

JESSE LASLOVICH
Office of the Commissioner of Securities & Insurance
Montana State Auditor's Office
840 Helena Avenue
Helena, MT 59601
(406) 444-2040

Attorney for the Commissioner

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE STATE AUDITOR
STATE OF MONTANA**

IN THE MATTER OF:)	CASE NO.: 07-31-09-316 C
)	
DONALD A. GARBERG)	CONSENT AGREEMENT
(License # 66998),)	AND FINAL ORDER
)	
Respondent.)	

The Commissioner of Securities and Insurance (CSI) within the Office of the Montana State Auditor, pursuant to the authority of the Securities Act of Montana, Mont. Code Ann. § 30-10-101, *et seq.*, and Mont. Code Ann. § 2-4-603, and Donald A. Garberg (Respondent), hereby mutually agree as follows:

FINDINGS OF FACT

1. The Respondent had been registered with the Montana Securities Department (Department) as a broker/dealer salesperson and investment adviser representative with Ameriprise (formerly IDS) from July 5, 1999, to May 6, 2009, and ING Financial Partners (ING) from May 1, 2009, until July 10, 2009.

2. ING terminated the Respondent as a securities salesperson and investment adviser representative due to the circumstances giving rise to this action and the Respondent has not been registered with the Department since July 10, 2009.

3. On June 30, 2009, the Department received a call from [REDACTED] regarding the sale of an annuity by the Respondent to [REDACTED], an 83 year old resident of the [REDACTED] in Helena, Montana.

4. [REDACTED] a friend of [REDACTED] alleged that the Respondent used high pressure sales tactics when he visited [REDACTED] in October 2008 and convinced her to exchange a large portion of an annuity she had at Ameriprise for 10 years, into an annuity with ING.

5. The Respondent was [REDACTED] securities salesperson for her Ameriprise account [REDACTED]

6. The Respondent recommended and sold [REDACTED] two annuities in 1999, a RiverSource Flexible Portfolio variable annuity and a RiverSource Retirement Advisor Advantage variable annuity.

7. Both annuities provided a majority of [REDACTED] income, as her only other source of income was \$424 per month in Social Security benefits.

8. In 2004, [REDACTED] filed a complaint with Ameriprise against the Respondent relative to her purchase of the RiverSource variable annuities, alleging that the Respondent failed to disclose certain tax consequences regarding the transactions.

9. The complaint was resolved with a settlement of \$3,316.78 to [REDACTED]

10. On October 17, 2008, the Respondent visited [REDACTED] at the [REDACTED] and tried to get her to exchange both of her RiverSource variable annuities to a new annuity with ING.

11. Even though [REDACTED] had questions about making any changes, she ultimately agreed to take \$31,100.59 from her RiverSource Retirement Advisor Advantage annuity (contract # [REDACTED]) and take \$179,479.36 from her RiverSource Flexible Portfolio annuity (contract # [REDACTED]) and move the funds, totaling \$210,579.95, to a deferred annuity (contract # [REDACTED]) with American General Insurance, a division of ING.

12. [REDACTED] paid \$229.79 in surrender charges on the withdrawal from her RiverSource Retirement Advisor Advantage annuity, but did not pay any surrender charges on her RiverSource Flexible Portfolio annuity.

13. The deferred annuity application for contract # [REDACTED] was completed by the Respondent at [REDACTED] apartment in the [REDACTED] and was signed by [REDACTED] on October 17, 2008.

14. Instead of the Respondent signing the Agent signature block on the application, Sean Morgan (Morgan), a supervising manager for ING, signed as agent.

15. The Agent signature block above Morgan's signature contains the following certification: "I certify that I have truthfully and accurately recorded on the application the information supplied by the Owner(s) and personally witnessed the signature(s)."

16. The Respondent was the one who recorded the information on the application and personally witnessed [REDACTED] signature, not Morgan.

17. The Respondent did not become licensed with ING until May 1, 2009, nearly six months after he sold [REDACTED] the annuity.

18. Because the Respondent was not yet affiliated with ING, Morgan, who was affiliated with ING, signed off as agent on Alm's annuity application with American General Insurance.

19. In a statement to the Department dated July 10, 2009, Morgan admitted that he signed [REDACTED] annuity application and said there was "no excuse" for his actions.

20. In a letter to the ING Compliance Department dated July 9, 2009, the Respondent stated that he knew it was wrong for Morgan to sign [REDACTED] annuity application, but did it to avoid alerting Ameriprise that he was involved in the transaction.

21. The Respondent made a commission of \$7,423.20 on the transaction and Morgan made a commission of \$156.68.

CONCLUSIONS OF LAW

1. The State Auditor is the Commissioner of Securities (Commissioner) pursuant to Mont. Code Ann. § 30-10-107.

2. The Securities Department (Department) is under the control and supervision of the Commissioner pursuant to Mont. Code Ann. § 30-10-107.

3. It is the policy of the Securities Act of Montana to protect the public interest. Mont. Code Ann. § 30-10-102(1).

4. The Commissioner and the Department have jurisdiction over this matter. Mont. Code Ann. §§ 30-10-107 and 30-10-305.

5. It is unlawful for any person, in connection with the offer, sale or purchase of any security in, into, or from Montana to make any untrue statement of material fact or

omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading. Mont. Code Ann. § 30-10-301(1)(b).

6. The Respondent violated Mont. Code Ann. § 30-10-301(1)(b) when he made untrue statements or omitted material facts by failing to inform [REDACTED]

- a. that his recommendation to sell her variable annuity at Ameriprise and use the proceeds for the purchase of another annuity with American General Insurance may not have been suitable based on her age, her liquidity needs, and her level of sophistication;
- b. that he was not affiliated with ING;
- c. that Morgan would be certifying as to the accuracy of the information gathered in her annuity application even though Morgan did not know [REDACTED] did not gather the pertinent financial information necessary to ensure the recommendations were suitable, and had no way of knowing whether the information regarding [REDACTED] was accurate; and
- d. that Morgan would be certifying that he witnessed [REDACTED] signature on the application even though Morgan was not present when [REDACTED] signed the application.

7. Pursuant to Mont. Code Ann. § 30-10-305(3), the Commissioner may, after reasonable notice and an opportunity for a hearing, impose a fine not to exceed the sum of \$5,000 per violation upon a person found to have engaged in any act or practice constituting a violation of any provision of the Securities Act of Montana.

AGREEMENT

The Department together with Donald A. Garberg, Respondent, hereby stipulate and agree to the following:

1. Respondent acknowledges that the Commissioner and Department have jurisdiction over the subject matter of the above-entitled proceeding.
2. Respondent acknowledges he was advised of the right to be represented by legal counsel and, although he understands his right to be represented by counsel, has knowingly and voluntarily waived his right to counsel by choosing to represent himself in this matter.
3. Respondent acknowledges that he has read and understands each term of this Consent Agreement and that he enters into this Consent Agreement voluntarily and without reservation.
4. Respondent and the Department stipulate and agree that this Consent Agreement resolves the alleged violations of the Montana Securities Act.
5. Respondent and the Department hereby acknowledge and agree that this Consent Agreement constitutes the entire agreement between the parties and that no other promises or agreements, either express or implied, have been made by the Department or by any member, officer, agent or representative of the Department to induce Respondent to enter into this Consent Agreement.

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6. Any notice provided for in this Consent Agreement and any other communication between the Department and Respondents are legally sufficient if given in the following manner:

(a) notice to the Department may be given by mailing the notice by registered or certified mail, postage paid and addressed to the Department as follows:

Jesse Laslovich
Office of Commissioner of Securities and Insurance
840 Helena Avenue
Helena, MT 59601

(b) notice to Respondent may be given by mailing the notice by registered or certified mail, postage paid and addressed as follows:

Donald Garberg
129 Bing Court
Kalispell, MT 59901

7. Either party shall give to the other party notice of change of address for the giving of notices in the manner provided in this Consent Agreement, if applicable.

8. With respect to a possible agency action, Respondent specifically and affirmatively waives a contested case hearing and elects to resolve this matter on the terms and conditions set forth herein.

9. Respondent fully and forever releases and discharges the Commissioner, Department, and all Department employees and agents from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of this administrative action and the Findings of Fact and Conclusions of Law incorporated by reference in this Consent Agreement.

10. The parties acknowledge and agree that this Consent Agreement may not be modified orally and any subsequent modifications to this Consent Agreement must be mutually agreed upon in writing to be effective.

11. The Department and Respondent agree that this Consent Agreement shall be incorporated into and made a part of the attached Final Order issued by the Commissioner herein.

12. Upon execution of this Consent Agreement, the Respondent acknowledges and waives his right to appeal the Commissioner's Order.

13. Upon execution of this Consent Agreement, the Department will not commence any further administrative, civil, or other legal action based upon the allegations set forth in this action that occurred prior to the execution of this Consent Agreement.

14. This Consent Agreement shall be effective upon signing of the Final Order.

15. Respondent acknowledges that this Consent Agreement and Final Order are public records under Montana law and as such may not be sealed or otherwise withheld from the public.

16. Upon execution of this Consent Agreement, the Respondent shall return the entire commission (\$7,423.20) earned on [REDACTED] transaction to [REDACTED]

17. The Department and Respondent stipulate and agree to the imposition of a fine upon the Respondent in the amount of Five Thousand Dollars (\$5,000.00), payable to the State of Montana upon execution of this Consent Agreement.

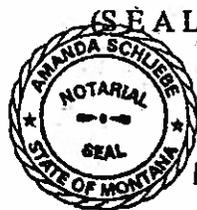
18. The Respondent shall pay for semi-annual compliance examinations on his proposed new advisory firm, Garberg & Associates, which will be conducted by this office or an independent compliance examiner for a period of at least 1 year from the effective date of this Consent Agreement and Order.


DONALD A. GARBERG

10.2.2009
DATE

State of Montana)
) :ss
County of Flathead)

SIGNED and SWORN to before me on this 2 day of October, 2009, by DONALD A. GARBERG.

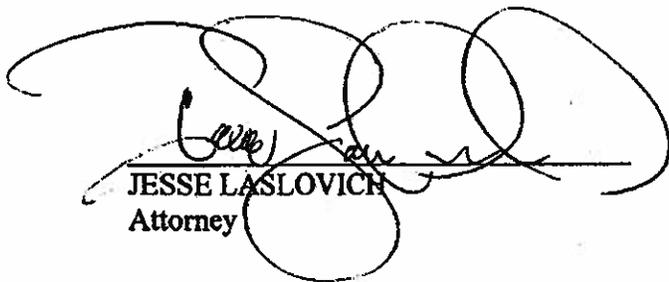


AMANDA SCHLIEBE
NOTARY PUBLIC for the
State of Montana
Residing at
Kalispell, Montana
My Commission Expires
July 18, 2011


(Signature)

Amanda Schliebe
(Printed name)
Notary Public for the State of Montana
Residing at Kalispell
My commission expires: July 18, 2011

ACCEPTED ON BEHALF OF THE SECURITIES DEPARTMENT:


JESSE LASLOVICH
Attorney

10.7.09
DATE

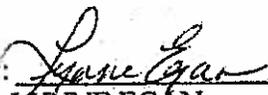
FINAL ORDER

Pursuant to the authority vested by Mont. Code Ann. § 2-4-603 and §§ 30-10-101, MCA, *et seq.*, and upon review of the foregoing Consent Agreement and good cause appearing therefore,

IT IS HEREBY ORDERED that the foregoing Consent Agreement between the Securities Department and the Respondent, Donald A. Garberg, is adopted as if set forth fully herein.

DATED this 7th day of October, 2009.

MONICA J. LINDEEN
Commissioner of Securities and Insurance
Montana State Auditor

By: 
LYNNE EGAN
Deputy Commissioner of Securities

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this 8 day of OCTOBER, 2009, a true and correct copy of the foregoing Consent Agreement and Final Order was served upon the following by hand delivery or by depositing the same in the United States mail postage paid and addressed as follows:

VIA USPS:

Donald Garberg
129 Bing Court
Kalispell, MT 59901

VIA HAND DELIVERY:

Jesse Laslovich, Attorney