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BEFORE THE UTAH INSURANCE COMMISSIONER

<p>UTAH INSURANCE DEPARTMENT, Complainant, vs. JOHN JACOB ASHTON, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER</p> <p>Docket No. 2020-4212</p> <p>Lisa Watts Baskin Presiding Officer</p>
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Complainant, Utah Insurance Department (“Department”) and Respondent, John Jacob Ashton, have stipulated to entry of the following Findings of Fact, Conclusions of Law and Order. Based upon that stipulation, and good cause appearing, the Presiding Officer makes and enters the following:

FINDINGS OF FACT

1. Respondent is an individual resident producer holding license no. 247587.
2. Respondent’s mailing address is 136 West 1170 South, Hurricane, UT 84737-2584.
3. In 2013, Consumer purchased a fixed index flexible premium deferred annuity with bonus (“Original Annuity”). The Original Annuity had a 10-year surrender charge.

4. In 2018, Respondent assisted Consumer, who at the time was 78 years-old, with a cash surrender of the Original Policy and the purchase of an index annuity contract (“New Annuity”).

a. The New Annuity was similar to the Original Annuity without a bonus. The New Annuity had a 10-year surrender charge, meaning the 78-year-old would be subject to a new 10-year surrender charge period.

5. Concerning the surrender and purchase transaction, because the surrender occurred before the 10-year surrender period had lapsed on the Original Annuity, Consumer incurred a surrender charge. Also, because Consumer received a bonus for the first year the Original Policy was in force, Consumer incurred a prorated recapture bonus penalty.

6. Respondent failed to indicate on Consumer’s individual annuity application that the New Annuity was a replacement annuity.

7. Respondent failed to file a replacement form for the New Annuity.

8. Respondent failed to accurately enter Consumer’s liquid assets on the suitability data confirmation form and the financial needs analysis form for the New Annuity.

CONCLUSIONS OF LAW

1. The Utah Insurance Commissioner (“Commissioner”) has jurisdiction over the parties and this adjudicative proceeding pursuant to Utah Code §§ 31A-1-105 and 31A-2-201.

2. The Commissioner has legal authority to impose penalties on the Department’s licensees who violate the Utah Insurance Code. *See* Utah Code § 31A-2-308.

3. Respondent’s conduct set forth above in the Findings of Fact, violates the following Utah insurance laws:

a. Utah Code § 31A-23a-402(1)(a)(i), providing false and misleading information

relating to an insurance product or contract, i.e., failing to indicate that the New Annuity was a replacement and failing to file a replacement form.

b. Utah Admin. Code R590-230-5, recommending to Consumer a cash surrender of Original Annuity and purchase of New Annuity both of which were not reasonably suitable for Consumer's financial situation and needs, the facts of which Consumer disclosed to Respondent.

4. The recommended forfeiture amount of \$1,000.00, and probation for a term of twelve (12) months are appropriate under the circumstances.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby Ordered that:

1. Respondent is ordered not to commit the violations described in the Conclusions of Law in the future.

2. Respondent is placed on probation for a period of twelve (12) months beginning on the date this Order is signed. During the probationary period, Respondent shall have no further violations of Utah insurance laws. During the probationary period, Respondent shall provide the Department with quarterly reports containing a complete list of annuity products sold to Utah residents. This list shall include the following: (1) annuitant name; (2) name of insurer; (3) annuity product sold; (4) policy number; (5) issue date of the policy, and (6) source of funds. The first quarterly report shall be due 90 days from the date this Order is signed, with the remaining reports due every 90 days thereafter. Based on these reports, the Department will conduct a random audit of the annuity applications for review.

3. Respondent shall pay a forfeiture in the amount of \$1,000.00 (One Thousand Dollars).

4. Respondent's failure to comply with the terms of this Order shall result in additional penalties and forfeitures, which may include the Department moving to revoke Respondent's individual resident producer license.

DATED this 30th day of April, 2020.

TODD E. KISER
Utah Insurance Commissioner

/s/ Lisa Watts Baskin
Lisa Watts Baskin
Presiding Officer
Utah Insurance Department

NOTICE TO RESPONDENT

Failure to obey the Order may subject you to further penalties that include forfeitures of up to \$2,500 per violation, license suspension or revocation, and/or further enforcement action before the Utah District Court where forfeitures of up to \$10,000 may be imposed. If you are licensed in other jurisdictions, you may be required to report this proceeding to those jurisdictions.