

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

**IN RE:** )  
**BENJAMIN T. WATTS** )  
**Maine Producer License No. PRR11206** )  
 )  
**Docket No. INS 08-303** )  
 )  
 )

**DECISION AND  
ORDER**

The Superintendent of Insurance issues this Decision and Order in the above-captioned proceeding.

**1. PROCEDURAL HISTORY**

By Order issued March 4, 2009, Maine Superintendent of Insurance Mila Kofman delegated all legal authority to Bureau of Insurance attorney Pamela Stutch to act in the Superintendent's name as the Presiding Officer in an adjudicatory proceeding to determine whether grounds exist for the Bureau to impose sanctions against Benjamin T. Watts for conduct related to certain of his activities while a licensed insurance producer in the State of Maine. On March 19, 2009, the Presiding Officer issued a Notice of Hearing scheduling a public hearing in this proceeding pursuant to 10 M.R.S.A. § 8003(5)(A-1) and 24-A M.R.S.A. § 12-A.

The hearing was held in response to allegations that Mr. Watts had committed misconduct. The Bureau of Insurance Staff ("Petitioner"), appearing as a party pursuant to 5 M.R.S.A. § 9054(5), alleged that Mr. Watts, in dealings with his clients Jennie Pearse Clark and Howard Clark, wrongfully used knowledge gained as an insurance producer for personal gain, in violation of 24-A M.R.S.A. § 1445(2)(A); and that in the course of that conduct, he used fraudulent, coercive, or dishonest practices or demonstrated untrustworthiness in the conduct of business, in violation of 24-A M.R.S.A. § 1420-K(1)(H).

The public hearing was conducted on April 27, 2009, as scheduled. The Petitioner was represented by Assistant Attorney General James M. Bowie, assisted by Bureau attorney Arthur G. Hosford, Jr. Mr. Watts represented himself.<sup>1</sup> Offered and admitted into evidence were Petitioner Exhibits A through F and Respondent Exhibits 1 through 9.<sup>2</sup>

Testimony under oath was provided by Petitioner witnesses Jennie Pearse Clark and Willis Smedberg, and by Mr. Watts, who presented himself as a witness.

The proceeding was conducted in accordance with the applicable provisions of the Maine Administrative Procedure Act, 5 M.R.S.A. §§ 9051-9064, the Maine Insurance Code, 24-A M.R.S.A. §§229-236, and Bureau of Insurance Rule 350. Each party had the right to present evidence, to examine or cross-examine witnesses, and to be represented by counsel.

## II. ALLEGED STATUTORY VIOLATIONS; STATUTORY REMEDIES

At hearing, the Petitioner alleged that Benjamin T. Watts violated the Maine Insurance Code at 24-A M.R.S.A. § 1445(2)(A) and § 1420-K(1)(H). The Petitioner requested that the Superintendent revoke Mr. Watts' insurance producer license. This authority is available pursuant to 10 M.R.S.A. § 8003(5)(A-1)(2-A), 24-A M.R.S.A. § 1420-K(1)(H), and 24-A M.R.S.A. § 1420-K(1)(B). Other statutory remedies are available to the Superintendent under 24-A M.R.S.A. § 12-A.

### *A. Alleged Statutory Violations*

Pursuant to 24-A M.R.S.A. § 1445(2)(A) a Maine licensed insurance producer may not "[u]se knowledge gained as a result of the producer's insurance relationship with the insurance consumer for the producer's own personal gain, other than the receipt of fees or commissions allowed under section 1450."

Under 24-A M.R.S.A. § 1420-K(1)(H), a producer may not use "fraudulent, coercive or dishonest practices," or demonstrate "incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere."

### *B. Statutory Remedies*

Civil Penalties: Pursuant to 24-A M.R.S.A. § 12-A(1), the Superintendent is authorized, following an adjudicatory hearing, to assess a civil penalty of up to \$500 for each violation by an individual, unless the applicable law specifies a different civil penalty. Pursuant to 10 M.R.S.A. § 8003(5)(A-1)(3), "(i)n addition to authority otherwise conferred, unless expressly precluded by language of denial in its own governing law" the Bureau of Insurance may "(i)mpose civil penalties of up to \$1,500 for each violation of applicable laws, rules and conditions of licensure or registration or for instances of actionable conduct or activity."

Restitution: The Superintendent may also order restitution under 24-A M.R.S.A. § 12-A(6) for “any insured ... injured by a violation for which a civil penalty may be assessed pursuant to this section.”

License Actions: Under 24-A M.R.S.A. § 1420-K(1)(H), 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 if the producer uses “fraudulent, coercive or dishonest practices” or demonstrates “incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere.” Under 24-A M.R.S.A. § 1420-K(1)(B), the Insurance Code permits the Superintendent similar authority for an insurance producer’s violation of “any insurance laws.” Similarly, 10 M.R.S.A. § 8003(5)(A-1)(2-A) provides that “(i)n addition to authority otherwise conferred, unless expressly precluded by language of denial in its own governing law” the Bureau of Insurance, “(f)or each violation of applicable laws, rules or conditions of licensure or registration may” . . . “(r)evolve a license or registration.”

### III. FINDINGS OF FACT

Based upon the testimony and exhibits presented at the hearing, and after considering the parties’ respective arguments, the Presiding Officer finds that:

1. Benjamin T. Watts is licensed by the Maine Superintendent of Insurance as a resident insurance producer under License No. PRR11206. Mr. Watts has been a licensed resident insurance producer since 1981.
2. For approximately the past 20 years Mr. Watts served as Ms. Pearse Clark’s insurance agent, selling at least one policy to Ms. Pearse Clark.
3. Ms. Pearse Clark was married to Basil Pearse until he died; she then married Howard Clark. Mr. Clark is now deceased.
4. Ms. Pearse Clark provided information to Mr. Watts about her finances, including insurance, savings accounts, and income.
5. In 2002, Mr. Watts borrowed \$50,000 from Ms. Pearse Clark and Mr. Howard Clark.
6. Mr. Watts told Mr. Clark and Ms. Pearse Clark that he would pay them back the \$50,000 with 8% interest.
7. Mr. Watts, Mr. Clark and Ms. Pearse Clark executed a contract on August 2, 2002, in which Mr. Clark and Ms. Pearse Clark gave \$50,000 to Mr. Watts and in exchange, Mr. Watts agreed to pay \$500 per month to Mr. Clark until he died, then to Ms. Pearse Clark until she died, and finally to Basil A. Pearse until Mr. Pearse died. When all three people were deceased, the contract was to terminate without remaining value.<sup>3</sup>
8. Mr. Watts made 17 or 18 payments of \$500. The last payment was made in October or November of 2004.

9. On December 20, 2003, Mr. Watts borrowed \$30,000 from Mr. Clark and Ms. Pearse Clark to be paid back by July 1, 2004 with 8% interest. On that date, Mr. Watts and Ms. Pearse Clark executed a promissory note to this effect.
10. Mr. Watts did not pay back any of the \$30,000 or interest owed.
11. Ms. Pearse Clark and Mr. Clark sued Mr. Watts in Superior Court for the money owed them. On June 15, 2007, as evidenced by a Stipulation of Judgment, Mr. Watts agreed to a final settlement of \$75,000 against him. Pre-judgment interest was set at a rate of 7.36% and post-judgment interest was set at 10.36%.
12. Mr. Watts has not paid any of the \$75,000 settlement or interest owed.
13. In March of 2003, Mr. Watts assisted Ms. Pearse Clark and Mr. Clark in opening an account with Sentinel Funds with an initial investment amount of \$71,361.68. To fund the investment, Ms. Pearse Clark cashed out two annuities with Jackson National Life Insurance Company.
14. Mr. Watts assisted Ms. Pearse Clark in preparing the letter to Jackson National Life Insurance Company requesting the annuity cancellations.
15. A portion of the annuity proceeds funded the December 20, 2003, loan to Mr. Watts.

#### IV. POSITIONS OF THE PARTIES

The Petitioner argued that Mr. Watts knew of the Clarks' financial situation, in particular that Mr. Watts knew that Ms. Pearse Clark had money she was able to lend him, and that with that knowledge, he obtained at least two personal loans from them. The Petitioner maintained that whether Mr. Watts intended to pay back the loans or not is irrelevant, and that even if he had paid them back he would have still violated 24-A M.R.S.A. § 1445(2)(A).

The Petitioner also argued Mr. Watts violated 24-A M.R.S.A. § 1420-K(1)(H) by taking a loan from Ms. Pearse Clark and Mr. Clark, promising to pay it back and then failing to do so.

Mr. Watts argued vehemently that he never intended to commit fraud or deceive the Clarks and that he intended to pay them back all of the money he owed to them. He maintained that he never had access to any of their checking accounts and that he was never a stockbroker. He explained that the only financial activity performed for Ms. Pearse Clark and Mr. Clark was to write an application for a mutual fund with Sentinel Funds with free check writing. He stated that he had given up his license with FINRA, formerly the NASD, in June of 2008.

Mr. Watts motioned for an extension of time to submit further documentation. The basis of his motion was to demonstrate his lack of his intent to defraud Ms. Pearse Clark. He asserted that he has been attempting to obtain to gain access to his office containing relevant material since the fall of 2008. The Presiding Officer denied his motion.<sup>4</sup>

#### V. ANALYSIS AND CONCLUSIONS OF LAW

A. 24-A M.R.S.A. § 1445(2)(A): Use of knowledge gained as a result of the producer's insurance relationship with the insurance consumer for personal gain.

As noted above, the Petitioner alleges that Mr. Watts used "knowledge gained as a result of the producer's insurance relationship with the insurance consumer for the producer's own personal gain," in violation of § 1445(2)(A).

The Petitioner has the burden of proving the allegations asserted against Mr. Watts. It is undisputed that Mr. Watts borrowed money from Ms. Pearse Clark and Mr. Clark. It is also undisputed that Mr. Watts had an insurance relationship with Ms. Pearse Clark. Inherent in such a relationship is knowledge of a client's financial situation. Furthermore, one of the loans was funded with proceeds of an insurance transaction that Mr. Watts had facilitated. Ms. Pearse Clark's affidavit (Petitioner Exhibit C) further attests to Mr. Watts' knowledge of her finances. Mr. Watts, as an insurance professional, was a trusted financial adviser with sophistication in financial matters that neither Ms. Pearse Clark nor Mr. Clark possessed. As set forth in Section III paragraphs 13 and 14, Mr. Watts assisted the Clarks with financial matters. Although Mr. Watts argued that he does not maintain a "stockbroker's license"<sup>5</sup> and therefore, had no knowledge of the Clarks' finances, a stockbroker's license is not required for an insurance producer to have knowledge of an insurance client's financial situation.

Although Mr. Watts testified that he intended to pay the Clarks back, that is not relevant to whether he abused his access to information for personal gain, in violation of § 1445(2)(A). Mr. Watts gained knowledge of the Clarks' financial situation through this insurance relationship with them and on the basis of that knowledge, Mr. Watts acquired two personal loans from the Clarks. Obtaining \$80,000 in unsecured credit is a personal gain, and it was not compensation earned for an insurance transaction in accordance with 24-A M.R.S.A. § 1450. The Superintendent therefore concludes that Mr. Watts violated § 1445(2)(A) by using knowledge gained as a result of his insurance relationship with the Clarks for his own personal gain.

B. 24-A M.R.S.A. § 1420-K(1)(H): Using fraudulent, coercive or dishonest practices, or demonstrating incompetence or untrustworthiness in the conduct of business

As noted above the Petitioner alleges that by engaging in the course of dealings with the Clarks as described above, Mr. Watts used "fraudulent, coercive or dishonest practices," and that he demonstrated "incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere."

Mr. Watts took money from his insurance clients as a loan, with a promise to pay them back with interest. Mr. Watts did not pay them back, even following the judgment against him for the money owed. I conclude that such actions constitute a dishonest practice that demonstrates untrustworthiness in the conduct of business. If he was unable to pay his trusting clients back, that would be a further indication of financial irresponsibility.

## VI. SANCTIONS

As stated previously, 24-A M.R.S.A. § 12-A(1) authorizes the Superintendent to assess civil penalties for each violation of the Insurance Code and § 12-A(6) permits the Superintendent to order restitution for any insured injured by a violation for which a civil penalty may be assessed pursuant to that section.

In addition to civil penalties and restitution, an insurance producer is subject to a license action if the producer engages in "fraudulent, coercive or dishonest practices" or demonstrates "incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere" See 24-A M.R.S.A. § 1420-K(1)(H). An insurance producer is also subject to a license action for violation of any insurance laws. 24-A M.R.S.A. § 1420-K(1)(B). Similarly, 10 M.R.S.A. § 8003(5)(A-1)(2-A) grants authority to the Superintendent to "[i]n addition to authority otherwise conferred," to revoke a license.

In determining the appropriate remedy, I consider the violation, extent of the wrongdoing, and the circumstances surrounding the conduct to assure that the remedy is reasonable in relation to the violations that were committed. That consideration includes factors such as harm to others, acceptance of responsibility by the actor, and the nature of the violation.

The matter before me in this proceeding involves allegations of two statutory violations: sections 1445(2)(A) and 1420-K(1)(H). I have found from the record that the Petitioner has proven both allegations.

To protect consumers, regulators must hold licensed insurance producers to the highest standards of conduct. The authority given and trust placed in licensed insurance producers enables some to easily take advantage of their clients. Mr. Watts took blatant advantage of that authority and trust by taking two personal loans from his client and then failing to pay them back.

Mr. Watts denies any wrongdoing. However, there should be no question in the mind of any honest insurance producer that it is unlawful and reprehensible to take a personal loan from an elderly client based upon knowledge gained from the insurance relationship, and then fail to pay

her back even following a court judgment. Mr. Watts' actions violated the public trust placed with insurance producers and the fiduciary responsibilities Mr. Watts owes to his clients. Rather than being remorseful, Mr. Watts remained defiant throughout the proceeding, asserting that he intended to repay Ms. Pease Clark and that made everything all right. Mr. Watts did not appear to understand that as an insurance producer, he owes a certain duty of conduct to all of his clients, and that taking personal loans from a client violates that duty. That he failed to pay back the loans only magnifies the wrongfulness of his actions.

After weighing all of these considerations, I hereby grant the request the Petitioner's request for revocation of Mr. Watts' resident insurance producer license.

I decline to impose monetary penalties pursuant to 24-A M.R.S.A. § 12-A(1) or 10 M.R.S.A. § 8003(5)(A-1)(3). The Petitioner did not request that the Superintendent impose civil penalties in addition to license revocation. Although I find that Mr. Watts' conduct to be sufficiently egregious as to be deserving of financial penalties in addition to license revocation, the penalties allowable by law are minuscule compared to the money owed to Ms. Pease Clark. I would not wish to delay Mr. Watts' payment to Ms. Pease Clark any longer by requiring that Mr. Watts submit civil penalties to the Bureau. Mr. Watts' repayment to Ms. Pease Clark must be his first priority.

For similar reasons, I decline to grant restitution pursuant to 24-A M.R.S.A. § 12-A(6). The Petitioner did not request that restitution to Ms. Pease Clark be awarded in this matter. Moreover, I would not wish to complicate Ms. Pease Clark's recovery of her money by adding an administrative layer that may prove to be more harmful than helpful to her. The Superior Court has already issued a judgment against Mr. Watts for the money owed to Ms. Pease Clark plus accruing interest. The most expeditious way for Ms. Pease Clark to recover her money is to enforce the judgment in Superior Court.

## VII. ORDER

For the reasons set forth in this Decision, the Superintendent ORDERS that Benjamin T. Watts' Resident Producer License # PRR11206 is hereby REVOKED pursuant to 24-A M.R.S.A. § 1420-K(1)(H), 24-A M.R.S.A. § 1420-K(1)(B), and 10 M.R.S.A. § 8003(5)(A-1)(2-A).

### **Notice of Appeal Rights**

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act.

It may be appealed to the Superior Court in the manner provided in 24-A M.R.S.A. §236, 5 M.R.S.A. § 11001 *et seq.* and M.R. Civ. P. 80C. Any party to the hearing may initiate an appeal within thirty (30) days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal within 40 days after the issuance of this Decision and Order. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S.A. § 11004.

The effective date of this Decision and Order shall be the date of the Presiding Officer's signature below.

<sup>1</sup> Although Mr. Watts indicated that he had an attorney, his attorney was not present due to another obligation. Neither the attorney nor Mr. Watts requested a continuance.

<sup>2</sup> The list of exhibits entered into the hearing record is as follows:

Petitioner Exhibit A - Notice of Hearing  
Petitioner Exhibit B - Licensee Report  
Petitioner Exhibit C - Affidavit of Jennie Pearse Clark  
Petitioner Exhibit D - Stipulation of Judgment  
Petitioner Exhibit E - Affidavit of Benjamin Watts  
Petitioner Exhibit F - Letter from Benjamin Watts to Susan Thiem Dated 10/2/05

Respondent Exhibit 1 - Fax Cover Sheet Dated 7/30/02  
Respondent Exhibit 2 - Sentinel Funds Application  
Respondent Exhibit 3 - Letter of Acknowledgement Regarding Change in Investment Portfolio  
Respondent Exhibit 4 - Letter From Jackson National Life Ins. Co. Dated 12/4/02 and Check Copies  
Respondent Exhibit 5 - Letter From Jackson National Life Ins. Co. Dated 2/10/03/Benefit Voucher  
Respondent Exhibit 6 - Declination Notice to Howard Clark Dated 5/2/03  
Respondent Exhibit 7 - Policy Cancellation Letter Dated 1/31/03  
Respondent Exhibit 8 - Policy Cancellation Letter Dated 1/6/03  
Respondent Exhibit 9 - Golden Rule Long Term Care Insurance Claim Form

<sup>3</sup> Although this contract appears to be an annuity, Mr. Watts' affidavit (Petitioner Exhibit E) denies that the loan was written as an annuity. The Petitioner did not accuse Mr. Watts with the unauthorized writing of an annuity; therefore, the Presiding Officer declines to address the issue.

<sup>4</sup> Mr. Watts testified that he sold his business to his stepson and that he has not been able access to the office since September 2008. He was unable to articulate the nature of the documents he asserted a need for more time to present, or their relevance to this proceeding.



<sup>5</sup> It is unclear whether Mr. Watts was referring to the securities license he surrendered or to a license that he has never held.

May 27, 2009

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Pamela Stutch, Esq.  
Presiding Officer