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Attorney for Insurance Departments

BEFORE THE 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	)	
	)	NOTICE OF PROPOSED AGENCY
in his capacity as a licensed insurance	)	DISCIPLINARY ACTION
producer, License #67308	)	AND OPPORTUNITY FOR HEARING
	)	
Respondent.	)	

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Staff of the Insurance Department (Department) of the Office Commissioner of Securities and Insurance, Montana State Auditor (CSI), pursuant to the authority of the Insurance Code of Montana, Mont. Code Ann. § 33-1-101, et seq., (Insurance Code) is proposing to the Commissioner of Securities and Insurance, Montana State Auditor (Commissioner) that she take specific action against MICHAEL A. LOWEEN (Loween), a licensed insurance producer, for violations of the Insurance Code. The Commissioner has authority to take such action under the provisions of Mont. Code Ann. §§ 33-1-102, 33-1-301, 33-1-311, 33-1-317, 33-1-318, 33-17-211, 33-17-1001 (1)(c), (f) and (n).

In particular, the Department recommends specific action against Loween, including imposition of appropriate fines and suspension or revocation of Loween's producer's license.

Service of process is pursuant to Mont. Code Ann. § 33-1-314.

### **REASONS FOR ACTION**

There is probable cause to believe that the following facts, if true, justify and support such specific action. Furthermore, there is reason to believe that the following facts will be proven true and, therefore, justify and support immediate issuance of an order requiring Respondent to cease and desist his activities in violation of the Insurance Code and suspending his insurance producer's license.

### **ALLEGATIONS OF FACT**

1. Loween is a licensed insurance producer, license number 67308.
2. The Department filed an agency disciplinary action (complaint) against Loween in April 2010. The complaint alleged Loween had failed to provide a change of address or contact information to a consumer who was Loween's customer, and that Loween had failed to pay his state income taxes in violation of the Montana Insurance Code.
3. Loween entered into a consent agreement with the Department dated August 24, 2010. In the consent agreement, Loween agreed to the following:
  - a. affiliate himself with the Tinseth Agency for the purpose of supervision, and
  - b. provide the Department with a quarterly report summarizing each annuity transaction engaged in by Loween, including purchases, sales, and withdrawals. The first report was due November 10, 2010.
4. Loween also entered into an agreement with the Department of Revenue (DOR) whereby he agreed to make monthly payments toward his arrearage of approximately \$65,000.

5. The consent agreement was recognized and adopted as an order of the Commissioner on August 26, 2010.

6. The Department received notice from the DOR that Loween had reneged on his agreement and that his tax bill is now in excess of \$108,000.

7. Loween also reneged on his agreement to provide quarterly reports regarding his annuity sales and the suitability of such sales by failing to timely file the required reports and by failing to provide complete documentation of the annuity sales transactions. Furthermore, Loween provided false information on the suitability documents he did provide to the Department.

8. The Department's investigator, Bryan Stanley, interviewed Loween regarding the notice from the DOR. Loween informed Stanley that Loween also owed in excess of \$200,000 in income taxes to the Internal Revenue Service.

9. Loween admitted to Stanley that Loween was promoting membership in an unfiled multi-level marketing program through Loween's Facebook account, in violation of Section 30-10-326(6), of the Securities Act of Montana. Loween was permanently banned from the securities industry in 2003 by action of the Financial Industry Regulatory Authority (FINRA, formerly known as NASD).

10. Loween denied any knowledge of an arbitration award of \$1,116,742.00 in damages he was ordered to pay to Montana claimants in an arbitration action instituted through FINRA. Loween was also ordered to pay to the claimants \$246,696.00 for attorney's fees, and \$17,101.00 in arbitration costs. The damage award continues to accrue interest at ten percent per annum until paid. Based on Loween's denial of any knowledge of the arbitration, the Department believes Loween has failed to pay any part of the awarded damages and fees.

11. Loween admitted to Stanley he once again failed to provide a timely change of address to the Department.

### **CONCLUSIONS OF LAW**

1. The Commissioner has jurisdiction over this matter by reason of the Respondent's licensure pursuant to Mont. Code Ann. § 33-17-101, et seq.

2. Pursuant to Mont. Code Ann. § 33-17-1001(1)(c), the Commissioner may suspend or revoke an insurance producer's license when that person fails to comply with an order of the Commissioner.

3. Pursuant to Mont. Code Ann. § 33-17-1001(1)(f), the Commissioner may suspend or revoke an insurance producer's license when that person is incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public.

4. Pursuant to Mont. Code Ann. § 33-17-1001(1)(n), the Commissioner may suspend or revoke an insurance producer's license when that person fails to pay state income tax that is delinquent.

5. Pursuant to Mont. Code Ann. § 33-17-214(6)(a)(i), a person licensed as an insurance producer shall inform the Commissioner, in writing, of a change of address within 30 days of such change.

6. Respondent violated Mont. Code Ann. § 33-17-1001, by failing to comply with the Commissioner's order dated August 26, 2010.

7. Respondent violated Mont. Code Ann. § 33-17-1001, by acting in a manner that demonstrates incompetence, a lack of trustworthiness, financial irresponsibility, and that indicates Respondent is a source of injury and loss to the public when he reneged on the provisions of the consent agreement he signed on August 24, 2010.

8. Respondent violated Mont. Code Ann. § 33-17-1001, by acting in a manner that demonstrates incompetence, a lack of trustworthiness, financial irresponsibility, and that Respondent is a source of injury and loss to the public by failing to pay his state and federal income taxes.

9. Respondent violated Mont. Code Ann. § 33-17-1001, by acting in a manner that demonstrates incompetence, a lack of trustworthiness, financial irresponsibility, and that Respondent is a source of injury and loss to the public by promoting an unfiled multi-level marketing program.

10. Respondent violated Mont. Code Ann. § 33-17-1001, by acting in a manner that demonstrates incompetence, a lack of trustworthiness, financial irresponsibility, and that Respondent is a source of injury and loss to the public by failing to pay over \$1,000,000.00 in damages and fees he was ordered to pay by FINRA.

11. Respondent violated Mont. Code Ann. § 33-17-1001, by acting in a manner that demonstrates incompetence by failing on multiple occasions to provide written notice to the Commissioner of a change in his address within 30 days of such change, as required.

12. Respondent violated Mont. Code Ann. § 33-17-1001, by failing to pay his state income taxes and by continuing to be delinquent for those taxes.

13. Respondent violated Mont. Code Ann. § 33-17-214(6)(a)(i), by failing to provide a written notice to the Commissioner of a change in his address within 30 days of such change.

#### **PUBLIC INTEREST**

For the reasons set forth above, it is in the public interest and will protect Montana insurance consumers to:

1. immediately issue a cease and desist order barring Loween from further violations of the Insurance Code and suspending his insurance producer's license;
2. order Loween to pay an administrative fine in an amount and upon such terms and conditions as supported by the evidence and determined at a hearing of this matter; and
3. take such other actions which may be in the public interest and necessary and appropriate for the protection of Montana insurance consumers.

### **RELIEF REQUESTED**

WHEREFORE, the Department seeks the following relief:

1. pursuant to Mont. Code Ann. § 33-1-317, imposition of a fine not to exceed \$5,000 for each violation of the Insurance Code;
2. pursuant to Mont. Code Ann. § 33-17-1001, suspension or revocation of Loween's insurance producer's license;
3. a finding that all sanctions and remedies detailed and described here are in the public interest and necessary for the protection of Montana insurance consumers;
4. pursuant to Mont. Code Ann. § 33-1-318, issuance of an immediate Order to cease and desist from committing further violations of the Insurance Code; and
5. any further action as deemed just and appropriate for the protection of Montana insurance consumers.

### **STATEMENT OF RIGHTS**

You are entitled to a hearing to respond to this notice, and to present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure

Act, Mont. Code Ann. § 2-4-601, et seq., including § 2-4-631. If you demand a hearing, you will be given notice of the time, place and the nature of the hearing.

If you want to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within 20 days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by writing to Roberta Cross Guns, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601. Pursuant to Mont. Code Ann. § 2-4-603(2), you may not request to proceed informally because the action could result in suspension, revocation or any other adverse action against a professional license. Should you request a hearing on the matters raised in this Notice, a hearing must be held within 45 days of the request, unless postponed by mutual consent of the parties, pursuant to Mont. Code Ann. § 33-1-701(2).

Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of *Application of American Smelting and Refining Co.*, 164 Mont. 139, 520 P.2d 103 (1973), and *Montana Supreme Court Commission on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200.

#### **CONTACT WITH COMMISSIONER'S OFFICE**

If you have questions or wish to discuss this matter, please contact Roberta Cross Guns, legal counsel for the Insurance Department, at 840 Helena Avenue, Helena, MT, 59601, 406-444-2040 or, within Montana, 800-332-6148. If an attorney represents you, please make any contacts with this office through your attorney.

**POSSIBILITY OF DEFAULT**

Failure to give notice or to advise of your demand for a hearing or informal procedure within 20 days will result in the entry of a default order imposing the disciplinary sanctions against you and your license without further notice to you, pursuant to Mont. Admin. R. 6.2.101, and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 7<sup>th</sup> day of June 2011.

Roberta Cross Guns  
Roberta Cross Guns  
Attorney for Insurance Department

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served on the 7<sup>th</sup> day of June, 2011, by US mail, certified first-class postage paid, to the following:

Michael A. Loween  
PO Box 7303  
Kalispell, MT 59904

Roberta Cross Guns