



STATE OF CONNECTICUT
INSURANCE DEPARTMENT

-----X
IN THE MATTER OF: :
 :
Howard S. Irving : Docket No. FC 19-103
 :
Respondent :
-----X

ORDER FOR DEFAULT JUDGMENT AND ORDER OF REVOCATION

The Insurance Commissioner, hereinafter referred to as Commissioner, is charged with the administration and enforcement of the insurance laws and regulations that pertain to licensees of the Insurance Department pursuant to Connecticut General Statutes Section 38a-8.

Section 38a-774 of the Connecticut General Statutes provides in part that:

The commissioner, after reasonable notice to and hearing of any holder of a license issued by the commissioner, may suspend or revoke the license for cause shown. In addition to or in lieu of suspension or revocation, the commissioner may impose a fine not to exceed five thousand dollars.

The Commissioner has conducted an investigation of the activities of the above captioned Respondent and as a result of that investigation issued a Complaint dated November 6, 2019, a copy of which is attached hereto as Exhibit A, alleging cause to suspend or revoke licenses issued by the Commissioner, or in addition to or in lieu thereof impose a fine.

Section 38a-8-61 of the Regulations of Connecticut State Agencies provides that:

The respondent in any enforcement proceeding shall file an answer with the Commissioner within twenty (20) days of service of the notice of hearing specifically admitting or denying the allegations or charges set out in the notice. Factual allegations not specifically denied shall be deemed to be admitted.

Section 38a-8-62 of the Regulations of Connecticut State Agencies provides that:

In any proceeding when the Respondent fails to file an answer as required by Section 38a-8-61 of these Regulations or fails to appear at a duly noticed hearing,

the Commissioner may, in his discretion, note such failure upon the record and render a decision by default.

IN ACCORDANCE WITH THE FOREGOING:

I FIND, in light of the foregoing, that a Complaint and Notice of Hearing was sent on or about November 15, 2019 to the Respondent, by regular first-class mail and by certified mail, Number 9214 8901 9403 8399 3516 86, with the proper postage at the following address:

Howard S. Irving
255 Ocean Drive, E.
Stamford, CT 06902

Evidence of mailing of Certified Mail, Article Number 9214 8901 9403 8399 3516 86, sent to Respondent at 255 Ocean Drive, E., Stamford, CT 06902 on November 15, 2019 is attached as Exhibit B. Certified Mail, Article Numbers 9214 8901 9403 8399 3516 86 was delivered to the Respondent on November 19, 2019, see Exhibit C. The Complaint and Notice of Hearing sent by first-class mail to the Respondent was not returned to the Department.

As of this date, the Department has not received any answer to the Complaint from the Respondent.

The address stated above is the address filed with this Department by the Respondent, who is required by law to report any change of address within thirty days. From the date of this order, the Complaint and Notice of Hearing was mailed to the Respondent 30 days ago. Accordingly, I find that the Respondent received service and reasonable notice of the Complaint in accordance with the Regulations of Connecticut State Agencies, Sections 38a-8-18 and 38a-8-59 *et seq.*

I FURTHER FIND that the Respondent did not file an answer within the time period required in accordance with the Regulations of Connecticut State Agencies, Section 38a-8-61, nor did he appear at the scheduled hearing. Accordingly, all of the allegations as set forth in the Complaint, attached hereto, are hereby deemed admitted.

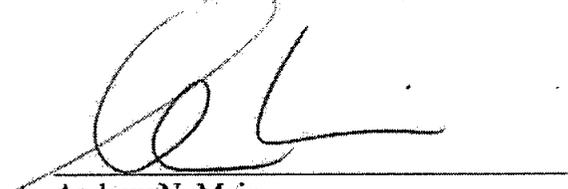
IT IS HEREBY ORDERED, in accordance with the above findings and pursuant to Section 38a-8-61 of the Regulations of Connecticut State Agencies, that:

1. A decision by default enters against the Respondent, Howard S. Irving.
2. That all licenses issued to the Respondent pursuant to Sections 38a-702f and 38a-769 of the Connecticut General Statutes, are hereby revoked and the Hearing originally scheduled for December 12, 2019 is cancelled.

3. That pursuant to Section 38a-8-63 of the Regulations of Connecticut State Agencies:

A respondent may move to reopen any decision rendered by default within sixty (60) days of the entry thereof. The motion shall be in writing and shall state the reasons for the failure of the respondent to answer or appear. If a default was entered for failure of the respondent to file an answer, the respondent shall submit said answer with the motion to reopen. If good cause appears for the failure of the respondent to answer or appear, the Commissioner may grant said motion and shall schedule the hearing at the earliest date convenient to the Commissioner.

So ordered this 17th day of December 2019



Andrew N. Mais
Insurance Commissioner



STATE OF CONNECTICUT

INSURANCE DEPARTMENT

CONNECTICUT INSURANCE
DEPARTMENT
EXHIBIT A

IN THE MATTER OF)
)
 HOWARD S. IRVING)
 and)
 THE ATLANTIC INSURANCE AGENCY, INC.) DOCKET NO.: FC 19-103
)
 Respondent)

COMPLAINT

The Insurance Commissioner of the State of Connecticut having reason to believe that Howard S. Irving engaged in acts of conduct as set forth herein and which, if true, would violate Sections 38a-702k, 38a-769, 38a-771, 38a-815 and 38a-816 of the Connecticut General Statutes and would constitute cause under Sections 38a-702k, 38a-774 and 38a-817 of the Connecticut General Statutes for the revocation or suspension of licenses issued by the Insurance Department and/or the imposition of fines and other penalties, and it appears to the Insurance Commissioner that a proceeding in respect thereof would be in the public interest, hereby issues this Complaint alleging the charges in that regard as follows:

COUNT I

1. Howard S. Irving ("Irving") is licensed as a Producer, license number 000967156, by the State of Connecticut Insurance Department ("Department"). The Respondent is the owner and authorized designee of The Atlantic Insurance Agency, Inc. ("Agency"), license number 002113619. Hereinafter, the term "Respondents" refers to both Irving and the Agency.
2. In 2004, Irving was placed on a two-year probation and fined two thousand dollars (\$2,000.00) for signing and submitting to an insurer an annuity application he did not solicit and falsely affirming therein that he had delivered the annuity and witnessed the insured's purported signature on the delivery receipt.
3. In September of 2014, the Respondents again engaged in unfair and dishonest practices in the business of insurance about business placed for [REDACTED] a family friend who had gone through a traumatic experience when her husband was diagnosed with brain cancer and passed away.
4. After receiving an annuity payout as the beneficiary of an annuity owned by [REDACTED] and issued by Allianz Life Insurance Company, [REDACTED] sought guidance

from Irving about the best use for the proceeds, as she had little knowledge of financial matters.

5. Irving, who originally sold the annuity to [REDACTED], advised [REDACTED] to use the Allianz annuity's beneficiary payout to buy an Athene Annuity and Life Company ("Athene") annuity for \$216,018.32 ("Athene AA10026691").
6. [REDACTED] trusted that Irving would keep her best interest in mind considering the trauma she went through with her husband's passing.
7. Sixteen months later, Irving advised [REDACTED] to withdraw over \$100,000 from Annuity No. AA10026691 to purchase a long term care policy.
8. [REDACTED] had reservations about Irving's advice, but the two-year ordeal of taking care of her husband was something she wished to avoid for her children if anything happened to her, so Irving was able to convince her that a long term care policy with skilled nursing benefits would be helpful.
9. Instead of purchasing a long term care policy, Irving used the \$100,000 to buy a Nationwide Life Insurance Company Annuity (Nationwide Annuity), which would fund the purchase of a Nationwide Fixed Premium Universal Life Insurance policy with a long term care provision ("Nationwide Policy"), without [REDACTED] knowledge or consent.
10. The Nationwide annuity was used by Irving to fund the purchase of the Nationwide Policy without [REDACTED] knowledge or consent.
11. [REDACTED] had sufficient funds to finance the purchase of the Nationwide Policy without withdrawing money from Annuity No. AA10026691 or purchasing the Nationwide Annuity.
12. Irving convinced [REDACTED] to sign the application and related paperwork to authorize the purchase of the Nationwide products without informing her about what exactly he was doing or about the surrender charge she would incur from the early-withdrawal from Annuity No. AA10026691.
13. To prevent [REDACTED] from ascertaining the actual facts about the transactions referenced above, Irving withdrew enough from her Athene Annuity, approximately \$109,529.03, to hide the applicable surrender charges so she would not notice.
14. These transactions resulted in commissions of \$1,376.00 and \$6,086.15, respectively, for Irving.

15. On March 24, 2015, [REDACTED] received her husband's AT&T Pension survivor benefits of \$79,014.71 and \$124,424.83.
16. Irving advised [REDACTED] to use the payouts from her husband's pension to buy two more Athene annuities. Contracts AA10030619 and AA10030617.
17. Contracts AA10030619 and AA10030617 were both the same annuity products, Horizon Target 10, as Athene AA10026691.
18. The transactions outlined in paragraphs 16 and 17 above profited Irving an additional \$15,000 in commissions.
19. When [REDACTED] received notification from Athene about the surrender charges paid for the withdrawal from Annuity No. AA10026691, she confronted Irving about his failure to inform her of the surrender penalty and never spoke to him again.
20. The Respondents churned [REDACTED] policies and provided her with not needed and unsuitable insurance products, placed their own interest over [REDACTED] best interest and provided false and misleading information to [REDACTED] and to Nationwide in the application process, by among other things submitting a letter to Nationwide misrepresenting that [REDACTED] had initiated the purchase of the long term care policy, that her previous experience with the passing of her husband drained her finances, that her husband left her with three pension accounts and that he had advised her of a surrender charge of \$9,529.03 applicable to the withdrawal from Annuity No. AA10026691.
21. As a result of the Respondents' unfair, misleading, and fraudulent practices [REDACTED] has originally suffered the following losses:
 - \$9,529.03 surrender penalties resulting from the \$110,994 withdrawal from the Athene Annuity, contract No. AA10026691.
 - \$5,447 in unnecessary federal tax payments, as reflected on her 2017 Form 1040.
 - \$1,405 in unnecessary CT tax payments, as reflected on her Form CT 1040.
 - \$3,465 in unnecessary tax payments and penalty, as reflected on her 2016 Form 1040.
 - \$1,270 in unnecessary CT tax payments, as reflected on the 2016 Form CT 1040.

- \$4,000 in penalties due to the pre-age 59 1/2 withdrawals from the unnecessary SPIA.
 - \$3,500 payment to an insurance consultant.
22. [REDACTED] eventually had to hire an attorney, who negotiated with Nationwide a \$32,500 remediation settlement to make her whole for all taxes and contingent deferred sales charges related to her Athene contracts.
23. The conduct as described above, if true, violates Sections and 38a-769 of the conduct as described above, if true, is in violation of Sections 38a-702k, 38a-816 and 38a-769 of the Connecticut General Statutes and constitutes cause pursuant to Sections 38a-702k, 38a-774 and 38a-817 of the Connecticut General Statutes for the suspension or revocation of insurance licenses and/or for the imposition of fines.

COUNT II

1. Paragraph one of Count I is incorporated in and made paragraph one of this Count.
2. On or about August 16, 2018, the Department sent a letter to Respondent requesting that he contact the Department within ten calendar days to address the issues outlined in this Complaint.
3. The letter sent to Respondent requested that he provide the following information so that the Department could review and resolve [REDACTED] complaint.
 - *Please provide complete details of the February 2016 Nationwide policy sales that resulted in the surrendering of Ms. [REDACTED] 2014 Athene annuity. Of what benefit to Ms. [REDACTED] was the replacement of her Athene annuity to purchase the Nationwide policies? Include complete details.*
 - *Was Ms. [REDACTED] informed by you of the Athene surrender penalty, State and Federal taxes, and penalty for taking qualified annuity monies prior to her age 59 1/2. Include details of your conversations with Ms. [REDACTED]*
 - *Please respond to Attorney Rosenfield's question on E&O coverage and/or your plans to make Ms. [REDACTED] whole.*
4. The Respondent failed to provide a reply to the Department.
5. On or about August 20, 2019, the Department sent another letter to Respondent requesting that he contact the Department within five calendar days to address [REDACTED] complaint.

6. The Respondent failed to provide an appropriate answer that would allow the Department to evaluate the issues listed in this Complaint.
7. On or about October 18, 2019, the Department sent an email to Respondent requesting that he contact the Department within five calendar days to address [REDACTED] complaint.
8. The Respondent failed to provide an appropriate answer that would allow the Department to review [REDACTED] allegations.
9. The Department made several attempts to contact Respondent at [REDACTED] leaving voicemail messages with no reply.
10. On September 11, 2019, the Department mailed a formal request to the Respondents requesting that Irving appear before the Department to address the allegations listed on Count I of this Complaint.
11. Irving failed to attend the meeting.
12. The conduct as described above, if true, is in violation of Sections 38a-702k, 38a-816 and 38a-769 of the Connecticut General Statutes and constitutes cause pursuant to Sections 38a-702k, 38a-774 and 38a-817 of the Connecticut General Statutes for the suspension or revocation of insurance licenses and/or for the imposition of fines.

NOTICE

Notice is hereby given to you, Howard S. Irving Respondent herein, that December 12, 2019, at 10:00 am is hereby fixed as the time where a public hearing will be held in the offices of the Insurance Department, 153 Market Street ("960 Main" Building), 7th Floor, Hartford, Connecticut on the charges set forth in this Complaint, at which time and place you will have the right to appear before the undersigned, or a duly designated hearing officer, to show cause why your license(s) should not be suspended or revoked and/or why fine(s) should not be imposed. The legal authority and jurisdiction for the hearing in this matter are contained in Section 38a-769, 38a-774, 38a-817, 4-177, 4-182 and 4-183 of the Connecticut General Statutes.

Pursuant to Section 38a-8-61 of the Regulations of Connecticut State Agencies, you are required to file an answer within the Insurance Department within twenty (20) days of service of this Amended Complaint specifically admitting or denying the allegations or charges set out in the Amended Complaint. Factual allegations not specifically denied shall be deemed to be admitted.

Failure to file said answer as required by Section 38a-8-61, R.C.S.A., or failure to appear at the time and place fixed for the hearing will permit the Commissioner, at his discretion, to note such failure upon the record and render a decision by default.

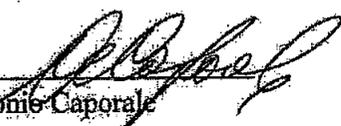
If you desire to waive hearing on the allegations of fact set forth in the Complaint and not contest the facts alleged, please file with the Insurance Department an answer to this complaint on or before the twentieth (20th) day after service of it upon you, consisting of a statement that you as Respondent in this matter admit all of the material allegations of fact charged in the Complaint to be true.

The Insurance Department does not discriminate on the basis of disability in admission to, access to, or operation of its programs, services or activities, in accordance with Title II of the Americans with Disabilities Act of 1990. Individuals who require auxiliary aids for effective communication or other accommodation are invited to make their needs and preferences known to Patricia Tiberio, ADA Coordinator, at the Insurance Department (Tel: 860.297.3800).

All correspondence concerning this matter should be sent to the Insurance Department, State of Connecticut, P.O. Box 816, Hartford, CT 06142-0816.

Dated at Hartford, Connecticut this 6th day of November 2019.

Andrew N. Mais
Insurance Commissioner

By 
Antonio Caporale
Counsel



CONNECTICUT INSURANCE
DEPARTMENT
EXHIBIT B

**PROOF OF ACCEPTANCE
(ELECTRONIC)**

PRODUCED DATE: 11/16/2019

STATE OF CONNECTICUT DEPARTMENT OF INSURANCE:

The following is information for Certified Mail™/RRE item number:
9214 8901 9403 8399 3516 86

Our records indicate that this item was accepted by the USPS at:
ORIGIN ACCEPTANCE HARTFORD,CT 06142 11/15/2019

ORIGINAL INTENDED RECIPIENT:
HOWARD S IRVING
255 OCEAN DR E
STAMFORD CT 06902-8219

Department: Fraud & Investigations
Sender: Richard Reid

The above information represents information provided by the United States Postal Service.



EXHIBIT

CONNECTICUT INSURANCE
DEPARTMENT

Mailer: State of Connecticut Department of Insurance

Date Produced: 11/25/2019

ConnectSuite Inc.:

The following is the delivery information for Certified Mail™/RRE Item number 9214 8901 9403 8399 3516 86. Our records indicate that this item was delivered on 11/19/2019 at 01:52 p.m. in STAMFORD, CT 06902. The scanned image of the recipient information is provided below.

Signature of Recipient :

Address of Recipient :

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

This USPS proof of delivery is linked to the customers mail piece information on file as shown below:

HOWARD S IRVING
255 OCEAN DR E
STAMFORD CT 06902-8219

Customer Reference Number: C1744412.9941729