

**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In Re: James Joseph Dillon

Docket No.: INS No. 16-019-EP

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

The New Hampshire Insurance Department (NHID) orders James J. Dillon (Respondent) to show cause why the NHID should not revoke his resident insurance producer's license, or levy an administrative fine, or both. In support of this Order to Show Cause and pursuant to RSA 541-A:31, RSA 400-A:17 and Ins Part 200, the NHID states as follows:

I. STATEMENT OF FACTS

A. The Respondent's Sale of an Annuity to Philip Towle Was Unsuitable.

1. The Respondent is a resident New Hampshire insurance producer. The NHID's records indicate that his residential, business and mailing address is 38 Winrow Drive, Merrimack, NH 03054.

2. Philip Towle (Towle) was a retired high school teacher who resided in Hampton Falls, New Hampshire. He died on February 10, 2016 at age seventy-one.

3. Towle first met the Respondent in 2012 when he answered the Respondent's direct mail solicitation offering financial services.

4. In July of 2012, the Respondent referred Towle to Kathy Burns (Burns), a loan originator employed by the Merrimack Mortgage Company, and on August 9, 2012, Burns sold Towle a reverse mortgage on his Hampton Falls property in the amount of \$260,800, which included \$10,651.77 in closing costs.

5. On August 15, 2012—a mere week after Burns had completed the sale of the reverse mortgage to Towle—the Respondent sold Towle a \$200,000 indexed annuity contract issued by Security Benefit Life Insurance Company (Security Benefit). The Respondent knew at the time of sale that the source of funds for the annuity was the proceeds of the reverse mortgage.

6. In contrast to the reverse mortgage, which *charged* interest in the amount of 5.060%, Towle's Security Benefit annuity contract *paid* guaranteed interest in the amount of 1%. As of November 30, 2015, the cash surrender value of the Security Benefit annuity contract was only \$123,648.06, far less than the debt he owed on his reverse mortgage, which by November 30, 2015 had climbed to \$320,931.00.

B. The Respondent Borrowed Money from Philip Towle to Pay the IRS.

7. Just a few months after Towle mortgaged his home and purchased the Security Benefit annuity contract, the Respondent asked Towle to lend him \$21,200.00. The Respondent wished to borrow the money in order to effect partial payment of a tax debt he owed the United States Internal Revenue Service (IRS). Towle agreed to lend the Respondent the money, and the terms of the loan were memorialized in a promissory note dated November 7, 2012. The Respondent eventually repaid the November 7, 2012 loan in full.

8. However, in the fall of 2015, the Respondent again asked Towle to lend him money, this time \$4,385.00. Again the purpose of the loan was to effect partial payment of a tax debt he owed the IRS. Unlike the first loan, where the promissory note provided for the payment of interest on the principal, the loan was memorialized in a handwritten promissory note dated October 26, 2015, and did not provide for the payment of any interest. Towle died before the second note came due, although it appears the Respondent eventually sent payment on the loan to a Rockingham County lawyer who was a longtime acquaintance of Towle's.

9. The NHID reserves the right to amend this Statement of Facts upon reasonable notice to the Commissioner (or his designated representative) and the Respondent.

II. STATEMENT OF ISSUES

1. Whether the Respondent's 2012 sale of the Security Benefit annuity contract to Towle was unsuitable.

2. Whether the Respondent failed to maintain records of the information collected from Towle and other information used in recommending to Towle that he purchase the Security Benefit annuity contract.

3. Whether the Respondent used dishonest practices, or demonstrated untrustworthiness or incompetence in the conduct of business when he referred Towle to Burns, who sold Towle a reverse mortgage, and then used the proceeds from the reverse mortgage to sell Towle an annuity contract.

4. Whether the Respondent demonstrated untrustworthiness, financial irresponsibility or incompetence in the conduct of business by borrowing money from a client to pay a tax debt owed to the IRS.

5. The NHID reserves the right to amend this Statement of Issues upon reasonable notice to the Commissioner (or his designated representative) and the Respondent.

III. NEW HAMPSHIRE INSURANCE LAWS VIOLATED BY RESPONDENT

The NHID maintains that Respondent has violated New Hampshire's insurance statutes and rules, including RSA 402-J:12, I (h); and PART Ins 305. (PART Ins 305 was substantially revised, effective January 1, 2015. The version of PART Ins 305 that the NHID alleges the Respondent violated became effective on January 30, 2009.)

The NHID reserves the right to amend this list of insurance laws violated by the Respondent upon reasonable notice to the Commissioner (or his designated representative) and the Respondent.

IV. PENALTY REQUESTED

In the event the Hearing Officer determines after evidentiary hearing that the NHID sustained its burden of proof with respect to the allegations of fact and violations of law outlined above, the NHID requests that the Hearing Officer impose the following sanctions on the Respondent:

- a. Pursuant to RSA 402-J:12, I and RSA 400-A:15, III, order the permanent revocation of the Respondent's New Hampshire insurance producer license; and
- b. Pursuant to RSA 402-J:12, I and RSA 400-A:15, III, order the Respondent to pay a fine in the amount of \$2500 per violation established by a preponderance of the evidence at hearing.

V. NOTICE OF HEARING

Pursuant to RSA 541-A:31, RSA 400-A:17 and CHAPTER Ins 200, the hearing in this matter shall commence on October 6, 2016 at 9:00 a.m. at the offices of the NHID, which are located at 21 South Fruit Street, Suite 14 in Concord, New Hampshire.

The Commissioner or his appointed representative shall preside as the Hearing Officer in this matter.

Sarah Prescott shall serve as clerk to the Hearing Officer. The parties should direct all communications to Ms. Prescott, whose contact information is:

Sarah Prescott, Clerk
New Hampshire Insurance Department

21 South Fruit Street, Suite 14
Concord, NH 03301
Tel: (603) 271-2261
Fax: (603) 271-1406
Email: sarah.prescott@ins.nh.gov

The Respondent has the right to be represented by counsel at his expense. Should the Respondent elect to obtain counsel, the Respondent's counsel shall file a notice of appearance with Ms. Prescott, at the earliest possible date. A copy of the NHID Notice of Appearance is enclosed with this Order.

Any party may request a transcript of the proceeding. The party requesting a transcript of the proceedings shall file a written request for a certified court reporter with the Hearing Officer at least ten days prior to the scheduled hearing date. The costs incurred for the services of a certified court reporter shall be borne by the requesting party.

Richard P. McCaffrey, Esq. and Mary C. Bleier, Esq. shall appear as staff advocates, representing the interests of the NHID.

It is **SO ORDERED**.

NEW HAMPSHIRE INSURANCE DEPARTMENT

Date: 8-22-16




Roger A. Sevigny, Commissioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Order to Show Cause and Notice of Hearing was sent this date by first-class mail, postage prepaid, and by certified mail, return receipt requested to James Joseph Dillon, 38 Winrow Drive, Merrimack, NH 03054, this being his mailing address on file with the NHID.

Date: 8.22.16


Carolyn R. Petersen, Enforcement Paralegal