

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
DIVISION OF SECURITIES & DIVISION OF INSURANCE
1511 PONTIAC AVENUE, BUILDING 69
CRANSTON, RI 02920**

IN THE MATTER OF

KEVIN K. HANDLEY

Respondent.

DBR No.

17-SC-003

17-IN-022

CONSENT AGREEMENT

1. Respondent is licensed with the Rhode Island Securities Division as a broker dealer representative with CRD number 1920007. Respondent was initially licensed as a broker dealer representative in 1989.
2. Respondent holds the insurance producer license number 1080398 and is authorized to sell variable, life, health, accident and sickness insurance products. Respondent was initially licensed as an insurance producer license in Rhode Island in 1991.
3. The Department received a complaint (the "Complaint") against Respondent submitted by a resident of Rhode Island (the "Complainant").
4. Respondent and Complainant signed paperwork to transfer a portion of Complainant's existing annuity to a new annuity with a different company. The paperwork included an annuity application with a series of questions about the source of funds. Answering "Yes" to these questions would have prompted completion of a side-by-side comparison of the two products, including whether the proposed contract has a Minimum Guaranteed Interest Rate (MGIR) greater than the existing contract. Respondent selected "No" in answering these questions.

5. The two products were compared, and it was found that the existing contract has a greater MGIR, meaning the new product sold to the consumer provided lower guarantees than the replaced product. By selecting "No," Respondent avoided showing the consumer the unfavorable comparison, and possibly avoided additional questions from the replacing insurer.

6. Respondent was asked if he documented his recommendation that Complainant should replace a portion of her existing annuity with a new annuity. While respondent stated he maintained records of the transaction itself, he did not record his recommendation, and Respondent stated that he generally does not record the recommendations he makes to his clients.

7. In March 2014, Respondent discussed with Complainant the then current stock market conditions, indicated that it was improving, and said to the Complainant, "We might want to look at investing in an account that might provide a better return in a better market." Respondent recommended taking a 10% surrender free withdrawal of \$16,723.16 from an existing fixed annuity and invest it in a variable annuity with no surrender charges, in case the complainant changed her mind in the future about the investment.

8. In December 2014, Complainant decided she did not want her money in the variable annuity purchased in March 2014 because it had dropped in value due to a market decline, and subsequently surrendered the variable annuity contract and transferred the proceeds of \$16,423.31 back to the fixed annuity from which it came.

9. In January 2015, Complainant, with advice from Respondent, deposited an additional \$50,000.00 into the fixed annuity. The Respondent received a commission for this deposit. Based on the annuity contractual agreement, the deposit of \$50,000.00 within the same contractual year caused the withdrawal in March 2014 to now be subject to a surrender charge of \$2,951.00.

10. The Department's investigation concluded that the Respondent should have known that a deposit made into the annuity in the same contractual year as a surrender free withdrawal would trigger a surrender charge on the withdrawal, and the Complainant should have been advised of that fact.

11. During the investigation of the complaint, the Department became aware of a web site operated by the Respondent titled *Sound Retirement Strategies* located at <http://soundretirementstrategies.net/>. The Respondent during an interview with the Department claimed that he was unaware of its existence.

12. The website did not meet the requirements of FINRA Rule 2210 "Communications with the Public" concerning prior approval before use and content standards.

13. The website remained currently active through November 2017.

14. R.I. Gen. Laws § 27-29-4.7(a)(1) prohibits twisting, specifically "Knowingly making any misleading representations or incomplete or fraudulent comparisons or fraudulent material omissions of or with respect to any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to ...surrender...any insurance policy or to take out a policy of insurance in another insurer." (Emphasis added.)

15. R.I. Gen. Laws § 27-29-1 et seq. and Insurance Regulation 12, Section 6A require that "the insurance producer... shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer." Reg. 12, Section 6E then states that the producer "shall at the time of the sale (1) Make a record of any recommendation subject to Section 6A." And Regulation 12, Section 9A requires that insurance producers maintain records related to the recommendation for five years.

16. R.I. Gen. Laws § 7-11-501(2) prohibits making "an untrue statement of a material fact or omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they are made, not misleading."

17. R.I. Gen. Laws § 7-11-212 articulates the grounds for administrative punishments and under Securities Division Rule 212 the Department has identified specific acts which are unethical or dishonest practices. Each of the following rules applies to the various conduct undertaken by Respondent.

- a. Securities Division Rule 212(a)-1(A)(3) prohibits "Recommending to a customer the purchase, sale or exchange of any securities without reasonable grounds to believe that the recommendation is suitable for the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by the broker-dealer."
- b. Securities Division Rule 212(a)-1(A)(17) prohibits "Violating any material rule of the U.S. Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA), any national or regional securities exchange or national securities association of which it is a member with respect to any customer, transaction or business in this state."
- c. Securities Division Rule 212(a)-1(B)(7) prohibits "Using advertising describing or relating to the sales representative's securities business unless the advertising clearly identifies the name of the broker-dealer or issuer with which the sales representative is associated."
- d. Securities Division Rule 212(a)-1(B)(9) prohibits "Engaging in any of the practices specified in paragraphs A. 1. through 8., 15 through 18 or 20."

Based on the foregoing, the Director determines that the following sanctions are in the public interest, appropriate for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of RIUSA and Rhode Island insurance laws and regulations.

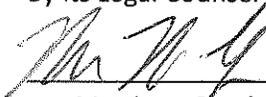
THEREFORE, based on the foregoing, Respondent and the Department have decided to resolve this matter without further administrative proceedings and hereby agree to the following resolution:

- 1) Respondent will pay a \$250 administrative fine to the Department within 7-days of executing this agreement;
- 2) Respondent agrees to pay an additional administrative fine of up-to \$2,951 within 120-days of executing this agreement, which may be reduced through the mechanism identified in item 3, below;
- 3) Respondent agrees to offer to make whole the Complainant regarding the 2014 annuity sale which resulted in a penalty to the Complainant of \$2,951. Any monies paid by Respondent as restitution to Complainant shall reduce the administrative fine ordered by the Department in item 2 in a dollar-for-dollar manner, but not lower than the \$250 fine identified in item 1 above.
- 4) Respondent must remove the website that was posted without his knowledge and ensure that no websites are posted listing his services as a financial adviser, sale representative or insurance producer without including appropriate disclosures and notices to potential consumers and will remove current website until it complies with FINRA Rule 2210
- 5) Respondent agrees that he will record all recommendations made to consumers.
- 6) For every sale involving a life and/or annuity replacement, Respondent must prepare a written *side-by-side comparison demonstrating the costs and benefits of the existing and replacing products*. This document must be signed by both the Respondent and the client and retained by Respondent as part of the client's file. Such comparison document must be on a form in a substantially similar format to a form approved by the RI Insurance Division pursuant to this agreement.

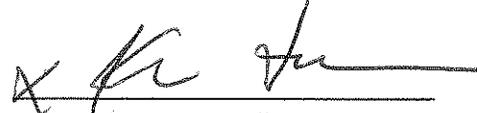
Counsel for the Department and the Respondent hereby consent and agree to the foregoing on behalf of their respective clients this 9 day of ~~November, 2017~~ ^{APRIL, 2018} 2/22/18

Department of Business Regulation

By its Legal Counsel


Matthew Gendron 4/9/2018

Respondent


Kevin K Handley

CERTIFICATION

I hereby certify that on this 13th day of April, 2018 ~~November 2017~~, a copy of this Consent Agreement was sent to the following:

By first class mail postage prepaid and certified mail:

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By Electronic Delivery via Email Address:

