

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

Jerold S. Smith (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 November 1, 2004, Jerold S. Smith was licensed by the Superintendent as an active resident insurance producer, License No. PRR41417. His National Producer Identification number is 3679747. His Maine license has been voluntarily terminated by his request as of November 1, 2004.
3. At all times relevant to this matter, Mr. Smith was an appointed producer for Bankers Life and Casualty Company, Maine License No. LHF127, based at its branch sales office in South Portland, Maine.
4. 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. 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.
5. At all times relevant to this matter, Mr. Smith was Mr. Landry's immediate supervisor, and the branch sales office manager was Neal J. Quimby, License No. PRN96157, formerly PRR26124.
6. In September 2005, Mr. Landry met with Mr. Smith and discussed his plan to advise a client, Consumer A, that he should replace his in-force Jefferson Pilot universal life insurance policy with a Bankers Life universal life insurance policy.

7. Mr. Landry explained to Mr. Smith that he had reviewed the account statements for the Jefferson Pilot policy and learned that the value of the policy's accumulation account was in excess of \$8,700.00, but that Consumer A was then paying premiums of only \$125.00 per quarter, which was below the policy's planned premiums.

8. Mr. Landry told Mr. Smith that Consumer A was currently 67 years of age and that the Jefferson Pilot policy had been issued to Consumer A on November 3, 1988, with a death benefit of \$50,000.00.

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

10. In fact, 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.

11. Mr. Smith approved Mr. Landry's plan to recommend that Consumer A replace his Jefferson Pilot Policy with a Bankers Life policy.

12. Mr. Smith did not ensure that Mr. Landry explained to Consumer A that he could prevent the policy from lapsing simply by increasing his premium payments.

13. Mr. Smith did not ensure that Mr. Landry explained to Consumer A that the maximum mortality charges of the Bankers Life policy were greater than the maximum mortality charges of the Jefferson Pilot policy.

14. Mr. Smith did not ensure that Mr. Landry explained to Consumer A that the expense charges of the Bankers Life policy were greater than the expense charges of the Jefferson Pilot policy.

15. Mr. Smith did not ensure that Mr. Landry explained to Consumer A that the surrender charges under the Bankers Life policy would be greater than the surrender charges of the Jefferson Pilot policy.

16. Following a meeting with Mr. Landry on September 14, 2000, Consumer A then applied for the proposed policy, which had 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.

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

Conclusions of Law

18. Mr. Smith violated the Maine Insurance Code, 24-A M.R.S.A. § 1417(1)(H), as it was in effect at the time these acts occurred, because he demonstrated incompetence when he approved Mr. Landry's plan to advise Consumer A to replace his Jefferson Pilot universal life insurance policy with a Bankers Life universal life insurance policy despite the clear financial disadvantages of this transaction to Consumer A.

Covenants

Jerold S. Smith, the Superintendent, and the Office of the Attorney General agree to the following:

19. 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.

20. Mr. Smith agrees to the imposition of a civil penalty of \$500.00, pursuant to 24-A M.R.S.A. § 12-A, for the violation admitted herein, and shall submit a check for that amount, payable to the Treasurer of the State of Maine at the time of execution of this Consent Agreement.

21. In consideration of Mr. Smith'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 allegations set forth in the Petition to Enforce in this matter (Docket No. INS-04-229), other than those agreed to in this Consent Agreement. However, should Mr. Smith 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. Smith by the Superintendent.

22. 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.

23. Mr. Smith 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.

24. Mr. Smith has consulted with counsel before executing this Agreement.

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

SIGNATURE PAGE

Dated: _____

Jerold S. Smith

Commonwealth of Pennsylvania; _____,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