

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

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IN THE MATTER OF:	)	CASE NO. INS-2011-127
	)	
MICHAEL A. LOWEEN	)	
	)	<b>FINAL AGENCY DECISION</b>
in his capacity as a licensed insurance	)	
producer, License #67308	)	
	)	
Respondent.	)	

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The Commissioner of Securities and Insurance, Montana State Auditor (Commissioner), has reviewed the Hearing Examiner's Proposed Findings of Fact, Conclusions of Law and Order (hereafter "Proposed Order") in this matter (Exhibit A). The Proposed Order notified the Respondent if he did not file exceptions to the Proposed Order within 30 days of the date of that decision, that it would constitute a waiver of his right to judicial review of this decision. No exceptions were filed by the Respondent. Therefore, the Commissioner finds good cause to enter the following:

**ORDER**

1. The Proposed Findings of Fact, Conclusions of Law and Order (Exhibit A) is adopted in its entirety as the Final Agency Decision in this matter and by this reference is made a part of this final agency decision;
2. The Respondent's insurance producer license is immediately revoked; and
3. The Respondent is to pay a total fine of \$40,000, which is due immediately, but no later than 10 days of this Order.

SO ORDERED this 24<sup>th</sup> day of November, 2011.



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

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing **FINAL AGENCY DECISION** to the following persons on this 24<sup>th</sup> day of November, 2011, by:

**U.S. MAIL, CERTIFIED, RETURN RECEIPT REQUESTED**

Michael A. Loween  
PO Box 7303  
Kalispell, MT 59904

**HAND DELIVERY**

Roberta Cross Guns  
840 Helena Avenue  
Helena, MT 59601



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BEFORE THE MONTANA STATE AUDITOR  
AND COMMISSIONER OF SECURITIES AND INSURANCE  
HELENA, MONTANA

IN THE MATTER OF:	)	Case No. INS-2011-127
	)	
MICHAEL A. LOWEEN, in his capacity	)	HEARING EXAMINER'S
as a licensed insurance producer,	)	<u>PROPOSED</u>
License #67308,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
Respondent.	)	AND ORDER
	)	

Pursuant to mailed notice, on Tuesday, August 9, 2011, in the Second Floor Conference Room of the State Auditor's Office, 840 Helena Avenue, Helena, Montana, a contested case hearing was conducted by the undersigned hearing examiner in the above matter. The hearing was conducted pursuant to the hearings and appeals provisions of the Montana Insurance Code (§§ 33-1-701, et seq., MCA); the contested case provisions of the Montana Administrative Procedure Act (§§ 2-4-601, et seq., MCA); and Montana's statutory, public participation in governmental operations notice and hearing provisions (§§ 2-3-101, et seq., MCA).

At the contested case hearing, Roberta Cross Guns, Legal Counsel for the Montana State Auditor's Office represented the



1 Insurance Department (DOI) and Securities Department (DOS) of the  
2 Commissioner of Securities and Insurance (COSI). Michael A.  
3 Loween (Loween) did not appear, nor did any counsel appear on his  
4 behalf.

5 Testimony was received on behalf of DOI from Jerry Lee  
6 Keller, Jr., Montana Department of Revenue Collections Department  
7 Unit Manager for accounts receivable; Bryan Stanley, DOI  
8 Investigator; Leslie Tinseth, a Kalispell insurance agent; and  
9 Lin Deola, a Helena Attorney.

11 The following document copies were offered by DOI without  
12 objection and received into evidence: April 11, 2011, letter form  
13 Montana Department of Revenue Enforcement Agent, Kelly Cabbage to  
14 State Auditor, Monica Lindeen (Exhibit A); May 16, 2011, e-mail  
15 from Loween to Bryan Stanley and Roberta Cross Guns (Exhibit B);  
16 two print screens from Loween's Facebook page (Exhibit C);  
17 October 8, 2004, NASD Dispute Resolution Award of Arbitrator,  
18 Steven Meyrich (Exhibit D). In addition, the undersigned takes  
19 judicial notice of an August 24, 2010, Consent Agreement between  
20 Loween and the COSI (Exhibit E).

22 From the testimonial and documentary evidence presented, the  
23 Hearing Examiner makes the following proposed:

24 /////

25 /////

1 FINDINGS OF FACT

2 1. COSI Insurance and Securities Investigator Bryan  
3 Stanley (Stanley) testified to having received a complaint in  
4 2009 from an annuities investor stating Loween's office had been  
5 closed and was only able to contact Loween through a cell phone  
6 number provided by insurance companies where the annuities were  
7 held, and from which Loween never returned any messages left by  
8 the investor. (Tr. 8-10.)  
9

10 2. Stanley sent two letters to Loween, who responded after  
11 the second letter via voicemail by leaving a call-back number  
12 different from phone numbers COSI had on file for Loween. (Tr.  
13 10.) Stanley testified to Loween having a history of failing to  
14 keep his contact information current with the COSI. (Tr. 20.)  
15

16 3. As a result of a database check during his  
17 investigation, Stanley discovered that Loween had an outstanding  
18 state tax debt, which was subsequently confirmed by the Montana  
19 Department of Revenue (DOR). (Tr. 10.) Loween entered into an  
20 August 24, 2010, Consent Agreement with the COSI in which Loween  
21 agreed:

22 1. To become affiliated with a Kalispell  
23 insurance agency known as Tinseth and Associates  
24 (Tinseth). During the first year of this affiliation,  
25 Loween and Tinseth shall jointly provide the Department  
26 with a quarterly report summarizing each annuity  
transaction engaged in by Loween, including purchases,  
sales and withdrawals. The report will contain  
information relevant to a suitability analysis as

1 outlined in Mont. Code Ann. § 33-20-801-806. The first  
2 report is due November 15, 2010 and shall be addressed  
3 to Roberta Cross Guns at the Office of the Commissioner  
4 of Securities and Insurance, Montana State Auditor, 840  
5 Helena Avenue, Helena, Montana 59601.

6 2. To comply with the terms and conditions of  
7 this Consent Agreement and with the securities laws and  
8 regulations of Montana.

9 (Tr. 11; Exh. E.)

10 4. DOR Collections Department Unit Manager for accounts  
11 receivable, Jerry Lee Keller, Jr., (Keller) testified that on  
12 May 25, 2010, Loween entered into an agreement with DOR to pay  
13 his 2001-2008 tax arrearage. (Tr. 6.) As a result of Loween  
14 failing to meet the terms of that agreement, DOR issued a Notice  
15 of Failure of Licensee to Pay Montana Income Taxes to the COSI  
16 asking her to consider suspension or revocation of Loween's  
17 insurance producer's license pursuant to § 33-17-1001, MCA. (Tr.  
18 6; Exh. A.)

19 5. Upon obtaining DOR confirmation that Loween remained in  
20 tax arrearage, Stanley attempted to contact Loween via Tinseth,  
21 the insurance agency with which Loween was required to affiliate  
22 pursuant to the August 24, 2010, COSI-Loween Consent Agreement.  
23 (Tr. 10-13; Exh. E.) Utilizing information received from Les  
24 Tinseth (Tinseth) that Loween was on vacation in Florida as well  
25 as a cell phone number, Stanley left a cell phone message for  
26 Loween, who returned the call several days later. (Tr. 13.)

1           6. Stanley subsequently met with Loween and Tinseth at the  
2 Tinseth Agency and reviewed the Consent Agreement with both men.  
3 (Tr. 13-16.) When asked about his failure to comply with the  
4 terms of the Consent Agreement, Loween said he wasn't clear as to  
5 what the agreement meant and that he had not done much business  
6 since his last Consent Agreement report to the COSI in November  
7 2010. (Tr. 16-17.) However, documentation presented by Loween  
8 to Stanley at that meeting, and its subsequent May 16, 2011,  
9 substantiation for insurance related business Loween had  
10 conducted between November 2010 and April 2011, demonstrated that  
11 Loween had engaged in ten or eleven insurance related business  
12 transactions for which Loween failed to provide a quarterly  
13 report to the COSI as required by the Consent Agreement. (Tr.  
14 Id.; Exhs. B and E.) Loween told Stanley that a majority of  
15 these transactions had been existing-annuity withdrawals, and  
16 very few were actually newly established annuities, however the  
17 Consent Agreement contains no reporting exemptions. (Tr. 17-18;  
18 Exh. D.)  
19

20  
21           7. Stanley also met with Loween privately to discuss the  
22 tax arrearage. Loween admitted to the tax arrearage, the  
23 original amount of which was in the \$63,000 to \$64,000 range, and  
24 at the time of this April meeting was around \$108,000. (Tr. 14-  
25 15.)  
26

1           8.    In addition, Stanley investigated Loween's contact  
2 history with the COSI and discovered that Loween not only had a  
3 record of difficulty in keeping his address and phone numbers  
4 updated with the COSI licensing bureau, but as a result of a  
5 security license violation his license was revoked in 2001, and  
6 he was permanently banned from conducting any securities  
7 business.   (Tr. 20.)  
8

9           9.    Also as a result of his investigation, Stanley  
10 discovered that Loween had a Facebook account by means of which  
11 Loween was soliciting for a website named "reserveyourcup.com," a  
12 multilevel marketing company established by Loween and not  
13 registered with the COSI.   (Tr. 18-19; Exh. C.) Stanley informed  
14 Loween that he must stop soliciting for this multilevel marketing  
15 company immediately, but Loween failed to do so.   (Tr. 19.)  
16

17           10.  Tinseth testified to having sold insurance in Kalispell  
18 since 1969, and to knowing Loween as a youth playing baseball,  
19 but not familiar with Loween on an employment level.   (Tr. 23-  
20 24.) Although Loween was to report to Tinseth on a weekly basis  
21 in accordance with the Consent Agreement, that arrangement  
22 failed, and whenever Tinseth attempted to make contact, Loween  
23 was not there, he "was either someplace else, or so forth."   (Tr.  
24 24.) Even most recently Loween failed to report weekly as  
25 required.   (Tr. 25.) Tinseth also didn't know that Loween was in  
26

1 Florida for vacation. (Tr. 24.) Tinseth felt that Loween only  
2 told him what Loween himself wanted Tinseth to know, rather than  
3 being more forthcoming regarding his transactions. (Tr. 25.)

4 11. Lin Deola, a lawyer practicing securities law since  
5 1985, became familiar with Loween on or about January 2003, as a  
6 result of a NASD (n/k/a Financial Industry Regulatory Authority  
7 or FINRA) arbitration case (03-01236 Denver Colorado) against  
8 Loween. (Tr. 27; Exh. D.) Loween had been properly served a  
9 claim relevant to the arbitration that alleged, among other  
10 things, that Loween had committed acts of securities fraud in  
11 violation of the Montana Securities Act regarding phone  
12 investments. (Tr. 28-30; Exh. D.) Loween failed to appear, as  
13 required, and was defaulted. (Tr. 28.) As a result of the  
14 arbitration, Loween was ordered to pay \$748,860 in compensatory  
15 damages, with 10% interest per annum until paid; \$368,062 was the  
16 pre-award interest on the damages award, plus costs, including  
17 attorney's fees. (Tr. 30-31.) None of these amounts have been  
18 paid by Loween. (Tr. 32.) Loween was provided a copy of the  
19 arbitration award. (Tr. 34.) Deola and her co-counsel attempted  
20 collection of the debt, but were unable to find assets, including  
21 tax returns. (Tr. 32-33.)

24 From the foregoing findings of fact, the Hearing Examiner  
25 makes the following proposed:  
26



1 § 33-17-1001(1)(c), by failing to comply with the August 24,  
2 2010, Consent Agreement between himself and the COSI (Exhibit E).

3 7. Pursuant to § 33-17-1001(1)(f), MCA, the COI may  
4 suspend or revoke an insurance producer's license when that  
5 person is incompetent, untrustworthy, financially irresponsible,  
6 or a source of injury and loss to the public. Loween violated §  
7 33-17-1001(1)(f), MCA, by acting in a manner that demonstrates  
8 incompetence, a lack of trustworthiness, financial  
9 irresponsibility, and that indicates Loween is a source of injury  
10 and loss to the public by:

- 12 (a) reneging on the provisions of the consent  
13 agreement Loween signed on August 24, 2010;
- 14 (b) by failing to pay his state and federal income  
15 taxes;
- 16 (c) promoting an unfiled multi-level marketing  
17 program; and
- 18 (d) failing to pay over \$1,000,000.00 in damages and  
19 fees he was ordered to pay by FINRA.

20 8. Loween also violated § 33-17-1001(1)(f), MCA, by acting  
21 in a manner that demonstrates incompetence by failing on multiple  
22 occasions to provide written notice to the COI of a change in his  
23 address within 30 days of such changes, as required.

24 9. Pursuant to § 33-17-1001(1)(n), MCA, the COI may  
25 suspend or revoke an insurance producer's license when that  
26 person fails to pay state income tax that is delinquent. Loween

1 violated § 33-17-1001(1)(n), MCA, by failing to pay his state  
2 income taxes and by continuing to be delinquent for those taxes.

3 10. Pursuant to § 33-17-214(6)(a)(i), MCA, a person  
4 licensed as an insurance producer shall inform the Commissioner,  
5 in writing, of a change of address within 30 days of such change.  
6 Loween violated § 33-17-214(6)(a)(i), MCA, by failing to provide  
7 notice to the COI of a change in his address within 30 days of  
8 such change.  
9

10 From the foregoing Findings of Fact and Conclusions of Law,  
11 the Hearing Examiner proposes to the Commissioner of Securities  
12 the following:

13 ORDER

14 1. The penalties proposed by the Department for Michael A.  
15 Loween's violations of the Montana Insurance Code are hereby  
16 approved and accepted.

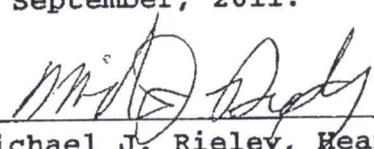
17 2. Pursuant to § 33-17-1001(1), MCA, the insurance  
18 Producer License of Michael A. Loween is hereby revoked.

19 3. In accordance with § 30-10-305(3), MCA, Respondent,  
20 Michael A. Loween is hereby fined \$5,000 for each of the seven  
21 above-identified violations of § 33-17-1001, MCA, as well as for  
22 the identified violation of § 33-17-214(6)(a)(i), MCA, for a  
23 total fine amount of \$40,000.  
24

1 NOTICE OF NECESSITY TO FILE EXCEPTIONS TO THESE PROPOSED  
2 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER  
3 WITHIN 30 DAYS OF THE DATE OF THIS DECISION

4 Pursuant to the Montana Administrative Procedures Act  
5 at Mont. Code Ann. § 2-4-621, adversely affected  
6 parties in this case have the opportunity to file  
7 written exceptions with supporting briefs and to  
8 present an oral argument to the Commissioner of  
9 Securities and Insurance or her designee. If a party  
10 does not file exceptions to the above Proposed Findings  
11 of Fact, Conclusions of Law and Order with the  
12 Commissioner of Securities and Insurance, Office of the  
13 State Auditor, at 840 Helena Avenue, Helena, MT 59601,  
14 within 30 days of the date of this decision, this will  
15 constitute a waiver of an adversely affected party's  
16 right to judicial review of this decision pursuant to  
17 Mont. Code Ann. § 2-4-702. Exceptions must be filed in  
18 order to exhaust all administrative remedies available  
19 to any party who believes he/she is aggrieved by this  
20 proposed decision.

21 Dated this 29<sup>th</sup> day of September, 2011.

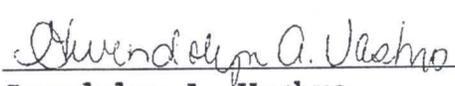
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23 \_\_\_\_\_  
24 Michael J. Rieley, Hearing Examiner

25 CERTIFICATE OF SERVICE

26 I do hereby certify I served a copy of the foregoing Hearing  
27 Examiner's Proposed Findings of Fact, Conclusions of Law, and  
Order upon all parties of record on the 29<sup>th</sup> day of September,  
2011, by mailing, e-mailing, faxing, or hand delivering a copy  
thereof to:

28 Ms. Roberta Cross Guns  
29 Special Assistant Attorney General  
30 State Auditor's Office  
31 840 Helena Avenue  
32 Helena, MT 59601

33 Mr. Michael A. Loween  
34 P.O. Box 7303  
35 Kalispell, MT 59904

36   
37 \_\_\_\_\_  
38 Gwendolyn A. Vashro