

In re:
Matthew E. Herman
National Producer # 7897865

] **STATE OF MAINE**
] **BUREAU OF INSURANCE**
] **Docket No. INS-08-212**
] **CONSENT AGREEMENT**
]

INTRODUCTION

This document is a Consent Agreement authorized by Title 10 M.R.S.A. § 8003(5)(B), entered into by and among Matthew E. Herman, a resident of Maine; the Superintendent of the Maine Bureau of Insurance; and the Maine Office of the Attorney General. *See also* 5 M.R.S.A. § 9053(2).¹ Its purpose is to make informal resolution of issues implicating Title 24-A M.R.S.A. §1417(1) and §1420-K(1)(H).

PARTIES

1. The Superintendent of Insurance is the official charged with administering and enforcing Maine's insurance laws and regulations, and the Bureau of Insurance is the administrative agency with such jurisdiction. The Superintendent has jurisdiction over this matter pursuant to the Insurance Code generally, Title 24-A Maine Revised Statutes Annotated, and, in particular, 24-A M.R.S.A. §§ 12-A and 229, as well as other provisions.
2. Matthew E. Herman has been licensed in Maine as an insurance producer with Life & Health and Variable Contract authorities since May 17, 2004. His Maine Producer Number is PRR158107. His National Producer Number is 7897865.

STATUTORY AUTHORITY

3. Under 24-A M.R.S.A. §1417 and §1420-K(1)(H), after notice and opportunity for hearing, the Superintendent may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license or may levy a civil penalty in accordance with section 12-A, or take any combination of such actions, for using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere.

FACTS

4. In July, 2007, based upon Mr. Herman's recommendation, consumer D.L., age 77, a resident of Saco, Maine, purchased a single premium (\$74,996.62) equity indexed deferred annuity through Mr. Herman. The funds for the annuity were to be withdrawn from a mutual fund D.L. had with Vanguard, which was invested in the equity markets.

5. At the time of policy delivery in September 2007, Mr. Herman met with D.L., her son and daughter, and her accountant, at the accountant's office. The meeting was held at D.L.'s request, so that she could get an independent expert opinion from her accountant about the appropriateness of purchasing the annuity.
6. Although the accountant concluded that the annuity would be an acceptable investment for D.L., D.L.'s son expressed concern to Mr. Herman regarding his mother's understanding of the annuity, and asked whether there was any way to undo the transaction. Mr. Herman stated that he would have to check and get back with an answer, because he was unsure whether there were penalties or fees associated with doing so. Everyone at the meeting agreed to leave the annuity in place for the time being while that question was explored.
7. Two to three days following policy delivery, D.L.'s son telephoned Mr. Herman and asked whether there was any way to move back out of the annuity without any charges. Mr. Herman again stated that he would have to check with his branch manager to determine the answer. D.L.'s son asked whether he could ask the manager directly, which Mr. Herman encouraged, but which does not appear to have subsequently occurred.
8. The annuity policy in fact contained a provision providing for an unconditional right to examine and return the policy within thirty days for any reason, with no penalties or fees.
9. The terms of the policy's free look period are absolute and Mr. Herman's failure to so advise - whether well-intentioned or not - misrepresented that policy term.
10. D.L. did not exercise her thirty day right to cancel the policy.
11. In October, 2007, more than 30 days following policy delivery, D.L. filed a complaint with the Bureau of Insurance based upon purchasing an annuity which she did not understand. The issuing company ultimately resolved the specific issue by allowing rescission of the policy, with a full refund plus interest.

VIOLATIONS OF LAW

12. Mr. Herman's failure to advise D.L.'s son of the absolute right to free look the annuity policy violated 24-A M.R.S.A. §1420-K(1)(H).

COVENANTS

13. Mr. Herman agrees to remit to the Maine Bureau of Insurance a civil penalty in the total amount of \$1,500.00, payable to the Treasurer of the State of Maine, at the time of executing this Consent Agreement.
14. Mr. Herman agrees that his Maine producer license will be suspended for a period of fourteen (14) calendar days, during which period he may not engage in any producer activities, nor hold himself out as currently authorized to engage in such activities. The period of suspension will commence on the first Monday following the date of the Superintendent's

signature below. The suspension period will terminate, and Mr. Herman's license will become active, on the 15th calendar day, which will be the second Monday following the commencement of the suspension.

15. Mr. Herman agrees that within six months from the date of this Consent Agreement (as measured from the date of the Superintendent's signature), he will successfully complete six (6) credit hours of ethics training, and report such completion to the Bureau. Such training must be through courses that are approved for the producer Continuing Education ethics requirement in Maine. However, the six credit hours required by this paragraph shall not be credited towards Mr. Herman's regular biennial continuing education requirement which is next due November 30, 2011.

16. In all future cases where Mr. Herman deals with applicants for annuities, in addition to all other obligations relating to disclosure and suitability determinations, Mr. Herman agrees that he will specifically advise each applicant of the applicable "free look" period. For a period of two years from the date of this Consent Agreement and before submitting any such application to the company, Mr. Herman agrees that he will obtain any such applicant's signed acknowledgement that Mr. Herman has made such disclosure, through use of a document substantially in the form of Exhibit A attached.

17. For a period of two years from the date of this Consent Agreement, in addition to all other applicable recordkeeping requirements, including those required of producers generally at 24-A M.R.S.A. §1447, Mr. Herman agrees to be subject to random audits by the Bureau of Insurance of all records pertaining to his producer activity, whether or not of the type specifically enumerated in § 1447, and specifically including copies of the document required by Paragraph 16 above. He will make such records available to the Superintendent at his place of business at any time during normal business hours, and will promptly comply with any requests to produce such records at the offices of the Bureau of Insurance.

18. The Parties to this Consent Agreement understand that nothing herein shall affect any rights or interest that any person not a party to this Agreement may possess.

19. Nothing in this Consent Agreement shall be construed to excuse any obligation or duty of Mr. Herman to past or present clientele.

20. This Consent Agreement does not preclude the State of Maine or any of its agencies from seeking in a judicial forum any remedy for illegal conduct by Mr. Herman, other than the conduct that is addressed in this Consent Agreement, the sole remedy for which is set forth herein.

21. This Consent Agreement is enforceable by an action in Maine Superior Court.

22. This Consent Agreement is not subject to appeal.

23. This Consent Agreement may be modified only by a written agreement executed by all of the signatories hereto.

24. This Consent Agreement is a public record subject to the provisions of the Maine Freedom of Access Law, 1 M.R.S.A. §§ 401 through 410, 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.

25. By his signature on this Consent Agreement, Mr. Herman indicates that he has read the Agreement, that he understands the Agreement, that he has reviewed the statutory provisions he has violated, that he has been advised of his right to consult with counsel and has had an opportunity to consult with counsel before signing the Agreement, and that he enters into the Agreement voluntarily and without coercion of any kind from any person.

¹ As authorized pursuant to 5 M.R.S.A. § 9053(2), the Superintendent may "[m]ake informal disposition of any adjudicatory proceeding by stipulation, agreed settlement or consent order."

Matthew E. Herman

Dated: October 15, 2010

Matthew E. Herman

State of Maine, Cumberland, ss

Subscribed and Sworn to before me
this 15 day of October, 2010.

Notary Public

Lisa M. Caldwell_____
(printed name)

THE MAINE SUPERINTENDENT OF INSURANCE

Dated: October 20, 2010

Mila Kofman, Superintendent

FOR THE OFFICE OF THE ATTORNEY GENERAL

Dated: October 19, 2010

Assistant Attorney General

Thomas C. Sturtevant, Jr. _____
(printed name)

Exhibit A

DISCLOSURE FORM

ANNUITY "FREE LOOK" PERIOD

The undersigned annuity applicant acknowledges that the licensed insurance producer indicated below has disclosed that the annuity in the principal amount of \$ _____ for which I have applied on this date provides for a "free look" examination period for a period of _____ days after delivery of the contract to me, during which **I shall have the unconditional right to examine and cancel the contract if desired for a full refund, with no charges or penalties.**

Dated: _____

Applicant's signature

Applicant's printed name

Dated: _____

Producer's signature

Producer's printed name