

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

In the Matter of **ING Life Insurance and Annuity Company.**) **STIPULATION** and
) **FINAL ORDER**
) Case No. INS 04-08-005

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 ING Life Insurance and Annuity Company (ING Life).

ING Life enters into this stipulation, pursuant to ORS 183.415(5), to conclude this proceeding without further administrative or judicial proceedings.

ING Life waives the right to receive a notice of proposed action, receive a notice of the rights of a party and procedures in contested cases, have a hearing, be represented by an attorney at the hearing, receive a proposed order, file exceptions to the proposed order, and have the final order judicially reviewed.

ING Life stipulates to the following facts, conclusions, and action; and consents to the issuance of a final order incorporating this stipulation.

Facts and Conclusions

Licensing Information

ING Life has been licensed in Oregon as an insurer since 12/31/76.

Failed to Promptly and Equitably Settle Claim

ING Life violated ORS 746.230(1)(f) in one instance by engaging in the following conduct. ORS 746.230(1)(f) prohibits an insurer from not attempting, in good faith, to promptly and equitably settle claims in which liability has become reasonably clear. On or about 4/23/03, ING life issued to the Donna K. Chapman Children's Trust (Trust) an individual single premium immediate fixed annuity, contract number S001000 xxxxxx9696, on form A050SP99 (OR). According to the schedule of benefits, the single premium was \$700,000, the number of guaranteed monthly

payments was 360, the first payment was to be on 5/23/03, and the amount of each monthly payment was \$2,401.70 for the first 12 months, and increasing at the rate of 3.00% annually thereafter. Chapman died on 7/3/03, just a little over two months after the contract started. On 8/13/03, ING Life sent a letter to the representative of the Trust and offered to either continue paying the monthly payments, or a lump sum payment of \$483,807.01. ING Life did not notice the obvious error in the amount of the proposed lump sum payment. On 11/14/03, ING Life received from an attorney representing the Trust a letter dated 11/14/03 (1) questioning whether the proposed payment was correct since Chapman had paid \$700,000 a little over two months before, and (2) asking ING Life to explain its calculation of the proposed payment. ING Life did not respond to the letter. So, on several occasions between 11/14/03 and 12/16/03, the attorney called ING Life. On one of those occasions, on 12/9/03, the attorney called ING Life specifically asking for a response to his letter dated 11/14/03. ING Life still did not respond to the letter. On another occasion, on 12/15/03, the attorney called ING Life asking ING Life what was the rate used in calculating the proposed payment. ING Life said that the rate was 4.4%. The attorney asked for a printout of the calculation using that rate so the attorney could determine whether proposed payment was correct. ING Life said it could not provide a printout. Although ING Life was contacted on behalf of the Trust three times about whether the proposed payment was correct, ING Life did not bother to recalculate the proposed payment to make sure it was correct. So, on 12/16/03, the attorney sent a letter to the Insurance Division asking for help. On 1/5/04, the Insurance Division faxed to ING Life some documents. On 1/9/04, during a telephone conversation, ING Life told the Insurance Division that ING Life had miscalculated the proposed payment because the computer system used to make the calculation did not take into account the increasing amount of the monthly payments, and that ING Life would recalculate the proposed lump sum payment. On 1/16/04, ING Life faxed to the Trust's representative, with a copy to the Insurance Division, a "corrected" and redated version of its 8/13/03 letter, offering to pay a lump sum payment of \$701,046.48. This corrected proposed payment was

\$217,239.47, or 31%, more than the initial proposed payment. On 1/29/04, the Insurance Division sent a letter to ING Life asking it to explain in writing why the initial proposed payment was miscalculated, and whether this error had occurred before. The response was due by 2/24/04. On 2/20/04, the Insurance Division received by fax from ING Life a letter dated 2/20/04 explaining that (1) the payment was “incorrectly based on a level payment of \$2,401.70” rather than on “an increasing payment,” (2) [t]his error was determined to be systems related since the calculation was produced by our administrative software when the date of death was added to the contract,” (3) [t]he error ... has since been corrected, (4) the proposed payment as of 2/1/04 was \$716,258.80 which included interest from 8/23/03 to 2/1/04, and (5) the error had not occurred before. Subsequently, on 3/8/04, ING Life paid the Trust a total of \$719,170.00 as payment of the claim. Thus, ING Life knew or should have known that it owed the Trust more than \$700,000 but did not recalculate the payment to make sure it was correct until after the Trust contacted ING Life three times, the Trust complained to the Insurance Division, and the Insurance Division contacted ING Life questioning the accuracy of the proposed payment.

Failed to Timely Respond to Claimant’s Communication About a Claim

ING Life violated OAR 836-080-0225(3) in two instances by engaging in the following conduct. OAR 836-080-0225(3) requires an insurer to reply within 30 days of receipt to communications about a claim from a claimant that reasonably indicates a response is expected.

1. As described above, on 11/14/03, ING Life received from the attorney representing the Trust a letter dated 11/14/03 requesting information about the proposed payment. ING Life was required by OAR 836-080-0225(3) to respond by 12/14/03. ING Life did not respond by that date. So, on 12/9/03, the attorney called ING Life specifically asking for a response to his letter. On 1/16/04, 33 days late, ING Life responded.

2. Additionally, on 4/26/04, ING Life received from an accountant representing the Trust a letter dated 4/22/04 requesting certain information about the payment.

ING Life was required by OAR 836-080-0225(3) to respond by 5/26/04. ING Life did not respond by that date. So on 5/27/04 the accountant sent a follow-up letter to ING Life. On 6/1/04, ING Life received the letter. On 8/6/04, 72 days late, ING Life responded.

Action

Pursuant to ORS 731.988, ING Life is assessed a civil penalty of \$10,000. The payment shall be made in the form of a check payable to the "Department of Consumer and Business Services" for the full amount due. The payment shall be delivered to the Insurance Division at the Labor and Industries Building, 350 Winter Street NE, Room 440 (4th Floor), Salem, Oregon; or mailed to the Insurance Division at PO Box 14480, Salem, OR 97309-0405. The payment is due on, and shall be received by the Insurance Division by, the date of the final order.

Dated October 8, 2004

/s/ Richard W. Vynalek
[Signature of Representative]

Richard W. Vynalek
[Printed Name of Representative]

Compliance Manager
[Printed Title of Representative]

ING Life Insurance and Annuity Company

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 October 27, 2004

/s/ Cory Streisinger
Cory Streisinger
Director
Department of Consumer and Business Services

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