

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

In re:)
)
) Consent Agreement of
AMERICAN EQUITY INVESTMENT) American Equity Investment
LIFE INSURANCE COMPANY) Life Insurance Company
)
Docket No. INS-10-202)
)

INTRODUCTION

This document is a Consent Agreement authorized by 10 M.R.S. § 8003(5)(B) and entered into among and between American Equity Investment Life Insurance Company ("American Equity"), the Superintendent of the Maine Bureau of Insurance ("the Superintendent"), and the Office of the Maine Attorney General. Its purpose is to resolve, in lieu of an adjudicatory proceeding, an alleged violation of the Maine Insurance Code for which the Superintendent may impose discipline, including license revocation, pursuant to 24-A M.R.S. §§ 1417 and 1476.

BACKGROUND

1. The Maine Insurance Code regulates persons who offer or sell insurance products in the State of Maine.
2. The Superintendent is the official charged with administering and enforcing Maine's insurance laws. The Superintendent has jurisdiction over this matter pursuant to the Insurance Code generally, Title 24-A Maine Revised Statutes, and in particular 24-A M.R.S. §§ 12-A, 220, 1417, 1420-K, 1445, 2152, 2155 and 2422.
3. American Equity is an Iowa-domiciled insurance company that is authorized to transact business in Maine under Maine License No. LHF62908.
4. Paul E. Richard has been licensed in Maine as a resident insurance producer since 1989. His license number is PRR24006. His National Producer Registry Number is 2288808. Mr. Richard's business address of record is 11 Roseanne Avenue, Augusta, ME 04330-8130.
5. At all times relevant hereto, Mr. Richard was an appointed insurance producer for American Equity.

ALLEGATIONS

6. On or about October 11, 2006, Mr. Richard met with Donald and Jacqueline Ouellette in the kitchen of the Ouellettes' home in Auburn, Maine and proposed that they purchase an annuity.

7. When Mr. Richard met with the Ouellettes in October 2006, Mr. Ouellette was suffering from a serious respiratory illness. The Ouelletes told Mr. Richard that Mr. Ouellette's illness was terminal.
8. At the time of Mr. Richard's visit, Mr. and Mrs. Ouellette were under a great deal of stress, not only because of Mr. Ouellette's illness but also from other personal circumstances. The Ouellettes told Mr. Richard that they were under a great deal of stress.
9. During Mr. Richard's visit, he sat close to Mr. Ouellette, with a metal tank between them. Mr. Ouellette was continuously receiving oxygen from that tank by way of a cannula inserted in his nasal passages. Other oxygen tanks were nearby, and Mr. Richard had walked past them on his way into the Ouellettes' kitchen.
10. During Mr. Richard's visit, Mr. Ouellette was having difficulty speaking due to shortness of breath.
11. At the time of Mr. Richard's visit, Mr. Ouellette was on an extremely heavy medication regimen. The Ouellettes told Mr. Richard that Mr. Ouellette was heavily medicated.
12. As a result of the medications he was taking at the time of Mr. Richard's visit, Mr. Ouellette had a propensity to become confused.
13. In the course of Mr. Richard's visit, he inquired about the Ouellettes' assets. Mr. Ouellette indicated that he had a small life insurance policy through his former employer as well as a life insurance policy with a death benefit of \$100,000.00. The Ouellettes indicated that they were paying premiums of \$240.00 per quarter on the \$100,000.00 policy.
14. Mr. Richard advised the Ouellettes that Mr. Ouellette did not need as much life insurance as he had because the couple's mortgage had been paid up. Mr. Richard said there would be more money for other expenses if they did not have to pay the premiums for life insurance. Mr. Richard told Mr. Ouellette to contact his insurance company for surrender forms.
15. The Ouellettes did not understand the nature or full import of Mr. Richard's recommendation for surrender of Mr. Ouellette's \$100,000.00 life insurance policy. Mr. Richard failed to take measures necessary to determine whether they had a sufficient understanding of his recommendation.
16. In the afternoon of Mr. Richard's visit, Mr. Ouellette called his life insurer for surrender forms.
17. Upon receipt of forms and in accord with Mr. Richard's recommendation, the Ouellettes submitted the request for surrender of Mr. Ouellette's life insurance policy. Mr. Ouellette had purchased the policy in 1985, and his cost basis for it was \$17,349.41.
18. Mr. Ouellette's life insurer duly processed his surrender request, and the Ouellettes received a check in November 2006 for the policy's cash surrender value of \$11,935.83.
19. On or about November 28, 2006, after the Ouellettes' receipt of funds from surrender of Mr. Ouellette's life insurance policy, Mr. Richard went to their home to have them complete applications for the purchase of three equity indexed annuities.
20. Mr. Richard did not give the Ouellettes an appropriate opportunity to read and understand the documents he placed before them.
21. The Ouellettes did not understand the nature or full import of recommendations Mr. Richard was making for the purchase of the equity indexed annuities. Mr. Richard failed to take measures necessary to determine whether they had a sufficient understanding of his recommendations.

22. Mr. Richard sold Annuity Contract #620931 having Mr. Ouellette as the annuitant. Annuity Contract #620931 was funded by a check from an existing IRA for \$8,564.63 and by a personal check written by Mrs. Ouellette for \$20,660.52, for a total of \$29,225.15.
23. Mr. Ouellette's annuity was purchased as a qualified (IRA tax status) annuity.
24. Mr. Richard did not properly disclose to American Equity the circumstances of Mr. and Mrs. Ouellette's health and financial situation. Mr. Richard did not disclose to American Equity that Mr. Ouellette had terminated his life insurance contract to fund part of the purchase of his annuity contract. Mr. Richard received a commission of \$3,062.64 for the sale of Mr. Ouellette's Annuity Contract #620931.
25. On or about November 28, 2006, Mr. Richard sold two annuities having Jacqueline Ouellette as the annuitant. Those annuities were funded by personal checks, in the amounts of \$15,018.97 for non-qualified Contract #629032 and \$2,455.95 for IRA Contract #629033.
26. Mr. Ouellette died on February 3, 2008.
27. In response to inquiries from the insurer that issued Mr. Ouellette's annuity, Mr. Richard asserted correctly that the cash value of a non-qualified life insurance policy may not be used to fund a qualified retirement annuity.
28. Also in response to inquiries from the insurer that issued Mr. Ouellette's annuity, Mr. Richard specifically recalled the source of funds for Mrs. Ouellette's two annuities and for the \$8,564.63 IRA rollover portion of Mr. Ouellette's annuity. However, as to the source of the remaining \$20,660.52 that funded Mr. Ouellette's annuity, Mr. Richard stated, "Where that money originated, I do not recall, nor would I be willing to speculate, other than to say that it was from another IRA that existed prior to the transaction." In truth, Mr. Richard knew that non-qualified funds were used to help fund Mr. Ouellette's annuity. Mr. Richard had made a written calculation showing the source of funds for all three annuities he sold the Ouellettes, and that written calculation shows that Mrs. Ouellette's personal check for \$20,660.52 helped fund Mr. Ouellette's annuity.
29. As a result of the transactions undertaken by the Ouellettes upon Mr. Richard's recommendation, the Ouellettes suffered substantial financial loss.
30. Mrs. Ouellette did not receive the benefit of Mr. Ouellette's \$100,000.00 life insurance policy, because it was surrendered for its cash value at Mr. Richard's recommendation. As a result, Mrs. Ouellette was struggling financially.
31. On November 30, 2009, Bureau of Insurance Staff filed a Petition for Enforcement alleging that Mr. Richard's conduct described above in IT 6 through 30 violated 24-A M.R.S. § 2155¹; violated 24-A M.R.S. § 2152²; constituted a fraudulent, coercive or dishonest practice; or demonstrated incompetence and/or untrustworthiness in the conduct of business.
32. On February 12, 2010, Bureau Staff filed a Petition for Enforcement alleging that, pursuant to 24-A M.R.S. §§ 1445(1)(A), 1445(1)(B), 1445(1)(C), 1445(1)(D), and 2422, American Equity was liable for Mr. Richard's conduct described above in ¶¶ 6 through 30.
33. On July 29, 2010, the Superintendent consolidated the cases against Mr. Richard and American Equity.
34. Upon receiving the Petition for Enforcement filed against it, American Equity investigated Mr. Richard's dealing with Mr. and Mrs. Ouellette. American Equity

concluded that in those dealings Mr. Richard had improperly sold annuities to Mr. and Mrs. Ouellette.

35. Effective March 8, 2010 and as a result of its investigation of Mr. Richard's dealings with Mr. and Mrs. Ouellette, American Equity terminated Mr. Richard's appointment with the company.
36. Subsequent to its termination of Mr. Richard and in good faith recognition of the harm done to Mr. and Mrs. Ouellette, American Equity:
 - A. Made restitution to Mrs. Ouellette in the amount of \$104,446.40 for the lost value of Mr. Ouellette's life insurance policy; and
 - B. Refunded to Mrs. Ouellette the purchase price, plus interest, of all three annuities purchased from Mr. Richard.

COVENANTS

37. American Equity has fully cooperated in good faith with the Maine Bureau of Insurance in this matter.
38. American Equity acknowledges that it was responsible for the conduct of its former agent, Paul E. Richard.
39. No later than fourteen days after executing this Consent Agreement, American Equity will remit to the Maine Bureau of Insurance a civil penalty in the amount of \$50,000.00, payable to the Treasurer of the State of Maine.
40. No later than twenty-one days after conclusion of hearing in *In re: Paul E. Richard*, Bureau Docket No. INS-08-305, American Equity shall remit to Mrs. Ouellette the full amount of any legal expenses incurred by her as a consequence of:
 - a. This proceeding;
 - b. *In re: Paul E. Richard*, Bureau Docket No. INS-08-305; and
 - c. *In re: Paul E. Richard*, No. 09-11420 (Bankr. D. Me.).
41. In return for American Equity's execution of this consent Agreement, the Superintendent and the Attorney General agree that no further action will be initiated against it by the Bureau of Insurance or the Attorney General for the violations of law alleged in the Petition for Review filed against it, unless American Equity fails to comply with the terms and conditions of this Consent Agreement.
42. The parties to this Consent Agreement understand that nothing herein shall affect any right or interest which any person not a party to this Agreement may possess.
43. This consent Agreement is not subject to appeal. American Equity waives any right it might have to appeal any matter that is a subject of this Consent Agreement.
44. This Consent Agreement is enforceable by an action in Maine Superior Court
45. This Consent Agreement may be modified only by a written agreement executed by all of the parties hereto. Any decision to modify, continue, or terminate any provision of this Consent Agreement rests in the discretion of the Superintendent and the Attorney General.
46. This Consent Agreement is a public record subject to the provisions of the Maine Freedom of Access Law, 1 M.R.S. §§ 401 through 410; will be available for public inspection and copying as provided for by 1 M.R.S. § 408; and will be reported to the National Association of Insurance Commissioners' "RIRS" database.

47. By the duly-authorized signature of its representative on this Consent Agreement, American Equity warrants that it has consulted with counsel before signing the Agreement or has knowingly and voluntarily decided to proceed in this matter without consulting counsel, that it understands the Agreement, and that it enters into the Agreement voluntarily and without coercion of any kind from any person.

¹ Under 24-A M.R.S. § 2155, 'No person shall make ...any written or oral statement misrepresenting or making incomplete comparisons as to the terms, conditions, or benefits contained in any policy for the purpose of inducing ... the policyholder to ...affect or dispose of any insurance policy.'

² Under 24-A M.R.S. § 2152, an insurance producer is prohibited from engaging in any unfair or deceptive practice in the business of insurance.

SIGNATURES

AMERICAN EQUITY INVESTMENT LIFE INSURANCE COMPANY

Dated: February 8, 2011

By: _____
(signature)

(printed name)

Its: _____

THE MAINE BUREAU OF INSURANCE

Dated: February __, 2011

By: _____
Mila Kofman, Superintendent

OFFICE OF THE MAINE ATTORNEY GENERAL

Dated: February __, 2011

By: _____
James M. Bowie
Assistant Attorney General