

STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT

In Re: Frederick V. McMenimen, III

Consent Order and Settlement Agreement

Docket No.: Ins. No. 09-046-EP

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N.H. INSURANCE DEPARTMENT

This Consent Order and Agreement ("Order") is made this 17th day of AUGUST, 2009 between the New Hampshire Insurance Department ("NHID") and Frederick V. McMenimen, III ("the Respondent").

1. The Respondent is a licensed insurance producer in New Hampshire and at relevant times was the producer of record for George and Francis Lewis ("the Consumers").
2. The Respondent negotiated the sale of three Sun Life Assurance Company of Canada ("Sun Life") annuity contracts to the Consumers. During the negotiations, the Respondent represented, apparently in good faith, that the annuities paid a guaranteed interest rate of 3% over the 10 year life of the annuity.
3. However, the Respondent subsequently discovered that, as per an endorsement attached to each contract, the actual guaranteed interest rate on each contract was 1.75%, not 3% as the Respondent had represented to the Consumers.
4. Consequently, the Respondent, as an inducement to insurance, knowingly offered, among other things, to "make up any difference" if the cumulative growth in the three contracts failed to achieve at least a 30% return over ten years.
5. As a result of a complaint filed with the NHID by the Consumers' daughter, the NHID's Enforcement Unit investigated the transaction and concluded that the Respondent's written offer to indemnify the Consumers for each annuity contract constituted rebating and therefore violated RSA 417:3, Unfair Trade Practices, as defined in RSA 417:4, IX (a);

WHEREFORE, for purpose of settling the above-referenced matter and in lieu of an administrative proceeding, the NHID and the Respondent have reached an agreement whereby Respondent consents to the following terms of this Order:

- A. The Respondent waives the statutory right to an adjudicatory hearing on this matter.
- B. The Respondent agrees to pay an administrative penalty in the amount of Two-Thousand, Five-Hundred Dollars (\$2,500.00). The administrative penalty shall be made

payable to the Treasurer, State of New Hampshire. The administrative penalty shall be payable upon Respondent's execution of this Consent Order and Agreement.

C. By entering into this Order, the Department and the Respondent intend to resolve all issues relating to the above mentioned matters. This Order shall be deemed a complete settlement and full and final resolution, and is in lieu of any other action that could have been taken by the Department.

D. This Order shall be fully enforceable in any Superior Court in the State of New Hampshire.

IT IS SO ORDERED.

New Hampshire Insurance Department

Dated: 8-19-09



Roger Sevigny, Commissioner

Dated: 8-17-09



Frederick V. McMenimen, III