

**STATE OF NEW HAMPSHIRE  
INSURANCE DEPARTMENT**

**In Re: Gary A. Gahan**

**INS No. 09-020-EP**

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

The New Hampshire Insurance Department (“NHID”) orders Gary A. Gahan (“Mr. Gahan”) and Seniors Financial Strategies, Inc. (“SFS”) to show cause why the New Hampshire Insurance Commissioner should not revoke the insurance producer licenses held by Mr. Gahan and SFS and impose the maximum fine allowed by law. In support of this Amended Order to Show Cause and pursuant to RSA 541-A: 31, the NHID states as follows:

I. THE RESPONDENTS

Mr. Gahan is an insurance producer licensed by the NHID. Mr. Gahan’s business address is 125 Daniel Webster Highway, Merrimack, New Hampshire, and he has conducted business in New Hampshire at various times as “Gahan Associates, Inc.” and “Senior Financial Strategies, Inc.”

SFS is a New Hampshire corporation with a principal place of business of 125 Daniel Webster Highway, Merrimack, New Hampshire. The President of SFS is Stephen G. Bennett, who is not a licensed insurance producer in New Hampshire. The Treasurer and Designated Producer of SFS is Mr. Gahan.

II. THE TRANSACTIONS

As a result of the Respondents’ misconduct, at least six New Hampshire consumers have been harmed: Lucille and Henry Soucy; Beverly and Paul Cantrell; and Helen and Gilbert

Bemis. One of these consumers, Helen Bemis, is now deceased. Of the five remaining consumers, all are elderly, and all reside in Nashua, New Hampshire.<sup>1</sup>

A. Helen and Gilbert Bemis

On March 14, 2002, Mr. Gahan sold Helen Bemis a deferred annuity issued by Aviva Life Insurance Company. The premium paid for this annuity was \$38,647.81, and the maturity date was January 20, 2017, Helen Bemis' ninety-fifth birthday.

A few months later, on August 8, 2002, Mr. Gahan sold Gilbert Bemis five deferred annuities issued by Aviva. The total premiums paid for the five annuities was \$125,599.37, and the maturity date for all five annuities was July 19, 2023, ten days after Gilbert Bemis' ninety-fifth birthday.

Less than four years later, Mr. and Mrs. Bemis surrendered three of the six Aviva annuities that Mr. Gahan had sold them. Mr. Gahan replaced the remaining three Aviva annuities with three annuities issued by American Equity Investment Life Insurance Company ("American Equity"). The American Equity annuities all mature in April 2017 when Mr. Bemis will be ninety-eight years old.

In January of 2009, Mr. Bemis, at Mr. Gahan's direction, began making a series of partial withdrawals from all three of Mr. Bemis' American Equity annuities. Between January 2009 and February 2010, Mr. Bemis made twelve withdrawals. These withdrawals totaled \$76,803.16, including surrender charges of \$11,907.98. When Mr. Bemis received each of the twelve checks, Mr. Gahan directed Mr. Bemis to endorse the check over to SFS; accordingly, the back of each check is signed by Mr. Bemis and reads: "Pay to the Order of Seniors Financial Strategies, Inc." Mr. Gahan advised Mr. Bemis the funds were being withdrawn so Mr. Gahan

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<sup>1</sup> The NHID's investigation of the Respondents' alleged misconduct is ongoing and may reveal additional evidence of violations of New Hampshire's insurance laws. However, the NHID expects that any additional evidence would affect the quantum of evidence against the Respondents, not the nature of Mr. Gahan's alleged violations of insurance laws.

could invest the funds in an account earning a higher interest rate than the rates paid by the American Equity annuities that Mr. Gahan had sold Mr. Bemis just a few years before.

By March of 2010, Mr. Bemis was asking Mr. Gahan for an accounting of the funds that had been withdrawn from the American Equity annuities and deposited in the SFS account. Mr. Bemis has never received any documentation from Mr. Gahan regarding the funds. Frustrated by Mr. Gahan's lack of responsiveness and fearing Mr. Gahan had misappropriated his money, Mr. Bemis retained Nashua attorney William H. Barry III to help him determine what had happened to his money. Attorney Barry wrote Mr. Gahan on March 25, 2010 requesting that Mr. Gahan account for the missing funds. Mr. Gahan has never responded to Attorney Barry's March 25, 2010 letter, and Mr. Bemis still does not know what Mr. Gahan did with his money.

B. Lucille and Henry Soucy

In addition to his employment with SFS, in 2005 Mr. Gahan was also employed part-time by First Mariner Bank of Baltimore. On October 25, 2005, Mr. Gahan sold Mr. and Mrs. Soucy a reverse mortgage issued by First Mariner Bank of Baltimore in the amount of \$197,198.72. Mr. and Mrs. Soucy paid closing costs in the amount of \$14,813.54, netting the Soucys \$182,198.18.

On that same day—October 25, 2005—Mr. Gahan sold Mr. and Mrs. Soucy a \$60,000, twenty-year deferred annuity issued by Aviva Life Insurance Company. The Aviva annuity paid a guaranteed interest rate of 3% and had a ten-year surrender charge schedule.

In addition to the Aviva annuity, Mr. Gahan also directed Mr. and Mrs. Soucy to use the proceeds of the reverse mortgage transaction to sell a \$100,000 interest in a life settlement contract issued by ABC Viaticals, Inc. On November 17, 2006, the United States Securities and Exchange Commission sued ABC Viaticals, Inc., alleging the company was a mere Ponzi scheme. A Federal court subsequently determined ABC Viaticals, Inc. was insolvent and placed the company in receivership.

On August 23, 2006—less than a year after he sold the Soucys the twenty-year deferred Aviva annuity—Mr. Gahan directed the Soucys to withdraw \$30,000 from the Aviva account for the purpose of purchasing a an annuity issued by Allianz Life Insurance Company of North America (“Allianz”). Despite funding the Allianz annuity with a withdrawal from the Aviva annuity, Mr. Gahan represented to Allianz that the Allianz contract was *not* replacing an existing contract. In other words, Mr. Gahan facilitated an undisclosed replacement of the Aviva contract with an Allianz contract.

C. Beverly and Paul Cantrell

In 2001, Mr. Gahan sold Beverly and Paul Cantrell thirteen deferred annuities issued by the Transamerica Life Insurance and Annuity Company (“Transamerica”). The total amount of premiums paid by the Cantrells for the thirteen Transamerica annuities was \$403,860.17. Twelve of the Transamerica annuities were to have matured in 2029 when Mr. and Mrs. Cantrell would have been one-hundred-one years old and ninety-eight years old, respectively; one Transamerica annuity would have matured in 2031 when Mr. and Mrs. Cantrell would have been one-hundred-three years old and one-hundred years old, respectively.

Just four years later, in 2005, Mr. Gahan replaced all thirteen of the Transamerica annuities with thirteen deferred annuities issued by American Equity.<sup>2</sup> The total amount of premiums paid by the Cantrells for the thirteen American Equity annuities was \$366,694.41. Twelve of the American Equity annuities mature in 2027 when Mr. and Mrs. Cantrell will be ninety-nine years old and ninety-six years old, respectively; one American Equity annuity matures in 2029 when Mr. and Mrs. Cantrell will be one-hundred-one years old and ninety-eight years old, respectively.

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<sup>2</sup> In the case of one Transamerica annuity, the surrender was only partial. Mr. Gahan used \$100,000 of this Transamerica annuity to purchase an American Equity annuity for the Cantrells. Mr. Gahan left approximately \$40,000 in the Transamerica annuity, and that annuity remains active today.

### III. STATEMENT OF THE ISSUES

The transactions outlined above implicate the following issues:

- a. Whether Respondents engaged in unfair insurance trade practices in the sale of insurance products.
- b. Whether Respondents used fraud and dishonest practices in the conduct of business in New Hampshire or elsewhere.
- c. Whether Respondents demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in New Hampshire or elsewhere.
- d. Whether Respondents misappropriated or converted money in the course of doing insurance business.
- e. Whether Respondents sold annuities to consumers that were unsuitable for those consumers.
- f. Whether Respondents complied with New Hampshire's insurance regulations governing the notice insurance producers are required to provide to consumers where one annuity (or life insurance policy) is replaced by another annuity (or life insurance policy).

### IV. NEW HAMPSHIRE INSURANCE LAW VIOLATED BY RESPONDENTS

As a result of the conduct outlined in the above-referenced transactions, the NHID maintains that Mr. Gahan or SFS or both violated New Hampshire's insurance statutes and rules, including RSA 417:4, I (f, g, h); RSA 417:4, II; RSA 402-J:12, I (b, d, h); Ins 301.06(l); and Ins 302.04.

### V. OTHER RELEVANT NEW HAMPSHIRE LAW

In addition to direct liability, SFS may also be vicariously liable for Mr. Gahan's conduct under New Hampshire common law governing the relationships between masters and servants or principals and agents or both.

VI. REQUEST FOR ADMINISTRATIVE PENALTIES

Pursuant to RSA 400-A:15, III, the NHID requests that the Hearing Officer: (1) revoke the New Hampshire producer licenses of Mr. Gahan and SFA; and (2) impose a fine against Mr. Gahan in the amount of \$77,500 and against SFS in the amount of \$30,000.

VII. NOTICE OF HEARING

Pursuant to RSA 541-A:31 and Ins 200, the hearing in this matter shall be held on September 21, 2010 at 9:00 a.m. at the offices of the NHID , 21 South Fruit Street, Suite 14, Concord, New Hampshire.

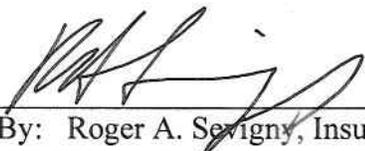
The Insurance Commissioner or his representative shall act as Hearing Officer at the hearing. The Respondent has the right to be represented by counsel at his expense. Should any Respondent elect to obtain counsel, said counsel shall file a notice of appearance with the Commissioner at the earliest possible date.

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

**SO ORDERED.**

**NEW HAMPSHIRE INSURANCE DEPARTMENT**

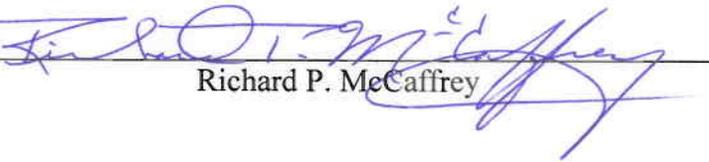
Date: 6-8-10

  
By: Roger A. Sevigny, Insurance Commissioner

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and accurate copy of the Amended Order to Show Cause and Notice of Hearing mail this day certified mail, return receipt requested, and by first-class mail to Gary A. Gahan and Stephen G. Bennett.

Date: 6/8/2010

By:   
Richard P. McCaffrey