

**STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

In the Matter of **Allen P. Towne**) **STIPULATION** and
) **FINAL ORDER**
) Case No. INS 10-01-002

STIPULATION

The Director of the Oregon Department of Consumer and Business Services (director) commenced this administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 731.256, to take enforcement action against Allen P. Towne (Towne).

On 1/25/10, the director issued a notice of proposed action informing the party that the director proposed to take enforcement action against the party, the party was entitled to a hearing pursuant to ORS 183.415, and if the party wanted a hearing then the party had to send to the director a written request for a hearing so that the director received it by 2/5/10. The director proposed to revoke Towne's Oregon resident individual insurance producer license for violating Oregon Administrative Rules (OAR) 836-080-0090 by, from 1/25/05 to 3/20/08, recommending to seven persons that they purchase 15 annuities which were unsuitable for the persons.

On 2/12/10, the director received from Towne an e-mail requesting a hearing.

On 2/22/10, the director referred the party's request for a hearing to the Office of Administrative Hearings (OAH).

On 3/31/10, OAH scheduled a hearing to be conducted on 6/21-22/10, and mailed to the party a written notice informing the party of the date, time and place of the hearing.

Towne desires to conclude this proceeding without a hearing by entering into this stipulation pursuant to ORS 183.417(3).

Towne waives all rights relative to an administrative hearing and judicial review thereof. Towne requests that the scheduled hearing be cancelled.

Towne stipulates to the following facts, conclusions, action, and to the issuance of a final order incorporating this stipulation.

Facts and Conclusions

Licensing Information

Towne has been licensed in Oregon as a resident individual insurance producer since 1/29/96. Towne's last recorded residence and business address is located in Springfield, Oregon.

Made Unsuitable Recommendation in Life Insurance Transaction

Towne is subject to enforcement action pursuant to OAR 836-080-0090 because of the following circumstances. OAR 836-080-0090 prohibits a person from recommending that another person purchase or replace a life insurance policy or annuity, or any rider, endorsement or amendment to the policy or annuity, without having reasonable grounds to believe that the transaction is not unsuitable for the other person based upon a reasonable inquiry concerning the other person's insurance objectives, financial situation and needs, age and other relevant information known by the person.

Lewis Transactions

On or about 1/25/05, Towne recommended to Samuel A. Lewis (Lewis), then age 83, of Albany, Oregon, that he terminate a pension plan invested in common stocks, options, and money market; terminate a financial management account invested in mutual funds and bank deposit; and terminate another account invested in common stocks, money fund, options, closed end funds, bonds, and preferred stocks, all managed by Smith Barney division of Citigroup Global Markets, Inc. (Smith Barney) and deposit \$180,561.32 therefrom into two annuities to be issued by Bankers Life & Casualty Company (Bankers Life). Towne did not have reasonable grounds to believe that the annuities were not unsuitable for Lewis because Towne knew or should have known that (1) Lewis' objective was to "increase or maintain income," but was satisfied with the return on his investments, which Towne recorded was "less than 5.5%," but the Bankers Life annuities promised to pay 5.5 percent for the first year, 2.5 percent for the next nine years, for

an effective annual interest rate of 2.8 percent for ten years, and 3 percent thereafter, (2) the \$180,561.32 to be deposited into the Bankers Life annuities was about 92 percent of Lewis' liquid assets of about \$195,561, (3) Lewis had limited income of about \$2,620 a month from social security and retirement pensions, (4) Lewis did not pay any federal income tax from 2001 to 2004 but would pay tax after purchasing the Bankers Life annuities because Lewis would incur a tax liability for the capital gain from the sale of non-qualified accounts, (5) Lewis had impaired health, and his wife, Mablelee, had declining health, which increased their healthcare expenses, and (6) Lewis was 83 years old and had a life expectancy of about six years, but the Bankers Life annuities had a surrender period of nine years and would not mature for 10 years. Lewis relied on Towne's recommendation and applied for the Bankers Life annuities. Bankers Life received the application for the first annuity on 1/28/05, and the application for the second annuity on 2/7/05. Bankers Life issued to Lewis the first annuity, number 7810008, on 2/7/05, and the second annuity, number 7810360, on 2/10/05. On 8/28/06, Lewis annuitized both annuities. On or about 2/7/08, the Insurance Division received from Lewis a complaint dated 2/5/08 about Towne.

Metzler Transaction

On or about 2/8/08, Towne recommended to Gilbert G. Metzler, then age 85, and Pauline Metzler, then age 79, husband and wife (collectively Metzler), of Corvallis, Oregon, that they terminate Ms. Metzler's life insurance policy issued by Aurora National Life Assurance Company and deposit \$23,178.19 therefrom into an annuity to be issued by Bankers Life. Towne did not have reasonable grounds to believe that the annuity was not unsuitable for Metzler because Towne knew or should have known that (1) Metzler would lose a death benefit of about \$6,800 by terminating the life insurance policy and the Bankers Life annuity would not offset this loss, (2) Gilbert Metzler was 85 years old and had a life expectancy of about 6 years and Pauline Metzler was 79 years old and had a life expectancy of about 10 years, but the annuity had a surrender period of 10 years and would not mature for 20 years, and (3) Pauline Metzler had impaired health. Metzler relied on Towne's

recommendation and applied for the annuity. On or about 3/21/08, Bankers Life issued the annuity, number 7885674. On or about 7/14/08, the Insurance Division received from Metzler a complaint dated 7/11/08 about Towne.

Action

Pursuant to ORS 744.074(1), Towne's Oregon resident individual insurance producer license is revoked on the date of the final order.

As consideration for the director not alleging any other violations against Towne, Towne agrees to never apply for any license authorized by ORS Chapter 744; or have any equity interest in, be an officer or director of, or be employed by or contracted with, any person that is issued any license authorized by ORS Chapter 744.

Dated April 14, 2010

/s/ Allen P. Towne
Allen P. Towne

FINAL ORDER

The director incorporates herein the above stipulation, adopts it as the director's final decision in this proceeding, and orders that the action stated therein be taken.

Dated April 21, 2010

/s/ Teresa D. Miller
Teresa D. Miller
Administrator
Insurance Division
Department of Consumer and Business Services

//
//
//