

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

In the Matter of **Gary D. South**) **STIPULATION** and
) **FINAL ORDER**
) Case No. INS 10-02-003

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 Gary D. South (South).

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

South waives all rights relative to an administrative hearing and judicial review thereof.

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

Facts and Conclusions

Licensing Information

South has been licensed in Oregon as a resident individual insurance producer since 6/25/07. South's last recorded residence address is located in Hillsboro, Oregon and business address is located in Vancouver, Washington.

Made Unsuitable Recommendation in Life Insurance Transaction

South is subject to enforcement action pursuant to Oregon Administrative Rules (OAR) 836-080-0090 because of the following circumstances. ORS 744.074(1)(b) permits the director to take any authorized enforcement action against a person who has applied for a license or is licensed in Oregon as an insurance producer if the person violated any insurance statute; or any rule, order, or subpoena, of the director or the insurance regulator of another state. OAR 836-080-0090 prohibits a person from recommending to a consumer the purchase or replacement of 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 based upon a reasonable inquiry concerning the persons insurance objectives, financial objectives and needs, age and other relevant information known by the person.

On or about 2/14/08, South recommended to Jean K. Nakamura (Nakamura), then almost age 80, of Portland, Oregon, that she terminate a mutual fund and deposit \$28,034.98 therefrom into an annuity to be issued by Bankers Life and Casualty Company (Bankers Life). South did not have reasonable grounds to believe that the annuity was not unsuitable for Nakamura because South knew or should have known that (1) the \$28,034.98 to be deposited into the Bankers Life annuity was about 90 percent of Nakamura's limited liquid assets of about \$31,000, (2) Nakamura believed that she needed about \$28,000 "to be totally liquid and accessible for [her] use" but Nakamura would have only about \$3,000 accessible if she deposited \$28,034.98 of \$31,000 into the annuity, (3) Nakamura did not have any experience investing in stocks because her deceased husband had made the decisions for them about how to invest their money but the Bankers Life annuity was an equity indexed annuity which is a complex financial instrument, (4) Nakamura could not withdraw annually from the annuity more than only 10 percent of the amount deposited, which would be only \$2,803, for the next 10 years without paying a fee, and could not withdraw any amount if the amount remaining in the annuity was less than \$5,000, (5) Nakamura had limited monthly income of about \$2,000 and "lived month to month" on her income, (6) Nakamura would incur a minor expense to terminate the mutual fund, and (7) Nakamura was about 80 years old and had a life expectancy of about nine years, but the annuity had a surrender period of 10 years and would not mature for 19 years. Nakamura relied on South's recommendation, applied for the Bankers Life annuity, and terminated her investment. Nakamura deposited \$27,665.91 into the annuity. On 4/25/08, Bankers Life issued to Nakamura the annuity, number 7888191.

On or about 3/15/08, South recommended to Ardis E. Hood (Hood), then age 79, of Milwaukie, Oregon, that she withdraw \$5,000 from her checking account and

deposit it into an annuity to be issued by Bankers Life. South did not have reasonable grounds to believe that the annuity was not unsuitable for Hood because (1) the \$5,000 to be deposited into the Bankers Life annuity was about 63 percent of Hood's limited liquid assets of about \$8,000, (2) Hood believed that she needed about \$6,000 "to be totally liquid and accessible for [her] use" but Hood would have only about \$3,000 accessible if she deposited \$5,000 of \$8,000 into the annuity, (3) Hood did not have any experience investing in stocks because her deceased husband had made the decisions for them about how to invest their money, and while single Hood deposited her funds only into a checking, savings or money market account, but the Bankers Life annuity was an equity indexed annuity which is a complex financial instrument, (4) Hood could not withdraw annually from the annuity any of the amount deposited for the next 10 years because Hood deposited only \$5,000 and the annuity did not permit any withdrawal if the amount remaining in the annuity was less than \$5,000, (5) Hood had limited monthly income of about \$1,700, (6) Hood 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 (7) Hood had impaired health. Hood relied on South's recommendation, applied for the Bankers Life annuity, and issued a check for \$5,000 to be deposited into the annuity. On 3/28/08, Bankers Life issued to Hood the annuity, number 7886305. Subsequently, Hood declined to accept the annuity.

On 8/12/08, South recommended to James P. Lee (Lee), then age 82, of West Linn, Oregon, that he terminate an annuity issued by Transamerica Life Insurance Company (Transamerica Life) and deposit \$23,820.07 therefrom into an annuity to be issued by Bankers Life. South did not have reasonable grounds to believe that the annuity was not unsuitable for Lee because (1) the \$23,820.07 to be deposited into the Bankers Life annuity was about 36 percent of Lee's limited liquid assets of about \$67,000, as recorded by South, (2) Lee believed that he needed about \$100,000 "to be totally liquid and accessible for [his] use" but Lee would have about \$43,179.93 accessible if he deposited \$23,820.07 of \$67,000 into the annuity, (3) Lee could withdraw at any time from the Transamerica annuity any amount without

paying a fee, but Lee could withdraw annually from the Bankers Life annuity up to only 10 percent of the amount deposited, which would be only \$2,382, for the next 10 years without paying a fee, (4) Lee had limited monthly income of about \$3,000, (5) the Transamerica Life annuity paid 3.10 percent interest, but the Bankers Life annuity promised to pay 6.75 percent for the first year and 2.50 percent for the next nine years for an effective interest rate of 2.92 percent for ten years, and 3.00 percent thereafter resulting in Lee earning increasing less interest each year by replacing the Transamerica Life annuity with the Bankers Life annuity, (6) Lee was 82 years old and had a life expectancy of about 7 years, but the annuity had a surrender period of nine years and would not mature for ten years, and (7) Lee had impaired health. Lee relied on South's recommendation, applied for the Bankers Life annuity, and terminated the Transamerica annuity. On 9/8/08, Bankers Life issued to Lee the annuity, number 7898655.

Action

Pursuant to ORS 744.074(1), South's Oregon resident individual insurance producer license is suspended for 90 days from 6/1/10 to 8/30/10. During the period of suspension, South shall not transact insurance including servicing existing clients. South shall refer an inquiry from an existing client to the insurer that issued the policy to the client.

Dated May 17, 2010

/s/ Gary D. South
Gary D. South

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 June 7, 2010

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