investors variable annuity that was surrendered had a safe harbor provision that permitted the Haney's to move their money to a fixed account to protect against a down market. Mr. Van Landingham was unaware of the safe harbor provision because he failed to get a copy of the Kemper policy from the Haney's. Therefore, he was unable to properly inform the Haney's about the safe harbor account when he recommended to them to replace the Kemper annuity.

STIPULATION AND CONSENT ORDER LEVYING A FINE

No. D 08-0008

Page 2

5. The Haneys' Jackson National Life Insurance Company whole life insurance policies that were surrendered, were fully paid up, had no surrender charges, had low mortality costs, and were paying a competitive interest rate. Mr. Van Landingham recommended to the Haneys to surrender these policies for a paid up policy with higher mortality costs and new surrender charges.

6. In September 2006, Mr. Van Landingham sold the Haneys another Bankers Life Annuity which he represented was tied to the performance of the Standard and Poor's 500 index and had a guaranteed minimum interest rate of 3%. The actual guaranteed minimum interest rate was only 2.15 % of 87.5% of the single premium and the Haneys only participated in 85% of the Standard and Poor's 500 index.

7. Mr. Van Landingham acknowledges that he violated RCW 48.30.180 when he made mistakes that led to misleading comparisons when he recommended to the insureds to lapse or convert existing policies. He further acknowledges that he violated RCW 48.30.090 when he made mistakes that led to misrepresenting the terms, benefits, and advantages of policies, and that by failing to obtain, fill out, sign, or submit replacement forms to replacing insurers, the Licensee violated WAC 284-23-440.

8. RCW 48.17.530 provides that: (1) The Commissioner may suspend, revoke, or refuse to issue any license . . . for any cause specified in any other provision of this code, or for any of the following causes:

(b) If the licensee . . . willfully violates . . . any provision of this code

(e) If the licensee . . . has, with intent to deceive, materially misrepresented the . . . effect of any insurance contract; or has engaged in . . . any fraudulent transaction.

(h) If the licensee or applicant has shown himself to be, and is so deemed by the commissioner, incompetent, or untrustworthy, or a source of injury and loss to the public.

9. The OIC entered an Order Revoking License on January 23, 2008, effective February 12, 2008. Licensee objected to the Order and requested an administrative hearing pursuant to RCW 48.04.040. The Order Revoking License was stayed, and the Licensee's license was not revoked.

STIPULATION AND CONSENT TO ORDER

Licensee stipulates to the foregoing Stipulated Facts and Law. Licensee enters into this Stipulation voluntarily, and foregoes the right to an administrative hearing. The licensee has engaged in practices that are not in accord with the standards set out in the insurance code of Washington. The licensee enters into this Stipulation with the understanding that the fine imposed hereunder is in lieu of any suspension or revocation of the licensee's license for such conduct and that if the conditions set forth in the Order are

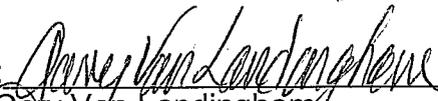
STIPULATION AND CONSENT ORDER LEVYING A FINE

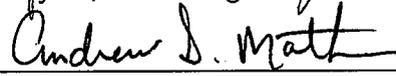
No. D 08-0008

Page 3

not fully met, the Insurance Commissioner may revoke his license pursuant to RCW 46.17.540(2).

Signed this 30 day of April, 2008

By: 
Gary Van Landingham

By: 
Andrew S. Mathers, Attorney at Law
Attorney for Licensee WSBA No. 35468

ORDER

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

1. Licensee shall not engage in any insurance practices listed above. Any repeat of the practices listed above may result in the revocation of the licensee's insurance license.

2. Pursuant to RCW 48.17.560 and the foregoing Stipulation, the Insurance Commissioner imposes a fine in the amount of Thirty-Five Hundred Dollars (\$3,500.00), which fine shall be paid on or before 30 days after the Order is signed by both parties.

3. Licensee shall satisfactorily complete six (6) hours of continuing ethics education credit prior to December 31, 2008. This continuing education shall be in addition to any other continuing education credits required to maintain licensee's license.

4. The Order Revoking License dated January 23, 2008, is vacated and shall have no force or effect.

ENTERED AT TUMWATER, WASHINGTON, this 2nd day of May, 2008.

MIKE KREIDLER
Insurance Commissioner

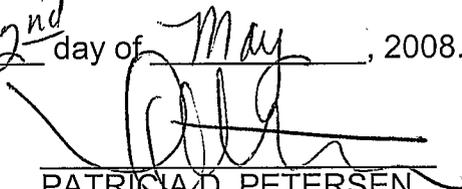
By: 

JOHN F. HAMJE
Deputy Insurance Commissioner
Consumer Protection Division

ORDER TERMINATING ADJUDICATIVE PROCEEDING

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 in the premises, it is hereby ordered pursuant to RCW 48.17.530 and 48.17.560 that OIC Docket No. D08-0008 is hereby closed and dismissed as settled.

SIGNED AND ENTERED this 2nd day of May, 2008.



PATRICIA D. PETERSEN
OIC CHIEF HEARING OFFICER

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 of a true copy of this document to Andrew Mathers, Gary Vandenberg, J. Ham, C. Brown
DATED this 5 day of May 2008
at Tumwater, Washington.

Signed: Wendy Holloway