

**STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE**

**IN RE: BANKERS LIFE AND CASUALTY)
COMPANY and GARY R. SMITH)**

DOCKET NO. INS-04-228)

**IN RE: BANKERS LIFE AND CASUALTY)
COMPANY, GARY R. SMITH, MARK D.)
LECLERC, and JOHN A. HOLT)**

DOCKET NO. INS-04-2001)

CONSENT AGREEMENT

Gary R. Smith, the Maine Bureau of Insurance, and the Maine Office of the Attorney General hereby enter into this Consent Agreement pursuant to 10 M.R.S.A. § 8003(5)(B) to resolve, without an adjudicatory proceeding, the charges against Respondent Smith contained in the Petition to Enforce dated January 4, 2005, in Docket No. INS-04-228 and the violations arising from Respondent’s conduct under a license issued by the Superintendent, which is the subject of the investigation designated as Docket No. INS-04-2001.

STIPULATIONS

1. The Superintendent is the official charged with administering and enforcing the insurance laws of the State of Maine.
2. Respondent Gary R. Smith is licensed by the Superintendent as a resident insurance producer under License No. PRR37831 and National Producer Identification number 2227442.
3. Mr. Smith is and was at all times relevant to this matter an appointed insurance producer for Bankers Life and Casualty Company, Maine License No. LHF127, based at its branch sales office at 32 Atlantic Place, South Portland, Maine.
4. Effective January 1, 2004, Mr. Smith was officially named the Branch Sales Manager of the South Portland branch sales office.
5. Mr. Smith was at all times relevant to these matters, the supervisor of Kevin W. Doyon, Bridget N. Chick, Mark D. Leclerc, and John A. Holt, all of whom were appointed producers of Bankers Life during the times relevant to these matters.
6. Kevin Doyon and Bridget Chick previously entered into separate consent agreements with the Superintendent and the Office of the Attorney General pertaining to the matter Docket No. INS-04-228.

Docket No. INS-04-228

7. In June of 2003, Ms. Chick learned that the church of a client of hers, had received a devise of nearly \$400,000.00 under a will, and was seeking advice on how to invest this money.
8. Ms. Chick's client invited her to a June 17, 2003 meeting of the Stewardship Committee of the church; Ms. Chick asked her fellow Bankers Life producer, Kevin Doyon, to accompany her.
9. Ms. Chick and Mr. Doyon explained to their supervisor, Mr. Smith, that the church was seeking investment options for a recent gift under a will of nearly \$400,000.00, and asked how they could go about selling an annuity to a church.
10. Mr. Smith had never previously sold an annuity to an entity other than a natural person.
11. Mr. Smith advised Ms. Chick and Mr. Doyon that he did not think the church could be the annuitant and suggested that they call the Bankers Life home office to find out how to submit such a case.
12. Mr. Smith, Ms. Chick, and Mr. Doyon had never received training from Bankers Life with regard to selling an annuity to someone other than the proposed annuitant.
13. Mr. Doyon called Charlotte Turner at the Bankers Life home office and understood from his conversation with her that the church, itself, could not be the owner of the annuity, but that it could establish a trust and that the trust could be the owner of an annuity.
14. Mr. Doyon informed Ms. Chick and Mr. Smith of the content of his conversation with Ms. Turner.
15. On June 17, 2003, Ms. Chick and Mr. Doyon met with members of the church's Stewardship Committee.
16. Ms. Chick and Mr. Doyon recommended that the church purchase a fixed rate deferred annuity.
17. Ms. Chick and Mr. Doyon recommended that the church establish a trust to be the holder of the annuity.
18. On June 30, 2003, Ms. Chick met with the treasurer of the church.
19. At this meeting, Ms. Chick learned that the church had yet to establish a trust for purposes of managing its assets.
20. Ms. Chick obtained an application from the church treasurer for a \$5,000.00 single premium deferred annuity with the treasurer as owner and annuitant and the church as the initial beneficiary.
21. Ms. Chick obtained from the treasurer a check in the amount of \$5,000.00 written on the account of the church.
22. Ms. Chick and Mr. Doyon then submitted this application and payment to the South Portland branch sales office for submission to the Bankers Life home office for processing
23. Mr. Smith was aware of the submission of this application and did not question its propriety. Although the application did not indicate that church funds were being used to purchase the annuity or that the individual on the application was the treasurer of the church, the factfinder associated with the application indicated that the money was inherited for the church.
24. Mr. Smith did not advise either Mr. Doyon or Ms. Chick to explain to the church the issues that could arise if an individual member of the church rather than the church was the owner of the annuity. In particular, he did not advise them to inform the church that if an individual was the owner of the annuity, the individual would be able to make or

modify the beneficiary designation or assign or terminate the annuity without the consent of the church. Furthermore, he did not advise them to explain the difficulties that could arise if an individual was the owner and became incompetent or appointed a power of attorney.

25. Mr. Smith did not advise either Mr. Doyon or Ms. Chick that the treasurer of the church should not be made the owner of the annuity.
26. On July 7, 2003, Bankers Life issued an annuity to the church treasurer in her individual capacity.
27. At this time Bankers Life credited Mr. Smith, as the manager of Ms. Chick and Mr. Doyon, with an Agent Productivity bonus of \$25.00, although the credit was not specifically identified as derived from the sale of this annuity.
28. At no time did Mr. Smith question the propriety of the issuance of the annuity or ascertain whether it was properly set up.
29. On December 23, 2003, Ms. Chick collected two additional checks from the church in the amounts of \$195,000.00 and \$100,000.00 and submitted these amounts as “dump in” contributions to the annuity issued to the church treasurer.
30. Ms. Chick issued a conditional receipt that listed the church and the consumer as the remitter of the \$295,000, which became a part of the submission.
31. The two checks referenced the church in the memo line.
32. Mr. Smith was aware of these “dump in” contributions, but did not question the propriety of the annuity.
33. At this time Bankers Life credited Mr. Smith, as the manager of Ms. Chick and Mr. Doyon, with another Agent Productivity bonus in the amount of \$1,180.33. However, the credit was not specifically identified as derived from the “dump in” to the annuity.
34. At no time did Mr. Smith question the propriety of the issuance of the annuity or ascertain whether it was properly set up.
35. Gary Smith violated the Maine Insurance Code, 24-A M.R.S.A. § 1420-K(1)(H) because he demonstrated incompetence or untrustworthiness in the conduct of business when he permitted agents that he supervised to implement the placement of an annuity for a church in which the treasurer of the church was made the owner and annuitant of the annuity without full disclosure and explanation of the effects and implications of the arrangement.

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36. While Mr. Smith was the branch sales manager of the South Portland office, he arranged for Steve Eastman of Financial Freedom, a company specializing in reverse mortgages, to speak with his producers about reverse mortgages.
37. Thereafter, insurance producers under Mr. Smith’s supervision referred at least fourteen of their clients to Mr. Eastman, which clients then obtained reverse mortgages from Mr. Eastman and Financial Freedom.
38. In September 2004, Mark Leclerc and John Holt met with an 81-year old widow who was a qualified recipient of MaineCare benefits, the Maine Medicaid program.
39. Mr. Leclerc and Mr. Holt determined that her status as a MaineCare recipient made her ineligible to apply for a Bankers Life Medicare Supplement policy and her lack of liquid assets and income made purchasing a Bankers Life annuity unfeasible.

40. Mr. Leclerc and Mr. Holt referred this consumer to Mr. Eastman at Financial Freedom for the purpose of her obtaining a reverse mortgage on her home.
41. Mr. Leclerc and Mr. Holt then made continual contacts with the consumer and told her to call them when she was approved for the reverse mortgage and when she would receive funds from the reverse mortgage.
42. On or about November 27, 2004, the consumer informed Mr. Leclerc and Mr. Holt that she had received funds totaling over \$152,000.00 from the reverse mortgage.
43. Mr. Leclerc and Mr. Holt then came to her house that same day and advised her to purchase a single premium immediate annuity in the amount of \$49,000.00 and a single premium deferred annuity in the amount of \$82,748.04.
44. The consumer followed their advice and completed applications for these annuities making out separate checks for \$49,000.00 and \$82,748.04.
45. The interest rate on the reverse mortgage was variable with a rate of 4.12% in November 2004.
46. The Bankers Life deferred annuity that the consumer applied for would pay an interest rate of only 3.25%.
47. Mr. Leclerc and Mr. Holt then helped the consumer contact the Maine Department of Health and Human Services for the purpose of helping her cancel her MaineCare benefits, which would then make her eligible for applying for a Bankers Life Medicare supplement insurance policy.
48. In December 2004, the Bankers Life home office informed Mr. Smith that the consumer had filed a complaint with the Bureau of Insurance because she was unsure what she had purchased from Bankers Life and had no documentation showing what she had applied for.
49. When the annuity documents for the consumer arrived at the Bankers Life branch sales office in South Portland, Mr. Holt and Mr. Leclerc made an appointment with the consumer to deliver them on December 22, 2004.
50. Mr. Smith met separately with Mr. Holt, and Mr. Eastman on December 21, 2004, and with Mr. Leclerc on the morning of December 22, 2004, during which meetings these three individuals confirmed to Mr. Smith the facts stated above.
51. Mr. Holt also informed Mr. Smith that the purpose of the appointment on December 22 was to set the consumer up with a Medicare supplement policy.
52. On December 22, 2004, Mr. Smith accompanied Mr. Leclerc and Mr. Holt on their appointment to deliver the annuities to the consumer.
53. At this meeting, the consumer told the three producers that she was confused about the annuities.
54. At this meeting, the consumer told the producers that she had stopped payment on the two checks.
55. The consumer then issued two new checks in the amounts of \$49,000.00 and \$82,748.04. Neither Mr. Smith, Mr. Leclerc, nor Mr. Holt first confirmed with the Bankers Life home office whether payment on the previous checks had in fact been stopped.
56. Gary Smith committed multiple violations of the Maine Insurance Code, 24-A M.R.S.A. § 1420-K(1)(H) because he demonstrated incompetence or untrustworthiness in the conduct of business on multiple occasions during his involvement in facilitating a relationship between Bankers Life producers and Steve Eastman and Financial Freedom and facilitating the solicitation of Bankers Life insurance products to the above

referenced consumer. Mr. Smith demonstrated through written communications that he was concerned that the transactions in their entirety were not in the financial best interests of the consumer, because she would be reinvesting borrowed money at a lower rate of return than the cost of borrowing the money. However, Mr. Smith permitted these producers, who were under his supervision, to effect the transactions.

COVENANTS

Gary R. Smith, the Superintendent, and the Attorney General agree to the following:

57. This Consent Agreement is entered into in accordance with 10 M.R.S.A. § 8003(5)(B) and is not subject to review or appeal. This Consent Agreement is enforceable by an action in the Superior Court.
58. Mr. Smith agrees to the imposition of a civil penalty of \$5,000.00, pursuant to 24 A M.R.S.A. § 12 A(1), for the violations admitted herein payable in five (5) monthly installments of one thousand dollars (\$1,000.00), each such installment to be paid by check, payable to the Treasurer of the State of Maine, and submitted to the Superintendent. The first such installment shall be submitted by June 1, 2005, and the remaining installments shall be due on the first day of each month thereafter, with the final installment due on October 1, 2005.
59. Mr. Smith agrees to the suspension of his insurance producer license for a period of 180 days beginning on the date on which all parties have executed this Consent Agreement. Mr. Smith's producer's license will be reinstated on the 181st day after the Superintendent signs this Consent Agreement at which time Mr. Smith will be able to resume his producer's duties.
60. Mr. Smith agrees that he will not act in a supervisory or managerial capacity within the insurance industry for a period of ten (10) months from the date on which his Maine producer's license is reinstated following the suspension imposed pursuant to this Consent Agreement.
61. Mr. Smith agrees that for a period of three (3) years following the reinstatement of his producer's license, he will promptly report to the Superintendent, any and all investigations, proceedings, and customer complaints of which he is a subject.
62. Mr. Smith agrees that upon reinstatement of his producer's license, he will not place any sales of annuities for which the premiums are derived from a reverse mortgage.
63. Mr. Smith agrees that for a period of three (3) years following the reinstatement of his producer's license, he shall provide Bureau of Insurance Staff with free and open access to all records, cold calls, and other customer interactions.
64. Mr. Smith agrees for each of the next three continuing education cycles he will complete at least one course in ethics or product suitability.
65. In consideration of Mr. Smith's execution of and compliance with the terms of this Consent Agreement, the Superintendent and the Attorney General agree to forgo pursuing further disciplinary measures or other civil or administrative sanctions against Mr. Smith for the violations described in the Stipulations, other than those agreed to in this Consent Agreement. However, should Mr. Smith violate this Consent Agreement, the Superintendent and the Attorney General reserve the right to pursue any available legal

remedy for the violation, including without limitation the suspension or revocation of all licenses issued to Mr. Smith by the Superintendent.

66. The parties to this Agreement understand that nothing herein shall affect any rights or interests that any person not a party to this Agreement may possess.
67. Mr. Smith understands and acknowledges that this Agreement will constitute a public record within the meaning of 1 M.R.S.A. § 402, will be available for public inspection and copying as provided for by 1 M.R.S.A. § 408, and will be reported to the National Association of Insurance Commissioners' "RIRS" database.
68. Mr. Smith has been advised of his right to consult with counsel before executing this Agreement.
69. This Consent Agreement may be modified only by a written agreement executed by all of the parties.

Dated: _____, 2005

Gary R. Smith

State of Maine, _____,ss

Personally appeared before me this day Gary R. Smith, and signed this Consent Agreement in my presence.

Notary Public/Attorney

FOR THE OFFICE OF THE ATTORNEY GENERAL

Dated: _____, 2005

Andrew L. Black, AAG

BY THE SUPERINTENDENT OF INSURANCE

Dated: _____, 2005

Alessandro A. Iuppa, Superintendent