

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

In the Matter of) **Case No: INS 10-01-007**
)
LORI C. BLANKENSHIP) **PROPOSED ORDER**
)
)

HISTORY OF CASE

On February 24, 2010, the Administrator of the Department of Consumer and Business Services Insurance Division issued a Notice of Proposed Action (Notice) proposing to revoke the Oregon resident agent license issued to Lori C. Blankenship (Licensee) pursuant to ORS 744.074(1). Licensee timely requested a hearing challenging the proposed action. On March 11, 2010, the Division referred this matter to the Office of Administrative Hearings (OAH) for hearing.

The hearing was held on July 13 and August 6, 2010 in Salem, Oregon. Senior Administrative Law Judge Alison Greene Webster presided. Assistant Attorney General Kelly M. Gabliks represented the Division. Licensee appeared in person without counsel.

The Division called the following witnesses: Lori Blankenship, John Hardiman, Selma Matzye, Retha Whitaker and Clifford Cummins. Licensee testified on her own behalf, and called Stephen Harrison and Michelle Slagle as character witnesses. The record was left open following the hearing for receipt of Exhibit A54 and closed on August 9, 2010, upon receipt of that exhibit.

ISSUES

1. Whether Licensee violated OAR 836-080-0090 by recommending an unsuitable life insurance policy or annuity to Richard "Dick" Whitaker and Retha Whitaker.
2. Whether Licensee violated OAR 836-080-0090 by recommending an unsuitable life insurance policy or annuity to Velma M. Hoiseth.
3. Whether Licensee violated OAR 836-080-0090 by recommending an unsuitable life insurance policy or annuity to Zolman "Bud" Bond and Virginia "Ginny" Bond.
4. Whether Licensee violated OAR 836-080-0090 by recommending an unsuitable life insurance policy or annuity to Selma B. Matzye.

5. If Licensee violated OAR 836-080-0090 on one or more occasions, what is the appropriate sanction?

EVIDENTIARY RULINGS

The Division's Exhibits A1 through A53 were admitted into the record at hearing. Division Exhibit A54, received August 9, 2010 was also admitted into the record. Licensee's Exhibits R1 to R5 were also admitted into the record at hearing.

FINDINGS OF FACT

1. At all times pertinent to this matter, Licensee was licensed in Oregon as a resident insurance producer. She was licensed from August 30, 2004 to August 31, 2006 and again from September 14, 2006 to the date of the hearing. From August 31, 2004 through January 23, 2008, Licensee was under contract with Bankers Life and Casualty Company as an insurance sales representative. (Test. of Blankenship.)

2. Effective January 1, 2005, the Division enacted a "suitability rule" for persons recommending or selling life insurance and annuities in Oregon. The rule specifically requires that the insurance producer consider the consumer's "insurance objectives, financial situation and needs, age and other relevant information." OAR 836-080-0090. For purposes of this rule, the Division interprets the phrase "other relevant information" to include the consumer's health, cash reserves (liquidity), assets, income and expenses, the penalties and fees to be incurred in the transaction and the tax consequences of the transaction. (Test. of Hardiman.)

A. Whitaker Recommendations

3. In September 2005, Licensee met with Richard "Dick" L. Whitaker, then age 77, and his wife, Retha I. Whitaker, then age 75, at their home in Albany, Oregon. Richard Whitaker had submitted a card to Bankers Life requesting information on Medicare coverage. Richard had been diagnosed with Alzheimer's disease, and was taking Aricept. Up to that point, he had always been responsible for managing the couple's finances. He had set up on-line accounts for bill paying and buying and selling stock. Retha had no experience managing money and, at the time she met with Licensee, she did not even know how to fill out or where to sign a check. (Test. of R. Whitaker; Ex. A1; test. of Blankenship.)

4. Licensee and another agent went to the Whitakers home on September 22, 2005. Because Richard had been diagnosed with Alzheimer's and was on Aricept, Licensee advised Retha that Richard was not eligible for long term health care coverage. Licensee recommended that Retha get a home health care policy for herself. Retha relied on the recommendation and Licensee completed the policy application. During this meeting, Retha expressed concern about her and Richard's financial situation and her ability to take over managing the finances. Retha also mentioned that they had money invested in the stock market, some individual retirement accounts (IRAs) and some certificate of deposit accounts (CDs). She said she wanted to simplify and consolidate their investments so that she could manage them. Retha advised Licensee that

their computer was broken, so she was unable to access the financial information that Richard had stored on the computer or their on line accounts. Licensee offered to help Retha get their computer working.¹ Licensee also recommended that the Whitakers consolidate their investments and convert them into deferred fixed annuities. (Test. of Blankenship; test. of Whitaker; Ex. 53 at 110-112.)

5. Two days later, on September 24, 2005, Licensee returned to the Whitakers' home to complete the annuity applications. On Retha Whitaker's behalf, Licensee contacted the Whitakers' stock broker and placed sell orders so that the funds could be transferred to the annuity account. Licensee recommended to the Whitakers that they terminate Retha's IRA stock account at Schwab (valued at \$9,817.27), a Schwab money market account (valued at \$24,105.74), Richard's IRA at Schwab (valued at \$30,852.86), a non-tax qualified stock account at Schwab (valued at \$108,953.23), plus four not yet matured CD accounts (valued at \$90,000), and deposit these funds (totaling \$263,729.10) into five annuities to be issued by Bankers Life. In recommending the annuities, Licensee did not explain the tax consequences of converting the existing accounts into annuities, nor did she explain the penalties and fees associated with the transactions. The Whitakers initially relied on Licensee's recommendations, and applied for the annuities. Licensee completed the applications and other necessary paperwork for these annuities and had the Whitakers sign the documents. (Exs. A2, A3, A4, A5 and A40; test. of R. Whitaker.)

6. During this meeting, in connection with the annuity applications, Licensee completed Annuity Suitability Questionnaires. She learned that the Whitakers had the following liquid assets: \$11,000 in a savings account; \$108,000 in stocks; \$24,000 in a money market account; \$110,000 in CDs; and \$9,817 in an IRA. She marked boxes indicating that the purpose for the annuity purchases was "tax savings," "initial return" and other, adding that the Whitakers wanted their "money out of the stock market" and wanted the "security" of their money. (Ex. A2 at 16; Ex. A3 at 15; Ex. A4 at 15; and Ex. A5 at 18.) In the remarks sections, Licensee added that the Whitakers wanted their money "out of the stock market and into a fixed account." (Ex. A2 at 16.)

7. The Bankers' Life annuities that Licensee recommended to the Whitakers would have accounted for approximately 96 percent of the Whitakers's liquid assets.² Each single premium deferred annuity had a surrender period of nine years and would not mature for at least 10 years. (Test. of Hardiman; Ex. A3 at 5.) Richard, at age 77, had a life expectancy of about 9 years (not taking into account his Alzheimer's' disease) and Retha, at age 75, had a life expectancy of 12.24 years. (Ex. A64; test. of Hardiman.)

¹ Licensee determined that the Whitakers' internet access was not working and called Comcast on Retha's behalf to get the line repaired. (Test. of Blankenship; Ex. A53 at 111.)

² In addition to the \$263,729.10 that Licensee recommended that the Whitakers invest in deferred premium annuities, the Whitakers had about \$11,000 in a checking/savings account, for a total in liquid assets of \$274,729.10. (Ex. A40; test. of Hardiman.)

8. After the Whitakers met with Licensee on September 24, 2005, they discussed their Bankers Life purchases with family members. The family members, including a daughter-in-law who worked for an insurance company, told the Whitakers that were making a mistake. On September 28, 2005, three days after they signed the applications, the Whitakers met with Licensee again. The Whitakers' granddaughter was present for Licensee's presentation. At the close of this meeting, Retha advised Licensee that she and Richard had decided not to go forward with the policy purchases. Retha directed Licensee to withdraw the applications, cancel the policies and not transfer any funds. (Test. of R. Whitaker; Ex. A1; Ex. A53 at 112-13.)

9. Licensee notified the home office of the Whitakers' intent to cancel, but by that time some of the applications and transfer requests had already been processed. It took several months and repeated written requests by Retha before all of the transactions were cancelled, the transfers were undone and her home health care premium payment was refunded. (Test. of R. Whitaker; Exs. A1 and A5.)

B. Hoiseth Transactions

10. On or about November 29, 2005 Licensee and another Bankers Life agent met with Velma M. Hoiseth, then age 82, at Hoiseth's home in Corvallis, Oregon. The meeting was arranged because Hoiseth had questions about Medicare Part D. (Ex. A54 at 14-15.) During the meeting, Licensee did a "needs assessment" with Hoiseth, inquiring into her retirement income, her savings, her medical expenses and her needs for long term care and life insurance. (Ex. A20; Ex. A54 at 21; test. of Blankenship.) At the time, Hoiseth had approximately \$150,000 in liquid assets, a limited monthly income of approximately \$1,500 from social security and a retirement pension, and fixed monthly expenses of about \$900. Hoiseth also had a history of health problems. She had a pacemaker installed after suffering a heart attack 10 years prior. (Exs. A40 and A20.)

11. During the November 29, 2005 meeting, Licensee recommended to Hoiseth that she terminate two existing deferred variable annuities with Thrivent Financial (one valued at \$7,689.40 and the other at \$13,700.06) and terminate a mutual fund managed by Thrivent Financial valued at \$49,018.59, and deposit these funds (totaling \$70,408.00) into three single premium deferred fixed annuities issued by Bankers Life. Hoiseth relied on Licensee's recommendations and applied for the Bankers Life annuities. (Exs. A13; A14 and A15.)

12. During her meeting with Hoiseth and in connection with the annuity application process, Licensee completed Annuity Suitability Questionnaire forms. Licensee marked boxes on the forms to indicate that Hoiseth's purpose for buying new annuities was "estate planning" and to "get her money out of the stock market."³ Licensee also marked the boxes indicating that Hoiseth would not incur any penalties or charges by converting her mutual fund money and existing annuities into Bankers Life annuities. (Ex. A10 at 2; Ex. A11 at 2; Ex. A12 at 2.)

13. Because Licensee was unaware of the circumstances, she did not advise Hoiseth that

³ Neither of Hoiseth's Thrivent annuity accounts was invested in stocks. One was in a fixed cash account (Ex. A17) and the other was invested in the bond market (Ex. A18).

Hoiseth would lose death benefits of approximately \$2,380 by terminating her Thrivent deferred variable annuities and would also be charged a surrender fee \$369.90 on one of the accounts. Licensee also did not explain to Hoiseth the tax consequences of converting her mutual fund money into an annuity. (Ex. A6; test. of Blankenship.)

14. Bankers Life issued to Hoiseth annuity no. 7833193, in the amount of \$49,018.59 on December 29, 2005. On January 6, 2006, Bankers Life issued to Hoiseth annuity no. 7833693, in the amount of \$13,330.16 and annuity no. 7833694, in the amount of \$7,689.40. (Exs. A13, A14 and A15.)

15. At the time Licensee recommended that Hoiseth purchase the Bankers Life annuities, Hoiseth was 82 years old and had a life expectancy of about eight years. Each single premium deferred annuity Licensee sold to Hoiseth had a surrender period of nine years and would not mature for at least 10 years. The annuities that Licensee sold to Hoiseth also accounted for approximately 47 percent of the Hoiseth's liquid assets. (Test. of Hardiman; Ex. A3 at 5; Ex. A38.)

C. Bond Transactions

16. On or about January 19, 2006, Licensee and another agent met with Zolman "Bud" Bond, then age 80, and his wife, Virginia "Ginny" Bond, then age 79, at the Bond home in Albany, Oregon. Both Zolman and Virginia had health concerns, Zolman had a history of prostate surgery and Virginia was a diabetic. At the time of this meeting, the Bonds had a mature annuity with Allianz Life Insurance Company worth \$4,593, about \$2,000 in CD accounts, a fixed monthly income of approximately \$1,541, and real estate valued at about \$400,000 (their homestead and 99 acres of farm property). (Ex. A40; Ex. A22 at 11.) The Bonds' monthly living expenses exceeded their monthly income due, in part, to the cost of their medications. They had recently been drawing money out of their Allianz annuity to make ends meet. (Ex. A53 at 89-90; test. of Blankenship).

17. During the meeting, Licensee recommended that the Bonds terminate the Allianz annuity and deposit the proceeds into a Bankers Life annuity. Licensee also suggested that the Bonds obtain a reverse mortgage on their real property, and recommended that they then deposit \$110,000 of the proceeds from the reverse mortgage into another Bankers Life annuity. Licensee contacted a mortgage broker, who met with the Bonds in Licensee's presence and arranged for the reverse mortgage. (Ex. A23; test. of Blankenship.)

18. Licensee also completed an Annuity Suitability Questionnaire form during her meeting with the Bonds. She marked boxes on the forms to indicate that Bonds' purpose for buying new annuities was for "initial return" and other, "wants IRA out of stock market." (Ex. A22 at 11.)

19. In late February 2006, after the Bonds obtained the reverse mortgage, Licensee sold them a fixed \$100,000 Bankers Life annuity out of the proceeds of the reverse mortgage. (Ex. A23.) The Bonds obtained approximately \$136,000 from the reverse mortgage and decided to use \$36,000 on home repairs and remodeling their kitchen. (Ex. A53 at 91; Ex. A54 at 129,133-)

35.) The reverse mortgage cost the Bonds about \$12,000 in fees. (Test. of Cummins; Ex. A53 at 142.)

20. At the time Licensee recommended the annuities to the Bonds, Zolman, at age 80, had a life expectancy of about eight years and Virginia, at age 79, had a life expectancy of about 10 years. (Ex. A38.) The single premium deferred annuities that Licensee sold to the Bonds had a surrender period of nine years and would not mature for at least 10 years. (Ex. A33.) These annuities also accounted for more than 95 percent of the Bonds' liquid net worth. (Test. Ex. A40.)

D. Matzye Transactions

21. Licensee first contacted Selma B. Matzye in mid-July 2005 at Matzye's home in Albany, Oregon, when Matzye was 83 years old. Licensee received a lead that Matzye was interested in long term care. Matzye's mind was sharp, but she had health concerns (including neuropathy in her feet) and was partially blind. During the meeting, Licensee did a "needs assessment" with Matzye, inquiring into her retirement income, her savings, her medical expenses and her needs for long term care and life insurance. Matzye reported that she had good insurance and sufficient money. (Ex. R3.) Licensee advised Matzye that, because of her neuropathy and her use of a wheelchair, she would not qualify for long term care. (Ex. A53 at 379-81.)

22. At the time of this meeting, Matzye had a variable annuity with GE Life and Annuity Assurance Company in the amount of \$90,437.63 and a Roth IRA variable annuity with GE Life in the amount of \$40,257.28. She also had more than \$170,000 in a trust account invested in annuities with AIG. She advised Licensee that she was receiving about \$1,300 from social security each month and a retirement pension of about \$2,500 month. (Test. of Blankenship; Ex. R3; Ex. A53 at 351.)

23. During a July 18, 2005 meeting with Matzye, Licensee recommended that Matzye terminate her two GE Life annuities and deposit the funds into annuities to be issued by Bankers Life. Matzye relied on the recommendation and applied for the annuities. Licensee completed the applications and then directed Matzye's hand to the signature lines, because Matzye's blindness prevented her from reading the applications and seeing the signature lines herself. Licensee was unaware that Matzye would incur penalties for terminating the GE Life annuities before their maturity, and therefore did not advise Matzye that there would be penalties or charges associated with her purchase of the Bankers Life annuities. Matzye incurred a penalty of \$1,953.71 for terminating one of the GE Life annuities and a penalty of \$876.55 on the other. (Exs. A28, A29, A36 and A40; test. of Matzye; test. of Blankenship; Ex. A53 at 366-67.)

24. On August 29, 2005, Bankers Life issued Matzye annuity no. 7824852, in the amount of \$39,380.73. (Ex. A33 at 2.) On or about September 8, 2005, Bankers Life issued Matzye annuity no. 7825296 in the amount of \$88,483.92. (Ex. A32 at 2.) At the time the annuities were issued, Matzye at age 83 had a life expectancy of about eight years. (Ex. A38.) Both of the deferred annuities that Licensee sold to Matzye in 2005 had a surrender period of nine years and would not mature for at least 10 years. (Exs. A32 and A33.)

25. On or about November 21, 2006, Licensee made another sales call on Matzye, who was then 84 years of age. During this meeting Licensee recommended that Matzye terminate her soon to be matured annuity with AIG valued at \$170,206.83 and deposit the funds into an annuity to be issued by Bankers Life. Matzye relied on the recommendation and applied for the annuity. (Ex. A30.) Licensee also completed an Annuity Suitability Questionnaire form during this meeting with Matzye. She marked boxes on the forms to indicate that Matzye's purpose for buying new annuities was for "estate planning" and other, "wants all annuities w/ Bankers' Life." (Ex. A30 at 11.)

26. On January 25, 2007, Bankers Life issued Matzye an equity indexed single premium annuity (number 7860497), in the amount of \$163,769.74. (Ex. A34 at 2.) At the time Matzye converted her AIG annuity into a Bankers' Life annuity, the AIG annuity was paying 3.5 percent interest, whereas the Bankers Life annuity was to pay only 1.04 percent during the 10 year surrender period. (Ex. A34 at 3; Ex. A37 at 5; Ex. A43 at 432.)

27. After annuity no. 7860497 was issued, Licensee and Matzye learned that the AIG annuity had not completely matured because Matzye had added funds to the account over the years, which increased the surrender period and the surrender charge. (Ex. A53 at 427-28, 445.) Upon learning that the surrender charges were approximately \$6,437, Matzye contacted Bankers Life and requested that the annuity be cancelled and the funds returned to the original company. (Ex. A34 at 5; Ex. A37 at 3.) Bankers Life voided the policy and refunded the funds to AIG. *Id.*

28. On April 30, 2007, Licensee again met with Matzye, who was then 85 years of age. Licensee recommended that Matzye withdraw the maximum amount allowed without incurring a penalty from her reinstated AIG annuity, \$23,724.00, and deposit that sum into an annuity to be issued by Bankers Life. Matzye relied on the recommendation and applied for the Bankers Life annuity.

29. On June 18, 2007, Bankers Life issued Matzye a single premium deferred annuity (number 7868957), in the amount of \$23,724. (Ex. A35 at 2.) The annuity had a surrender period of nine years and would not mature for 10 years. *Id.* At this time, Matzye (at 85 years of age) had a life expectancy of six and a half years. (Ex. A38.)

30. In recommending annuities to consumers, Licensee did not consider the consumer's age or life expectancy as a relevant factor if the consumer was age 85 or younger. (Test. of Blankenship.) Licensee also did not consider consumer's income to expenses ratio when recommending that the consumer purchase an annuity. She simply asked what the consumer could afford. (Ex. A53 at 84-85.) At the time Licensee made the recommendations at issue in this matter, she did not understand the potential tax consequences of placing money in an annuity versus leaving it in an existing stock or mutual fund account. (Ex. A53 at 284-87.) Licensee believed, however, based on information from her trainers and other, more experienced sales representatives for Bankers Life, that a fixed annuity was always the most appropriate and least risky investment for senior citizens. She did not at that time understand how variable annuities worked. (Test. of Blankenship.)

31. Licensee used a Bankers Life Needs Assessment, which she called the “fact finder” form, to inquire into a potential client’s financial situation and insurance needs. The Needs Assessment questions focused on four areas: the consumer’s current health insurance coverage and medical expenses, long term care coverage and needs, life insurance and survivors’ income needs and retirement income and savings. Licensee was trained that these were the four corners that made up the “senior worry box.” (Ex. A53 at 75-76; test. of Blankenship.) Licensee used emotional appeals and role playing in her sales presentations. Licensee learned to “pivot,” and to focus on the customer’s worries in pitching the Bankers Life products. *Id.* Licensee then took the consumer’s annuity applications back to the office for her manager to review and approve. She believed that, if the product was not suitable for the client, then her manager would not approve the application or Bankers Life would not issue the annuity. (Test. of Blankenship.)

CONCLUSIONS OF LAW

1. Licensee violated OAR 836-080-0090 by recommending an unsuitable life insurance policy or annuity to Richard “Dick” Whitaker and Retha Whitaker.
2. Licensee violated OAR 836-080-0090 by recommending an unsuitable life insurance policy or annuity to Velma M. Hoiseth.
3. Licensee violated OAR 836-080-0090 by recommending an unsuitable life insurance policy or annuity to Zolman “Bud” Bond and Virginia “Ginny” Bond.
4. Licensee violated OAR 836-080-0090 by recommending an unsuitable life insurance policy or annuity to Selma B. Matzye.
5. The appropriate sanction for Licensee’s conduct is revocation of her Oregon insurance producer license.

OPINION

The Division seeks to revoke Licensee's insurance agent license based on her alleged violations of the “suitability” rule, OAR 836-080-0090. The Division alleges that Licensee violated the rule in 2005 and 2006 when making recommendations to Richard and Retha Whitaker, Velma Hoiseth, Zolman and Virginia Bond and Selma Matzye. The Division has the burden of proving the allegations by a preponderance of the evidence. *See* ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position.); *Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). In this case, for the reasons set forth below, the Division has met its burden.

OAR 836-080-0090 requires Oregon insurance producers to conduct a reasonable inquiry into a consumer’s needs and objectives in recommending a life insurance policy or annuity to the consumer. The rule also requires that the producer recommend only suitable products that are

suitable for that consumer. Specifically, OAR 836-080-0090 provides:

Suitability in the Sale of Life Insurance and Annuities

A person may not recommend to a consumer the purchase, sale or replacement of a life insurance policy or annuity, or any rider, endorsement or amendment to the policy or annuity, without reasonable grounds to believe that the recommendation or transaction is not unsuitable for the consumer based upon reasonable inquiry concerning the consumer's insurance objectives, financial situation and needs, age and other relevant information known by the person. For the purpose of this rule, when a person recommends a group life insurance policy or annuity, "consumer" refers to the intended group policyholder.

(Emphasis added.)

1. Whitaker Recommendations

As set out in the findings above, in September 2005, Licensee recommended to the Whitakers that they terminate IRA accounts, a money market account and not yet matured CD accounts and deposit the proceeds from these accounts (more than \$263,000) into Bankers Life annuities. The Division alleges that Licensee did not have reasonable grounds to believe that the annuities she recommended were suitable for the Whitakers considering the Whitakers' ages (77 and 75 years of age respectively), their financial situation and needs and other relevant factors including their liquidity needs, their income versus expenses and their respective health issues. Specifically, the Division contends that Licensee knew or should have known that the recommended annuities were unsuitable for the Whitakers because: (1) the \$263,729.10 to be deposited into Bankers Life annuities constituted about 96 percent of the Whitakers' liquid assets; (2) the Whitakers had a limited monthly income of approximately \$1,800 month and fixed monthly expenses of about \$1,468 per month; (3) the Bankers Life annuities' nine year surrender period and 10 year maturation period exceeded Richard's life expectancy; and (4) Richard, with Alzheimer's disease, would likely need money available for in-home care or a nursing home in the upcoming years.

The record establishes that Licensee did not do a reasonable inquiry, and did not have reasonable grounds to believe that the annuities she recommended to the Whitakers were suitable for them based upon their insurance objectives, financial situation and needs, age and other relevant factors. As set out above, Licensee did not consider the Whitakers' ages when making the recommendation. She did not recognize that the annuities' surrender periods and maturation dates exceeded Richard Whitaker's life expectancy. She did not consider the Whitakers' monthly income versus monthly expenses. Licensee was not aware of, and did not consider, the tax consequences of selling the stocks in the Whitakers' Schwab account and converting the proceeds into a fixed annuity. Licensee also did not reasonably consider the Whitakers' financial

situation and the high likelihood that, given Richard Whitaker's Alzheimer's disease, he would need convalescent care in the near future.⁴

Furthermore, Licensee's recommendation that the Whitakers place 96 percent of their liquid assets in fixed annuities would have left the Whitakers with little or no cash reserves. They could not have accessed more than 10 percent of their money annually without incurring penalties and fees. In addition, Licensee's recommendations were not consistent with the purposes identified on the Whitakers' Annuity Suitability Questionnaire form. For example, Licensee marked "tax savings" as one of the purposes of purchasing the annuities, yet the Whitakers were not paying income tax at the time. Licensee also erroneously indicated on the form that the Whitakers would not incur any penalties or charges by converting their existing accounts into Bankers Life annuities. She did not consider that the Whitakers would incur fees for selling stocks and would lose interest on their CD accounts or be penalized for withdrawing funds before the accounts matured.

In short, the Division has established that Licensee did not have reasonable grounds to believe that her recommendations for fixed annuity policies were suitable for the Whitakers. The violation of OAR 836-080-0090 has been proven.

2. Hoiseth Transactions

With regard to Velma Hoiseth, Licensee recommended that she terminate her Thrivent mutual fund account and two Thrivent deferred variable annuities and deposit the proceeds from these accounts into Bankers Life annuities. The Division alleges that Licensee did not have reasonable grounds to believe that the annuities she recommended were suitable for Hoiseth considering Hoiseth's age (82 years), her financial situation and other factors, including her health and medical condition. Specifically, the Division asserts that Licensee knew or should have known the recommended annuities were unsuitable for Hoiseth because: (1) the \$70,408 to be deposited into Bankers Life annuities was about 47 percent of Hoiseth's liquid assets; (2) Hoiseth would lose death benefits totaling approximately \$2,380 if she terminated her two Thrivent annuities; (3) Hoiseth would pay a surrender fee of \$369.90 for terminating one of the annuities; (4) Hoiseth had a fixed monthly income of about \$1,547 and fixed expenses of about \$960; (5) the surrender periods and maturity dates on the Bankers Life annuities exceeded Hoiseth's life expectancy; and (6) Hoiseth had impaired and possibly declining health.

The record establishes that Licensee did not do a reasonable inquiry, and did not have reasonable grounds to believe that the annuities she recommended to Hoiseth were suitable based upon Hoiseth's insurance objectives, financial situation and needs, age and other relevant factors. As set out above, Licensee did not consider the Hoiseth's age when making the recommendation. Licensee did not recognize that the annuities' surrender periods and maturation dates exceeded

⁴ At hearing, Licensee asserted there was a "convalescent care rider" on the annuity policies (which would have allowed an additional annual withdrawal during the policy surrender period if the policy owner needed extended convalescent care). But, because Richard Whitaker was 77 years of age when the policy was purchased, he would not have qualified for the rider, because the rider only applies to policy owners under the age of 75. (Test. of Hardiman.)

Hoiseth's life expectancy. Licensee did not consider Hoiseth's monthly income versus her monthly expenses. Licensee was not aware of, and did not consider, the tax consequences of converting Hoiseth's mutual fund account and her variable annuities into fixed annuities. Licensee was also not aware of, and therefore did not consider, that Hoiseth would be subject to a surrender fee and would forfeit the death benefits on her two Thrivent annuities when terminating the accounts to place the proceeds into new Bankers Life annuities. Furthermore, Licensee did not recognize that, given Hoiseth's impaired health, she would likely need ample cash reserves to cover her future medical care needs.

Licensee's recommendations to Hoiseth did not further Hoiseth's stated goals. Hoiseth gained no tax or probate advantage by putting her money into Bankers Life annuities. And, by converting her existing annuities in new fixed annuities, Hoiseth lost the death benefits and started over with new surrender periods. In addition, because one of Hoiseth's existing annuities was in a cash account and the other invested in the bond market, the conversion of these proceeds did not further the goal of getting Hoiseth's money out of the stock market.

Consequently, the Division has also established that Licensee did not have reasonable grounds to believe that her recommendations for fixed annuity policies were suitable for Hoiseth. A second violation of OAR 836-080-0090 has been proven.

3. Bond Transactions

Licensee recommended that the Bonds terminate a mature Allianz Life Insurance annuity valued at \$4,593 and deposit the proceeds into a new Bankers Life annuity. She also recommended that the Bonds obtain a reverse mortgage on their home and place up to \$110,000 of the proceeds into a second Bankers Life annuity. The Division alleges that Licensee did not have reasonable grounds to believe that the annuities she recommended were suitable for the Bonds considering their ages (80 and 79 years), their financial situation and needs and other factors, including their health and current and potential medical expenses. Specifically, the Division asserts that Licensee knew or should have known that the recommended annuities were unsuitable for the Bonds because: (1) the \$4,593 to be deposited into a new annuity was about 96 percent of the Bonds liquid assets; (2) the Bonds had limited income and needed all of that income, if not more, to cover their monthly living expenses; (3) the surrender periods and maturity dates on the Bankers Life annuities exceeded the Bonds' life expectancies; and (4) both of the Bonds had impaired health.

The record establishes that Licensee did not do a reasonable inquiry, and not have reasonable grounds to believe that the annuities she recommended to the Bonds were suitable for them based upon their insurance objectives, financial situation and needs, age and other relevant factors. Licensee did not consider the Bonds' ages, life expectancies and their respective health issues (including diabetes) when she recommended that they purchase annuities with a nine year surrender period that would not mature for 10 years. And, while Licensee was aware that the Bonds were having difficulty covering their monthly expenses and were withdrawing money from their Allianz annuity, she did not look into the sources of their income. She instead recommended that they tie up nearly all of their liquid net worth at the time with a new, single premium deferred annuity.

Licensee recommended that the Bonds obtain a reverse mortgage on their property to free up some of their money, and then recommended that they place a significant percentage of the proceeds (70 to 80 percent) into a Bankers Life deferred annuity. There is no evidence that Licensee considered the costs of a reverse mortgage in making this recommendation, nor is there any evidence that she considered or recommended other ways for the Bonds to improve their financial situation, such as obtaining a line of credit on their property instead.

As with the other transactions discussed above, the Division has shown that Licensee did not have reasonable grounds to believe that her recommendations for deferred annuity policies were suitable for the Bonds based on a reasonable inquiry of the Bonds' insurance objectives, financial situation and needs, age and other relevant factors. A third violation of OAR 836-080-0090 has been proven.

4. Matzye Transactions

Licensee recommended that Selma Matzye purchase annuities on at least three occasions. In 2005, when Matzye was 83, Licensee recommended that Matzye terminate her GE Life annuity, valued at more than \$90,000, and a Roth IRA annuity, valued at more than \$40,000, and deposit the proceeds from these accounts into annuities to be issued by Bankers Life. In November 2006, when Matzye was 84, Licensee recommended that Matzye terminate her AIG annuity, valued at more than \$170,000 and deposit the funds into a new annuity to be issued by Bankers Life. And, when that purchase was later cancelled because of the significant surrender charges that Matzye would have incurred, Licensee recommended in April 2007 that Matzye withdraw the maximum amount she could from her AIG account without incurring fees (approximately \$23,700), and deposit that sum into a new Bankers Life annuity.

The Division alleges that Licensee did not have reasonable grounds to believe that the annuities she recommended were suitable for Matzye considering Matzye's age, her financial situation and needs and other factors, including the tax consequences, costs and penalties, Matzye's health and her current and potential medical expenses. Specifically, with regard to the 2005 recommendation to terminate the GE Life annuities, the Division asserts that Licensee knew or should have known that the recommended annuities were unsuitable because: (1) Matzye's fixed monthly income was less than her monthly expenses; (2) Matzye would pay penalties in excess of \$2000 for terminating the annuities; (3) the surrender periods and maturity dates on the Bankers Life annuities exceeded Matzye's life expectancy; and (4) Matzye had impaired health.

With regard to the November 2006 recommendation that Matzye terminate her AIG annuity and purchase a new Bankers Life annuity, the Division asserts that the Licensee knew or should have known that the recommended annuity was unsuitable for Matzye because: (1) Matzye's fixed monthly income was less than her monthly expenses; (2) Matzye would pay penalties in excess of \$6,400 for terminating the AIG annuity; (3) the AIG annuity paid 3.5 percent interest and the Bankers Life annuity promised to pay only 1.04 percent during the surrender period; (4) the surrender period (10 years) and maturity date (14 years) on the Bankers Life product exceeded Matzye's life expectancy; and (5) Matzye had impaired health.

And, with regard to the April 2007 recommendation to purchase a Bankers Life annuity with the maximum allowed withdrawal from the AIG annuity, the Division asserts that Licensee knew or should have known that this product was unsuitable for Matzye because: (1) Matzye's fixed monthly income was less than her monthly expenses; (2) the AIG annuity paid 3.5 percent interest and, with the exception of the first year (which paid 6.4 percent), the Bankers Life annuity promised to pay 2.5 percent for nine years and 3 percent thereafter; (3) the surrender period and maturity date on the Bankers Life product exceeded Matzye's life expectancy; and (5) Matzye had impaired health.

The record establishes that Licensee did not do a reasonable inquiry, and did not have reasonable grounds to believe that the annuities she recommended to Matzye were suitable for based upon Matzye's insurance objectives, financial situation and needs, age and other relevant factors. Licensee did not consider the Matzye's age (83, 84 and 85 years old) when making the recommendations. Licensee did not consider Matzye's monthly income versus her monthly expenses. Licensee was not aware of, and did not consider, the tax consequences to Matzye of the recommended conversions, nor was she aware of the significant penalties for terminating annuities the existing annuities. Licensee did not consider or appreciate that Matzye's AIG annuity was paying higher interest than the Bankers Life products she recommended. Finally, Licensee did not appreciate that the annuities she recommended did not further Matzye's stated purpose of estate planning, because Matzye already had her money in trust and established annuities.

Consequently, the Division has also established that Licensee did not have reasonable grounds to believe that her recommendations for deferred annuity policies were suitable for the Matzye under the circumstances. The fourth violation of OAR 836-080-0090 has been proven.

5. Sanction

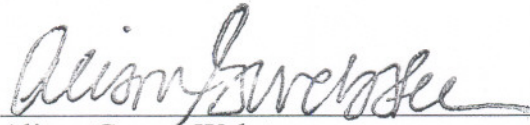
The Division proposes to revoke Licensee's resident individual insurance producer license based on Licensee's violations of OAR 836-080-0090. Licensee asserts that revocation is not warranted because (1) she did not intend to harm any clients or perspective clients and (2) the violations were not her fault. On this second point, Licensee places the blame on her former employer and her former managers, supervisors and coworkers for their lack of ethics and her lack of knowledge concerning her duties and obligations to consumers under the suitability rule. Licensee also faults the Bankers Life Annuity Suitability Questionnaire for not covering all relevant considerations, such as the client's income to expense ratio and liquidity level. Licensee further contends that she relied on the "checks and balances" of Bankers Life's system, her sales managers and the home office, to catch unsuitable transactions.

In this case, Licensee's ignorance of her professional obligation to make a reasonable inquiry into the consumer's objectives, financial situation, age, health condition, etc. in recommending a suitable product, does not constitute a defense to the violations nor does it provide a basis for mitigation. Further, because there is no *mens rea* element to OAR 836-080-0090, it is not determinative that Licensee had no intention to recommend products that were not suitable for her clients.

The Division has shown that Licensee violated the suitability rule on at least four occasions, when she recommended Bankers Life annuities to the Whitakers, Velma Hoiseth, the Bonds and Selma Matzye. Due to her lack of awareness of the suitability rule's criteria, Licensee did not make reasonable inquiries and did not appreciate the relevant factors, *i.e.* the consumer's age, life expectancy, financial needs and insurance objectives, when she recommended annuity products to seniors. Under these circumstances and in accordance with the Division's authority, revocation of Licensee's producer license is warranted.

ORDER

I propose that the Division issue a final order affirming the February 24, 2010 Notice of Proposed Action revoking Lori C. Blankenship's Oregon resident insurance producer license pursuant to ORS 774.074(1).



Alison Greene Webster
Senior Administrative Law Judge
Office of Administrative Hearings

Notice of Right to File Exception to Proposed Order

If the proposed order is adverse to a party, then the party has the right to file written exceptions to the order and present written argument concerning those exceptions pursuant to ORS 183.460. A party may file the exceptions and argument by sending them to the Insurance Division by delivering them to the Labor and Industries Building, 350 Winter Street NE, Room 440 (4th Floor), Salem, Oregon; or mailing them to P.O. Box 14480, Salem, Oregon 97309-0405; or faxing them to 503-378-4351; or e-mailing them to mitchel.d.curzon@state.or.us. The Insurance Division must receive the exceptions and argument within 30 days from the date this order was sent to the party.

CERTIFICATE OF SERVICE

On 25th day of August 2010, I mailed the foregoing Proposed Order in Reference No. **1001007**.

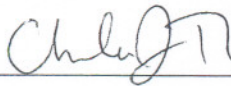
BY FIRST CLASS MAIL:

Lori C Blankenship
5526 E Street
Springfield OR 97478

Kelly Gabliks AAG
General Counsel Division
1162 Court Street NE
Salem OR 97301-4096

VIA ELECTRONIC MAIL:

Mitchel Curzon
Chief Enforcement Officer
Insurance Division
Department of Consumer and Business Services



Charles J Ramsey
Hearing Coordinator