

AUG 16 2012

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

STATE OF NEBRASKA)	
DEPARTMENT OF INSURANCE,)	
)	
PETITIONER,)	CONSENT ORDER
)	
VS.)	
)	
F. JOSEPH VLOCK,)	CAUSE NO. A-1952
NAIC National Producer # 228342)	
)	
RESPONDENT.)	

In order to resolve this matter, the Nebraska Department of Insurance ("Department"), by and through its attorney, Michael C. Boyd and F. Joseph Vlock, ("Respondent"), mutually stipulate and agree as follows:

JURISDICTION

1. The Department has jurisdiction over the subject matter and Respondent pursuant to Neb. Rev. Stat. §44-101.01 and §44-4047, et seq.

2. Respondent was licensed as a resident insurance agent under the laws of Nebraska at all times material hereto. Respondent's registered business address with the Department is New York Life, One Valmont Plaza, Suite 100, Omaha, Nebraska 68154. His registered home address with the Department is 3505 S. 161st Street, Omaha, Nebraska 68130.

STIPULATIONS OF FACT

1. The Department initiated this administrative proceeding by filing a petition styled State of Nebraska Department of Insurance vs. F. Joseph Vlock, Cause Number A-1952 on July 24, 2012. A copy of the petition was served upon the Respondent at the Respondent's business address

registered with the Department by certified mail, return receipt requested, and Respondent's home address registered with the Department by First Class U.S. Mail.

2. Respondent violated §§44-1524, 44-1525(10), 44-4059(1)(b), 44-4059(1)(e), 44-4059(1)(g), and 44-4059(1)(h) as a result of the following conduct:

- a. In March, 2011, a complaint by Delores Kripal ("Kripal") was received by the Department regarding alleged misconduct by her AXA Equitable Life Insurance Company ("AXA Equitable") insurance producer that included Kripal's contention that the AXA Equitable writing agent in September, 2008 used \$82,626 of her funds to purchase an AXA Equitable variable annuity called Accumulator Plus, contract #308652821 dated September 19, 2008. Kripal's submitted complaint had various attached documents, including a copy of a July 27, 2009 e-mail of Respondent that indicated his awareness of that AXA Equitable variable annuity #308652821 and its September 19, 2008 contract date. Pursuant to that complaint, the Department's Consumer Affairs Division ("CAD") initiated an investigation.
- b. CAD corresponded with AXA Equitable about Kripal's complaint, and among the documents included in AXA Equitable's various replies to CAD was a copy of a facsimile submitted March 23, 2011 from the Respondent's New York Life Insurance Company ("New York Life") agency office wherein Kripal requests surrender of her AXA Equitable variable annuity contract #308652821. That facsimile included a copy of that variable annuity contract's "Face Page" with a contract date of September 19, 2008, as well as a copy of Kripal's signed Withdrawal (surrender) Form dated March 23, 2011 requesting a "Full Surrender" on which form it notes that for a Full Surrender, "All applicable charges will be assessed". In other documentation, AXA Equitable indicated the variable annuity contract #308652821 cash surrender value proceeds disbursed to Kripal on March 23, 2011 were \$82,294.51, which meant Kripal incurred a Withdrawal (surrender) charge of almost \$6,000.
- c. Due to the information CAD had received regarding Respondent's contacts with Kripal, CAD wrote to Respondent regarding his activities with Kripal as a licensed insurance producer. In his reply to that CAD correspondence, Respondent noted that he was contacted March 23, 2011 by Kripal that she wanted to transfer the money from her AXA Equitable annuity contract #308621821 to New York Life. Respondent also included documents that indicated he sold Kripal a New York Life Select Guarantee Fixed Annuity contract #74212812 with an issue date of April 1, 2011.

- d. Based upon the information CAD obtained from Respondent, noted above in subparagraph 3c, CAD wrote to New York Life seeking information about the fixed deferred annuity contract #74212812 Respondent sold Kripal. New York Life's response to CAD included copies of the Select Guarantee Fixed Annuity #74212812, along with the New York Life annuity application forms that Respondent completed and submitted for Kripal for that contract and New York Life's suitability guidelines for such fixed deferred annuity policy. (The suitability guidelines' Source of Funds requirement for Fixed Deferred Annuities, such as the Select Guarantee product, states that "If the Source of Funds is either Fixed Annuity or Variable Annuity, the surrender charge must be \$500 or less, OR less than 3% of the aggregate amount redeemed.")
- e. Upon completion of its review of New York Life's response, including the annuity contract's application forms, CAD wrote to New York Life about the concerns that arose from the review of the New York Life annuity application forms for Select Guarantee Fixed Annuity contract #74212812 that Respondent completed for that contract. Among the concerns raised by that review was that Respondent recorded an "Estimated Surrender Charge" of "0" on the Time Horizon/Source of Funds section of the disclosure form included in Kripal's New York Life annuity application, even though Respondent was well aware that the AXA Equitable variable annuity that Kripal surrendered had only been in force since September 2008 (approximately 2½ years) and certainly would have a significant full withdrawal/surrender percentage fee. An additional concern was that Respondent misrepresented the purchase date of Kripal's AXA Equitable variable annuity contract # 308652821 as September 19, 2003, even though he was clearly aware that it was September 19, 2008 based upon his e-mail noted in subparagraph 3a above, as well as the facsimile request to AXA Equitable for surrender forms on that contract as noted in subparagraph 3b above. In its February 15, 2012 reply to this CAD correspondence, New York Life advised that it had recently inquired of Respondent about the surrender charge showing of "0" on the annuity application disclosure form, and Respondent agreed that he knew Kripal had incurred a surrender charge from AXA Equitable and that he should have disclosed the exact surrender charge on the annuity application disclosure form. New York Life further noted that had Kripal's incurred surrender charge been correctly shown on the New York Life annuity application disclosure form, the sale of the Select Guarantee Fixed Annuity contract #74212812 to Kripal would not have met the New York Life suitability guidelines.
- f. By his information provided New York Life as noted in their response above in subparagraph 3e and his e-mail noted above in subparagraph 3a as well as his activities in helping Kripal surrender her AXA Equitable variable annuity noted above in subparagraph 3b, the Department alleges that he

misstated the purchase date of Kripal's AXA Equitable variable annuity and the surrender charge she incurred in its surrender in March, 2011. Since New York Life has stated that had Respondent listed correct information on the annuity application disclosure form for the surrender charges Kripal incurred, they would not have approved the sale of the Select Guarantee Fixed Annuity to Kripal, Respondent has, in effect, admitted that he made false statements on an application for a policy he solicited for which Respondent obtained commissions from New York Life, and that he misrepresented the terms of an actual application for insurance to avoid noncompliance with New York Life's suitability guidelines' Source of Funds requirement for Fixed Deferred Annuities, such as the Select Guarantee contract #74212812 he sold to Kripal. Therefore, Respondent's actions constituted an insurance unfair trade practice in this matter.

3. Respondent was informed of his right to a public hearing. Respondent waives that right, and enters into this Consent Order freely and voluntarily. Respondent understands and acknowledges that by waiving his right to a public hearing, Respondent also waives his right to confrontation of witnesses, production of evidence, and judicial review.

4. Respondent admits the allegations stated in Paragraph #2 above.

CONCLUSIONS OF LAW

Respondent's conduct as alleged above constitutes a violation of §§44-1524, 44-1525(10), and 44-4059(1)(g).

CONSENT ORDER

It is therefore ordered by the Director of Insurance and agreed to by Respondent, F. Joseph Vlock, that Respondent shall pay an administrative fine of one thousand five hundred dollars

(\$1,500), due within thirty (30) days after the Director of Insurance or his designee approves and signs this consent order.

In witness of their intention to be bound by this Consent Order, each party has executed this document by subscribing their signature below.

Michael C. Boyd

Michael C. Boyd, #10394
Attorney for Nebraska
Department of Insurance
941 O Street, Suite 400
Lincoln, Nebraska 68508
(402)471-2201

8-13-2012

Date

F. Joseph Vlock

Respondent

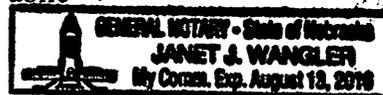
8-7-12

Date

State of Nebraska)
County of Douglas) ss.

On this 7 day of August, 2012, F. Joseph Vlock personally appeared before me and read this Consent Order, executed the same and acknowledged the same to be his voluntary act and deed.

Janet J. Wangler
Notary Public



CERTIFICATE OF ADOPTION

I hereby certify that the foregoing Consent Order is adopted as the Final Order of the Nebraska Department of Insurance in the matter of State of Nebraska Department of Insurance vs. F. Joseph Vlock, Cause No. A-1952.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

Bruce R. Ramge

BRUCE R. RAMGE
Director of Insurance

8-16 2012

Date

CERTIFICATE OF SERVICE

I hereby certify that a copy of the executed Consent Order was sent to the Respondent at his business address registered with the Department New York Life, One Valmont Plaza, Suite 100, Omaha, Nebraska 68154, by certified mail, return receipt requested on this 16th day of August, 2012.

Jeanne A. Stuehn