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BEFORE THE STATE AUDITOR
AND COMMISSIONER OF SECURITIES
HELENA, MONTANA

IN THE MATTER OF:

MARTIN BOWER,

Respondent.

) Case No.: I-11-08-04-01

)
) CEASE AND DESIST ORDER AND
) ORDER FOR REVOCATION OF
) PRODUCER'S LICENSE
)

The State Auditor in his capacity as ex-officio Commissioner of Insurance of the State of Montana (Commissioner), pursuant to the authority of the Insurance Code of Montana, §§ 33-1-101, et seq., Mont Code Ann. (2003), hereby issues the following allegations of fact, proposed conclusions of law, order and notice of right to a public hearing:

ALLEGATIONS

1. Martin Bower (hereafter "Bower") is a licensed insurance producer, license number 901279, issued by the Department. Bower is appointed with Banker's Life and Casualty Company (Banker's) as an insurance producer and is paid a commission on Banker's products that he sells.

1 ALLEGATIONS RELEVANT TO VIOLATION OF § 33-1-1302, MCA

2 2. The Department realleges by incorporation the facts contained in paragraph 1.

3 3. On or about August 9, 2004, staff of the Department received a complaint from a
4 Montana citizen identified herein as "HZ" alleging that HZ was unable to get HZ's stock
5 certificates from HZ's account at Raymond James, broker-dealer firm. HZ is 86 years of age and
6 resides at an assisted living facility in Kalispell, Montana.

7 4. On or about August 10, 2004, HZ again contacted the Department and alleged
8 that Bower visited HZ at the assisted living facility and urged HZ to sell HZ's Glacier Bancorp
9 stock to purchase an annuity from Banker's. HZ had stock holdings with Glacier Bancorp in
10 excess of \$500,000. HZ also alleged that Bower convinced her to purchase an additional annuity
11 using \$179,000 in proceeds from HZ's savings account.

12 5. The Department investigated HZ's complaint, contacting Jean Luckey (Luckey)
13 on or about August 9, 2004. Luckey is HZ's sales representative from Raymond James. Luckey
14 indicated she became HZ's sales representative after Michael Blodnick (hereafter "Blodnick"),
15 the president of Glacier Bancorp referred Luckey to HZ.

16 6. The Department contacted Blodnick as part of its investigation. Blodnick
17 indicated to the Department that he had contacted Luckey in July 2004 with concerns because
18 HZ's spouse had died in the last year and the spouse handled all the finances during their
19 marriage. HZ indicated to Blodnick that HZ had lots of stock certificates and did not know what
20 to do with them. Blodnick recommended Luckey to HZ as a person who could help HZ with the
21 safekeeping of the stock certificates. Blodnick was aware that someone wanted to liquidate the
22 entire portfolio valued in excess of \$500,000. HZ contacted Blodnick concerned that Luckey
23 may have stolen the stock certificates because the person wanting to liquidate HZ's stock
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1 certificates convinced HZ that this was happening. Blodnick calmed HZ's fears by explaining
2 HZ's brokerage statements indicated the stock certificates were intact.

3 7. In August 2004, HZ contacted Luckey asking Luckey to come to HZ's assisted
4 living apartment with copies of the certificates. When Luckey arrived at HZ's apartment, Bower
5 was present in the apartment. HZ indicated to the Department that Bower told HZ that he could
6 sell the stock certificates for HZ.

7 8. HZ indicated to the Department that HZ subsequently cancelled the check from
8 HZ's savings account when HZ became concerned about the safety of the Banker's annuity.
9 Additionally, HZ indicated to the Department that HZ decided not to purchase the annuity
10 because Bower was too insistent, utilizing "pushy" sales tactics. HZ also indicated Bower did
11 not provide HZ with the beneficiary information he had promised.

12 9. On or about November 4, 2004, the Department received a complaint from a
13 Montana citizen identified herein as "LL". LL indicated to the Department that LL's parent,
14 herein identified as "IRL" suffers from Alzheimer's disease and resides in a small home abutting
15 LL's own home. LL also indicated that IRL's Alzheimer's is readily apparent to anyone and that
16 she has virtually no short-term memory. LL indicated that Bower had contacted IRL by coming
17 personally to her home on several occasions attempting to convince IRL to liquidate IRL's
18 securities portfolio in order to purchase a Banker's annuity product. LL indicated that IRL is 79
19 years of age.
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21 10. The Department investigated LL's complaint. Tim Skiftun ("Skiftun") is IRL's
22 sales representative at Merrill Lynch, the broker-dealer firm where IRL's securities are held.
23 Based on conversations with Skiftun's assistant, the Department alleges that Bower sent two
24 different Banker's "Authorization to Transfer Funds" forms signed by IRL and Bower to Merrill
25

1 Lynch on or about October 15, 2004. The forms indicated IRL and Bower signed them on or
2 about October 7, 2004. On or about October 19, 2004, Skiftun called IRL to clarify what IRL
3 wanted to do with her securities portfolio as it was unclear based on the submitted forms. IRL
4 did not recall signing the forms when Skiftun called IRL. IRL indicated to Skiftun that IRL did
5 not want to move her accounts or to purchase an annuity.

6
7 11. On or about October 26, 2004, IRL sent a letter to Banker's indicating IRL did
8 not want to purchase an annuity, nor did IRL want to liquidate or transfer her securities portfolio.
9 Then, on or about November 1, 2004, Bower again convinced IRL to sign a Banker's
10 "Authorization to Transfer Funds" form with an indication that IRL's portfolio was to be
11 liquidated in its entirety. IRL did not remember signing the earlier transfer forms, nor did she
12 remember sending the letter to Banker's dated October 26, 2004. Banker's submitted the new
13 form to Merrill Lynch on or about November 3, 2004.

14 12. On or about November 5, 2004, IRL sent a letter to Skiftun instructing Skiftun not
15 to process any transfer requests, not to liquidate any assets and not to take any instructions
16 without IRL's express oral and written permission. LL assisted IRL in the preparation of this
17 letter to Skiftun.

18 13. The Department's investigation of Bower indicates that Bower acted as an
19 unregistered investment advisor or investment advisor representative when he advised HZ and
20 IRL to sell their securities to buy an annuity from Banker's and that annuity purchase would
21 result in compensation to Bower.

22
23 14. The insurance industry's continuing education materials approved by the
24 Department indicate annuity products are suitable for persons in their late 50's and early 60's or
25 for persons still working. The reason for this age criteria is that there are significant hold periods

1 associated with annuity products, making it difficult for older persons to access funds they may
2 need for their retirement. Bower acted fraudulently by failing to disclose this information to HZ
3 and IRL.

4 15. Through its investigation of the HZ and IRL complaints, the Department
5 determined that Bower fraudulently attempted to sell an unsuitable insurance product to HZ and
6 IRL, acting with reckless disregard as to whether his assertions regarding the product were true,
7 making the assertions for his benefit and to the detriment of HZ and IRL when they relied upon
8 those assertions.
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10 **ALLEGATIONS SPECIFIC TO VIOLATIONS OF § 33-17-1001, MCA**

11 16. The Department realleges by incorporation the facts contained in paragraphs 1-15,
12 herein.

13 17. The Department's investigation of Bower has determined that in the conduct of
14 his affairs under his insurance producer's license Bower used coercive and dishonest practices by
15 using undue pressure in his sales tactics to convince HZ and IRL to buy the annuity product he
16 sells by appointment with Banker's.

17 18. The Department's investigation of Bower has determined that in the conduct of
18 his affairs under his insurance producer's license, Bower is untrustworthy because he provides
19 investment advice without registration as an investment advisor as required by § 30-10-201,
20 MCA.
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22 19. The Department's investigation of Bower has determined that in the conduct of
23 his affairs under his insurance producer's license, Bower is a source of injury and loss to the
24 public because he provides investment advice without meeting the requirements of Montana law
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1 to do so and by his using undue pressure in his sales tactics Bower has convinced persons to
2 purchase insurance products they did not want or that were unsuitable.

3 CONCLUSIONS OF LAW

4 1. The State Auditor is the Commissioner of Insurance pursuant to § 2-15-1903,
5 MCA.

6 2. The Montana Insurance Department is under the control and supervision of the
7 Commissioner pursuant to §§ 2-15-1902 and 33-1-301, MCA.

8 3. The Commissioner shall administer the Department to protect consumers pursuant
9 § 33-1-311, MCA.

10 4. Pursuant to §§ 33-2-109(4), 33-20-101 et. seq., and 33-17-236, MCA, as a
11 licensed insurance producer appointed with Banker's, Bower may sell fixed annuity contracts
12 issued by Banker's.

13 5. Pursuant to § 33-1-102, MCA a person may not transact a business of insurance in
14 Montana or a business relative to a subject, resident, located, or to be performed in Montana
15 without complying with the applicable provisions of this code.

16 6. Bower is in violation of § 33-17-1001(1)(f), MCA in that, while in the conduct of
17 the affairs under the insurance producer license, Bower used fraudulent, coercive, or dishonest
18 practices or was otherwise incompetent, untrustworthy, financially irresponsible, or a source of
19 injury and loss to the public.

20 7. Bower is in violation of § 33-1-1302, MCA by fraudulently selling unsuitable
21 insurance products to Montana citizens, acting with reckless disregard as to whether his
22 assertions regarding the product were true.
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1 8. Pursuant to § 33-17-1001(1), MCA, the Commissioner may suspend, revoke,
2 refuse to renew, refuse to issue a license or may levy a civil penalty in accordance with MCA §
3 33-1-317 or choose any combination of actions when an insurance producer is found to be in
4 violation of MCA § 33-17-1001.

5 9. Pursuant to MCA § 33-1-317, the Commissioner may impose an administrative
6 fine not to exceed \$5,000.00 per violation of the Montana Insurance Code or regulations.
7

8 ORDER

9 Pursuant to §33-17-1001, MCA, it appears to the Commissioner that the above named
10 Respondent has engaged or is about to engage in an act or practice constituting a violation of the
11 Insurance Code of Montana as it applies to this Respondent's insurance producer's license and
12 therefore hereby orders Respondent's insurance producer's license revoked until resolution of
13 this matter and to cease and desist any actions or activity wherein Respondent acts in violation of
14 the Insurance Code of Montana causing Respondent to be in violation of §33-17-1001, MCA.

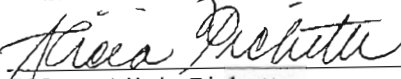
15 NOTICE

16 Respondent is notified that the Commissioner has issued this temporary cease and desist
17 order. If Respondent wishes to contest the allegations herein, he shall make a written request for
18 a hearing to Roberta Cross Guns of this office within fifteen (15) days of receipt of this order.
19 The hearing shall then be held within thirty (30) days of the Commissioner's receipt of the
20 hearing request unless otherwise agreed by the parties. If no hearing is requested within fifteen
21 (15) days of receipt of this order by Respondent, and the Commissioner orders none, this cease
22 and desist order shall become permanent, and the suspension shall become a revocation
23 enforceable for a period not to exceed five (5) years.

24 Should you request a hearing, you have the right to be accompanied, represented and
25 advised by counsel. If the counsel you choose has not been admitted to the practice of law in the

1 State of Montana, he or she must comply with the requirements of Application of American
2 Smelting and Refining , Co., 164 Mont. 139, 520 P.2d 103 (1973).

3 DATED this 16th day of November 2004.

4 JOHN MORRISON
5 State Auditor and
6 Commissioner of Securities
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8 BY: Alicia Pichette
9 Deputy Insurance Commissioner
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