



Paul R. LePage
GOVERNOR

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BUREAU OF INSURANCE
34 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0034

Mila Kofman
SUPERINTENDENT

***In re* PAUL A. DYER**

**Maine License No. PRR12598
National Producer No. COR 56235**

DOCKET NO. INS-09-217

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DECISION AND ORDER

The Staff of the Bureau of Insurance has requested that the Superintendent revoke the insurance licenses of Paul A. Dyer and to impose other appropriate disciplinary sanctions as permitted by law, for multiple violations of the Maine Insurance Code. For the reasons discussed more fully below, Mr. Dyer’s Resident Insurance Producer License and his Resident Insurance Consultant License are both revoked, and he is ordered to pay a civil penalty of \$5,500 and restitution, with interest, of all fees and commissions received with regard to transactions with his client J.V.

Background and Procedural History

Mr. Dyer has been licensed by the Bureau of Insurance since 1982. Dec. 2 Tr., at p. 15. He currently holds a Resident Insurance Producer License and a Resident Insurance Consultant License. Dec. 2 Tr., at p. 15. On December 16, 2009, Bureau of Insurance Staff filed a Petition for Enforcement alleging numerous violations of the insurance laws. The Superintendent issued a Notice of Hearing on September 23, 2010, and held a public adjudicatory hearing on December 2 and 3, 2010, with Bureau Staff appearing as a party pursuant to 5 M.R.S. § 9054(5). At the conclusion of the hearing, the record was held open to allow for written arguments to be submitted. The record closed with submission of Mr. Dyer’s reply argument on January 31, 2011.

Findings of Fact

Mr. Dyer and J.V. became acquainted in the fall of 2004, following a speech he made at the Augusta Civic Center Senior Fair on long term care protection. Dec. 2 Tr., at pp. 28-29; 91-92; Dec. 3 Tr., at p. 15; *see also* Resp. Exh. 1, at p.1 (letter from Attorney Bickerman to Attorney Stutch, dated November 17, 2008).

After they met, Mr. Dyer and J.V. had several meetings, and J.V. decided to apply for long term care insurance. She was denied long term care coverage, however, on a medical basis. Dec. 2

Tr., at p. 30; Resp. Exh. 1, at p. 2. Mr. Dyer testified that the denial of long term care coverage necessitated more complicated planning to make sure J.V.'s assets were not dissipated by long term care needs and she could pass her estate down to her heirs. Dec. 2 Tr., at pp. 105, 118-20.

J.V. signed a Consultant Agreement with Mr. Dyer on January 18, 2005, agreeing to pay for up to ten hours of consulting time, and that his consulting fee would be offset by any commission he received. Staff Exh. 5. Pursuant to the agreement, J.V. engaged Mr. Dyer "to review her insurance programs, estate and financial plans" and "offer advice, counsel, opinion, or service with respect to the benefits, advantages, or disadvantages of the clients [*sic*] current plans or needs" and to "make proper evaluation of such programs or needs." Staff Exh. 5. The Consultant Agreement contemplated that a detailed, final report would be provided to J.V. after a plan had been made and implemented. Staff Exh. 5.

Mr. Dyer testified that J.V. told him she was concerned that she had allowed her long term care insurance to lapse and that she wanted to pass her estate down to her heirs. Dec. 2 p, at p. 29; 91-92. He testified that J.V.:

had applied for long-term care insurance, and she had been denied the coverage on a medical basis,¹ so we had determined that she was not going to be able to reinsure in a traditional manner, and so as part of the planned speech that I did in the Augusta Civic Center, it was there's only two other ways to do it, and that's to be wealthy enough to privately pay or be poor enough to be able to qualify for MaineCare, and so we went into the next way to solve her problem, which was to prepare her estate to be able to qualify for MaineCare. It's a large undertaking, and so she signed a consultant's agreement that she would pay for ten hours of consulting time and a plan, and she would commit to paying for that time regardless of whether she implemented the plan or not.

Dec. 2 Tr., at p. 30. According to Mr. Dyer, he created a four part plan "that would guarantee her an income stream so that she could safely reinvest assets in other tools that would have a higher yield, and then do that inside a special needs trust that was owned by her grandchildren or [K.L.] or both." Dec. 2 Tr., at p. 39. K.L. is J.V.'s oldest granddaughter. Dec. 3 Tr., at p. 25. However, Mr. Dyer referred to her separately because he believed that she was a "lifetime friend," Dec. 2 Tr., at p. 29, "whom she regarded as a surrogate child," Resp. Exh. 23, at p. 2. Mr. Dyer testified that the goal was to "get the three-year clock clicking on the gift rules in the State of Maine in order to make sure that if she ever did end up needing long-term care, that she would essentially not have any assets at that point other than her home." Dec. 2 Tr., at p. 39.

The alleged four-part plan was never reduced to a single document. Mr. Dyer testified that he told J.V. orally what the four components of the plan would be, but never communicated his plan in writing. Dec. 2 Tr., at pp. 119-20. Mr. Dyer testified that he assembles his planning documents, including policy and investment documents, for his clients once all of the components are in place. Dec. 2 Tr., at pp. 106-08. He also testified that J.V. stopped

¹ Mr. Dyer described J.V. as suffering from "minor breathing discomfort, so no big issue there." Dec. 2 Tr., at p. 146. J.V. testified that she has been a smoker for many years and was turned down because she suffers from COPD (chronic obstructive pulmonary disorder). Dec. 3 Tr., at p. 18-19.

participating in the planning process before the plan could be compiled and that, indeed, its components had not all been selected and put in place. Dec. 2 Tr., at pp. 83, 87-88; Resp. Exh. 1, at 3-4. He pointed to a November 17, 2008 letter from his attorney to Bureau Staff Attorney Pamela Stutch as embodying the plan. Dec. 2 Tr., at p. 45. Other than this “after the fact” letter to the Bureau from his attorney attempting to document the existence of the plan, there is no evidence adequately documenting its existence, nor documentation that the plan was properly explained to J.V. I find that the four part plan was not adequately documented or explained to J.V.

J.V. holds an annuity through Modern Woodmen of America, a fraternal benefit society. Staff Exh. 22. The one component of Mr. Dyer’s plan that was completed was the surrender of a portion of that annuity and its replacement, through a tax-free partial exchange under Section 1035 of the Internal Revenue Code, with a single-premium immediate annuity (“SPIA”) issued by Fidelity and Guaranty Life Insurance Company. That company was purchased shortly thereafter by the Old Mutual Financial Network, Dec. 2 Tr., at p. 66, and both the predecessor and successor companies will be referred to for simplicity as “Old Mutual.”

At the time of the partial 1035 exchange, the Modern Woodmen annuity had a value of \$143,818.58, a base interest rate of 5.45%, earned an additional credited interest rate of 0.25% on balances over \$100,000.00, had a guaranteed interest rate of 4.00%, and paid J.V. a fixed monthly withdrawal of \$550.00. Staff Exh. 22. Mr. Dyer testified that he was concerned that too much of J.V.’s money (90%) was tied up in the annuity, and that he was concerned about Modern Woodmen’s real estate investments, although he acknowledged that the crisis in the real estate market a few years later did not seem to have a great effect on Modern Woodmen’s financial condition. Although it is illegal to use the existence of the Maine Life and Health Insurance Guaranty Association for the purpose of soliciting an insurance purchase, 24-A M.R.S. § 4620, Mr. Dyer testified that “I explained to her that Modern Woodmen is a fraternal benefit society and that she — if they went bankrupt, she’d have no recourse with the Bureau of Insurance,² she’d have no recourse with the FDIC, she would just be broke.” Dec. 2 Tr., at p. 49. He testified that it didn’t make sense for J.V. to have that much money in a tax-deferred annuity because she was in a very low tax bracket. Dec. 2 Tr., at pp. 42, 48.

On May 31, 2005, Mr. Dyer and J.V. submitted an application to Fidelity and Guarantee Life (F&G) (now “Old Mutual”) for a Single Premium Immediate Annuity (“SPIA”). Staff Exh. 6; Dec. 2 Tr., at p. 37. Mr. Dyer did not review the SPIA application with J.V. personally, but rather mailed it to her with “sign here” stickers. Dec. 2 Tr., at pp. 64-65. J.V. did not understand what a SPIA or a partial 1035 exchange was. Dec. 3 Tr., at p. 19. Mr. Dyer testified that he had received a quotation offering a 2% to 3% interest rate on the Old Mutual annuity, and told J.V. that would be the expected yield. Dec. 2 Tr., at pp. 50-51. His attorney’s letter to the Bureau of Insurance described this as “the best quotation” he could find. Resp. Exh. 23, at p. 3. “Unfortunately,” he continued, “Mr. Dyer does not have a copy of the signed quote his office received” from the broker that allegedly provided the quotation. Resp. Exh. 23, at p. 3.

² Mr. Dyer subsequently clarified that what he meant was that “for whatever reason we don’t include it in the Maine State Guarantee Fund.” Dec. 2 Tr., at p. 49.

Mr. Dyer testified that he warned J.V. that the yield on the Old Mutual annuity would be “very, very low, but ... then I said we’ll make up for whatever we lose there between income tax savings and netting that out over the period of time, and then also of increase in her income on the other components, and then reinvesting in whatever else it was that we chose.” Dec. 2 Tr., at p. 63. He also testified that it did not really matter because “A SPIA isn’t about yield.” Dec. 2 Tr., at p. 62.

Those explanations are either grossly incompetent or fraudulent. When one is investing a fixed sum for a fixed term at a fixed return, as in this SPIA, yield is one of the most important considerations. That is why it figures so prominently in the quotations. Mr. Dyer’s claim that tax savings could somehow make up for the lower yield is inconsistent with his professed rationale that J.V. had no need for tax benefits and should not have had her assets tied up in a tax-deferred investment. In any event, it is mathematically impossible for the tax savings associated with a lower income to make up for the loss of income, and all of the other strategies that Mr. Dyer cited could have been pursued even if the funds used to purchase the SPIA had been left in the Modern Woodmen annuity where they were then earning 5.8%,³ with a guaranteed annual minimum rate of 4%. And if the reason for selling J.V. a SPIA was so that she could maintain an income stream while relinquishing control over the underlying asset, any potential benefit of that sort was placed in doubt by Mr. Dyer’s failure to have the “Senior Safeguard” box checked on the Old Mutual application,⁴ Staff Exh. 6, and his direction that J.V. name her estate as the annuity’s residual beneficiary, Staff Exh. 7. His explanation for that recommendation was that “if one of my administrative staff wrote that in, it was for a lack of knowing what else to say.” Dec. 2 Tr., at p. 79.

Furthermore, J.V. testified that she was never given the warnings Mr. Dyer said he gave her. She was not told that she would need to accept a lower yield on her investment because a SPIA was essential to a Medicaid impoverishment strategy. Indeed, when J.V. was asked whether Mr. Dyer had ever discussed “the advantages and disadvantages of giving a lot of money to your kids before you die or leaving it to them after you die,” J.V. testified “If he did, you know what my answer would have been? N-O.... I’m hanging onto it until I don’t need it anymore.” Dec. 3 Tr., at p. 55.

Nor was J.V. told that Mr. Dyer recommended a lower-yielding investment because he had concerns over the safety of Modern Woodmen. Dec. 3 Tr., at pp. 54-55. Furthermore, she was not told that Old Mutual’s investment yield would be lower. Quite the opposite, she testified consistently and unequivocally that Mr. Dyer represented to her that she would receive 6% to 7% interest. Dec. 3 Tr., at pp. 17, 24, 40 and 43. Mr. Dyer’s own testimony refers vaguely to “lots of contracts paying six, seven, eight percent guaranteed interest,” but he said that refers to a different stage of his four-part plan. Dec. 2 Tr., at p. 62. Despite his professed concerns over the

³ The base rate was 5.45%, and the part of the account that was exchanged was earning an additional 0.25% because the remainder of the account value exceeded \$100,000. Staff Exh. 22; Dec. 2 Tr., at p. 47; Dec. 3 Tr., at pp. 3-4.

⁴ Mr. Dyer testified that he chose Old Mutual because of its strong reputation in the Medicaid planning market, Dec. 2 Tr., at pp. 138-39, but the Old Mutual annuity he sold J.V. was not Old Mutual’s recommended Medicaid planning product, Dec. 2 Tr., at pp. 154-55, 172-73.

safety of Modern Woodmen and the proportion of J.V.'s assets that was concentrated in a single institution, Mr. Dyer testified that the first company he approached about a partial 1035 exchange was Modern Woodmen itself. Dec. 2 Tr., at pp. 51-52.

Mr. Dyer contends that J.V. is not credible because she demonstrated significant short-term memory impairment during the course of the hearing, and acknowledged that she had memory problems. Dec. 3 Tr., at pp. 32, 40, 44. However, when she lacked memory of prior events, she readily acknowledged it. Her testimony on the most important points was clear and consistent, it was corroborated by the written evidence and the credible portions of Mr. Dyer's own testimony, and I find it highly credible. Furthermore, the concerns over J.V.'s possible cognitive impairment make it especially troubling that Mr. Dyer consistently failed to explain his plans to J.V. in writing or to maintain adequate records of his planning activities and his conversations.⁵

Furthermore, it turned out that the yield on the Old Mutual SPIA was not the 2% to 3% that Mr. Dyer testified that he was quoted. It was negative. The Old Mutual SPIA was issued, effective June 20, 2005, for a premium of \$39,326.50. Staff Exh. 6, 7, 22; Dec. 2 Tr., at p. 51. It had a fixed monthly payment of \$648.23 per month for a 5 year period. Staff Exhs. 7 and 9. This means that the total amount paid back over the five-year period would be \$38,893.80, which is \$432.70 less than the return on leaving the money in a mattress over the same period of time. Even with the most pessimistic assumptions about the future performance of the Modern Woodmen annuity, this means that J.V. lost more than \$7,000 on the transaction. Dec. 3 Tr., at pp. 66-68.

It was J.V. who first brought the problem to Mr. Dyer's attention. Dec. 3 Tr., at p. 25. According to her, he seemed surprised. Dec. 3 Tr., at p. 27. Factors contributing to the problem were the inclusion of a 2% premium tax, the sales commission payment and the low policy amount. Dec. 2 Tr., at pp. 155-156. Mr. Dyer did not discuss the 2% premium tax or his commission with J.V. Dec. 3 Tr., at p. 19. Old Mutual eventually responded by increasing her monthly payments. Dec. 2 Tr., at p. 155. The payments were increased to \$662.65 per month. Dec. 3 Tr., at pp. 53, 57.

Mr. Dyer made efforts with Old Mutual to resolve the problem with the SPIA on J.V.'s behalf. Dec. 3 Tr., at p. 66; Staff Exh. 12. He testified that, at some point in October or November, 2007 he received a message on his answering machine from Old Mutual promising to refund J.V. her SPIA premium payment. Dec. 2 Tr., at pp. 67-68, 98-102. Mr. Dyer claimed he did not save the message because it was recorded on a digital answering machine. Dec. 2 Tr., at pp. 70-71. However, he testified that when he received the message he immediately called J.V. and played it for her, twice. Dec. 2 Tr., at pp. 67-68. J.V. had no memory of hearing the message (Dec. 3 Tr., at pp. 21-23), and this would have been a very important event for her. See Dec. 3 Tr., at p. 23. She testified that she "would remember that if they had said it." Dec. 3 Tr., at p. 51.

⁵ Mr. Dyer asserts that he gave the Bureau more extensive client records but the Staff failed to introduce them into evidence, and therefore, no inferences may be drawn from any lack of documentation. Resp. Closing Argument, at p. 10 n.7. He argues that because the Staff has the burden of proof, he had no obligation to introduce any documents that might exonerate him. *Id.* The Staff, however, only has the burden of proving its own case, not the Respondent's case. I must decide this matter on the basis of the evidence the parties have chosen to present.

Mr. Dyer also represented to Old Mutual that the company left the message on his answering machine. Staff Exh. 11. A similar representation was made to Bureau of Insurance Staff during its investigation of this matter. Staff Exh. 14. However, Old Mutual had no record of such a phone call being made to Mr. Dyer's office. Dec. 2 Tr., at p. 215; Staff Exhs. 20, 21. Old Mutual's staff is trained to specifically document phone calls made and received by the company and, according to Russell Laws, Old Mutual's Vice President, a deviation from its procedures for documenting phone calls is uncommon. Dec. 2 Tr., at pp. 218-219. Mr. Dyer offered no client records documenting any such a message. The only contemporaneous evidence that the message existed were Mr. Dyer's e-mails to Old Mutual. I find, based on the consistent evidence of J.V.'s testimony, Mr. Laws's testimony, and all the remaining written records of both Mr. Dyer and Old Mutual, that those e-mails were part of a pattern of deception designed to persuade Old Mutual to compensate J.V. so that Mr. Dyer would not be responsible for her losses.

On April 24, 2008, Mr. Dyer and J.V. filed a complaint against Old Mutual with the Bureau of Insurance. Staff Exh. 4. In that complaint, he explained to the Bureau of Insurance that he had relied on "the honesty of the insurance company" and "That is why it has taken several years for my clients [*sic*] realization that if I added up the total payments that she was receiving and the total amount of time she was to receive them, she would not get all my [*sic*] money back, let alone interest." Staff Exh. 4. This description of the mathematics involved is either incompetent or intentionally misleading. When the monthly payment is fixed, there is no need to add up all the total payments over the total amount of time; it is only necessary to multiply \$648.23 by 60 months.

The complaint alleged, among other things, that Old Mutual was unresponsive to the problem with J.V.'s SPIA. On June 27, 2008, Old Mutual sent Mr. Dyer a fax seeking information in order to respond to the Bureau of Insurance on the complaint. Staff Exh. 15. In particular, Old Mutual asked Mr. Dyer to specify: the purpose for the annuity; the manner in which J.V. benefited by the partial withdrawal from the Modern Woodmen annuity; whether he explored the option of annuitizing the Modern Woodmen policy; an explanation of the suitability of the sale; whether there was documentation indicating that J.V. would receive interest on the policy and whether he had gotten a quote; and whether any verbal promises were made. Staff Exh. 15. Not having received a response from Mr. Dyer, Old Mutual followed the June 27, 2008 fax with another fax to Mr. Dyer's lawyer on September 3, 2008 seeking the same information. Staff Exh. 16.

Mr. Dyer did not provide a specific written response to Old Mutual's inquiries. Instead, Old Mutual received a letter from Mr. Dyer's lawyer enclosing documents gathered during the sale of the SPIA along with a statement that the documents were self explanatory. Dec. 2 Tr., at pp. 168-170. Old Mutual subsequently terminated Mr. Dyer's appointment on the grounds that he violated his Producer's Agreement by failing to cooperate in a regulatory investigation. Dec. 2 Tr., at pp. 170-171; Staff Exh. 23. Old Mutual also determined that Mr. Dyer violated certain sales practices under its "Market Conduct Guide" by selling an improper replacement product to J.V. and improperly representing there was a value to the SPIA contract to J.V. when there wasn't. Dec. 2 Tr., at p. 171; Staff Exh. 19.

On September 16, 2008, Bureau of Insurance Staff sent Mr. Dyer a letter asking him to provide additional information in connection with its investigation. Resp. Exh. 21 The Bureau's letter concluded with five specific questions, asking Mr. Dyer to provide: a copy of J.V. estate and tax plan, his analysis and recommendations to her; a copy of Old Mutual's quote with a taxable yield and exclusion ratio; all credentials he had to support his ability to do estate and tax planning for his customers; a description of all monetary and other consideration that he received as a result of the issuance of the SPIA; an explanation of the meaning of a statement by Mr. Dyer that he "didn't feel that [he] needed to question the honesty of [Old Mutual]..."; an explanation of how the loss of at least \$4,910.46 in earnings from the Modern Woodmen annuity due to the partial 1035 exchange benefitted J.V.; and a detailed explanation of how the alleged purpose in effecting the 1035 exchange (reducing J.V.'s tax liability) was accomplished. Dec. 3 Tr., at p. 65; Resp. Exh. 21; Staff Exh. 24.

Mr. Dyer did not answer the specific questions the Bureau asked, but he and his attorney, Peter Bickerman, Esq., met with Bureau of Insurance staff and provided oral and written explanations of the transactions along with what Mr. Bickerman described as "one or more pieces of paper" outlining what Mr. Dyer had discussed with J.V. Resp. Exh. 15, 21, 23; Dec. 3 Tr., at pp. 135-36, 142. Mr. Bickerman testified at the hearing and added that by then "we had given every document we had." Dec. 3 Tr., at p. 143. Bureau staff did not have consensus as to whether Mr. Dyer's response was adequate or whether it was still necessary to obtain the answers to the questions in the September 16 letter. Resp. Exh. 15; Dec. 3 Tr., at pp. 79-80. There was no communication to Mr. Dyer at that time that would suggest that the response was inadequate. Dec. 3 Tr., at pp. 136-37. I therefore find that Mr. Dyer reasonably believed in November of 2008 that he had been responsive, and therefore did not violate his obligation under 24-A M.R.S. § 220(2) to respond to the Bureau's September 16 letter.

However, Bureau of Insurance complaint investigator Michael McGonigle subsequently wrote Mr. Dyer again on December 1, 2008, explaining that "After conferring with Bureau of Insurance management, it has been determined that your substantive response to this letter is required as we continue our investigation into complaint # 2008-22703." The letter repeated the substance of the September 16 letter and concluded with the same five specific questions, in bulleted form. Staff Exh. 24;⁶ Resp. Exh. 21; Dec. 3 Tr., at pp. 64-65, 80, 143-44.

⁶ Mr. Dyer argues that Staff Exhibit 24 "cannot be used to establish any failure to respond to the Bureau." Resp. Closing Argument, at p. 8 n.6. At the hearing, Mr. Dyer had objected to the exhibit because it was not a photocopy of the signed letter that Mr. McGonigle sent to Mr. Dyer. His counsel said that demonstrated that it was "clearly a draft," but Mr. McGonigle authenticated it under oath as a true copy printed from the same electronic original as the signed letter that Mr. McGonigle sent. Dec. 3 Tr., at pp. 69-74. Furthermore, Mr. Bickerman confirmed both at hearing and in his initial response to the letter that Staff Exhibit 24 and Mr. McGonigle's testimony accurately describe the questions in the letter that Mr. Dyer received. Dec. 3 Tr., at pp. 143-44. In context, the Staff's purported "concession" that the exhibit "was not offered to demonstrate that Mr. Dyer received it," Resp. Closing Argument, at p. 8 n.6. *citing* Dec. 3 Tr., at p. 70," was merely an acknowledgment that proof that Mr. McGonigle sent the letter did not by itself conclusively establish that Mr. Dyer received it. Dec. 3 Tr., at pp. 70-72. That missing step in the proof could be inferred if necessary from Mr. Bickerman's receipt of a letter addressed to Mr. Dyer, but Mr. Bickerman expressly acknowledged that Mr. Dyer did receive the letter in December of 2008. Resp. Exh. 21.

Mr. Bickerman replied on Mr. Dyer's behalf that "Although I would like to be responsive to your inquiries, please note that your December 1 letter is virtually identical in substance to a letter to me dated September 16, 2008." Resp. Exh. 21. In his testimony, he acknowledged that he "didn't answer the specific question," explaining that he thought there must have been some mistake, and that he "was perplexed" because the December letter was "almost identical to the letter you had sent to us back in September." Dec. 3 Tr., at pp. 143-44. He testified that even though the specific questions had not been answered the first time either, in his opinion the Bureau had been given all the information it needed to figure out the answers, and therefore its request was "duplicative" and there was no obligation to respond. Dec. 3 Tr., at pp. 145-47. Based on Mr. Bickerman's testimony, I find that Mr. Dyer should not be held accountable for the violation of 24-A M.R.S. § 220(2) because he was acting in reliance on the advice of counsel.

Conclusions of Law

Pursuant to 10 M.R.S. § 8003(5) and 24-A M.R.S. §§ 12-A, 215 and 1420-K(1)(B), the Superintendent may impose disciplinary sanctions against a producer who violates any provision of the Maine Insurance Code, Title 24-A M.R.S. In his dealings with J.V., and his subsequent responses to inquiries by the Bureau and by Old Mutual, Mr. Dyer has committed serious violations of the Insurance Code, which demonstrate incompetence and untrustworthiness and warrant the revocation of his producer and consultant licenses, along with the maximum civil penalty of \$500 under 24-A M.R.S. § 12-A(1) for each of the eleven wrongful acts listed below. In addition, pursuant to 24-A M.R.S. § 12-A(6), the Superintendent may order restitution for any insured or applicant for insurance injured by a producer's violations. Because J.V.'s losses as a result of Mr. Dyer's misconduct significantly exceeded any commissions and fees earned, full restitution of those commissions and fees is called for.

Title 24-A M.R.S. § 1467 provides that an insurance consultant is obligated, under that license, to serve with objectivity and complete loyalty the interests of the client and to render the client such information, counsel and service that, within the knowledge, understanding and opinion in good faith of the consultant, best serves the client's insurance or annuity needs and interests. Title 24-A M.R.S. § 1420-K(1)(H) authorizes the Superintendent to revoke an insurance license and impose a civil penalty when the producer has used fraudulent, coercive or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business. Title 24-A M.R.S. § 1420-K(1)(E) authorizes the Superintendent to revoke an insurance license and impose a civil penalty when the producer intentionally misrepresents the terms of an actual or proposed insurance contract or application for insurance. Title 24-A M.R.S. § 2153 provides that no person shall make a statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby. Title 24-A M.R.S. § 2155 prohibits any written or oral statements misrepresenting or making incomplete comparisons as to the terms, conditions or benefits contained in any policy for the purpose of inducing or attempting to induce the policy holder to lapse, forfeit, borrow against, surrender, retain, exchange, modify, convert or otherwise affect or dispose of any insurance policy. Title 24-A M.R.S. § 2152 prohibits any trade practice which is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

I find that Mr. Dyer committed each of the following acts, and that each of those acts constitutes a violation of one or more of these statutes:

1. Breaching his Consultant Agreement with J.V., by failing to make a proper evaluation of her plans and needs, in violation of 24-A M.R.S. §§ 1420-K(1)(H), 1467, and 2152;
2. Selling J.V. an annuity product that caused her unnecessary loss, in violation of 24-A M.R.S. §§ 1420-K(1)(H), 1467, and 2152;
3. Representing to J.V. that she would receive 6 to 7 percent interest on her SPIA, in violation of 24-A M.R.S. §§ 1420-K(1)(H), 1467, 2152, 2153, and 2155.
4. Selling J.V. an annuity product without having reasonable grounds to believe it was suitable for her and without conducting an adequate investigation to determine its suitability, in violation of 24-A M.R.S. §§ 1420-K(1)(H), 1467, and 2152;
5. Failing to provide J.V. with an adequate explanation of the SPIA, in violation of 24-A M.R.S. §§ 1420-K(1)(H), 1467, 2152, and 2155;
6. Failing to obtain assurance from J.V. that she understood her SPIA, in violation of 24-A M.R.S. §§ 1420-K(1)(H), 1467, and 2152;
7. Failing to make sure that the SPIA was properly issued and would provide appropriate earnings, in violation of 24-A M.R.S. §§ 1420-K(1)(H) and 1467;
8. Failing to keep adequate records of his alleged four-part plan, in violation of 24-A M.R.S. §§ 1420-K(1)(H) and 1447;
9. Failing to cooperate with Old Mutual in its response to a regulatory investigation, in violation of 24-A M.R.S. §§ 1420-K(1)(H);
10. Falsely representing to Old Mutual that it had left him an answering machine message promising J.V. a refund of her SPIA premium payment, in violation of 24-A M.R.S. §§ 1420-K(1)(H) and 2152; and
11. Falsely representing to the Bureau of Insurance that Old Mutual had left him an answering machine message promising J.V. a refund of her SPIA premium payment, in violation of 24-A M.R.S. §§ 1420-K(1)(H) and 2152.

.Order

It is therefore ***ORDERED***:

1. The Petition for Enforcement is ***GRANTED***.
2. Mr. Dyer's privileges to act as an insurance producer and an insurance consultant are ***REVOKED***.
3. Mr. Dyer shall pay a civil penalty of \$5,500, by check payable to the Treasurer of State.

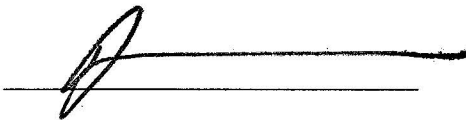
4. As restitution, Mr. Dyer shall pay to the Treasurer of State, for the benefit of J.V., the full amount of commissions and fees he has received from any source for all transactions involving J.V., plus interest at the statutory pre-judgment rate.

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 is appealable to the Superior Court in the manner provided in 24-A M.R.S. § 236 and M.R. Civ. P. 80C. Any party to the hearing may initiate an appeal within thirty 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 on or before April 19, 2011. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S. § 11004.

PER ORDER OF

MARCH 7, 2011

A handwritten signature in black ink, appearing to read 'Mila Kofman', is written over a horizontal line. The signature is stylized and cursive.

**MILA KOFMAN
SUPERINTENDENT OF INSURANCE**