

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE :
BANKERS LIFE AND CASUALTY
COMPANY, PAUL A. LANDRY and
JEROLD S. SMITH

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CONSENT AGREEMENT

DOCKET NO. INS-04-204

Paul A. Landry (Respondent), the Maine Superintendent of Insurance (Superintendent), and the Maine Office of the Attorney General (Attorney General) hereby enter into this Consent Agreement pursuant to 10 M.R.S.A. § 8003(5)(B) to resolve, without an adjudicatory proceeding, issues arising out of the Respondent's conduct under a license issued by the Superintendent.

Stipulation of Facts

1. The Superintendent is the official charged with administering and enforcing the insurance laws of the State of Maine.
2. Until January 2005, Paul A Landry was licensed by the Superintendent as an active resident insurance producer, License No. PRR41416. His National Producer Identification number was 2227526.
3. Until May 2004, Mr. Landry was an appointed insurance producer for Bankers Life and Casualty Company, Maine License No. LHF127, based at its branch sales office in South Portland, Maine.
4. At all times relevant to this matter, Mr. Landry's immediate supervisor was Jerold S. Smith, License No. PRR41417, and the branch sales office manager was Neal J. Quimby, License No. PRN96157, formerly PRR26124.
5. In September 2000, Mr. Landry accompanied fellow Bankers Life agent Corey Tibbetts, former License No. PRR57215, to the residence of Consumer A in Waldoboro, Maine in order to solicit the purchase of Bankers Life insurance products.
6. At the time, Consumer A was 67 years of age.
7. Mr. Tibbetts had previously informed Mr. Landry that Consumer A was the policyholder and insured of a universal life insurance policy issued by Kentucky Central Life Insurance Company that was later assumed by Jefferson Pilot Life Insurance Company.

8. Mr. Landry reviewed the Jefferson Pilot policy. The policy had been issued to Consumer A on November 3, 1988, with a death benefit of \$50,000.

9. Mr. Landry also reviewed the account statements for the Jefferson Pilot policy and learned that the value of the policy's accumulation account was in excess of \$8,700. Consumer A was then paying premiums of \$125.00 per quarter, which was below the policy's planned premiums.

10. Mr. Landry then determined that the current \$125.00 quarterly premium payments were insufficient to keep the policy in force until its maturity date and told Consumer A that the policy would lapse within two years.

11. If Consumer A continued to make quarterly premium payments of \$125.00, and if Jefferson Pilot paid only the guaranteed minimum interest rate of 3.00% but charged the guaranteed maximum mortality charges, the policy would have remained in force for at least six and one-half more years.

12. Following his meeting with Consumer A, Mr. Landry worked up a proposal to sell Consumer A a universal life insurance policy with a \$50,000 death benefit to replace his Kentucky Life policy.

13. Mr. Landry then met with his supervisor, Mr. Smith, and discussed his plan to advise Consumer A that he should replace his Jefferson Pilot policy with a Bankers Life universal life insurance policy.

14. Mr. Smith approved Mr. Landry's plan.

15. On September 14, 2000, Mr. Landry returned to Consumer A's residence and proposed that Consumer A replace his Jefferson Pilot policy with a Bankers Life universal life insurance policy. Mr. Landry proposed a policy that would have a \$50,000 death benefit, and a planned premium of \$304.94 quarterly based on standard non-tobacco rates after a Section 1035 rollover and initial premium of \$7,875 from the accumulation account of the Jefferson Pilot policy.

16. Mr. Landry again told Consumer A that his existing policy would lapse early and that it would be to his advantage to replace his existing policy with the proposed Bankers Life policy.

17. At no time did Mr. Landry tell Consumer A that he could prevent the policy from lapsing simply by increasing his premium payments.

18. At no time did Mr. Landry advise Consumer A that the maximum mortality charges of the Bankers Life policy were greater than the maximum mortality charges of the Jefferson Pilot policy.

19. At no time did Mr. Landry advise Consumer A that the expense charges of the Bankers Life policy were greater than the expense charges of the Jefferson Pilot policy.

20. At no time did Mr. Landry advise Consumer A that the surrender charges under the Bankers Life policy would be greater than the surrender charges of the Jefferson Pilot policy.

21. At no time did Mr. Landry advise Consumer A that the maturity date of the Bankers Life policy was five years later than the Jefferson Pilot policy.

22. Consumer A then applied for the proposed policy.

23. As part of this application, Mr. Landry presented Consumer A with a standard agreement that would allow Consumer A to assign his existing policy to Bankers Life in order to affect a tax-free exchange of his existing policy under Section 1035 of the Internal Revenue Code. Consumer A signed the agreement and Mr. Landry signed as a witness.

24. Bankers Life issued the policy on December 12, 2000, but did so under standard tobacco rates and without effecting a Section 1035 exchange.

25. Because the policy that Consumer A applied for was based on a computer-based illustration that did not precisely mirror the policy offered to Consumer A, Mr. Landry understood that he was responsible for obtaining Consumer A's signature on an illustration compliance certificate form that would have to be submitted to Bankers Life.

26. Mr. Landry did not obtain Consumer A's signature on the illustration compliance certificate. The illustration compliance certificate form submitted to Bankers Life purported to bear Consumer A's signature but Consumer A did not in fact sign the form. Mr. Landry knew that Consumer A's signature in the form had not been made by Consumer A or made by another with Consumer A's express authorization.

27. Consumer A subsequently surrendered his Jefferson Pilot policy on December 21, 2000, and transferred the policy's cash value to Bankers Life as the initial premium on the Bankers Life policy. This transaction was not a Section 1035 exchange.

28. On or about December 13, 2000, Respondent Landry delivered a life insurance policy to Consumer B.

29. Pursuant to Bureau of Insurance Rule Chapter 910 § 9(B)2), Respondent Landry was required to obtain a signature from Consumer B on a copy of a basic illustration conforming to the policy as issued no later than the time the policy is delivered and provide a copy of this signed document to Bankers Life and Consumer B.

30. Respondent Landry never obtained Consumer B's signature on a copy of the basic illustration. Rather, Respondent Landry signed Consumer B's signature on a copy of the illustration, without prior express authorization from Consumer B, and submitted this document to Bankers Life.

31. Respondent Landry failed to provide Consumer B, before or at the time the policy was delivered, with a copy of a basic illustration signed by Respondent Landry and Consumer B.

32. Mr. Landry resigned as a producer for Bankers Life in May 2004.

33. Mr. Landry voluntarily ceased engaging in the sale of insurance after May 15, 2004.

34. Mr. Landry's license to sell insurance in Maine was cancelled by administrative order on March 1, 2005, for failure to comply with continuing education requirements for maintaining a license as a resident insurance producer.

Conclusions of Law

35. Mr. Landry's representation to Consumer A that his Jefferson Pilot policy would lapse early was, under the circumstances, a misleading representation of the terms of the Jefferson Pilot policy and constitutes a violation of 24-A M.R.S.A. § 2153 and a basis for sanction under 24-A M.R.S.A. § 1417(1)(B), as it was in effect at the time these acts occurred, as well as 24-A M.R.S.A. § 1417(1)(E), as it was in effect at the time these acts occurred.

36. Mr. Landry's representation to Consumer A that his Jefferson Pilot policy would lapse without explaining that Consumer A could keep the policy in force simply by increasing his premium payments was an incomplete comparison made for the purpose of inducing Consumer A to exchange his policy and constitutes a violation of 24-A M.R.S.A. § 2155 and a basis for sanction under 24-A M.R.S.A. § 1417(1)(B), as it was in effect at the time these acts occurred, as well as 24-A M.R.S.A. § 1417(1)(E), as it was in effect at the time these acts occurred.

37. Mr. Landry's solicitation of the Bankers Life policy without obtaining Consumer A's signature on the illustration compliance certificate form constitutes a violation of Insurance Rule Chapter 910 § 9(B)(1) and 24-A M.R.S.A. § 2152-A and a basis for sanction under 24-A M.R.S.A. § 1417(1)(B), as it was in effect at the time these acts occurred.

38. Mr. Landry's failure to effect the Section 1035 exchange constitutes a basis for sanction under 24-A M.R.S.A. § 1417(1)(H), the applicable statute at the time.

39. Mr. Landry violated the Maine Insurance Code, 24-A M.R.S.A § 2152-A and Bureau of Insurance Rule Chapter 910 § 9(B)(2), because he failed to obtain a signature from Consumer B on a basic illustration conforming to the policy issued to Consumer B no later than the time the policy was delivered.

40. Mr. Landry violated the Maine Insurance Code, 24-A M.R.S.A § 1417(1)(H) when he wrote Consumer B's signature on a copy of the illustration form required by Bureau of Insurance Rule Chapter 910 § 9(B)(2), without prior express authorization from Consumer B, and submitted this document to Bankers Life.

Covenants

Paul A. Landry, the Superintendent, and the Office of the Attorney General agree to the following:

41. This Consent Agreement is entered into in accordance with 10 M.R.S.A. § 8003(5)(B) and is not subject to review or appeal. This Consent Agreement is enforceable by an action in the Superior Court.

42. Paul Landry’s resident insurance producer license shall be deemed, and hereby is, revoked.

43. In consideration of Mr. Landry’s execution of and compliance with the terms of this Consent Agreement, the Superintendent and the Office of the Attorney General agree to forgo pursuing further civil disciplinary measures or other civil or administrative sanction, including fines or penalties, for the violations described in the Stipulations, other than those agreed to in this Consent Agreement. However, should Mr. Landry violate this Consent Agreement, the Superintendent and the Attorney General reserve the right to pursue any available legal remedy for the violation, including without limitation the suspension or revocation of all licenses issued to Mr. Landry by the Superintendent.

44. The parties to this Agreement understand that nothing herein shall affect any rights or interests that any person not a party to this Agreement may possess.

45. Mr. Landry understands and acknowledges that this Agreement will constitute a public record within the meaning of 1 M.R.S.A. § 402, will be available for public inspection and copying as provided for by 1 M.R.S.A. § 408, and will be reported to the National Association of Insurance Commissioners’ “RIRS” database.

46. Mr. Landry has consulted with counsel before executing this Agreement.

47. This Consent Agreement may be modified only by a written agreement executed by all of the parties.

Dated: _____
Paul A. Landry

State of Maine, _____,ss

Personally appeared before me this day _____, and signed this Consent Agreement in my presence.

Notary Public/Attorney

FOR THE OFFICE OF THE ATTORNEY GENERAL

Dated: _____
Andrew L. Black, AAG

BY THE SUPERINTENDENT OF INSURANCE

Dated:

Alessandro A. Iuppa, Superintendent