

AUG 27 2014

FILED

BEFORE THE DEPARTMENT OF INSURANCE STATE OF NEBRASKA

STATE OF NEBRASKA)
DEPARTMENT OF INSURANCE,)
PETITIONER,)
VS.)
RUSSELL AKIO VAN BELLE)
(NAIC National Producer #6811434),)
RESPONDENT.)

CONSENT ORDER

CAUSE NO. A-2005

IDENTIFIER # 6811434
AMOUNT \$ 1,700.00
AUG 28 2014
DISTRIBUTION # 21319358
CHECK # 3116

In order to resolve this matter, the Nebraska Department of Insurance ("Department"), by and through its attorney, Matthew W. Holman, and Russell Akio Van Belle ("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 to 44-4067.
2. Respondent was licensed as an insurance producer under the laws of Nebraska at all times material hereto.

STIPULATIONS OF FACT

1. The Department initiated this administrative proceeding by filing a petition styled State of Nebraska Department of Insurance vs. Russell Akio Van Belle (NAIC National Producer Number 6811434), Cause Number A-2005 on August 19, 2014. A copy of the petition was served upon the Respondent at Respondent's registered business addresses by certified mail, return receipt requested.

2. Respondent is alleged to have violated Neb. Rev. Stat. § 44-4059(1)(h) as follows:
- a. On or about January 11, 2008, Respondent first met with Leslie and Rosemarie Mlnarik to determine their needs related to financial products.
 - b. On or about January 24, 2008, Respondent recommended the Mlnariks transfer their existing variable annuity policy into a Lincoln Financial Group (“LFG”) OptiPoint 8 fixed indexed annuity (“Opti-8 Policy”), and at this time Respondent submitted an annuity application and 1035 request for tax-free exchange to LFG in order to effectuate this recommendation.
 - c. On or about February 4, 2008, LFG denied the January 24, 2008 1035 request because the annuity application listed Rosemarie Mlnarik as the annuity owner while the transfer paperwork listed Leslie Mlnarik as the owner of the surrendering policy.
 - d. On or about February 20, 2008, Respondent effectuated a change of ownership on the existing LFG variable annuity from Leslie Mlnarik to Rosemarie Mlnarik.
 - e. On or about February 24, 2008, Respondent submitted a second annuity application and 1035 request to LFG for the Opti-8 Policy. This application listed Rosemarie Mlnarik as the owner and Leslie Mlnarik as the beneficiary. The 1035 exchange request still listed Leslie Mlnarik as the owner, but Rosemarie Mlnarik signed as the owner.
 - f. On or about March 5, 2008, LFG contacted Respondent and indicated that it cannot approve the transfer without, among other things, a 1035 exchange form properly listing Rosemarie as the owner. LFG informed Respondent that any changes to the application will require the owner’s initials.

- g. On or about March 27, 2008, Respondent attempted to resume replacement by submitting a new copy of the first page of the annuity application correctly identifying the owner and annuitant and identifying a new beneficiary. Respondent did not submit a new copy of the 1035 exchange request.
- h. On or about March 28, 2008, April 7, 2008, and April 15, 2008, LFG contacted Respondent indicating that LFG cannot process the application until 1) Rosemarie Mlnarik initials and dates the beneficiary change, 2) page two of the application is submitted with the annuitant's signature, and 3) a new 1035 exchange form is submitted showing Rosemarie Mlnarik as the owner and Leslie Mlnarik as the annuitant.
- i. On or about April 22, 2008, Respondent submitted to LFG a revised 1035 exchange form identifying Rosemarie Mlnarik as the owner and with Leslie Mlnarik signing as the annuitant.
- j. On or about April 23, 2008, LFG again contacted Respondent to indicate that the application cannot be processed until Rosemarie Mlnarik initials and dates the beneficiary change.
- k. On or about April 25, 2008, LFG received all necessary paperwork related to the annuity application, and the Opti-8 Policy was issued on or about May 22, 2008.
- l. On or about March 4, 2013, Respondent first met with Beverly Nixon to discuss fees and market risk related to her IRA. Respondent recommended a Secure Opportunities Plus EIA ("EIA") through ING Life Insurance and Annuity Company ("ING").

- m. On or about March 4, 2013, Respondent submitted an application and suitability profile for the EIA. On the suitability profile, Respondent:
 - i. Identified a 10 year surrender period for the EIA but failed to anticipate any potential increase in medical, nursing home, or assisted living expenses despite Ms. Dixon being 75 years old and in poor health, and
 - ii. Failed to properly follow the suitability profile instructions for determining the percentage of liquid assets the annuity represents.
 - n. ING required a Fixed Annuity Needs Analysis (“FANA”) form to be provided in conjunction with the sale of the EIA. Respondent did not initially provide the FANA form with the EIA application. On or about March 12, 2013, March 18, 2013, March 26, 2013, and April 3, 2013, ING contacted Respondent or Respondent’s office requesting the FANA. ING received the FANA on or about April 10, 2013, over a month after the initial application was made.
 - o. On the FANA, Respondent incorrectly calculated Ms. Nixon’s household liquid assets and net worth.
 - p. On or about March 4, 2013, Respondent filled out an Annuity Placement Questionnaire for Ms. Dixon. On this Annuity Placement Questionnaire, Respondent identified that mutual funds were available as other assets in the event of an emergency, despite utilizing the entirety of Ms. Dixon’s mutual fund to purchase the EIA.
3. Respondent is alleged to have violated Neb. Rev. Stat. §§ 44-4059(1)(b), 44-4059(1)(h), 44-8106(1), 210 Neb. Admin. Code §§ 006.01, 012.01, 012.01B, 012.01C, and 012.01D, as follows:

- a. On or about January 26, 2009, Respondent facilitated an additional payment of \$65,000 by Rosemarie Mlnarik into the Opti-8 Policy.
- b. On or about March 12, 2009, Respondent met with the Mlnariks to discuss a potential replacement for the Opti-8 Policy to be placed with Allianz.
- c. On or about March 16, 2009, Allianz received an annuity application, product suitability form, and 1035 exchange request for a 10% Bonus PowerDex Elite Annuity ("PowerDex") from Respondent on behalf of Rosemarie Mlnarik. This paperwork disclosed that the PowerDex was a replacement of an existing annuity.
- d. On or about April 23, 2009, Allianz cancelled/declined the PowerDex application and transfer because the policy being replaced was issued less than one year previously. Notification of this denial was sent to Respondent.
- e. On or about May 8, 2009, Respondent submitted a second application on behalf of Rosemarie Mlnarik for the PowerDex annuity. On this application respondent certified that, to the best of his knowledge, Ms. Mlnarik did not have existing annuity contracts and that this annuity contract would not replace or change existing policies.
- f. On or about May 18, 2009, Allianz conducted a suitability interview with Respondent, during which Respondent indicated the premium consisted of nonqualified funds coming from savings/checking.
- g. On or about May 18, 2009, Respondent submitted an annuity distribution request to LFG on behalf of Rosemarie and Leslie Mlnarik, requesting a total surrender of the Opti-8 Policy which resulted in a taxable event and surrender charges being incurred.

- h. On or about June 5, 2009, the Mlnariks submitted a premium payment to Allianz for the PowerDex annuity.
- i. On or about June 8, 2009, the PowerDex policy was issued.
- j. Over the course of this transaction, Respondent failed to properly take into account potential tax liability in his recommendation of the replacement of the Opti-8 annuity with the PowerDex policy.

4. 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.

5. Respondent neither admits nor denies the allegations stated in Paragraphs 2 and 3.

CONCLUSIONS OF LAW

Respondent's conduct as alleged above constitutes violations of Neb. Rev. Stat. §§ 44-4059(1)(b), 44-4059(1)(h), 44-8106(1), 210 Neb. Admin. Code §§ 006.01, 012.01, 012.01B, 012.01C, and 012.01D.

CONSENT ORDER

It is therefore ordered by the Director of Insurance and agreed by Respondent, Russell Akio Van Belle, that:

- Respondent shall pay an administrative fine in the amount of \$1,700 due within 30 days after the Director of Insurance or his designee approves and signs this consent order. If Respondent fails to pay the amount required under this consent order, within the time specified, Respondent's insurance producer license shall automatically be revoked.

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

Matthew W. Holman
 Matthew W. Holman, #24410
 Attorney for Petitioner
 941 "O" Street, Suite 400
 Lincoln, NE 68508
 (402) 471-2201

Russell Akio Van Belle
 Russell Akio Van Belle
 Respondent

8/27/14
 Date

8-26-2014
 Date

State of Nebraska)
) ss.
 County of Douglas)

On this 26th day of August, 2014, Russell Akio Van Belle personally appeared before me and read this Consent Order, executed the same, and acknowledged the same to be his voluntary act and deed.

Lauren Cotton
 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 v. Russell Akio Van Belle (NAIC National Producer #6811434), Cause No. A-2005.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

Bruce Rame

Bruce Rame
Director of Insurance

8-27-2014

Date

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Consent Order was served upon Respondent by mailing a copy to Respondent's business address, 3343 N. 107th Street, Omaha, NE 68134, by certified mail, return receipt requested, on this 28th day of August, 2014.

Brandis J. Gause

RECEIVED

AUG 28 2014

NEBRASKA DEPARTMENT OF
INSURANCE