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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:**

MICHAEL L. CHILD  
6770 South 900 East, Suite 300  
Midvale, UT 84047  
License # 129457

**STIPULATION AND ORDER**

Docket No. 2012-051 LC

Enf. Case No. 3100

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**STIPULATION**

1. Respondent, Michael L. Child is a licensed resident insurance producer in the State of Utah, holding license number 129457.
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 1st day of March, 2012.



MICHAEL L. CHILD



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 March 10, 2010, Respondent, Michael L. Child, a Utah resident insurance producer solicited and sold an Allianz MasterDex "X" Annuity to a Utah resident.

2. At the time of the application, Respondent listed the insured's approximate household net worth and household liquid assets incorrectly. Respondent did not use current financial information to fill out the suitability form; rather he used figures he obtained from the consumer in 2009.

3. Based upon a review by their Suitability Department, Allianz determined that it should not have issued the annuity contract due to the low liquidity of the consumer and refunded the premium paid.

4. The Allianz annuity which Respondent sold was purchased with funds from consumer's surrender of another life annuity policy issued by Jackson National Life. Jackson National assessed a \$14,381.01 surrender charge to the consumer.

5. On September 13, 2011, Respondent met with the Department investigator and admitted that he did not use current information to fill out the suitability form regarding the Allianz annuity sold to consumer on or near March 10, 2010.

6. The Division recommends an administrative forfeiture in the amount of \$15,381.00 with \$14,381.00 stayed provided Respondent reimburses the consumer for the surrender charge he incurred. The Division also recommends 12 months probation.

7. On November 17, 2011, the Respondent agreed to the Division's recommendation.

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:
- (A) assuring the nonobligatory payment of future dividends or refunds of unused premiums in any specific or approximate amounts, but reporting fully and accurately past experience is not false or misleading information; and
  - (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 subsections (1) and (2) state:

(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 Section 31A-23a-402 by providing false or misleading information on an annuity application submitted to an insurer.

3. Respondent violated Rule 590-230-5 in that his recommendation of the subject transaction resulted in financial harm to the consumer.

4. An administrative forfeiture in the amount of \$15,381.00 (with \$14,381.00 stayed if Respondent reimburses consumer for the surrender charge incurred) and 12 months probation is appropriate in 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 Michael L. Child is assessed an administrative forfeiture in the amount of \$15,381.00. Of that amount, \$14,381.00 is stayed pending reimbursement of the surrender charges incurred in the surrender of the Jackson National Life Annuity in order to purchase the annuity sold by the Respondent.

2. The remaining forfeiture in the amount of one thousand dollars (\$1,000) shall be paid to the Department within 30 days of issuance of this Order.

3. Respondent's insurance license is placed on probation for a period of 12 months

commencing with the date of this Order. The terms of probation are:

A. Respondent pay the portion of the forfeiture not stayed herein in the amount of \$1,000.00 in a timely manner;

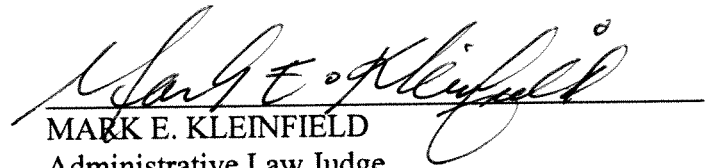
B. during the period of probation Respondent shall reimburse his customer the sum of \$14,381.00 for the surrender charges incurred by his customer, and provide evidence of that reimbursement to the Department ten business days prior to the expiration of the probation imposed herein;

C. if Respondent fails to reimburse his customer the entire amount of the surrender charges incurred before 10 business days prior to the expiration of the probation imposed herein, the stay on the balance of the forfeiture imposed shall be lifted, and the Respondent shall immediately pay the entire amount of the portion stayed to the department, less credit for any amounts paid to his customer as reimbursement; and

D. Respondent shall have no further violations of the Utah Insurance Code or Rules or of any order of the commissioner.

DATED this 7<sup>th</sup> day of March, 2012.

NEAL T. GOOCH  
Insurance Commissioner

  
MARK E. KLEINFELD  
Administrative Law Judge  
Utah Insurance Department

**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.