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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH

COMPLAINANT:

UTAH INSURANCE DEPARTMENT

RESPONDENT:

ZACHARY DANIEL LOVINGIER
P.O. Box 1078
Draper, UT 84020
License # 242019

STIPULATION AND ORDER

Docket No. 2012-052 LC

Enf. Case No. 3083

STIPULATION

1. Respondent, Zachary Daniel Lovingier is a licensed resident insurance producer in the State of Utah, holding license # 242019.
2. Respondent stipulates with the Complainant, Utah Insurance Department, as follows:
 - a. If a hearing were held, witnesses called by the Complainant could offer and introduce evidence that may support the Findings of Fact herein;
 - b. Respondent neither admits nor denies 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.

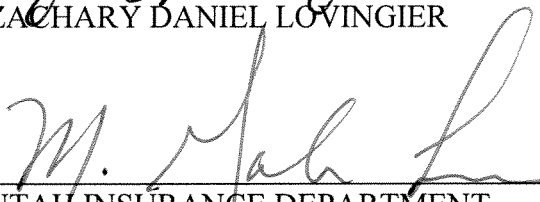
5. Respondent is acting herein free from any duress or coercion of any kind or nature, having been advised fully as to his rights set forth herein.

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 29 day of February, 2012.



ZACHARY DANIEL LOVINGIER



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. On or about May 21, 2009, Respondent solicited and sold two Forethought Destination Income 15 Annuities to a resident of Bountiful, Utah. At the time of application, the Annuity Suitability Questionnaire and Acknowledgment on both applications stated consumer's approximate worth at \$500,000, when it should have been \$95,000.

2. Forethought Life Insurance Company, the insurer, determined that these were unsuitable annuity transactions and refunded the premiums paid to the consumer.

3. On or about August 24, 2009, Respondent solicited and sold three Forethought Destination Income 125 Annuities to a resident of Layton, Utah. At the time of the application, the Annuity Suitability Questionnaire and Acknowledgment on all three applications stated the consumer's approximate annual income was \$50,000 when it should have been \$30,500. Also, the consumer's approximate net worth was stated as \$2,500,000 when it should have been \$1,130,000.

4. The Insurer determined that these were suitable annuity transactions; however due to the dissatisfaction of the consumer with the products and with the Respondent, the insurer terminated the contracts and refunded the premiums paid by the consumer.

5. Respondent agrees to an administrative forfeiture of \$2,000 and 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 Code Ann. § 31A-23a-402 states in part:

- (1) (a) (i) Any of the following may not make or cause to be made any communication that contains false or misleading information, relating to an insurance product or contract, any insurer, or any licensee under this title, including information that is false or misleading because it is incomplete:
 - (A) a person who is or should be licensed under this title;
 - (B) an employee or producer of a person described in Subsection (1)(a)(i)(A);
 - (C) a person whose primary interest is as a competitor of a person licensed under this title; and
 - (D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).
- (ii) As used in this Subsection (1), "false or misleading information" includes:
 - ...
 - (B) with intent to deceive a person examining it:
 - (I) filing a report;
 - (II) making a false entry in a record; or
 - (III) wilfully refraining from making a proper entry in a record.

2. Utah Administrative Code R590-230-5 states in part:

- (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.

3. Respondent violated the above provisions because false or misleading information was stated on the annuity applications submitted to an insurer.

4. An administrative forfeiture of \$2,000.00 and probation for a period of 12 months is appropriate under the circumstances of this matter.

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 Zachary Daniel Lovingier is assessed an administrative forfeiture of \$2,000.00 to be paid to the Utah Insurance Department within 30 days of issuance of this Order.
2. Respondent's insurance agent's license is placed on probation for a period of 12 months beginning with the date of this Order. The terms of probation are that Respondent shall pay the forfeiture assessed herein in a timely manner, and have no further violations of the Utah Insurance Code, Department Rules, or any order of the Commissioner.

NOTIFICATION


Respondent is hereby notified that failure to abide by the terms of this Order may subject you to further penalties, including additional forfeitures of up to \$2,500.00 per violation and the

suspension or revocation of your license, and the filing of an action to enforce this Order in the District Court, which may impose penalties of up to \$10,000.00 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 7th day of March, 2012.

NEAL T. GOOCH
Insurance Commissioner


MARK E. KLEINFELD
Administrative Law Judge
Utah Insurance Department