

State of New Hampshire Insurance Department

In Re: Metropolitan Life Insurance Company

Docket No: Ins 09-005-EP

ORDER TO SHOW CAUSE AND NOTICE OF HEARING

Pursuant to New Hampshire Revised Statutes (“RSA”) 400-A:17, Metropolitan Life Insurance Company is hereby notified that a hearing will be conducted on April 14, 2009 at 10:00 a.m. in the offices of the New Hampshire Insurance Department (“Department”), 21 South Fruit Street, Suite 14, Concord, New Hampshire. This hearing is scheduled for purposes of giving the Respondent the opportunity to show cause why the Respondent should not have its producer license revoked or suspended, and/or receive an administrative fine pursuant to Ins. 401.04(h), promulgated pursuant to RSA 400-A:15, I; RSA 408:9; and RSA 409-A:3. Specifically, the Department alleges as follows:

1. The consumer, Richard Cimics (“Mr. Cimics”), is a sixty-five year old retired Ford automotive technician who lives alone in single-family home in Salem, New Hampshire. Mr. Cimics’ sole sources of retirement income are Social Security disability benefits and the approximately \$60,000 he accumulated in a 401(k) account while working as an automotive technician.
2. In April 2008, Richard Cimics (“Mr. Cimics”) met with Jeffrey Sickler (“Mr. Sickler”), a licensed New Hampshire producer, to discuss how Mr. Cimics should invest the proceeds of his 401(k) account.

3. Mr. Sickler subsequently recommended that Mr. Cimics invest the entire proceeds of the 401(k) account into a variable annuity issued by the Respondent. Mr. Cimics accepted Mr. Sickler's recommendation and signed a Variable Annuity Application on April 28, 2008.

4. The Respondent approved Mr. Cimics' application and allegedly transmitted Mr. Cimics' variable annuity policy to Mr. Sickler in May 2008. Mr. Sickler maintains that he, in turn, forwarded the policy to Mr. Cimics by first-class mail. However, Mr. Sickler failed to have Mr. Cimics sign a delivery receipt. Moreover, Mr. Sickler cannot provide alternative definitive proof, such as a Federal Express tracking sheet, confirming that Mr. Cimics received the policy or indeed that policy was ever placed in the mail. For his part, Mr. Cimics denies having received the policy.

5. Mr. Cimics received the first annuity payment from the Respondent in May 2008.

6. In late June 2008, Mr. Cimics met with Bonnie E. Sullivan ("Ms. Sullivan"), a licensed New Hampshire producer affiliated with Bankers Life and Casualty Company, to discuss health insurance coverage. During the course of this meeting, Mr. Cimics expressed to Ms. Sullivan certain dissatisfaction with the variable annuity he had purchased from the Respondent. When Ms. Sullivan asked Mr. Cimics if she could review the policy, Mr. Cimics advised her that he never received the policy. With Mr. Cimics' permission and in his presence, Ms. Sullivan telephoned the Respondent and inquired about whether or not the requisite ten-day "free look" period had expired. The Respondent's customer service representative advised that the "free look" period had recently expired, but the Respondent's representative suggested to Ms. Sullivan that Mr.

Cimics write the Respondent to request an extension of the “free look” period, an accommodation that the representative advised the Respondent sometimes allowed.

7. During that same meeting in late June 2008, Ms. Sullivan—again in Mr. Cimics’ permission and in his presence—ghost wrote at letter the Respondent requesting an extension of the “free look” period. In this letter, Ms. Sullivan included the following sentence: “*After checking my policy I found out that if I withdraw more than 6% per year my rider would be jeopardized.*” (A copy of the June 2008 letter is attached hereto as Exhibit 1.)

8. Understandably, the Respondent now relies on the phrase “after checking my policy” as conclusive evidence that the variable annuity policy was, in fact, delivered to Mr. Cimics.

9. However, Ms. Sullivan, the person who drafted the phrase, states that the phrase refers only to her telephone discussion with the Respondent’s customer service representative. She further states that she could not have actually reviewed the policy itself because, as noted above, Mr. Cimics had informed her he had never received it.

10. Ins. 401.04(h) states:

Unless the insurer has adopted a procedure to obtain a policyholder’s dated and signed receipt for delivery of the policy pursuant to (f) above, it shall be presumed that the date of delivery is the date shown in the policyholder’s records or by his memory unless there is evidence sufficient to void this presumption.

11. In the present case, the Respondent violated Ins. 401.04(h) by failing to obtain Mr. Cimics’ signature on a delivery receipt form.

12. Moreover, because Mr. Cimics states neither the Respondent nor its agent, Mr. Sickler, ever delivered the policy to him, the Hearing Officer must presume that the Respondent never delivered the variable annuity policy to Mr. Cimics. (*See* Ins.

401.04(h).) The presumption under Ins. 404.04(h) is rebuttable, but it does not appear that the Respondent, who carries the burden of proof once the presumption is established, can meet its burden.

13. The Respondent has the right to be represented by counsel at his expense. Should the Respondent elect to obtain counsel, Respondent's counsel shall file a notice of appearance with the Hearing Officer at the earliest possible date.

21. As provided under Ins 202.01, the Commissioner has appointed Don Belanger, an employee of the Department, to serve as the Hearing Officer. The Hearing Officer shall issue a decision in this matter in accordance with Ins 204.27.

22. Richard P. McCaffrey, Compliance and Enforcement Counsel, will appear as staff advocate, representing the interests of the Department pursuant to Ins 203.06. The contact information for the Department is:

New Hampshire Insurance Department
21 South Fruit Street, Suite 14
Concord, NH 03301
271-7973

23. These proceedings shall be conducted in accordance with the provisions of RSA 541-A and Ins 200. Copies of Department rules may be obtained through the Department's website, www.state.nh.us/insurance.

IT IS SO ORDERED.



Roger A. Sevigny, Commissioner
New Hampshire Insurance Department

Date: 2-6-09