

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE COMPLEX
1511 PONTIAC AVENUE
CRANSTON RI 02920**

IN THE MATTER OF:

**AMERIPRISE ADVISOR
SERVICES, INC. (formerly)
H&R BLOCK FINANCIAL
ADVISORS, INC. and
DEAN J. CANNING, Sr.**

Respondents

**CONSENT ORDER MAKING
FINDINGS AND IMPOSING
REMEDIAL SANCTIONS**

The Director of the Rhode Island Department of Business Regulation ("Director") enters this Consent Order Making Findings and Imposing Remedial Sanctions ("Order") under Section 602 of the Rhode Island Uniform Securities Act of 1990("RIUSA"), Section 7-11-101 *et seq.* of the Rhode Island General Laws, 1989, as amended, with regard to the above-referenced Respondents. The Director has determined to resolve this matter, without instituting administrative proceedings, by accepting Respondents' Offer of Settlement, attached hereto as Exhibit A, which is made without admitting or denying any findings or violations (the "Offer"), and entering this Order, making the findings and imposing the remedial sanctions set forth below.

I

1. Respondent Ameriprise (formerly H&R Block Financial Advisors, Inc.) is a broker-dealer with principal offices located at 719 Griswold Street, Detroit, Michigan.
2. Respondent Ameriprise is currently, and has been continuously, licensed as a broker-dealer in the State of Rhode Island since February 1, 1983, pursuant to § 7-11-201 of RIUSA.

3. Respondent Canning is currently licensed as a registered sales representative with Respondent Ameriprise pursuant to § 7-11-201 of RIUSA and has maintained this licensure since April 5, 2004.

II

4. On July 28, 2008, the Securities Division (the “Division”) received a written complaint from ES (the “Complainant”) alleging that Respondent Canning mishandled her accounts in that “He was always rolling over my accounts to other annuities without informing [her] of any transfers.”
5. The subsequent investigation into the complaint conducted by the Division disclosed the following:
 - a.) On January 4, 2007, Respondent Canning assisted the Complainant with the surrender of an American Investors Life Equity Index Annuity (“EIA”) that was purchased by the Complainant on June 22, 2004, with a contract premium of \$40,224.00.
 - b.) At the time the EIA was surrendered, thirty months after it was purchased by the Complainant, it had a value of \$44,934.00. The Complainant paid a surrender charge of \$8,261.00 and received a net \$36,673.00.
 - c.) On January 10, 2007, the Complainant deposited the proceeds from the sale of the EIA into an H&R Block brokerage account 6999-8992 (the “Brokerage Account”). The Brokerage Account was opened on November 7, 2006, and was registered in the name of the Complainant. In accordance with the Complainant’s Block Brokerage Account Application, these funds were used to purchase a money market fund within the Block Brokerage Account.

- d.) On January 31, 2007 Respondent Canning recommended that the Complainant apply the \$36,000.00 in the Brokerage Account money market fund toward the purchase of two mutual funds: the Franklin Income Fund – Class A Shares, \$25,000.00 and the Gabelli Utilities Fund – Class A Shares, \$11,000.00. The Complainant accepted the recommendation, and Respondent Canning received commissions totaling \$1,550.00 from the sale.
- e.) On June 13, 2007, Respondent Canning assisted the Complainant with the surrender of an OM Financial Flexible Premium Deferred Annuity (the “OM Annuity”) that was purchased by the Complainant on November 3, 2004, with a premium of \$25,789.00.
- f.) At the time the OM Annuity was surrendered, thirty-two months after it was purchased by the Complainant, it had a value of \$27,550.00. The Complainant paid a surrender charge of \$2,778.00 and received a net \$24,972.00.
- g.) On June 19, 2007, the Complainant deposited the proceeds of the OM Annuity surrender, \$24,972.00, into an H&R Block IRA account 2173-3298 (the “Block IRA Account”) opened on October 25, 2006 for the benefit of the Complainant. In accordance with the Complainant’s Block IRA Account Application, these funds were used to purchase a money market fund within the Block IRA Account.
- h.) On July 25, 2008, Respondent Canning recommended that the Complainant purchase a Genworth Variable Annuity (the “Genworth VA”) in the Complainant’s Block IRA Account, with a premium value of \$24,981.00. The premium was distributed equally among three equity sub-accounts: the

Black Rock Global Allocation Fund, the Franklin Templeton Income Securities Fund and the GEI Total Return Fund. The Complainant accepted the recommendation. Total commissions paid on the Genworth VA sale were \$1,561.31. Respondent Canning received \$593.30.

6. In transacting the business on behalf of the Complainant Respondent Canning in effect recommended that the Complainant replace an annuity with an annuity, specifically, the OM Financial Flexible Premium Deferred Annuity with the Genworth Variable Annuity.
7. In assisting the Complainant with the surrender of both the EIA and OM annuity and helping reposition the proceeds of both annuities into cash, Respondent Canning effectively compromised the ability of Ameriprise's supervisory systems to identify the subject transactions as annuity replacements.
8. Specifically, in responses made in the Ameriprise ANNUITY PURCHASE SUMMARY AND DISCLOSURE form (the "Disclosure") and the SUITABILITY SUMMARY REPORT form (the "Report"), Respondent Canning indicated that the Genworth VA sale was not replacing an existing policy; the funding method was from an "HRBFA Account" and not an "Annuity Exchange/1035." By answering this way, Respondent Canning avoided having to disclose "...the percentage AND dollar amount of the surrender charge (if applicable)".
9. Further, in the Ameriprise TRANSACTION DETAIL REPORT form, when questioned about the money source and payment method, Respondent Canning indicated "ROLLOVER" and "QUALIFIED BROKERAGE ACCOUNT".

10. By characterizing the subject transactions in this fashion, Respondent Canning made it more difficult for Ameriprise to identify the fact that annuity replacements were effectuated for an eighty-two year old investor, replacing two annuities: the American Investors Life Equity Index Annuity and the OM Financial Flexible Premium Deferred Annuity that were only purchased by the Complainant thirty and thirty-two months earlier, respectively.
11. These actions on the part of Respondent Canning, and the failure of Respondent Ameriprise to identify and prevent such actions from occurring, constitute violations of RIUSA, specifically: § 7-11-212(b)(8) – Unethical or Dishonest Practices; § 7-11-212(b)(11) – Failure to Supervise; Rule 212(a)-1A.3 – Unsuitable Investments; Rule 212(a)-1A.17 – Violating any Material Rule of any Securities Exchange or National Securities Association¹; Rule 212(a)-1B.9 – Sales Representative Violation of any of the Above and § 7-11-501 – Fraudulent and Other Prohibited Practices.

III

Based on the foregoing, the Director finds that the following is in the public interest, appropriate for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of RIUSA.

Accordingly, it is hereby Ordered:

- 1) Respondents Ameriprise and Canning shall immediately cease and desist from any further violations of the RIUSA and the Rules promulgated thereunder.

¹ NASD Rules 2110–Commercial Honor, 2120–Deceptive Devices, 2310–Suitability, 3010–Supervision

- 2) Respondent Ameriprise shall pay a civil penalty in the amount of twenty-five thousand dollars (\$25,000) to the Department.
- 3) Respondent Canning shall individually pay a civil penalty in the amount of one thousand dollars (\$1,000) to the Department.
- 4) Respondents Ameriprise and Canning shall disgorge all commissions paid by the Complainant in this matter, in the amount of two thousand six hundred twenty three dollars and eighty-six cents (\$2,623.86), to the Complainant.
- 5) Respondent Ameriprise shall pay a restitution amount of twenty thousand seven hundred eighty eight dollars and fifty-one cents (\$20,788.51) to the Complainant.
- 6) If the Respondent fails to abide by any of the requirements of this Consent Order, the Department may initiate further administrative proceedings and impose penalties against the Respondent including such additional administrative penalties as deemed appropriate by the Department. Respondent shall be provided with notice and opportunity for hearing, should the Department deem to take further action.

Dated this 24th day of July 2009.



A. Michael Marques, Director
Rhode Island Department of Business Regulation

Order No. 09-191