

**STATE OF NEW HAMPSHIRE  
INSURANCE DEPARTMENT**

**In re: Gary A. Gahan  
and  
Seniors Financial Strategies, Inc.**

**Docket # 09-020-EP**

**FINAL ORDER**

**Introduction**

The New Hampshire Insurance Department's ("Department") Amended Order to Show Cause and Notice of Hearing came for hearing before the undersigned hearing officer on September 21 and 22, 2010. Several witnesses testified and numerous exhibits were offered and received into evidence.

This proceeding is governed by RSA Chapter 541-A, the Administrative Procedure Act, as well as by the rules adopted by the Department, Ins 200, Practices and Procedures. In particular, RSA 541-A:33, II provides the following:

The rules of evidence shall not apply in adjudicative proceedings. Any oral or documentary evidence may be received; but the presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence.

The evidence received in this proceeding, both testimonial and documentary, has met this standard.

In addition, Ins 204.05 establishes that the burden of proof in this proceeding as follows:

(b) In a hearing held to determine whether a certification, license, permit or other approval that has already been issued should be suspended, revoked, or not renewed, the department shall unless otherwise required by statute, present a prima facie case supporting its action in order to meet its burden of going forward with evidence of the violation, after which the opposing party shall bear the

burden of persuasion to present evidence to convince the hearing officer that the department's position should not be upheld.

By the evidence received in this proceeding, both testimonial and documentary, the Department has met this burden of proof.

### **Procedural Background**

An Order to Show Cause and Notice of Hearing in this matter was issued on March 12, 2009 by Insurance Commissioner Roger A. Sevigny, to provide the Respondent the opportunity to show cause why the Respondents' New Hampshire insurance producer licenses should not be revoked or suspended, and why an administrative fine should not be levied against the Respondents. The Notice set a hearing date of May 7, 2009. The hearing was commenced on May 7, 2009, and upon motion of the Department, was continued until June 8, 2009 by Order of the hearings officer, Donald L. Belanger. On May 27, 2009 the Insurance Department agreed to an indefinite continuance requested by Stephen Bennett, president and owner of Seniors Financial Strategies, Inc. ("SFS") and purported attorney for both SFS and Respondent Gahan. The Motion was granted by Hearings Officer Donald L. Belanger on May 27, 2009.

On June 8, 2010 an Amended Order to Show Cause and Notice of Hearing was issued by Insurance Commissioner Roger Sevigny setting a hearing date of September 21, 2010. An appearance on behalf of Respondent's Gahan and SFS was filed on August 20, 2010 by Stephen G. Bennett. On September 9, 2010 Insurance Commissioner Roger Sevigny issued an order appointing Kathleen L. Belanger as hearings officer for the September 21, 2010 scheduled hearing. The hearing in this matter was conducted on September 21 and September 22, 2010 at the Department's offices at 21 South Fruit St., Suite 14, Concord, NH. Kathleen L. Belanger was the presiding officer.

Respondent Gahan appeared pro se. Respondent SFS did not appear. Stephen Bennett, who had previously filed an appearance on behalf of both Respondents, did not appear. Respondent Gahan's Exhibit A was admitted into evidence. Respondent Gahan testified on his own behalf. Respondent Gahan called no other witnesses.

Richard P. McCaffrey, Esq., Compliance and Enforcement Counsel, represented the Department. Department Exhibits 1 through 64 were admitted into evidence. The Department presented witnesses Gary A. Gahan, Lucille Soucy, Gilbert P. Beemis, Keith Nyhan, and telephonically, Tara Gorsch.

On Order of the hearings officer, the record remained open until 4:30 PM on September 29, 2010 for the optional submission of proposed Findings of Fact and Rulings of Law, and proposed Orders. On the hearings officers' own motion, the deadline for filing optional proposed Orders was continued until 4:30 PM on October 4, 2010.

Respondent Gahan filed an uncaptioned statement on September 29, 2010, and an uncaptioned request for "findings of fact" and "request for relief" on October 4, 2010.

The Department filed proposed Findings of Fact and Rulings of Law on September 29, 2010 and a proposed Order on October 4, 2010.

Rulings on the parties' proposed findings and conclusions are set forth below. In the event of any conflict between those rulings and the following narrative material, the rulings shall govern.

### **Summary**

At issue in this matter is whether the Respondents engaged in unfair insurance trade practices in the sale of insurance products; whether Respondents used fraud and dishonest practices in the conduct of business in New Hampshire or elsewhere; whether the Respondents demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in New Hampshire or elsewhere; whether Respondents misappropriated or converted money in the course of doing insurance business; whether Respondents sold annuities to consumers that were unsuitable for those consumers; and 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), and whether by engaging in any or all of the above the Respondents violated the provisions NH RSA 417:4,I(f, g, h); RSA 417:4,II; RSA 402-

J:12,I(b,d,h); NH Code of Administrative Rules Ins 301.06(l) and Ins 302.04, and whether, pursuant to RSA 400-A:15,III, the Respondents' New Hampshire insurance producer licenses may be revoked or a fine imposed.

### **Gary A. Gahan's Employment With Senior's Financial Strategies**

Prior to April 7, 2003, Gary A. Gahan, a licensed New Hampshire producer, engaged in the business of insurance as Gahan Associates, Inc. Some of Respondent Gahan's alleged misconduct in this case occurred while Respondent Gahan was still operating as Gahan Associates, Inc. Gahan Associates, Inc. filed its last corporate annual report in 2003 and the company was administratively dissolved by the New Hampshire Secretary of State on September 1, 2005.

SFS was formed as a New Hampshire corporation on April 7, 2003. The company obtained a New Hampshire insurance producer license on April 5, 2004. The President and sole director of SFS is Stephen G. Bennett. Respondent Gahan is employed by SFS. The exact date that Respondent Gahan's employment with SFS began is not clear. However, the record establishes Respondent Gahan was employed with SFS on October 11, 2004, the date he completed an application for part-time employment as a loan originator with 1<sup>st</sup> Mariner Bank.

### **The Helen and Gilbert Bemis Transactions – Violations of Law and Rule**

Testimony was presented that Gilbert Bemis ("Mr. Bemis") was born in 1928 and has resided for many years in Nashua, New Hampshire. Mr. Bemis' wife Helen ("Mrs. Bemis") was born in 1922 and died on December 23, 2006. They had no children.

Mr. Bemis testified that he met Respondent Gahan in the 1990s, perhaps earlier, at the Masonic Temple in Nashua, New Hampshire. Mr. Bemis testified, credibly, that he trusted Respondent Gahan completely for advice about financial matters.

On August 1, 2002, Mr. and Mrs. Bemis closed on a reverse mortgage issued by Wells Fargo. The evidence established that at the time Mr. and Mrs. Bemis applied for the reverse mortgage they had no available assets other than \$1,532.14 in monthly income and the equity in their home. After subtracting closing costs and other fees from

the total amount of the reverse mortgage, Wells Fargo paid \$133,419.62 to Mr. and Mrs. Bemis. Respondent Gahan was paid commissions totaling \$14,029.29 on the sale of five Aviva Life and Annuity Company (“Aviva”) annuities to Mr. and Mrs. Bemis, and was listed on the Wells Fargo reverse mortgage application as a “friend” and “financial advisor” to the Bemis’.

The evidence establishes that Mr. and Mrs. Bemis used \$125,599.37 of the reverse mortgage proceeds to purchase the five deferred annuity contracts issued by Aviva, and that they did so on the advice and direction of Respondent Gahan. The evidence further establishes that between 2001 and Mrs. Bemis’ death in 2006, Mr. and Mrs. Bemis made substantial withdrawals from their Aviva annuities, resulting in over \$13,000 in surrender penalties. It is apparent from the evidence that if Respondent Gahan had not advised Mr. and Mrs. Bemis to use the reverse mortgage proceeds to purchase the five Aviva annuities, Mr. and Mrs. Bemis could have used the reverse mortgage proceeds to pay bills, especially Mrs. Bemis’ nursing home bills. Unlike the Aviva contracts, which carried large surrender charges, withdrawals from the reverse mortgage would have been penalty free. By advising Mr. and Mrs. Bemis to use the proceeds from their reverse mortgage to purchase deferred annuities, Respondent Gahan violated Ins 301.06(l). The violation of Ins 301.06(l) also constitutes a violation of RSA 402-J:12, I (b).

On or about April 20, 2006, Mr. and Mrs. Bemis, acting on Respondent Gahan’s advice, replaced three Aviva annuities with annuities issued by American Equity Investment Life Insurance Company (“American Equity”). Respondent Gahan admitted American Equity paid him commissions for the sale of these replacement annuities. By the time the Aviva contracts were replaced, Mrs. Bemis had been in a nursing home for almost a year, and she would remain there until her death later that year. The evidence established that the American Equity contracts paid a lower minimum guaranteed interest rate than the Aviva contracts they replaced, and, further, that the American Equity annuities carried higher surrender charges than the Aviva annuities they replaced. At hearing, Respondent Gahan failed to offer any plausible rationale for replacing the Aviva contracts with the American Equity contracts. By advising Mr. and Mrs. Bemis to replace three Aviva annuities with inferior annuity contracts issued by American Equity,

Respondent Gahan violated Ins 301.06(1). The violation of Ins 301.06(1) also constitutes a violation of RSA 402-J:12, I (b).

Between November 20, 2009 and January 21, 2010, Mr. Bemis made a total of ten withdrawals totaling \$64,895.10 from his three American Equity annuities. All ten withdrawals from the American Equity annuities were made at the request of Respondent Gahan, who had persuaded Mr. Bemis to “loan” him the money with the promise that he would repay the money with 6% interest. At Respondent Gahan’s direction, Mr. Bemis endorsed each check over to “Seniors Financial Strategies, Inc.” and Respondent Gahan deposited all ten checks issued by American Equity into a SFS bank account. One check bore the endorsement “Stephen G. Bennett” in addition to the endorsement “Seniors Financial Strategies, Inc.”

Mr. Bemis testified that he became alarmed about what Respondent Gahan and SFS had done with his \$64,895.18, and that he repeatedly requested that Respondent Gahan account for the funds. Mr. Bemis testified that when Respondent Gahan failed to provide an accounting of the funds, Mr. Bemis retained a Nashua attorney, William Barry, who attempted to contact Respondent Gahan regarding the money. The evidence established that Respondent Gahan ignored Attorney Barry’s repeated attempts to obtain information from Respondent Gahan about Mr. Bemis’ money. The evidence also established that Respondent Gahan knowingly tried to mislead Tara Gorsch of American Equity when Respondent Gahan told Ms. Gorsch on March 23, 2010 that there was a written agreement between Respondent Gahan and Mr. Bemis memorializing the so-called “loan.” In fact, there was never any such written agreement. Finally, Respondent Gahan admitted during the hearing that Mr. Bemis’ \$64,895.10 was used to pay “business expenses.”

The evidence that Respondent Gahan misappropriated and converted \$64,895.10 belonging to Gilbert Bemis is overwhelming and incontrovertible. By misappropriating and converting Mr. Bemis’ money, Respondent Gahan violated RSA 402-J:12, I (d, h) and RSA 417:4, I (g, h). Moreover, Respondent Gahan’s knowing misrepresentation to Ms. Gorsch concerning the existence of a written agreement violated RSA 402-J:12, I (h). Finally, the evidence presented supports the conclusion that Respondent Gahan forged Mr. Bemis’ initials on certain Partial Withdrawal Request forms that Respondent Gahan

submitted to American Equity in order to facilitate the misappropriation and conversion of Mr. Bemis' money. The forgery of Mr. Bemis' initials, an act tantamount to forging Mr. Bemis' entire name, violated RSA 402-J:12, I (j).

The evidence presented was sufficient to establish that SFS knowingly participated in the misappropriation and conversion of Mr. Bemis's funds and thereby violated RSA 402-J:12, I (d, h) and RSA 417:4, I (g, h).

### **The Henry and Lucille Soucy Transactions – Violations of Law and Rule**

Testimony was presented that Henry and Lucille Soucy were both born in 1930, Mr. Soucy in a small town in Maine, and Mrs. Soucy in a French-speaking home in Quebec. Neither of them went further in school than the eighth grade, and Mrs. Soucy testified that she started working full-time in a textile mill in Nashua when she was 15 years old. Both Mr. and Mrs. Soucy worked in factory-type jobs their entire adult lives until they retired. They had no children. In retirement, their income was comprised of Mrs. Soucy's monthly pension payment of approximately \$37 and a combined monthly Social Security payment of approximately \$1,500. The Soucys owned their home in Nashua.

The evidence presented established that by 2005, both Mr. and Mrs. Soucy were experiencing health problems and that they were concerned about paying medical bills. The Soucys read an article in a local newspaper about reverse mortgages and eventually they were referred to Respondent Gahan by Mrs. Soucy's brother, Jean Gelin. In addition to his employment with SFS, Respondent Gahan was also employed in 2005 by 1<sup>st</sup> Mariner Bank as a reverse mortgage loan originator.

On October 12, 2005, Mr. and Mrs. Soucy closed on a home equity conversion mortgage issued by 1<sup>st</sup> Mariner Bank. After subtracting closing costs and other fees from the total amount of the reverse mortgage, 1<sup>st</sup> Mariner Bank paid to the Soucys \$182,198.18. The loan originator on Soucys' reverse mortgage was Respondent Gahan, who was paid a commission on the sale.

The evidence clearly established that immediately upon the sale of the reverse

mortgage, Respondent Gahan facilitated Mr. and Mrs. Soucy's purchase of a \$60,000, twenty-year deferred Aviva annuity that was funded with part of the proceeds of the reverse mortgage. Respondent Gahan, made a commission of \$4,800 on the sale of the Aviva annuity.

At virtually the same time that Respondent Gahan sold the Soucys the Aviva annuity, he also sold them a \$100,000 life settlement contract issued by ABC Viaticals, Inc. ("ABC Viaticals"), which, like the Aviva annuity, was funded with part of the proceeds of the reverse mortgage. Regrettably for Mr. and Mrs. Soucy, the President of ABC Viaticals, the issuer of the \$100,000 life settlement contract Gahan sold the Soucys, was convicted in Federal court of mail and wire fraud on March 7, 2007, and ABC Viaticals was ordered into receivership.

In August 2006, less than a year after Respondent Gahan sold Mr. and Mrs. Soucy the Aviva annuity, he sold them a \$30,000 deferred annuity issued by Allianz Life Insurance Company. Although Respondent Gahan specifically represented on the Allianz application that the Allianz annuity was not a replacement of another annuity, the evidence established that that representation was false. In fact, the Allianz annuity was a partial replacement of the Aviva annuity that Respondent Gahan had sold the Soucys less than a year earlier. Moreover, Respondent Gahan stated on the Allianz Product Suitability Form that accompanied Mr. and Mrs. Soucy's Application for the \$30,000 Allianz annuity, that the source of the premium for the Allianz annuity was the Soucys' "cash checking" account; that statement was also false. The evidence established that the actual source of the premium for the Soucys' Allianz annuity was the Soucys' Aviva annuity. In sum, Respondent Gahan's sale of the Allianz annuity was an undisclosed replacement, which, the hearing officer concludes, was intended to deceive both Aviva and Allianz.

The evidence presented by the Department established that Respondent Gahan violated RSA 417:4, II by knowingly making false representations on the Allianz annuity Application and Product Suitability Form for the purpose of obtaining a commission.

The evidence presented by the Department established that Respondent Gahan violated Ins 302.04 by failing to make all required disclosures regarding the replacement of the Aviva policy. The violation of Ins 302.04 also constitutes a violation of RSA 402-J:12, I (b).

The evidence presented by the Department established that Respondent Gahan's sale of the \$60,000 Aviva annuity contract, and the later sale to the Soucy's of the \$30,000 Allianz annuity, were unsuitable for Mr. and Mrs. Soucy, and therefore Respondent Gahan violated Ins. 301.06(1). The violation of Ins 301.06(1) also constitutes a violation of RSA 402-J:12, I (b).

The evidence presented by the Department established that Respondent Gahan's sale of the \$100,000 ABC Viatical life settlement contract was unsuitable for Mr. and Mrs. Soucy.

The hearing officer finds that SFS violated RSA 402-J:12, III because the company either knew or should have known of the violations by Respondent Gahan noted above and failed to report the violations to the Commissioner and failed to take corrective action.

### **Beverly and Paul Cantrell Transactions – Violations of Law and Rule**

The Department submitted evidence demonstrating that in 2001 Respondent Gahan sold Beverly and Paul Cantrell 13 annuity contracts issued by Transamerica Life Insurance Company ("Transamerica") and that Gahan collected \$31,985.73 in commissions on those sales. The Department also submitted evidence demonstrating that in 2005 the Cantrells, at Respondent Gahan's direction, replaced 12 of the Transamerica annuities completely, and one partially, with 13 annuities issued by American Equity. Respondent Gahan, on behalf of SFS, collected \$27,450.81 in commissions on these sales.

The Department alleges that the replacement of the Cantrells' Transamerica policies was unsuitable for the Cantrells, and the evidence supports this allegation.

Accordingly, Respondent Gahan violated Ins 301.06(1). The violation of Ins 301.06(1) also constitutes a violation of RSA 402-J:12, I (b).<sup>1</sup>

The hearing officer finds that SFS violated RSA 402-J:12, III because the company either knew or should have known of the violations by Respondent Gahan noted above and failed to report the violations to the Commissioner and failed to take corrective action.

### **Rulings on Requests**

On the Department's requests:

**Granted:**

- 1 – 9 (7, the expiration date was 2006);
- 10 (when amended to read “identical in all material respects”);
- 11-79;
- 80 (when the word “home” is inserted following the word “nursing”);
- 81-82;
- 83 (when the word “totaling” is deleted);
- 84-131.

**Denied:**

None

On Respondent Gahan's submission:

Respondent Gahan did not file requests for Findings of Fact or Rulings of Law or proposed Orders within the time frames ordered by the presiding officer. The statement

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<sup>1</sup> Other activities by Mr. Gahan and SFS may constitute violations of Ins 301.06(1), including the replacement of the Cantrells Aviva policies with policies issued by ING. However, the activities noted above are sufficient to establish violations of Ins 301.06(1).

Similarly, the Department presented evidence that SFS's President, Stephen G. Bennett knowingly misrepresented his history of Bar memberships at a May 7, 2010 hearing, and, further, that Mr. Bennett has practiced law in New Hampshire and Massachusetts without the benefit of being admitted to the practice of law in either State. While this evidence is perhaps suggestive of violations of certain insurance laws, including RSA 402-J:12, I (h), Mr. Bennett's conduct in this regard does not form any part of the basis for this order.

filed by Respondent Gahan by the deadline for filing proposed Findings of Fact and Rulings of Law does not contain requests for findings or rulings, therefore no rulings on the document are made. The document has been entered in the record of this matter Respondent Gahan's submission entitled "Request for Findings of Fact" filed on October 5, 2010, one day after the deadline for filing proposed Orders, and 6 days after the September 29, 2010 filing deadline for proposed Findings of Fact and Rulings of Law, is likewise entered in the record, but does not conform to the hearing officer's orders with respect to filing deadlines or to content, therefore no rulings on the document are made.

### Sanctions

#### **Gary A. Gahan**

As a result of the violations of New Hampshire insurance law discussed above and pursuant to RSA 417:10, 402-J:12, I and RSA 400-A:15, III, it is hereby ordered that Respondent Gary A. Gahan's New Hampshire insurance producer license be revoked immediately and that Respondent Gahan pay an administrative penalty in the amount of ninety-seven thousand five hundred dollars (\$97,500.00). Fifty thousand dollars (\$50,000.00) of the penalty shall be paid within ten (10) days of the Commissioner's execution of the final Order, and the remaining forty seven thousand five hundred dollars (\$47,500.00) shall be paid within (20) days of the Commissioner's execution of the final Order. The fine is determined based upon the number of violations discussed above, multiplied by the statutory fine of \$2,500 per act or violation. The full statutory fine is assessed due to the nature of Respondent Gahan's conduct and the harm caused to Respondent Gahan's victims by these violations. This penalty is itemized as follows:

(1) \$25,000 (\$2,500 for each of 10 separate acts) for misappropriation and conversion of Gilbert Bemis' \$64,895.18; (2) \$2,500 for false statement to American Equity regarding existence of written agreement between Respondent Gahan and Mr. Bemis; (3) \$7,500 (\$2,500 for each of 3 separate acts) for forging Mr. Bemis' initials on American Equity Partial Withdrawal Request Forms; (4) \$2,500 for making false representation on Henry and Lucille Soucy's Allianz annuity Application and Product Suitability Form; (5) \$2,500 for failing to provide Henry and Lucille Soucy with

disclosures required by Ins 302.04 where one annuity is replaced by another; (6) \$2,500 for selling an Aviva annuity to Henry and Lucille Soucy in violation of Ins 301.06(1); (7) \$2,500 for replacing Henry and Lucille Soucy's Aviva annuity with an Allianz annuity in violation of Ins 301.06(1); (8) \$12,500 (\$2,500 for each of 5 separate acts) for selling Aviva annuities to Gilbert and Helen Bemis in violation of Ins 301.06(1); (9) \$7,500 (\$2,500 for each of 3 separate acts) for replacing 3 of the Bemis' Aviva annuities with 3 American Equity annuities in violation of Ins 301.06(1); (10) \$32,500 (\$2,500 for each of 13 separate acts) for replacing Paul and Beverly Cantrell's 13 Transamerica annuities with 13 American Equity annuities in violation of Ins 301.06(1).

### **Seniors Financial Strategies, Inc.**

SFS failed to appear at the hearing in this matter and presented no reasons for its failure to appear. Consequently, SFS has defaulted and the allegations set forth in the Notice of Hearing and Amended Notice of Hearing are hereby deemed admitted. Despite the default, sufficient credible evidence was entered into the record in this matter to determine that Respondent SFS violated both law and rule as set forth above. As a result of the violations of New Hampshire insurance law discussed above and pursuant to RSA 417:10, 402-J:12, I and RSA 400-A:15, III, it is hereby ordered that Seniors Financial Strategies, Inc.'s New Hampshire insurance producer license be revoked immediately and that Seniors Financial Strategies, Inc. pay an administrative penalty in the amount of sixty eight thousand dollars (\$68,000) within ten (10) days of the Commissioner's execution of the final Order. The maximum statutory fine is assessed due to the nature of Respondent SFS's conduct and the harm caused to Respondent SFS's victims by these violations. This penalty is itemized as follows:

(1) \$25,000 (\$2,500 for each of 10 separate acts) for misappropriation and conversion of Gilbert Bemis' \$64,895.18; (2) \$2,500 for the false representation made by Stephen A. Bennett, President of SFS to the NHID regarding his membership in the New Hampshire Bar Association in violation of RSA 402-J:12,I(h); (3) \$2,500 for selling an Aviva annuity to Henry and Lucille Soucy in violation of Ins 301.06(1); (4) \$2,500 for replacing the Soucy's Aviva annuity with an Allianz annuity in violation of Ins 301.06(1);

(5) \$12,500 (\$2,500 for each of 5 separate acts) for selling 5 Aviva annuities to Helen and Gilbert Bemis in violation of Ins 301.06(1); (6) \$7,500 (\$2,500 for each of 3 separate acts) for replacing the Bemis Aviva annuities with 3 American Equity annuities in violation of Ins 301.06(1); and (7) \$32,500 (\$2,500 for each of 13 separate acts) for replacing Paul and Beverly Cantrell's 13 Transamerica annuities with 13 American Equity annuities in violation of Ins 301.06(1).

SO ORDERED.

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Kathleen L. Belanger  
Hearings Officer

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Dated

SO ORDERED.



November 15, 2010  
Date

Roger A. Sevigny, Commissioner