

**STATE OF NEW HAMPSHIRE  
INSURANCE DEPARTMENT**

**In re: Richard Morrison  
Docket # 08-073-EP**

**DECISION AND ORDER**

**Background**

An Order to Show Cause and Notice of Hearing was issued in this matter on May 5, 2009 by Insurance Commissioner Roger A. Sevigny, to provide the Respondent the opportunity to show cause why the Respondent's New Hampshire insurance producer license should not be revoked or suspended, and why an administrative fine should not be levied against him. The Notice set a hearing date of September 16, 2009.

A hearing was conducted at the New Hampshire Insurance Department's ("Department") offices at 21 South Fruit St., Suite 14, Concord, NH on the aforesaid date. Kathleen L. Belanger, the Department's Director of Administration, was the presiding officer. The Respondent appeared with counsel Arnold Rosenblatt, Esq. of Cook, Little, Rosenblatt & Manson PLLC, and provided testimony. Respondent exhibits A through O were admitted into evidence. Richard P. McCaffrey, Esq., the Department's Compliance and Enforcement Counsel, represented the Department and presented witness testimony. Department exhibits 1 through 35 were admitted into evidence. In addition to the Respondent, the Department presented witnesses Michael Todd, Esq., Debbie Haskell and Katherine Jerome.

On order of the hearings officer, the record remained open for 10 days following the hearing, until September 26, 2009, for the submission of proposed findings of fact and rulings of law, and optional submission of proposed orders.

Rulings on the parties' proposed findings and conclusions are appended to this decision. In the event of any conflict between those rulings and the following narrative material, the rulings shall govern.

At issue in this matter is whether the Respondent violated the provisions of NH Code of Administrative Rules Ins 301.06 concerning the suitability of sale of an annuity, violated various provisions of RSA 417 concerning unfair insurance trade practices, and whether the Petitioner's New Hampshire insurance producer license may be revoked or a fine imposed pursuant to RSA 420-J:12.

### Summary

In the fall of 2007 the Clara E. Digilio Trust ("Trust" or "Digilio Trust") owned a Metropolitan Life Insurance Company ("MetLife") annuity valued at approximately \$400,000.00. The sole trustee of the Trust was Clara Digilio. Clara and her husband Robert Digilio were aged 86 and 80 respectively at the times of their deaths in 2008. In the fall of 2007, and at all times relevant to this matter, Clara and Robert Digilio lived alone in their home with the assistance of daily caregivers and/or hospice care. In the fall of 2007 Mrs. Digilio was nearly blind, generally non-verbal and in frail health. She was unable to perform most activities of daily living, including toileting, dressing, ambulation and bathing. In June of 2008, approximately 3 months after the death of Robert Digilio, the Merrimack County Probate Court declared Mrs. Digilio incapacitated and unable to provide for her own care and supervision, and unable to manage her own property and financial affairs. The Probate Court issued an order appointing a guardian over Mrs. Digilio's person and estate. Mrs. Digilio died on December 10, 2008, approximately 6 months after the Probate Court's order. Mr. Digilio died on March 25, 2008, predeceasing Mrs. Digilio by approximately 7 months. Prior to Mr. Digilio's death, Mrs. Digilio relied on her husband to arrange for her care and to handle the couple's financial affairs. In the fall of 2007 Mr. Digilio's health was also poor. He required oxygen to assist his breathing and was nearly deaf. In November 2007 Mr. Digilio suffered injuries when he fell outside his home, resulting in hospitalization. Mr. Digilio's health continued to deteriorate after the fall, and he died approximately four month later on March 25, 2008. In order to remain in their home at the times applicable to this matter

the Digilios required regular caregiver and/or hospice assistance provided by the Lake Sunapee Region Visiting Nurse Association. Clara had begun receiving daily care in 2003, and after Mr. Digilio's fall and hospitalization in November 2007 he also required daily care and assistance.

At issue in this matter are four separate attempts by the Respondent to transfer the Trust's annuity, valued at approximately \$400,000.00, from MetLife to an American National Insurance Company ("American National") deferred indexed annuity product. These attempts were brought to the attention of the Department when Michael Todd, Esq. filed a complaint with the Department dated April 18, 2008 on behalf of the Digilio's. Attorney Todd's inquiry questioned the transfer of the MetLife annuity to American National approximately one week prior to the MetLife maturity date of April 1, 2008. At the time of the transfer, and three earlier attempts to transfer the annuity, the Respondent was an employee of MetLife, and had been an employee of MetLife for over 25 years.

The MetLife annuity was originally issued in 1997. When the original producer on the account left the company, MetLife assigned the account to Kimberly Morrison, the Respondent's wife, as producer of record. Kimberly Morrison left MetLife in the fall of 2007 yet remained employed by the Respondent as a personal marketing assistant. The Respondent was not the producer of record on the Digilio Trust MetLife annuity account, but was an employee of MetLife.

In October 2007 MetLife notified Clara Digilio, the trustee of the Trust, by letter that the MetLife annuity would mature on April 1, 2008. The notice also explained that the Trust needed to instruct MetLife concerning disposition of the proceeds of the annuity at maturity. The notice included a form for the annuitant to complete and return to MetLife if the annuitant sought additional information. The Digilios returned the form to MetLife after selecting the option requesting "further information on receiving income payments available under my contract".

Although not producer of record on the account, the Respondent learned of the Digilio Trust's maturing annuity and contacted the Digilios and arranged to meet with them at their home while the request for information the Digilios had submitted to MetLife was pending. MetLife did not learn of any of the Respondent's numerous

contacts, meetings and conversations with the Digilios until after Attorney Todd filed a complaint with the Department in May 2008.

At his first meeting with the Digilios, the Respondent, at that time a MetLife employee of approximately 25 years, discussed transferring the proceeds of the MetLife annuity to an indexed annuity with another company, American National Insurance Company. The Respondent persuaded Mr. Digilio to transfer the annuity to American National and to have Mrs. Digilio sign the transfer documents. The 1035 Exchange Request document that Mrs. Digilio signed in the Respondent's presence at her husband's direction did not identify the Respondent as being involved in the transfer transaction in any way, including identifying him as the American National producer or as having witnessed Mrs. Digilio's signature. The 1035 Exchange form, when sent to MetLife, would effectuate the transfer of the funds from MetLife to American National. Therefore, absent identification of the Respondent on the transfer documents, MetLife was unable to determine that one of its employees was transferring its account to another company.

In order to effectuate the transfer, the Respondent arranged to have Mrs. Digilio's signature witnessed on the transfer documents by Kara Stanley, a New Hampshire licensed producer for American National, who was not present when Mrs. Digilio signed any of the transfer documents. Insurance Department licensing records entered into evidence show Kara Stanley shared the same business address as the Respondent. The Respondent testified at the hearing that Ms. Stanley witnessed the documents at the Respondent's request, that Ms. Stanley did not in fact witness Mrs. Digilio signature on any of the transfer documents, and that Ms. Stanley had never met either of the Digilios. At the Respondent's request Ms. Stanley also falsely witnessed 3 subsequent sets of transfer documents related to later attempts to transfer the Digilio Trust annuity to American National.

The Respondent testified that he asked a Digilio caregiver to tell Mr. Digilio that Mr. Digilio shouldn't tell MetLife that the Respondent was involved in the transfer. Witness Deborah Haskell corroborated this conversation with the Respondent. The Respondent further testified that MetLife would not know that a MetLife employee was involved in or orchestrating the transfer transaction.

After receiving the transfer documents prepared by the Respondent, that instructed MetLife to transfer the funds to American National, MetLife contacted the Digilios and explained to Robert Digilio that a surrender penalty would apply if the funds were transferred prior to the annuity's maturity date of April 1, 2008, a few months in the future. As a result, the Digilios cancelled the first transfer attempt. Following the cancellation of the transfer, the Respondent again contacted the Digilios and again persuaded them to transfer the funds to American National. This occurred approximately 2 weeks following Mr. Digilio's fall and hospitalization, and approximately 4 months before his death on March 25, 2008. Again, upon the Respondent's request, Ms. Stanley falsely witnessed Mrs. Digilio's signature on the transfer documents.

In January, 2008 MetLife contacted the Digilios upon receiving another set of transfer documents. MetLife again advised the Digilios that an early withdrawal penalty would apply to the transfer if the annuity was transferred prior to its April 1, 2008 maturity date, approximately 3 months away. The Digilios again cancelled the transfer in order to avoid the surrender penalty.

On January 22, 2008, after contacting and meeting with the Digilios, the Respondent once more persuaded the Digilios to execute a transfer request, the third such request, approximately 2 months before the MetLife annuity April 1, 2008 maturity date. The Respondent testified that Mrs. Digilio's signature on the transfer documents was again falsely witnessed by Kara Stanley at the Respondent's direction. This transfer was again cancelled by the Digilios when they were contacted by MetLife concerning the surrender penalty that would apply unless they waited until the April 1, 2008 maturity date to transfer the funds.

This time, in addition to the transfer documents, the Respondent presented for Mrs. Digilio's signature a letter dated January 22, 2009. The Respondent testified that he authored and typed the letter he presented for Mrs. Digilio's signature. The letter purported to have been written by Mrs. Digilio, and instructed MetLife that Mrs. Digilio was "firm in my decision to move the account and do not wish to be contacted further." The letter the Respondent wrote also requested that MetLife facilitate the transfer request immediately.

Despite this letter, on February 27, 2008 the Digilios were contacted again by MetLife who advised them again of the early withdrawal penalty and explained as before that the penalty could be avoided by waiting until the April 1, 2008 maturity date to transfer the funds. Following this conversation, the Digilios again cancelled the transfer.

On March 20, 2008, a little over one week before the April 1 maturity date of the MetLife annuity, and five days before Robert Digilio died, the Respondent again contacted the Digilios. For the fourth time the Respondent persuaded Mrs. Digilio to sign the documents to transfer the MetLife annuity to the American National indexed annuity. Robert Digilio died on March 25, 2008, five days after Mrs. Digilio signed the fourth set of transfer documents presented by the Respondent. The annuity was transferred to American National on March 28, 2008, 3 days prior to its maturity, and a penalty in the amount of \$1,497.38 was assessed by MetLife for early withdrawal.

MetLife later learned of the Respondent's involvement with the transfer of the Digilio Trust annuity due to the Department's investigation of Attorney Todd's complaint. MetLife had previously warned the Respondent that his employment would be terminated if the Respondent continued to engage in selling business away from MetLife. MetLife terminated the Respondent's employment on May 16, 2008 as a result of his involvement in the transfer transaction.

### **Discussion**

The Respondent persisted in four attempts to transfer the \$400,000.00 Digilio Trust annuity away from his employer to another carrier. The Respondent influenced an 85 year old frail and ill woman with diminished mental capacity to execute transfer documents to a 10 year deferred annuity with an early withdrawal penalty on four separate occasions.

The Respondent arranged to have the applicable transfer documents falsely witnessed by another producer so that his employer would not know that he was involved in a transaction that would move the annuity to another insurance carrier. The Respondent acted dishonestly when he asked the Digilio's caregiver to tell Mr. Digilio to



lie to MetLife about the Respondent's involvement in the transfer attempts in order to hide his involvement from his employer. Further, the Respondent caused Clara Digilio to execute partially blank transfer request forms.

Observation of the Respondent's testimony and demeanor, and that of the other witnesses, as well as review of the exhibits entered into evidence in this matter, indicate the Respondent's actions with respect to the Digilio Trust were self serving, and that the Respondent failed in his duty under the law as an insurance producer to make reasonable inquiry to determine suitability of the 10 year replacement annuity to an elderly couple with diminished capacity and frail health. The Respondent misrepresented the consequences of the surrender of the MetLife annuity, by frightening the Digilios into believing that there were tax consequences associated with failure to transfer the annuity to the product he recommended. The Respondent admitted to making false and fraudulent statements on an application for insurance when he failed to witness Clara Digilio's signature, and admitted to inducing his colleague to falsely witness the documents after the fact.

Much of the Respondent's testimony justifying his actions was not credible. The Respondent engaged in subterfuge to avoid detection by his employer due to prior termination warnings for the same activity, and in fact his employment was terminated when MetLife learned of his attempts to transfer the annuity to another insurance carrier.

In the fall of 2007 the Respondent had knowledge of the upcoming maturity of the Trust's annuity because his wife was agent of record on the account, but was no longer a licensed producer. The Respondent then commenced his contact with the Digilios. The method he used included personal meetings with the Digilios at their home, where he convinced Mr. Digilio to persuade his wife to sign documents to transfer the funds to an American National 10 year deferred annuity. The Respondent claimed throughout his testimony that the American National product provided a better return to the Digilios than the MetLife annuity, despite evidence that the minimum guaranty was less than what the trust was earning on the existing MetLife annuity. The first attempt, and all 3 subsequent attempts, to transfer the annuity were undertaken prior to maturity of the MetLife annuity.

Despite being employed by MetLife for over 25 years, the Respondent testified that he had no means of determining if a surrender charge or penalty would be assessed by MetLife for early withdrawal of the funds. The Respondent claimed that MetLife would not disclose this information to him and that he had not inquired. Despite failing to inquire about penalties, the Respondent convinced Mr. Digilio that the transfer of the funds would earn a higher interest rate, and did not advise Mr. Digilio that a surrender charge or early withdrawal penalty might apply. The Respondent testified that Mr. Digilio was solely concerned with the interest rate the annuity would earn and any potential tax liability. He was unable to explain in response to the hearings officer's inquiry why the Digilios cancelled the transfer on 3 separate occasions, except to claim that MetLife told Mr. Digilio that there would be tax liability. No other evidence of any communication from Met Life concerning tax liability was offered, and the Respondent's testimony in this respect was not credible.

Neither of the Digilios was fully aware of their financial circumstances. Testimony from more than one witness described the house as cluttered and like a "rabbit warren" with paths leading through mounds of papers, magazines and other belongings. The Digilio's lived in the living room of the house, which contained Clara's hospital bed. After Robert's fall in 2007 both Clara and Robert rarely left in their chairs in the living room, even to sleep. Testimony from Attorney Todd indicated that dividend checks were found uncashed and undeposited among mounds of mail next to Mr. Digilio's chair. Attorney Todd found bank statements under Mr. Digilio's underwear in a bureau in the bathroom of the house. When finally tallied, Attorney Todd found their assets to be in excess of one million dollars, yet they lived in impoverished conditions.

Mrs. Digilio signed the applicable transfer documents when they were presented by the Respondent. No credible testimony was provided that Mrs. Digilio knew what she was signing. Caregivers testified that Clara was incontinent, and that she could not stand or move without assistance. Ample evidence was presented, including testimony of the Respondent, that Clara Digilio was nearly blind and was non-verbal. In addition, medical evidence in the record indicates Clara's mental capacity was severely limited.

Less than 2 months after the final transfer documents were executed in March 2008, Clara's physician certified to the Probate Court that her mental condition was such



that she could not understand pending guardianship proceedings, and that she had been in that condition since at least January 2008. The Respondent testified that Clara signed the transfer documents when Mr. Digilio asked her to sign, but did not ask questions or verbally communicate in any way with either Mr. Digilio or the Respondent about what she was signing. The Respondent also testified that Mrs. Digilio never spoke during any of the number of meetings he had with the Digilios at their home, yet the Respondent indicated she understood what was said to her because she nodded when Mr. Digilio spoke to her.

When a power of attorney was appointed for the trust in January 2008, the Respondent's testimony indicates that he considered the power of attorney to be suspect because Mrs. Digilio wasn't capable of understanding the transfer of this authority to sign checks for the trust to her brother in law. At the same time, the Respondent testified that he did not recall if the Trust owned the MetLife annuity. Nonetheless, throughout his testimony the Respondent insisted that both the Digilios, though physically incapacitated, had no mental incapacity with respect to understanding the financial implications of the transfer of the \$400,000 annuity.

The Respondent testified that he did not know what commission amount he would have earned from this transfer, stating that the American National commission rates change on a regular basis and are based on a number of factors. The Respondent had been a producer and managing producer in the industry for over 25 years, had placed numerous policies with American National and other carriers. He testified that he sold away several dozen policies from MetLife to both American National and Great American Life Insurance Company between January 12, 2004 and May 18, 2008. The Respondent testified that his commission income from the business he sold away from MetLife to these two carriers during that period exceeded \$508,000. He also testified that any policies sold through MetLife required him to split commissions. The Respondent testified that he did not split the commission when the Digilio Trust annuity was finally transferred to American National. The Respondent also admitted in his testimony that he never attempted to determine if the American National product he sold the Digilio Trust was available through the MetLife general agency.

The transfer documents executed by Clara Digilio contained no indication that the Respondent had any involvement in the transaction whatsoever. The Respondent, although present at their execution by Mrs. Digilio, did not sign the transfer documents as witness. The Respondent testified that only he and Mr. Digilio witnessed Clara Digilio's signature. Instead of indicating on the forms that he had witnessed the signatures, the Respondent testified that he had an associate who was not a MetLife employee witness Mrs. Digilio's signature after the fact. The Respondent did not offer any explanation for his failure to sign as the witness to Clara Digilio's signature on the transfer documents for all four transfer attempts.

The Department alleged that the reason for Respondent's failure to witness Clara Digilio's signature was because the transfer documents would have been presented to MetLife to effectuate the transfer. The Respondent was an employee of MetLife at the time, and the Department posited that these documents would have adversely affected his employment relationship if he had witnessed them. A letter of warning had been issued to the Respondent by MetLife for previous actions in which he sold business away from his employer.

The Respondent testified that he had no financial incentive to transfer the account away from his employer, but provides no credible explanation of the subterfuge he engaged in to hide the American National transfer from MetLife. He also does not explain why he failed to use the MetLife general agency to place the American National product, which was available to him to sell the product that he claimed was a "better fit" for the Digilios than any MetLife product available.

The Respondent testified that the Digilios told him that they did not need additional income and therefore he sold them the American National 10 year deferred annuity with an early withdrawal penalty. However, the Respondent did not explain the discrepancy in his testimony when compared to the forms the Digilios returned to MetLife requesting information on increasing their income payments. Attorney Todd testified that the Digilio's were spending approximately \$100,000 per year on home care.

The Respondent's admission that he did not witness Clara Digilio's signatures, his failure to provide an explanation for not witnessing the documents, his admission that the 1035 exchange and replacement forms were forwarded to MetLife for transfer of the

funds to American National, and the warning letter in his personnel file for selling business away from MetLife, leads to the reasonable conclusion that the Respondent was attempting to hide these transactions from his employer (1) in order to avoid dismissal from his employment and (2) to gain a higher commission from American National than he would have received from MetLife for rolling the funds into another MetLife product or for selling the American National product through the MetLife general agency.

This conclusion is further supported by the Respondent's admitted repeated attempts to transfer the funds on 4 separate occasions despite the Digilio's rescission of each of the transactions when Mr. Digilio learned from MetLife of the early withdrawal penalty that applied. Each time Mr. Digilio would be convinced by the Respondent that there would be tax consequences if the funds were not transferred, and each time the decision to transfer would be rescinded when the Digilios received notification from MetLife that there would be a penalty for early withdrawal.

The final and successful transfer documentation was signed only 5 days before Mr. Digilio's death, and approximately 1 week before the maturity date of the MetLife annuity. Testimony that Mrs. Digilio was not verbal, was nearly blind, needed daily care and assistance to ambulate, was unable to feed herself, was incontinent, did not bathe herself or perform other activities of daily living, explains why this final transfer, that occurred just days before Mr. Digilio's death, was not subsequently reversed. In addition, despite admonishments by caretakers to the Respondent that no one was to speak to the Digilio's without their attorney's presence or permission, the Respondent obtained the signatures for the final transfer without contacting Attorney Todd.

At the time of the final transfer, Mrs. Digilio's health had deteriorated further, and she had been assessed by a psychologist as incapable of making any but the simplest financial decisions as of January 2008, such as to whom she wanted to leave her estate. The Respondent alleges that a \$400,000 annuity transfer to an account with a graduated interest rate over a 10 year period, including a 2 year so-called "teaser" rate, was a financial transaction equivalent to knowing whom she wanted as heirs to her estate. Again, this is not credible given the complex nature of an annuity insurance investment contract and the assessments of Mrs. Digilio's mental capacity contained in the record. The transfer occurred approximately one week prior to the maturity date on the MetLife

annuity, and an early withdrawal penalty of approximately \$1,400.00 was consequently assessed by MetLife.

The Respondent argues that there was no harm to the Digilios or their estate because the transfer to the American National annuity resulted in significant earnings over the short term. Nonetheless, the evidence indicates that absent the so-called “teaser rate” in the new contract, the remaining 8 years of the contract would have paid a lower rate than the MetLife annuity contract. As a result, over the long term, had Mr. and Mrs. Digilio survived an additional 10 years to their 90<sup>th</sup> and 96<sup>th</sup> birthdays respectively, their return over the last 8 years of the contract would have been less than their earnings under the MetLife annuity.

The Respondent justifies his actions by claiming it was in the best financial interest of the Digilios to move their funds to the American National annuity, stating the American National product was “a better fit”, but does not admit that he had anything to benefit from this transaction. The Respondent offered no credible reason to move this account 5 days prior to maturity, thus incurring an early withdrawal penalty. In fact, the Respondent testified that Mr. Digilio intended to have his wife place the funds in a bank CD. However he was convinced to do otherwise by the Respondent making him fear potential tax consequences warned of by the Respondent.

The Respondent claims the transfer was motivated by his unselfish desire to assist this elderly couple increase their interest earnings. However, he proposed to move the funds to a product with an overall less favorable investment return scheduled to mature at a time likely to exceed their life spans. In addition, any liquidity needs the Digilios might have had prior to maturity would have been subject to an early withdrawal penalty if the withdrawal exceeded 10% of the balance, and Attorney Todd testified that the Digilios were expending approximately \$100,000 per year on their home care.

Additional facts are set forth in the attached appendix.

## Conclusion

Observation of the Respondent's testimony and demeanor, and that of the other witnesses, as well as review of the exhibits entered into evidence in this matter has left no doubt in the mind of the hearings officer that the Respondent's actions with respect to the Digilios' funds were self serving. The Respondent failed in his duty under the law as an insurance producer to make reasonable inquiry to determine the suitability of the American National annuity to a frail and elderly woman with diminished mental capacity, that he engaged in unfair and deceptive trade practices in the business of insurance by perpetrating a fraud concerning the witnessing of the 1035 exchange and replacement documents. In addition, the Respondent directly misrepresented the consequences of the surrender of the MetLife annuity in his effort to exchange that policy for one issued by American National. The Respondent made false and fraudulent statements on an application for insurance in violation of RSA 417:4, II for the purpose of obtaining a fee, commission, money or benefit when he failed to witness the signature of Clara Digilio on the 1035 exchange and replacement forms on four different occasions, and instead induced his colleague Kara L. Stanley to falsely witness Mrs. Digilio's signatures, and by allowing Mrs. Digilio sign blank or partially blank application forms. Finally, the Respondent used fraudulent, coercive and dishonest practices in the conduct of an insurance business in this state by engaging in the above enumerated activities in violation of RSA 402-J:12, I.

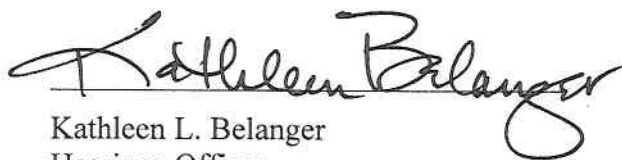
I conclude that the Respondent engaged in the above enumerated activities partially in order to avoid discovery by his then-current employer. He was motivated to avoid detection because he had received an employment termination warning in the past for identical activity, and expected that his employment would be terminated if it was discovered that he had engaged in any further such actions.

I conclude that the Respondent's efforts to coerce the Digilios, a frail and vulnerable elderly couple, to move the Clara E. Digilio Trust's \$400,000 annuity into a 10 year deferred annuity constitutes unfair, deceptive and illegal insurance practices. I conclude that the Respondent violated RSA 402-J:12,I(h) when he asked Debbie Haskell to tell Robert Digilio to lie to MetLife about the Respondent's involvement in the

transactions, when he caused Clara Digilio to execute four separate blank or partially blank 1035 Exchange Request and Notices of Replacement of Life Insurance or Annuities forms, and when he caused Kara L. Stanley, who had never met the Digilios, to falsely witness Clara Digilio's signature on four separate occasions on 1035 Exchange Request and Notice of Replacement forms. In addition, I conclude that the Respondent violated RSA 417:3 and 417:4,II when he made false and fraudulent statements and representations relative to an application for insurance for the purpose of obtaining a sales commission. Finally, I conclude that the Respondent violated Insurance Department administrative rule Ins 301.06(1) and RSA 402J:12, I(b) when he sold a ten year deferred annuity to an 85 year old woman in poor and deteriorating physical health and with diminished and deteriorating mental capacity.

NOW THEREFORE, I hereby ORDER:

1. The immediate revocation of the Respondent's New Hampshire producer license, with prejudice, and
2. The imposition of a \$20,000.00 (twenty thousand dollar) fine payable within 30 (thirty) days of the date of this order.

  
Kathleen L. Belanger  
Hearings Officer

Jan. 5, 2010  
Dated



APPENDIX TO FINAL ORDER

STATE OF NEW HAMPSHIRE  
INSURANCE DEPARTMENT

In re: Richard Morrison  
Docket # 08-073-EP

ORDER ON PROPOSED FINDINGS OF FACT AND RULINGS OF LAW

I. Hearing Counsel's Proposed Findings.

A. Findings of Fact

- |         |   |
|---------|---|
| 1 - 18  | Granted.  |
| 19      | Granted as a conclusion of law, not a finding of fact.  |
| 20 – 36 | Granted   |
| 37      | Granted when revised to read “Shortly after the December 7, 2007 meeting with the Digilios, the Respondent telephoned the Digilios’ home and spoke to Debbie Haskell (“Ms. Haskell”), one of the Digilios’ caregivers. During the phone call, the Respondent instructed Ms. Haskell to tell Mr. Digilio that if MetLife called again to question the 1035 exchange, Mr. Digilio should not tell MetLife about the Respondent’s involvement in the sale, and should instead tell MetLife that the 1035 exchange was Mr. Digilio’s idea.” |
| 38      | Granted when revised to read “By asking Mr. Digilio to not tell Met Life about the Respondent’s involvement in the 1035 exchange, the Respondent prevented MetLife from discovering that the Respondent, a MetLife employee, was selling a \$400,000 annuity away from MetLife.”  |
| 39      | Granted   |
| 40      | Granted when revised to read “Both the MetLife log entry for November 29, 2007 and the MetLife log entry for January 8, 2008 reference only “penalty fees”, and make no reference to taxes or tax consequences.”  |

- 41 - 43            Granted.
- 44                 Granted when revised to read "In addition to having Mrs. Digilio sign the blank (or partially-blank) transfer forms, the Respondent also had Mrs. Digilio sign a typewritten letter that the Respondent had personally authored and typed. The letter purported to inform MetLife that Mrs. Digilio was "firm in [her] decision" to go forward with the 1035 exchange, and it instructed MetLife to stop contacting her. The letter made no reference to the misinformation about taxes that the Respondent alleges MetLife was providing to the Digilios."
- 45                 Granted when revised to read "When MetLife received the third 1035 Exchange Request form from American National, MetLife sent a letter dated February 6, 2008. The letter explained the penalty fee/surrender charge and further explained that the Digilios could avoid the penalty fee by delaying the transfer until April 1, 2008, less than two months from the date of the letter. The February 6, 2008 letter contains no reference to any tax liability."
- 46 - 49            Granted.
- 50                 Granted when revised to read "The fourth 1035 exchange was not reversed, and Mrs. Digilio's trust was required to pay the surrender charge."
- 51                 Granted.
- 52                 Granted when revised to read "Mr. Digilio died on March 25, 2008, just five days after the Respondent's last meeting with the Digilios."
- 53 - 59            Granted.
- 60                 Granted when revised to read as follows:  
"One can conclude based upon the above referenced Affidavit of Dr. John Kirk and the Probate Court Order that were issued after the 1035 exchange had been completed at the end of March 2008 that Mrs. Digilio suffered from a diminished mental capacity throughout the time of the subject transaction. Clara Digilio's death certificate stated she had suffered from Cerebral Vascular Disease for 5 years prior to her death in December 2008. Nonetheless,

the Respondent testified that he did not observe Clara Digilio's health deteriorate between November 13, 2007 and April 1, 2008."

- 61            Granted.
- 62            Granted when revised to read "There is no evidence that Robert Digilio ever had any legal right to make decisions on Clara Digilio's behalf. The Respondent did not introduce into evidence a duly executed power of attorney authorizing Robert Digilio to make financial decisions for Clara Digilio. The Digilios' estate attorney, Michael Todd, testified that by January 2008 Robert Digilio's brother, Richard Digilio, held the power of attorney to execute certain financial decisions on behalf of Clara Digilio. The Respondent never consulted with Richard Digilio about the 1035 exchange."
- 63 – 67        Granted.
- 68            Granted when revised to read "By selling Clara Digilio the American National annuity outside the Enterprise General Agency, the Respondent maximized the amount of his sales commission."
- 69 – 74        Granted.

#### B. Conclusions of Law

- 75 – 77        Granted
- 78            Granted when the following phrase is appended to the end of the last sentence " , when Kara L. Stanley had not in fact witnessed the annuitant's signature."
- 79 – 84        Granted.

#### Respondent's Proposed Findings

##### A. Findings of Fact

- 1 - 2            Granted.

- 3 - 4 Denied.
- 5 Granted when revised to read "At year end 2006 Robert Digilio held 2 MetLife accounts, Clara Digilio held 4 MetLife accounts, and the Clara E. Digilio Trust held one fixed rate MetLife annuity."
- 6 Granted when revised to read "Kimberly Morrison, the Respondent's wife, was the MetLife servicing agent assigned to the Digilios' various contracts at one point, but was no longer a licensed producer in the fall of 2007."
- 7 Granted in part. Denied with respect to the phrase "within 30 days".
- 8 - 12 Denied.
- 13 Denied in part. Granted with respect to the statement "Mr. Digilio was familiar with both where and how their money was invested."
- 14 Denied in part. Granted with respect to the statement "The American National Annuity offered a 6.3 percent rate of interest in the first year, followed by a two-year guarantee of a 4.3 percent rate of interest.", and with respect to the statement "...the American National annuity allowed the Digilios to withdraw up to ten percent of the total principal in any one year without a surrender charge..."
- 15 - 16 Denied.
- 17 Granted.
- 18 First sentence denied. Remainder granted.
- 19 - 20 Granted.
- 21 Denied.
- 22 Granted with the following phrase deleted "...in order to better facilitate communication with him given Mr. Digilio's hearing impairment..."
- 23 - 24 Denied.

- 25           Granted in part, denied in part. Granted with respect to the statement "Mr. Todd did not make any representations regarding either Mr. or Mrs. Digilio's capacity to make financial decisions of this nature. Mr. Todd did not indicate that he had retained a psychologist to evaluate Mrs. Digilio's mental capacity at that time..." Remainder denied.
- 26           First sentence Granted. Remainder denied.
- 27           Granted with respect to the following phrase "Mrs. Digilio executed a second 1035 Exchange request form." Remainder denied.
- 28 – 30       Denied.
- 31           Granted.
- 32           Denied in part, granted in part. Denied with respect to all but the following "Mr. Digilio cancelled." and "On March 20, 2008, Mrs. Digilio executed a 1035 Exchange request."
- 33           Granted with respect to "At that time, Mr. Morrison again met with the Digilios in their home." Remainder denied.
- 34           Granted.
- 35           First sentence Granted when revised to read "The Digilios incurred a surrender charge of roughly \$1,400." Remainder denied.
- 36           Granted.
- 37           Denied.
- 38           Granted when revised to read "The annuity contract from American National was forwarded by the Respondent to Attorney Todd on June 3, 2008 via UPS overnight delivery service. The contract contained notice of a 10 day right to cancel the certificate following delivery of the certificate to the annuitant." Remainder denied.
- 39           Granted in part, denied in part. Granted with respect to the following statement "At the time of Mrs. Digilio's death in December 2008, the American National annuity had earned approximately \$20,000."

## B. Rulings of Law

- 40 Denied.
- 41 - 42 Granted.
- 43 Granted with respect to the statement “The Department challenges the Digilios’ capacity to make the purchase decision.” Remainder denied.
- 44 - 48 Denied.
- 49 Granted in part, denied in part. Granted when revised to read “Mr. Digilio understood from the letter he received from MetLife that the annuity was set to mature in April, 2008.”, remainder denied.
- 50 Granted when revised to read “At the time the Respondent first met with the Digilios they were living in their own house with the assistance of caregivers. Mr. Digilio took sole responsibility for the couple’s financial matters, was writing checks on Mrs. Digilio’s account, and making all financial decisions affecting the couple.” Remainder denied.
- 51 – 54 Denied
- 55 Granted when revised to read “The Department submitted evidence that on June 16, 2008, three months after Mr. Digilio’s death, the Probate Court entered an order appointing a guardian over the person and estate of Mrs. Digilio.” Remainder denied.
- 56 – 58 Denied.
- 59 - 60 Granted.
- 61 Denied.
- 62 Granted when revised to read “The Department’s claims include Mr. Morrison’s alleged failure to properly inform the Digilios of the applicable surrender charge that would be incurred should the annuity be transferred to American National prior to its maturity on April 1, 2008.”

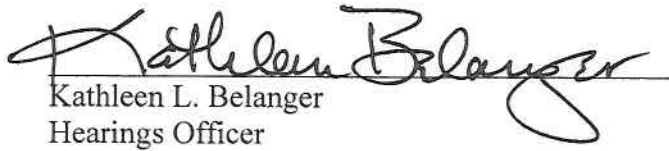


63 - 68 Denied.

69 - 73 Granted.

74 - 82 Denied.

So ORDERED.

  
Kathleen L. Belanger  
Hearings Officer

Dated: Jan. 5, 2010