



**STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE**

TENNESSEE INSURANCE DIVISION,)	
Petitioner,)	
)	
vs.)	Order No.: 18-010
)	
BERNARD SCHWALBE,)	
Respondent.)	

CONSENT ORDER

The Insurance Division of the Department of Commerce and Insurance (“Division”) and Bernard Schwalbe (“Respondent”) hereby stipulate and agree to the entry of this Consent Order subject to the approval of the Commissioner of the Tennessee Department of Commerce and Insurance (“Commissioner”) as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner’s acceptance and has no force and effect until such acceptance is evidenced by the entry of an order by the Commissioner.

2. This Consent Order is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

3. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against Respondent for acts or omissions not specifically addressed in this Consent Order or for facts and/or omissions that do not arise from the facts or transactions addressed herein.

4. Respondent fully understands that this Consent Order will in no way preclude proceedings by state government representatives, other than the Commissioner, for violations of the statutes, rules, or regulations addressed specifically in the Findings of Fact and Conclusions of Law in this Consent Order, or which may arise as a result of the execution of this Consent Order by the Respondent.

5. Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of this Consent Order, the stipulations, and imposition of discipline contained herein, and the consideration and entry of said Consent Order by the Commissioner.

AUTHORITY AND JURISDICTION

6. The Commissioner has jurisdiction over this matter pursuant to the Tennessee Insurance Law ("Law"), Title 56 of Tennessee Code Annotated ("Tenn. Code Ann."), specifically, Tenn. Code Ann. §§ 56-1-101, 56-1-202, 56-2-305 and 56-6-112. The Law places on the Commissioner the responsibility of the administration of its provisions.

PARTIES

7. The Division is the lawful agent through which the Commissioner administers the Law and is authorized to bring this action for the protection of the people.

8. Respondent, Bernard Schwalbe, was a licensee of the Division and is responsible for being compliant with the insurance laws, rules, and regulations of the State of Tennessee.

9. Respondent held a valid Tennessee insurance producer license, number 1011911.

10. Respondent's insurance producer license is currently in INACTIVE status and expired on or about July 31, 2014.

11. Upon information and belief, and records on file with the Division, Respondent is a resident of the State of Florida and residing at 7215 Fairfax Drive, #108, Tamarac, Florida, 33321.

FINDINGS OF FACT

12. In or about November of 2011, Respondent, during communications with Gail Vollman ("Ms. Vollman"), proposed that, based on his understanding of their then present needs and objectives, Ms. Vollman and her spouse, Kurt Vollman ("Mr. Vollman") purchased certain annuity products. Respondent had a pre-existing relationship with Mr. and Mrs. Vollman ("Vollmans") dating to their prior residency in Florida.

13. Based on those communications and the documents provided by Respondent, the Vollmans, agreed to purchase two (2) annuities from Phoenix Life Insurance Company ("Phoenix") through Respondent who acted as Phoenix's agent for the sale.

14. The sale of Mr. Vollman's annuity (Annuity #1) was completed on January 27, 2012.

15. The sale of Mrs. Vollman's annuity (Annuity #2) was completed on February 2, 2012.

16. Respondent's insurance producer license in Tennessee expired on August 5, 2011, and was expired at the time Respondent sold the annuities to the Vollmans.

17. Respondent's insurance producer license in Tennessee was not reactivated until March 23, 2012.¹

CONCLUSIONS OF LAW

18. At all times relevant hereto, Tenn. Code Ann. § 56-6-103 provided the following: “[a] person shall not sell, solicit or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this part.”

19. At all times relevant hereto, Tenn. Code Ann. § 56-2-201(4) provided the following: “[l]ife insurance means insurance on human lives and insurance appertaining to human lives or connected with human lives . . . [and] . . . includes the granting of annuities, both with and without a life or mortality contingency or element, and endowment benefits, additional benefits in the event of death by accident or accidental means, additional benefits in the event of the total and permanent disability of the insured, and optional modes of settlement of proceeds.”

20. At all times relevant hereto, Tenn. Code Ann. § 56-6-112(e) provided the following: “[t]he commissioner shall retain the authority to enforce this part and impose any penalty or remedy authorized by this part and this title against any person who is under investigation for or charged with a violation of this part or this title, even if the person's license has been surrendered or has lapsed by operation of law.”

21. At all times relevant hereto, Tenn. Code Ann. § 56-6-112(g) provided the following: “[i]f . . . the commissioner finds that any person required to be licensed, permitted, or authorized by the division of insurance pursuant to this chapter has violated any statute, rule or order, the commissioner may, at the commissioner's discretion, order:

¹ Respondent was, at all relevant times, duly licensed in Florida, where the Vollman's resided when he first established a professional relationship with them.

- (1) The person to cease and desist from engaging in the act or practice giving rise to the violation;
- (2) Payment of a monetary penalty of not more than one thousand dollars (\$1,000) for each violation, but not to exceed an aggregate penalty of one hundred thousand dollars (\$100,000) . . . [and] [f]or purposes of this subdivision (g)(2), each day of continued violation shall constitute a separate violation; and
- (3) The suspension or revocation of the person's license.”

ORDER

NOW, THEREFORE, on the basis of the foregoing, and the waiver by the Respondent of the right to a hearing and appeal under the Tennessee Insurance Law and the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 *et seq.*, and the admission by the Respondent of jurisdiction of the Commissioner, the Commissioner finds that Respondent, for the purpose of settling this matter, admits to the Findings of Fact and Conclusions of Law herein, has agreed to the entry of this Order, and that the following Order is appropriate and is in the public interest.

IT IS ORDERED, pursuant to Tenn. Code Ann. § 56-6-112, that:

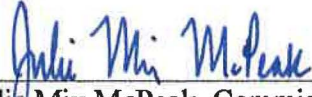
1. The Respondent’s Insurance Producer License is currently in INACTIVE status and expired on or about July 31, 2014, and shall not be eligible for renewal.
2. The Respondent shall **CEASE AND DESIST** from engaging in the business of insurance.

IT IS ORDERED that this Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signatures affixed below, the Respondent affirmatively

states that Respondent has freely agreed to the entry of this Order, that Respondent waives the right to a hearing on the matters underlying this Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made to Respondent by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Order, affirmatively state their agreement to be bound by the terms of this Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement as set forth in this Order, are binding upon them.

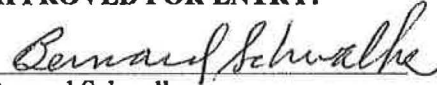
IT IS SO ORDERED.

ENTERED this 22 day of January, 2018.

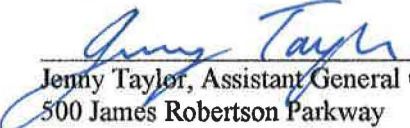


Julie Mix McPeak, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:



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