STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION

In the Matter of: WILLIAM D. NICHOLS, an individual, Respondent.	Case No. INS-21-0037 ORDER TO CEASE AND DESIST, ORDER ASSESSING CIVIL PENALTIES, AND CONSENT TO ENTRY OF ORDER THIS IS A FINAL ORDER

The Director of the Department of Consumer and Business Services for the State of Oregon ("Director"), acting by and through the Division of Financial Regulation ("Division"), in accordance with Oregon Revised Statutes ("ORS") 731, 732, 733, 734, 735, 737, 742, 743, 743A, 743B, 744, 746, 748 and 750, and the Oregon Administrative Rules ("OARs") promulgated thereunder ("Oregon Insurance Code"), and of ORS 59.005 to 59.505, 59.991 and 59.995, and the rules promulgated thereunder ("Oregon Securities Law"), has determined that William D. Nichols ("Respondent") engaged in activities constituting violations of the Oregon Insurance Code and the Oregon Securities Law.

Respondent wishes to resolve and settle this matter with the Director.

Now, therefore, as evidenced by the authorized signatures subscribed on this Order, Respondent hereby CONSENTS to entry of this Order upon the Director's Findings of Fact and Conclusions of Law as stated hereinafter.

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

FINDINGS OF FACT

The Director FINDS that:

1. Respondent is licensed as a nonresident insurance producer in Oregon. Respondent's license number and National Producer Number (NPN) is 765097. Respondent has been licensed continuously to sell insurance products since 1988.

Respondent has not been the subject of any disciplinary action by the Division arising out of the sale of insurance products other this this matter.

2. Respondent's business address is 8916 NE 24th Ave, Vancouver, WA 98665-9049.

3. In addition to his nonresident Insurance Producer license, Respondent has also passed the Financial Industry Regulatory Authority (FINRA) Series 65 exam and is licensed in Oregon as an Investment Adviser Representative. Respondent's Central Registration Depository (CRD) number is 3208638. Respondent has been licensed continuously to sell securities for over 20 years. Respondent has not been the subject of any disciplinary action by the Division arising out of the sale of securities other this this matter.

4. Respondent has been appointed as an agent of American Equities since 2004.

The May 13, 2016 Meeting

5. On May 13, 2016, Respondent met with an Oregon consumer who will be identified for purposes of this Order as RS. RS, along with her husband (who will be identified for purposes of this order as CS) had attended a retirement planning presentation put on by Respondent at the Veteran's Administration hospital in White City, Oregon. Following the presentation, RS and CS took the opportunity to consult with Respondent.

6. At the time of this meeting, RS was the owner of two variable-rate annuities issued by Jackson National Life (Jackson), valued at $67,125.92 ("Jackson Contract *835") and $20,969.18 ("Jackson Contract *720"). These two annuities contracts are referred to in this order collectively as the "Jackson Annuities".

7. RS had become dissatisfied with the performance of the Jackson Annuities. RS hoped to retire in the next 3-6 years and felt that the Jackson Annuities were underperforming.

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

8. In their meeting on May 13, 2016, Respondent suggested that RS purchase two American Equity Flexible Premium Deferred Annuities—one to be valued at $66,000 ("AE Contract No. *042") and a second to be valued at $21,000 ("AE Contract No. *044"). These two annuities contracts are referred to collectively in this order as the "American Equity Annuities".

9. During the meeting Respondent, RS, and CS called Jackson and compared the cash accumulation and surrender values of the Jackson Annuities to the purchase price of the American Equity Annuities.

10. Respondent advised RS to have the funds resulting from the surrender of the Jackson Annuities sent to RS directly, to deposit the surrender amounts in her bank account, and to write two new personal checks for the purchase price of the American Equity Annuities. At the time of this advice, Respondent was aware that the proceeds of surrendering the two Jackson Annuities would fund the purchase of the two American Equity Annuities.

The Jackson Surrender Forms

11. Respondent completed two Jackson documents entitled "Variable Annuity Partial Withdrawal/Surrender Request"—one for each of the Jackson Annuities. Respondent submitted these surrender forms to Jackson by fax on May 19, 2016.

12. Respondent did not disclose the surrender of the two Jackson Annuities to American Equity and represented to American Equity that RS was not surrendering or otherwise replacing any other life insurance policy or annuity contract with the two American Equity Annuities.

The American Equity Individual Annuity Applications

13. On May 13, 2016, Respondent completed two copies of an American Equity document entitled "Individual Annuity Application"—one for each of the American Equity Annuities. On these applications, Respondent stated the following:

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

(a) That RS was not the "Owner, Annuitant, and/or insured" of any existing life insurance product;

(b) That the American Equity Annuities would not replace or change any existing life insurance or annuity; and

(c) That, as agent of record, Respondent had accurately recorded on the application the information given to him by RS.

14. Respondent submitted both Individual Annuity Applications to American Equity by mail on May 19, 2016.

The American Equity Suitability Acknowledgments

15. On May 13, 2016, Respondent completed two copies of an American Equity document entitled "Suitability Acknowledgment"—one for each of the American Equity Annuities. In these Suitability Acknowledgments, Respondent stated the following:

(a) That RS did not currently own any annuities outside of American Equity;

(b) That the funds for purchasing the American Equity Annuities would come from "mutual funds"; and

(c) That RS would not be using "funds from an existing life insurance policy or annuity contract" to fund the American Equity Annuities.

16. Respondent submitted both of the Suitability Acknowledgements to American Equity on May 19, 2016.

The American Equity Annuity Replacement Notices

17. On May 13, 2016, Respondent completed two copies of an American Equity document entitled "Important Notice: Replacement of Life Insurance or Annuities"—one for each of the American Equity Annuities. On these forms, Respondent stated the following:

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

(a) That RS was not "considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating" an existing annuity contract;

(b) That RS was not "considering using funds" from an existing policy or contract to pay premiums due on the American Equity Annuities; and

(c) That RS did not own any existing life insurance policy or annuity contract that would be replaced by the American Equity Annuities.

18. Respondent submitted both of the documents entitled "Important Notice: Replacement of Life Insurance or Annuities" to American Equity by mail on May 19, 2016.

Impact of the Annuities Transaction

19. RS incurred significant financial consequences as a result of the way Nichols structured the surrender of the Jackson Annuities and the purchase of the American Equity Annuities. Specifically:

(a) RS had to pay Jackson $5,128.84 in surrender charges and fees for the Jackson Annuities;

(b) RS was required to pay a tax penalty for withdrawing the moneys invested in the Jackson Annuities before reaching the age of 59 ½; and

(c) On July 21, 2019, after learning from the Division about the Jackson Annuities, American Equity concluded that the purchase of the American Equity Annuities was an improperly conducted replacement of the Jackson Annuities. American Equity therefore cancelled the American Equity Annuities.

20. Additionally, Respondent was required to return all commissions he earned relating to the sales of the American Equity Annuities.

Record Keeping and Cooperation in the Investigation

21. Respondent cooperated in the Division's investigation and produced complete

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

and accurate records relating to the transactions with and on behalf of RS.

CONCLUSIONS OF LAW

The Director CONCLUDES the following:

False Statement on Application for Insurance

22. Pursuant to ORS 746.100, no person may make "a false or fraudulent statement or representation on or relative to an application for insurance, or for the purpose of obtaining a fee, commission, money or benefit from an insurer or insurance producer."

23. Respondent violated ORS 746.100 as follows:

(a) By stating on the two Individual Annuity Applications for the American Equity Annuities that RS did not currently own any annuities outside of American Equity;

(b) By stating on the two Individual Annuity Applications for the American Equity Annuities that the funds for purchasing the American Equity Annuities would come from "mutual funds";

(c) By stating on the two Individual Annuity Applications for the American Equity Annuities that RS would not be using "funds from an existing life insurance policy or annuity contract" to fund the American Equity Annuities;

(d) By stating on the two Suitability Acknowledgements for the American Equity Annuities that RS did not currently own any annuities outside of American Equity;

(e) By stating on the two Suitability Acknowledgements for the American Equity Annuities that the funds for purchasing the American Equity Annuities would come from "mutual funds";

(f) By stating on the two Suitability Acknowledgements for the American Equity Annuities that RS would not be using "funds from an existing life insurance policy or annuity contract" to fund the American Equity Annuities;

(g) By stating on the two documents entitled "Important Notice: Replacement of Life Insurance or Annuities" for the American

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

Equity Annuities that RS was not "considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating" an existing annuity contract;

(h) By stating on the two documents entitled "Important Notice: Replacement of Life Insurance or Annuities" for the American Equity Annuities that RS was not "considering using funds" from an existing policy or contract to pay premiums due on the American Equity Annuities; and

(i) By stating on the two documents entitled "Important Notice: Replacement of Life Insurance or Annuities" for the American Equity Annuities that RS did not own any existing life insurance policy or annuity contract that would be replaced by the American Equity Annuities.

Failure to Disclose Replacement Transaction

24. Pursuant to OAR 836-080-0014, an insurance producer who initiates an application for insurance is required to certify to the insurer whether (a) the applicant has existing policies or contracts, and (b) at the option of the insurer, whether the applicant is replacing any of the existing policies or contracts.

25. Pursuant to OAR 836-080-0005(8), a transaction in which a new insurance policy or annuity contract is purchased and an existing policy or contract is "[l]apsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated" is a replacement.

26. Respondent violated OAR 836-080-0014 by knowingly failing to disclose the existence of the two Jackson Annuities to American Equity.

Cease and Desist Authority

27. Under ORS 731.252 (1), because the Director has reason to believe that Respondent has engaged in violations of the Insurance Code, the Director may issue an order to Respondent to cease and desist from violations of the Insurance Code.

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

28. Under ORS 59.245 (4), because the Director has reason to believe that Respondent has engaged in violations of ORS 59.205 (2), the Director may issue an order to Respondent to cease and desist from violations of ORS 59.205 (2).

Civil Penalties Authority

29. Under ORS 731.988(1), the Director may impose a civil penalty against an individual insurance producer in an amount not to exceed $1,000 for each violation of the Insurance Code. Each violation is a separate offense.

ORDERS

Now therefore, the Director issues the following Orders:

Cease and Desist

30. As authorized by ORS 731.252 (1), the Director ORDERS Respondent to CEASE AND DESIST from violating the Insurance Code.

31. As authorized by ORS 59.245 (4), the Director ORDERS Respondent to CEASE AND DESIST from violating ORS 59.205(2).

Civil Penalties

32. As authorized by ORS 731.988(1), the Director hereby ORDERS that Nichols be subject to a CIVIL PENALTY of $11,000 as follows:

(a) $9,000 for violating ORS 746.100 by making false statements or representation "on or relative to an application for insurance," as described in paragraph 23, above; and

(b) $2,000 for violating OAR 836-080-0014 by knowingly failing to disclose the Jackson Annuities to American Equity, as described in paragraph 23, above.

33. The Director hereby SUSPENDS payment of $6,000 of the CIVIL PENALTY imposed on Nichols for a period of three years from the effective date of this Order, provided Nichols complies with the following terms:

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

(a) For the three years following the effective date of this Order, Nichols shall make all records relating to transactions prepared or submitted by Nichols available to the Division upon request. Nichols shall be responsible for paying the reasonable costs incurred in order to comply with the Division's requests for records.

(b) For the three years following the effective date of this Order, Nichols shall commit no new violations of the Insurance Code, of any rules adopted pursuant to the Insurance Code, or of ORS 59.205(2).

34. The $5,000 non-suspended CIVIL PENALTY assessed herein against Nichols is due and payable at the time this Order is returned to the Division.

35. The $6,000 suspended CIVIL PENALTY will be waived three years from the effective date of this Order, provided Nichols has complied with the forgoing Order terms and does not commit any further violations of the Insurance Code during the three year period. The Director reserves the right to immediately assess and collect the suspended civil penalty upon a determination that Nichols has violated any term of this Order or has committed any further violation of the Insurance Code or of ORS 59.205(2).

36. This Order is a "Final Order" under ORS 183.310(6)(b). Subject to that provision, the entry of this Order does not limit other remedies that are available to the Director under Oregon law.

SO ORDERED this 27th day of October, 2022.

Andrew R. Stolfi, Director
Department of Consumer and Business Services

/s/ Dorothy Bean
Dorothy Bean, Chief of Enforcement
Division of Financial Regulation

[The remainder of this page intentionally left blank.]

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

CONSENT TO ENTRY OF ORDER

I, WILLIAM D. NICHOLS, state that I have read the foregoing Consent Order and that I know and fully understand the contents hereof; that the factual allegations stated herein are true and correct; that I have been advised of my right to a hearing, and that I have been advised of my right to be represented by counsel in this matter; that I voluntarily consent to the entry of this Consent Order without any force or duress, expressly waiving any right to a hearing in this matter, as well as any rights to administrative or judicial review of this Consent Order; that I understand that the Director reserves the right to take further actions against me to enforce this Consent Order or to take appropriate action upon discovery of other violations of the Insurance Code by me; and that I will fully comply with the terms and conditions stated herein.

I understand that this Consent Order is a public document.

William D. Nichols
Signature

State of WA

County of Clark

Signed or attested before me on this 6th day of September, 2022 by William D. Nichols.

/s/ Drew Anderson
Notary Public

[The remainder of this page intentionally left blank.]

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387