

M. GALE LEMMON #4363  
Assistant Attorney General  
MARK L. SHURTLEFF #4666  
Attorney General  
Attorneys for Utah Insurance Department  
160 East 300 South, Fifth Floor  
P.O. Box 140874  
Salt Lake City, UT 84114-0874  
Telephone: 801.366.0375

RECEIVED  
OCT 03 2011  
UTAH STATE  
INSURANCE DEPT.

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BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF UTAH

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**COMPLAINANT:**

UTAH INSURANCE DEPARTMENT

**RESPONDENT:**

KORY L. SWEATFIELD  
4590 Harrison Blvd. #300A  
Ogden, UT 84403-3175  
License No. 86283

**STIPULATION AND ORDER**

Docket No. 2011-213 LF

Enf. Case No. 2946

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**STIPULATION**

1. Respondent, Kory L. Sweatfield is a licensed resident producer in the State of Utah holding license number 86283.

2. Respondent stipulates with the Complainant, Utah Insurance Department, as follows:

- Can*
- a. If a hearing were held, witnesses called by the Complainant could offer and introduce evidence that would support the Findings of Fact herein;
  - b. Respondent admits the Findings of Fact and Conclusions made therefrom;

- c. Respondent stipulates to the summary entry of the Order herein which shall be in lieu of other administrative proceedings by Complainant in this matter; and
- d. Respondent and Complainant have negotiated the terms of the Order entered herein and Respondent agrees to its entry and further agrees to be bound by all its terms.

3. Respondent is aware of his right to a hearing at which he may be represented by counsel, present evidence and cross-examine witnesses. Respondent has irrevocably waived his right to such hearing and to any appeal related thereto.

4. Respondent admits the jurisdiction of the State of Utah Insurance Commissioner as to all matters herein.

5. Respondent is acting herein free from any duress or coercion of any kind or nature, having been advised fully as to his rights set forth herein.

6. Respondent acknowledges that the issuance of this Order by the Commissioner is solely for purpose of disposition of the matter entitled herein.

DATED this 30 day of Sept, 2011.

  
\_\_\_\_\_  
KORY L. SWEATFIELD

  
\_\_\_\_\_  
UTAH INSURANCE DEPARTMENT  
M. Gale Lemmon, Assistant Attorney General

Based upon the foregoing Stipulation and information in the file, the Presiding Officer makes the following Findings of Fact:

**FINDINGS OF FACT**

1. In April of 2010, Respondent, acting with another Utah resident producer advised Brent G. Griffiths (consumer) to surrender his Lincoln Benefit Life (LBL) IRA Annuity # LBCA159877 and use the funds to purchase a new annuity with Allianz Life Insurance Company of North America (Allianz).

2. In recommending the Allianz annuity, the Respondent failed to accurately compare the two annuity products and recommended an annuity with a lower guaranteed contract value.

3. Respondent advised the consumer to have the surrender check on the LBL annuity made payable to consumer, rather than completing an IRS § 1035 Exchange (termination of an annuity with a direct transfer of funds to another annuity), resulting in LBL reporting the distribution as taxable income to the IRS, if the funds were not rolled-over within a 60 day period. The surrender check on the LBL annuity was made payable to the consumer, however he was able to put the proceeds into a traditional IRA prior to the end of the 60 day period.

4. Respondent's recommendation of this transaction financially harmed the consumer, in that the consumer incurred a net surrender charge of \$5,894.49 on his LBL annuity.

5. Respondent failed to fully research the replacement of the LBL Annuity and the Allianz application was declined by Allianz based on the fact that the premium for the Allianz annuity originated from an annuity that was issued less than one year from the original contract's purchase date. It is Allianz's company practice to decline applications where the money originated from another newly issued annuity.

6. Thus, the Allianz annuity recommended by the Respondent to the consumer was not a suitable transaction for him.

7. The Department and Respondent have agreed to an administrative forfeiture by Respondent in the amount of \$3,947.00 with \$2,947.00 to be stayed if the Respondent reimburses Griffiths for one-half of the surrender charge incurred. Respondent also agrees to Probation for a period of 12 months.

Based upon the foregoing Stipulation and Findings of Fact, the Presiding Officer enters the following Conclusions of Law:

**CONCLUSIONS OF LAW**

1. Utah Administrative Code R590-230-5(1) and (2) states as follows:

(1) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.

(2) Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:

(a) the consumer's financial status;

(b) the consumer's tax status;

(c) the consumer's investment objectives; and

(d) such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is

involved, in making recommendations to the consumer.

2. Respondent violated the above provisions when he recommended the surrender of the LBL annuity and purchase of the Allianz annuity to the detriment of the consumer Griffiths.

3. Utah Administrative Code R590-230-6 states:

(1) The commissioner may order:

(a) an insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this rule;

(b) an insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this rule; and

(c) a general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale, of annuities to consumers, to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this rule.

(2) Any applicable penalty under 31A-2-308 for a violation of Subsection R590-230-5.(1), (2), or (3)(b) may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered.

4. By virtue of the above provision, the Commissioner may stay a portion of the forfeiture and require Respondent to take corrective action toward the consumer as deemed appropriate.

5. The terms of the forfeiture, reimbursement and probation as agreed to by the Department and the Respondent are appropriate.

Based upon the foregoing Stipulation, Findings of Fact and Conclusions of Law, the Presiding Officer herewith enters the following Order:

**ORDER**

**IT IS HEREBY ORDERED:**

1. Respondent Kory L. Sweatfield is hereby assessed an administrative forfeiture in the amount of \$3,947.00. The amount of \$2,947.00 of the forfeiture is stayed pending successful completion of the probation imposed herein.

2. Respondent's license is placed on probation for a period of 12 months beginning with the date of this Order. The terms of probation are:

- a. Respondent shall pay the portion of the forfeiture not stayed in the amount of \$1,000 to the Department within 30 days of the issuance of this Order;
- b. Respondent shall reimburse one-half of the surrender charge incurred by the consumer for the surrender of the LBL annuity, and shall provide proof of such payment to the Department within 10 days of the payment being made, as follows:
  - i. the first payment of \$736.75 shall be made within 30 days of this Order,
  - ii. the second payment of \$736.75 shall be made within 120 days of this Order,
  - iii. the third payment of \$736.75 shall be paid within 210 days of this Order, and
  - iv. the fourth payment of \$736.75 shall be paid within 240 days of this Order; and
- c. Respondent shall have no further violations of the Utah Insurance Code, Department Rules, or any order of the Commissioner.

3. If Respondent fails to make any of the payments due to the consumer in a timely manner, the full amount of the stayed portion of the forfeiture become immediately due and payable.

**NOTIFICATION**

You are hereby notified that a failure to obey an Order of Commissioner may subject you to further penalties, including forfeitures of up to \$2,500 per violation and the suspension or revocation of your license and the filing of an action in district court, which may impose forfeitures of up to \$10,000 per day for continued violation.

You are further notified that other jurisdictions in which you may be licensed may require that you report this action to them.

DATED this \_\_\_\_\_ day of OCT 13 2011, 2011.

NEAL T. GOOCH  
Insurance Commissioner



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Administrative Law Judge  
Utah Insurance Department  
State Office Building Room 3110  
Salt Lake City, UT 84114  
Telephone 801-538-3800

CERTIFICATE OF MAILING

I do hereby certify that on this date I mailed, by regular mail, postage prepaid a true and correct copy of the attached:

STIPULATION  
&  
ORDER

To the following:

Kory L. Sweatfield  
4590 Harrison Blvd. #300A  
Ogden, UT 84403-3175

DATED this 13<sup>th</sup> day October, 2011



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Linda Hardy  
Market Conduct  
Utah Department of Insurance  
State Office Building, Room 3110  
Salt Lake City, UT 84114-6901



**UTAH**  
**Invoice - Original**

Printed Date: October 13, 2011  
 Invoice Date: October 13, 2011  
 Balance Due: \$1,000.00  
 Due Date: November 14, 2011  
 Invoice ID: 530688  
 Payor ID: 31062

SWEATFIELD KORY L  
 4590 HARRISON BLVD 300A  
 OGDEN UT 84403-3175

<b>Item Description</b>	<b>Amount</b>
10/13/2011 Monetary Penalty Individual	\$1,000.00
E-Case 2946 Docket 2011-213 LF	
<b>Original Amount Due</b>	\$1,000.00
<b>Payments Received</b>	
	<b>Balance Due</b>

**UTAH**  
**Invoice - Original**

Invoice Date: October 13, 2011  
 Balance Due: \$1,000.00  
 Due Date: November 14, 2011  
 Invoice ID: 530688  
 Payor ID: 31062  
 Payor Name: SWEATFIELD, KORY  
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Make checks payable to: Utah Insurance Department

Send payment to:

Utah Insurance Department  
 3110 State Office Building  
 Salt Lake City, UT 84114-6901