

**STATE OF NEW HAMPSHIRE  
INSURANCE DEPARTMENT**

**In Re: Richard Morrison**

**Docket No.: INS No. 08-073-EP**

**ORDER TO SHOW CAUSE  
AND NOTICE OF HEARING**

Pursuant to RSA 400-A:17, Richard Morrison (“Respondent”) is hereby notified that a hearing will be conducted on September 16, 2009 at 9:30 a.m. in the offices of the New Hampshire Insurance Department, 21 South Fruit Street, Suite #14, Concord, New Hampshire. At issue in this hearing is whether or not, in view of the consumer’s age, health and other factors, an annuity the Respondent sold to a New Hampshire consumer was a suitable investment for the consumer. This hearing is scheduled for purpose of giving the Respondent the opportunity to show cause why the Respondent should not have his producer license revoked or suspended, and why an administrative fine pursuant to applicable laws should not be levied against him. In support of this Order to Show Cause, the Department alleges that:

**FACTS**

1. In the fall of 2007, the Clara E. Digilio Trust (“Trust”) owned an annuity issued by the Metropolitan Life Insurance Company (“MetLife”). MetLife originally issued the annuity in 1997, and the MetLife producer who sold the annuity was Pamela Maines. When Ms. Maines retired from MetLife, the annuity account was transferred to Kimberly Morrison’s book of business, making Kimberly Morrison the servicing agent on the contract. Kimberly Morrison is the Respondent’s spouse and a licensed New Hampshire producer. Kimberly Morrison resigned from MetLife in the fall of 2007, and, upon information and belief, at all relevant times she worked as the Respondent’s personal marketing assistant, paid by the Respondent.
2. The value of the MetLife annuity in the fall of 2007 was approximately \$400,000.

The sole trustee of the Trust was Clara Digilio (“Mrs. Digilio”).

3. At all relevant times Mrs. Digilio was an eighty-five year old retired school teacher. Unfortunately, by the fall of 2007 Mrs. Digilio was experiencing a number of physical and mental maladies: for example, she was legally blind; profoundly hard of hearing; and suffering from diminished mental capacity. Indeed, less than three months after the consummation of the transaction at issue in this Show Cause Order, the Merrimack County Probate Court issued an order ruling that Mrs. Digilio was incapable of exercising a multitude of legal rights, including, but not limited to, the right to refuse or consent to medical care; the right to convey or hold property; the right to make contracts; and the right to possess real or personal property or income from any source. Consequently, the Probate Court appointed the Office of Public Guardian as guardian over Mrs. Digilio’s person and estate. Mrs. Digilio died on December 10, 2008, just five months after the Probate Court issued its Order and only eight months after the Respondent succeeded in selling her Trust an indexed annuity.

4. Prior to the Probate Court’s appointment of a guardian over Mrs. Digilio’s person and estate, Mrs. Digilio relied on her husband Robert Digilio (“Mr. Digilio”), to assist her with the activities of daily living and with making decisions regarding her property. However, Mr. Digilio, a retired barber, was himself seventy-nine years old, and although he was a little younger than his wife, he was experiencing his own physical problems, including being profoundly hard of hearing and tethered to an oxygen tank.

5. Indeed, in order to remain in their home, Mr. and Mrs. Digilio required daily assistance. This assistance was comprised of the Lake Sunapee Region Visiting Nurse Association, which administered the hospice program through which Mrs. Digilio was receiving regular at-home medical treatment, as well as the part-time caregivers who assisted the Digilios with the daily activities of living.

6. The Digilios' situation deteriorated dramatically after Mr. Digilio was hospitalized on November 23, 2007 due to injuries he sustained in a fall at home. From the time of his hospital discharge in late November 2007 through his death on March 25, 2008, Mr. and Mrs. Digilio required twenty-four hour care.

7. In any event, on or about October 12, 2007 MetLife sent the Trust (that is, Mrs. Digilio) a two-sided letter advising that the MetLife annuity at issue in this matter was scheduled to mature on April 1, 2008. The letter further advised that it was necessary for the Trust to decide how it wished to distribute the money the Trust had accumulated in the account. The second page of the two-sided letter set forth a "Maturity Election Form" that Mrs. Digilio, as Trustee, was supposed to complete and return to MetLife. The Digilios responded to this notice by checking off a box on the "Maturity Election Form" requesting "further information on receiving income payments available under my contract."

8. While the Digilios' request for further information was pending, the Respondent, who had never been assigned the Digilios' account, met with the Digilios at their home in Bradford, New Hampshire to discuss reinvesting the proceeds of the MetLife annuity. This meeting was not scheduled at MetLife's request, and MetLife did not become aware of the Respondent's numerous meetings and phone calls with the Digilios until after a complaint was filed with the NHID in May 2008.

9. Although the Respondent was a MetLife employee, he persuaded the Digilios to transfer the proceeds of the MetLife annuity into an indexed annuity issued by American National Insurance Company ("American National"), and on November 13, 2007, Mrs. Digilio signed an American National annuity application, as well as the required 1035 Exchange Request. The 1035 Exchange Request, which is the document that would be sent to MetLife to effect the transfer, did not identify the Respondent as the selling producer or in any other capacity.

Instead, the 1035 was signed by Kara Stanley, a licensed New Hampshire producer who never met the Digilios before their deaths, as the producer and witness.

10. Moreover, after obtaining the Digilios' consent to the transfer of approximately \$400,000 from the MetLife account to an American National account, the Respondent telephoned the Digilios' home and spoke to Deborah Haskell ("Ms. Haskell"), one of the Digilios' caregivers. The Respondent asked Ms. Haskell to tell Mr. Digilio that if MetLife contacted Mr. Digilio, Mr. Digilio should advise MetLife that the transfer was Mr. Digilio's idea. The Respondent left Ms. Haskell with the impression that he did not want Mr. Digilio to tell MetLife that the Respondent was involved in transferring the MetLife account to American National.

11. That MetLife was unaware that its own employee—that is, the Respondent—had just sold the Digilios an American National indexed annuity, is reflected in the fact that on November 16, 2008 MetLife sent the Trust a second notice of maturity. Incredibly, although the Digilios had just "agreed" to transfer the MetLife account to American National, the Digilios signed the "Maturity Election Form" and returned the executed letter to MetLife.

12. When MetLife received the 1035 Exchange Request that had been signed by Mrs. Digilio and "witnessed" by Kara Stanley, MetLife telephoned the Digilios and advised Mr. Digilio that if the Trust transferred the account before the April 1, 2008 maturity date, the Trust would incur surrender charges. The MetLife representative explained that the Trust could avoid the surrender charges by simply delaying the rollover until the April 1, 2008 maturity date, then only four months away. Based on this information, Mr. Digilio cancelled the transfer.

13. After the Digilios cancelled the transfer, the Respondent contacted the Digilios and again persuaded them to transfer the MetLife account to American National. Mrs. Digilio executed a second 1035 Exchange Request on December 7, 2007, and Kara Stanley signed the 1035 Exchange Request as both witness and producer. All of this occurred only two weeks after the fall that culminated in Mr. Digilio's death in March 2008.

14. About a month later, on January 9, 2008, MetLife contacted the Digilios about the second 1035 Exchange Request. MetLife once again informed Mr. Digilio of the applicable surrender charges, and once again explained that the surrender charges could be avoided by delaying the transfer of the annuity until the April 1, 2008 maturity date, which was now less than three months away. Mr. Digilio again cancelled the rollover.

15. In response to the second cancellation of the transfer, the Respondent contacted the Digilios again and persuaded them to have Mrs. Digilio to execute a *third* 1035 Exchange Request. Mrs. Digilio executed a *third* 1035 Exchange Request on January 22, 2008, now a little more than two months before the MetLife annuity matured. As before, Kara Stanley signed the 1035 Exchange Request as both witness and producer.

16. This time, however, in addition to having Mrs. Digilio execute the third 1035 Exchange Request, the Respondent also prepared for Mrs. Digilio's signature a typewritten letter to MetLife dated on January 22, 2008. This letter stated:

I have requested on 2 previous occasions that my MetLife # 073197713AB be transferred to my American National account # 14801341. Each of these requests was followed by a MetLife representative contacting me and trying to persuade me not to transfer the account. I am firm in my decision to move the account and do not wish to be contacted any further. I am thanking you in advance for your cooperation with respect to this matter and look forward to you facilitating this request immediately.

The Respondent had Mrs. Digilio sign this letter although she was legally blind and would soon be declared incompetent by the Probate Court.

17. MetLife nevertheless did contact the Digilios again, this time on February 27, 2008. For the third time, MetLife advised the Digilios that if the Trust transferred the annuity contract to American National, the Trust would be required to pay surrender charges. As before, MetLife further advised the Digilios that the Trust could avoid the surrender charges by delaying any action until the April 1, 2008 maturity date, now only a month away. Mr. Digilio cancelled the transfer for the third time.

18. Although the MetLife annuity was going to mature in only eleven days, on March 20, 2008, the Respondent contacted the Digilios about transferring the MetLife annuity to American National. For the fourth and final time, the Respondent convinced Mrs. Digilio to execute the 1035 Exchange Request. As before, Kara Stanley signed the 1035 Exchange Request as both witness and producer. This time, however, the transfer was not reversed.

19. Mr. Digilio's health had been deteriorating since his fall on November 23, 2007, and he finally died on March 25, 2008, just a few days after Mrs. Digilio executed the fourth and last 1035 Exchange Request.

20. MetLife terminated the Respondent on May 16, 2008, and American National reversed the Respondent's commission because the annuitant, Mrs. Digilio, died within one year of the issuance of the indexed annuity.

#### LAW

21. Ins 301.06(1) provides: "*Reasonable inquiry shall be made by insurers and/or their agents to determine the suitability of any sale to a prospective buyer's insurance and annuity needs and means.*"

22. RSA 417:3 provides: "*No person shall engage in this state in any trade practice which is defined in this chapter or determined pursuant to this chapter as an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.*"

23. RSA 417:4, I provides, in pertinent part, that: "*Misrepresenting, directly or indirectly, in the offer or sale of any insurance or in connection with any inducement or attempted inducement of any insured or person with ownership rights under an issued insurance policy to lapse, forfeit, surrender, assign, effect a loan against, retain, exchange, or convert the policy, by:*

\* \* \*

*(g) Obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statement made, in light of the*

*circumstances under which it was made, not misleading; the burden of establishing truthfulness or completeness shall be upon the party stating or omitting to state a material fact."*

24. RSA 417:4, II provides that: *"Making false or fraudulent statements or representations on or relative to an application for insurance, for the purpose of obtaining a fee, commission, money or benefit from an insurer, agent, or individual."*

25. RSA 417:10 provides, in pertinent part, that the Commissioner *"may suspend, revoke or refuse to renew the license"* of any person or entity who violates RSA 417:3. RSA 417:10 further provides that the Commissioner may impose *"an administrative penalty of not more than \$2,500 for each method of competition, act, or practice found to be in violation of RSA 417:3."*

26. RSA 402-J:12, I provides, in pertinent part, that: *"The commissioner may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license, or may levy a penalty in accordance with RSA 400-A:15, III or any combination of actions for any one or more of the following causes:*

\* \* \*

*(b) Violating any insurance laws, or violating any rule, regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.*

\* \* \*

*(h) Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere."*

### **ALLEGATIONS OF REGULATORY VIOLATIONS**

27. The Respondent violated the insurance laws cited above by engaging in the following misconduct:

- a. Engaging in substantive discussions with Mr. and Mrs. Digilio about the disposition of a valuable annuity when the Respondent either knew or should have known that Mr. and Mrs. Digilio lacked the capacity to make informed decisions on their own behalf;
- b. Failing to advise Mr. and Mrs. Digilio of the surrender charges the Trust would incur if the MetLife annuity were transferred to an American National annuity prior to maturity;
- c. Representing to Mr. and Mrs. Digilio that the Trust would not incur any surrender charges if the MetLife annuity were rolled over prior to maturity when the Respondent either knew or should have known that said representation was false;
- d. Knowing the MetLife annuity would mature on April 1, 2008 but nevertheless persisting as late as March 20, 2008 to perfect the transfer of the MetLife annuity to an American National indexed annuity; and
- e. Procuring Kara Stanley's signature as witness and producer on four sets of 1035 Exchange Request documents when the Respondent knew that Kara Stanley had not witnessed Mrs. Digilio execute the 1035 Exchange Requests, and when the Respondent also knew that he, not Kara Stanley, was the producer on the transaction.

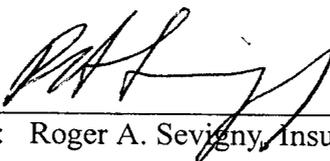
28. The Commissioner of Insurance or his representative shall act as Hearing Officer at the hearing on September 16, 2009 at 9:30 a.m. The Respondent has the right to be represented by counsel at his expense. Should the Respondent elect to obtain counsel, Respondent's counsel shall file a notice of appearance with the Commissioner at the earliest possible date.

29. Richard P. McCaffrey shall appear as staff advocate representing the interests of the NHID.

IT IS SO ORDERED.

**NEW HAMPSHIRE INSURANCE DEPARTMENT**

Date: 5-5-09

  
By: Roger A. Sevigny, Insurance Commissioner