

STATE OF WASHINGTON

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MIKE KREIDLER
STATE INSURANCE COMMISSIONER



OFFICE OF
INSURANCE COMMISSIONER

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

Charles P. Vick, SEB LLC
DATED this 1st day of April at Tumwater, Washington.

Signed: *[Signature]*

HEARINGS UNIT
Fax: (360) 664-2782

Patricia D. Petersen
Chief Hearing Officer
(360) 725-7105

Nicole Kelly
Paralegal
(360) 725-7002
nicolek@oic.wa.gov

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:)	NO. D09-0029
)	
CHARLES P. VICK and SENIOR LIFE)	FINDINGS OF FACTS, CONCLUSIONS
PLANNING SERVICES, LLC,)	OF LAW, AND FINAL ORDER
)	ON HEARING
Licensee.)	
)	

TO:	Charles P. Vick Senior Life Planning Services, LLC 3803 S. 272 nd Street Kent, WA 98032	Charles P. Vick P.O. Box 9139 Covington, WA 98042
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COPY TO: Mike Kreidler, Insurance Commissioner
Michael G. Watson, Chief Deputy Insurance Commissioner
Carol Sureau, Deputy Commissioner, Legal Affairs
Charles Brown, Esq., Staff Attorney
John F. Hamje, Deputy Commissioner, Consumer Protection
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Pursuant to RCW 34.04.090, 34.04.120, 48.04.010 and WAC 10-08-210, and after notice to all interested parties and persons, the above-entitled matter came on regularly for hearing before the Insurance Commissioner for the state of Washington ("OIC") on December 1, 2009, in Tumwater, Washington. All persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. The OIC appeared pro se, by and through OIC Staff Attorney Charles Brown. Charles P. Vick failed to appear (addressed below).



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Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General in the United States mail. If a party chooses to file a petition in the Superior Court, he or she may, but is not required to, first file a request for reconsideration. For further information or to obtain copies of the applicable statutes, the parties may contact the administrative assistant to the undersigned.

NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether the Insurance Commissioner's ("OIC") Order Revoking License, No. D09-0029, entered by the OIC on March 12, 2009, should be confirmed, set aside or modified. Said Order Revoking License revokes the insurance agent's license of Charles P. Vick ("Licensee") and Senior Life Planning Services, LLC ("SLPS"), based upon the facts alleged therein and those additional grounds set forth in the OIC's Statement of Additional Grounds for Revocation of Licenses entered June 3, 2009. Charles P. Vick and SLPS will hereinafter be referred to collectively as "Licensees" except where otherwise stated. The Licensees requested this hearing to contest the Order Revoking Licenses.

FINDINGS OF FACTS

Having considered the evidence and arguments presented at the hearing, and the documents on file herein, the undersigned presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. This Order is entered pursuant to Chapter 48 RCW, Chapter 34 RCW including, on the basis of good cause shown, RCW 34.05.461(8).
2. Mr. Vick initially appeared in this matter representing himself and SLPS, of which he is the sole owner and "managing member." The undersigned held the first prehearing conference herein on June 8, 2009, and on June 12 a Notice of Hearing was entered reflecting the parties' agreement that the hearing should commence on August 5. Before that hearing date, Mr. Vick requested a continuance of the hearing date on the basis of a serious health problem, and the

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hearing date was rescheduled until October 16, 2009. On September 14, 2009, Mr. Vick requested another continuance of the hearing date on the basis of another, different, serious health problem, which was being treated but stated he "definitely [sic] wants his day in court but will have to continue this indefinitely [sic]." On October 14, 2009 the undersigned held another prehearing conference and the parties agreed that the hearing should commence on December 1, 2009. Shortly before the hearing date, Mr. Vick advised that he was being treated for "several conditions which will last approx. 90 days," was currently medicated but still wanted his "day in court and request the hearing be delayed for a later time." Considering that the Licensees had been given two prior continuances on the basis of two different claims of serious ill health; the fact that the OIC had several witnesses traveling from out of town to testify at the proceeding – at least one of which was already on his way; and the fact that the OIC objected to an additional continuance, the undersigned asked for proof of Mr. Vick's medical condition and treatment. In response, Mr. Vick sent inadequate proof of his conditions and treatment, which are included in the hearing file, and therefore the undersigned advised Mr. Vick that the hearing would not be continued again and that if he failed to appear then the Licensees would be held in default. Mr. Vick had been previously advised that should he not appear at his hearing he and SLPS would be held in default and the consequences of default were explained to him. Mr. Vick did fail to appear and therefore Mr. Vick and SLPS were held in default. The OIC presented his case in full at the duly scheduled hearing time.

3. Licensee Vick has an authorized address in Maple Valley, Washington and has recently stated an address in Kent, Washington. Mr. Vick has held a Washington insurance agent's license for the lines of life and disability insurance. He has held appointments to represent some 34 insurance companies. Mr. Vick also holds a Washington securities license. Mr. Vick is not licensed as an insurance broker. [Ex. 34.]

4. SLPS has an authorized address in Renton, Washington, and has recently stated an address in Kent, Washington. SLPS has held a Washington insurance agency license, WA OIC No. 259789, for the lines of life and disability insurance. [Ex. 34.]

5. Mr. Vick is the sole owner and "managing member" of SLPS. [Testimony of OIC Investigator Thomas H. Talarico ("Talarico").]

6. In September 2007, Mr. Vick mailed two letters - one dated September 4, 2007 and one dated September 18, 2007 - to his customers and those of SLPS asking them to pay a membership fee so that he and SLPS could continue to provide insurance services to them. [Testimony of Talarico; Exs. 2 and 3.]

7. In October 2007, the OIC learned of Mr. Vick's fee solicitation letters to consumers and commenced an investigation. At the request of OIC Investigator Thomas H. Talarico [Ex. 5, Letter from OIC dated October 16, 2007], Mr. Vick eventually provided the OIC with a list of 45 consumers from whom Mr. Vick had obtained fees ranging from \$10 to \$200 [Ex. 4]. Eighteen

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of these consumers were Washington insurance clients of Mr. Vick and SLPS that, according to the list provided by Mr. Vick, had paid a total of \$1,585 in fees to Mr. Vick. [Testimony of Talarico.]

8. By January 10, 2008 letter from Investigator Talarico, the OIC ordered Mr. Vick to return those fees to his Washington customers who had paid them. [Testimony of Talarico; Ex. 6.] By return letter of January 29, 2008, Mr. Vick mentioned that these charges were somehow a result of his former accountant wanting to get SLPS licensed as an insurance agency, sent a list of those consumers who had paid a fee and the amounts they had paid, promised the OIC that he would return the fees he collected from these customers and requested an additional sixty days to do so. [Testimony of Talarico; Ex. 7.]

9. By letters dated February 1, 2008, March 31, 2008, and April 11, 2008, Mr. Talarico requested confirmation that Mr. Vick had returned the fees collected to his Washington insurance customers and requested copies of the refund checks. [Testimony of Talarico.]

10. Finally, on May 1, 2008, Mr. Vick faxed to Mr. Talarico copies of eighteen refund checks payable to the Washington insurance customers from whom he had exacted fees totaling \$1,585 along with the explanation that his failure to respond to the OIC's previous requests and his failure to refund the fees earlier was due to a lack of funds. [Testimony of Talarico; Ex. 8.]

11. By letter dated May 1, 2008, Mr. Talarico asked Mr. Vick to provide proof that he had actually sent these checks. Specifically, Mr. Vick was asked to provide a copy of either his June bank statement or a copy of the front and back of the eighteen refund checks showing that they had been negotiated. [Ex. 9.] Mr. Vick failed to respond to this request. [Testimony of Talarico.]

12. By letter dated July 7, 2008, Mr. Talarico again requested proof that Mr. Vick had actually sent the refund checks to Washington consumers. [Testimony of Talarico; Ex. 10.]

13. Mr. Vick finally responded by letter dated July 14, 2008, with which he enclosed copies of four money orders payable to four of Mr. Vick's Washington insurance customers. In this letter, Mr. Vick stated that "This is a partial list. The balance will be refunded on or before July 25, 2008. It has been simply a matter of now [sic] funds. Revoking my license will not get this done. I'm asking for ten days. Thank you." [Testimony of Talarico; Ex. 11, letter w/ encls.]

14. On August 5, 2008, the OIC again contacted Mr. Vick, stating that Mr. Vick had promised to mail certified letters and money orders to the Washington consumers who had paid his fee, and to provide a copy to the OIC, all by July 25, 2008. The letter further noted that the OIC had given Mr. Vick the extra 10 days to comply as he had requested, but that he had once again failed to comply with an order of the OIC. [Testimony of Talarico; Ex. 13.]

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15. By letters dated August 8, 2008 [Exs. 14 through 19], Mr. Talarico contacted the four Washington consumers who were named as payees on the July 2008 money orders, which Mr. Vick had furnished as proof that he had refunded these fees to those consumers. The purpose of the OIC's contact with these consumers was to determine whether or not Mr. Vick had actually sent the money orders. Only one of these four consumers reported having received a money order and Mr. Vick has still not provided proof that he has refunded the "fees" collected from his other Washington insurance customers. [Testimony of Talarico; Exs. 14, 15, 16, Statements from the Washington consumers.]

16. Finally, by certified letter dated October 6, 2008, Mr. Talarico advised Mr. Vick that the OIC had still not received proof that the Washington consumers had been sent the refunds as required by the OIC. [Testimony of Talarico; Ex. 20.]

17. Donald Dawson, age 71, and his wife Julia Dawson, age 63, ("Dawsons") residents of Puyallup, Washington, were insurance customers of Mr. Vick and SLPS. On or about November 25, 2002, Mr. Vick sold Donald Dawson an annuity contract, No. 175382, issued by American Equity Investment Life Insurance Company ("American"). On November 25, 2002, Mr. Vick also sold Julia Dawson an annuity contract issued by American, No. 17380. These were tax qualified annuities purchased respectively with single premiums of \$138,069.51 rolled over from Mr. Dawson's individual retirement account and \$43,301.88 rolled over from Mrs. Dawson's individual retirement account. Both annuities guaranteed a first year interest rate of 7.25 percent and a minimum guaranteed interest rate starting in year two of 4.00 percent. Both had declining eight year surrender charges declining to zero in year nine. [Testimony of Donald Dawson; Testimony of Julia Dawson; Testimony of OIC Investigator Victor E. Overholt.]

18. In October 2006, Mr. Vick contacted the Dawsons recommending a replacement program that Mr. Vick claimed would produce tax free income and provide a better way for the Dawsons to take money from their IRA accounts. The replacement contract Mr. Vick was selling was offered by National Community Foundation ("NCF"), a division of New Life International. Although NCF had a Certificate of Exemption from the OIC to issue Charitable Gift Annuities, the contract sold by Mr. Vick to the Dawsons had not been filed with the OIC for approval as required by statute. Based upon Mr. Vick's representations and comparisons, the Dawsons purchased for \$143,850 a NCF contract that promised \$4700.24 per month for 20 years. [Testimony of Dawsons; Testimony of OIC Investigator Victor E. Overholt; Ex. 21.]

19. Mr. Vick made misrepresentations and misleading comparisons to induce the Dawsons to surrender their American annuities and replace them with the NCF contract. The American annuities would have paid the Dawsons a guaranteed lifetime monthly income of \$916.95 with specified period certain factors that would have guaranteed at least 240 months payable to the Dawsons' Family Trust regardless of how long the Dawsons were to live. Contrary to Mr. Vick's representations, the NCF contract was not a better way for the Dawsons to take money from their IRA accounts and will cost the Dawsons at least \$51,794.40 in payouts for the first

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240 months, and depending on Mr. Dawson's life span, possibly much more. [Testimony of Thomas Thorpe; Testimony of Dawsons; Testimony of OIC Investigator Victor E. Overholt Exs. 21 through 33.]

20. Mr. Vick represented to the Dawsons that when they surrendered their American annuities, there would be surrender charges of \$8,351.40 and taxes due of approximately \$16,000. The Dawsons were in a zero percent federal income tax bracket at the time Mr. Vick induced them to surrender their IRA American annuities. The 2007 tax on the Dawsons' 2007 IRA distribution of \$173,861 was \$25,809, not \$16,000. In addition and as a result of their early liquidation of their IRAs recommended by Mr. Vick, the Dawsons' increased 2007 income resulted in a substantial reduction of Mr. Dawson's Social Security benefit, a substantial increase in his Medicare Part B premium, and disqualified the Dawsons from receiving federal stimulus funds. [Testimony of Thomas Thorpe; Testimony of Dawsons; Testimony of OIC Investigator Victor E. Overholt Exs. 21 through 33.]

21. Mr. Vick also represented to the Dawsons that the NCF annuity payments would be tax free. This representation was also false and the payments are subject to federal income taxation. [Testimony of Thomas Thorpe; Testimony of Dawsons; Testimony of OIC Investigator Victor E. Overholt Exs. 21 through 33.]

22. Thomas H. Talarico, an Investigator with the Office of the Insurance Commissioner, appeared as a witness on behalf of the Commissioner. Mr. Talarico presented his testimony in a detailed and credible manner and exhibited no apparent biases.

23. Donald R. Dawson, referred to in the facts above, appeared as a witness on behalf of the Commissioner. Mr. Dawson presented his testimony in a detailed, thoughtful and credible manner.

24. Julia A. Dawson, referred to in the facts above, appeared as a witness on behalf of the Commissioner. Mrs. Dawson presented her testimony in a detailed, thoughtful and credible manner.

25. Thomas Thorp, President of Tax and Accounting Professionals Inc. of Fife, Washington, appeared as a witness on behalf of the Commissioner. Mr. Thorp presented his testimony in a detailed and credible manner and exhibited no apparent biases. Mr. Thorp contains the proper credentials, and more, to qualify him to testify about the transactions, which are detailed in the Findings of Facts above.

26. Victor E. Overholt, an Investigator with the Office of the Insurance Commissioner, appeared as a witness on behalf of the Commissioner. Mr. Overholt presented his testimony in a detailed and credible manner and exhibited no apparent biases.

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27. As set forth above, Charles P. Vick failed to appear at the hearing herein and no representatives appeared on either his behalf or on behalf of Senior Life Planning Services, LLC and no one appeared as witnesses on their behalf.

28. By engaging in the above activities, the Licensees have shown themselves to be, and are hereby so deemed to be, untrustworthy and a source of injury and loss to the public and not qualified to be an insurance agent or an insurance agency in the State of Washington.

29. Based upon the activities of the Licensees as set forth in the facts found herein, it is here found that the Insurance Commissioner's Order Revoking License, No. D09-0029 entered March 12, 2009, and as supplemented by Statement of Additional Grounds for Revocation of Licenses entered June 3, 2009, is reasonable under the circumstances and should be upheld.

30. The undersigned recognizes recent case law which draws into question the proper standard of proof to be applied in administrative cases involving some types of professional licenses, and recognizes that such cases involving insurance agents' licenses has been addressed. In recognition of recent case law regarding the standard of proof to be applied in insurance agents' licenses, the undersigned has applied the "clear cogent and convincing" standard of proof rather than the "preponderance of the evidence" standard of proof, and finds the above facts under application of that higher standard of proof.

CONCLUSIONS OF LAW

1. By collecting fees from insurance customers that were not included in the premium specified in the policy, Licensees exceeded the scope of their insurance licenses, acted as unlicensed insurance brokers and in doing so violated the provisions of RCW 48.18.180.

2. By making misrepresentations of the terms of any policy or the benefits or advantages promised thereby and misrepresenting the nature of those policies, the Licensees have violated RCW 48.30.090.

3. By providing untimely and misleading responses to the OIC's investigative inquiries and by representing that refunds had been made when in fact they had not, the Licensees violated RCW 48.17.475.

4. By reason of their conduct as found above, the Licensees have shown themselves to be, and are hereby so deemed to be, untrustworthy and a source of injury and loss to the public and not qualified to be an insurance agent or insurance agency in the state of Washington as contemplated by RCW 48.17.530(1)(h) and therefore it is concluded that the Licensee's insurance agent's license should be revoked pursuant to that statute.

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ORDER

On the basis of the foregoing Findings of Facts and Conclusions of Law, to the effect that the Licensee has violated the provisions of RCW 48.18.180, 48.30.090 and 48.17.475 and have shown themselves to be and have been so deemed to be, untrustworthy and a source of injury and loss to the public and not qualified to be an insurance agent in the state of Washington as contemplated by RCW 48.17.530(1)(h),

IT IS HEREBY ORDERED that the OIC's Order Revoking License, No. D09-0029, entered on March 12, 2009, as amended by Statement of Additional Grounds for Revocation of Licenses, entered on June 3, 2009, is upheld and therefore the insurance agent's license of Charles P. Vick is revoked and the insurance agency license of Senior Life Planning Services, LLC, which is currently cancelled or lapsed, shall not be renewed or reinstated.

IT IS FURTHER ORDERED that the Licensee's insurance agent's license and the insurance agency license of Senior Life Planning Services, LLC shall both be surrendered to the Office of the Insurance Commissioner, P.O. Box 40255, Olympia, Washington 98504-0255 by close of business on April 15, 2010.

IT IS FURTHER ORDERED that the insurance agency license of Senior Life Planning Services, LLC shall not be renewed.

This Order is entered pursuant to RCW 34.05, WAC 10-08-210, Title 48 RCW and regulations applicable thereto.

This Order is entered at Tumwater, Washington, this 1st day of April, 2010.



PATRICIA D. PETERSEN
PRESIDING OFFICER