

In the Matter of
Sarah E. Laux,

FINAL DECISION
AND ORDER

Respondent

Case No. **13-C35577**

Alice M. Shuman-Johnson, Administrative Law Judge, Presiding

APPEARANCES

For the Office of the
Commissioner of Insurance:

Robin Jacobs, Attorney
P. O. Box 7873
Madison, Wisconsin 53707-7873

For the Respondent:

Michael Fitzgerald, Attorney, appeared by phone
Fitzgerald Law Firm, SC
526 E Wisconsin Ave.
Milwaukee, WI 53202-4503

PRELIMINARY

Pursuant to a Notice of Hearing dated November 7, 2013, and a Prehearing Conference Memorandum entered November 25, 2013, a motion hearing on OCI's motion for default judgment was held at OCI, 125 S. Webster Street, Madison, WI on January 6, 2013, before the designated Administrative Law Judge. The motion hearing was held to determine if a default judgment pursuant to s. Ins. 5.21(1), Wis. Adm. Code should be entered against the Respondent for her failure to file an answer to the Notice of Hearing and failure to appear at the prehearing conference and her failure to comply with other prehearing orders entered by the ALJ and to determine whether the Respondent's permanent insurance intermediary agent's license should be revoked, in accordance with s. 628.10, Wis. Stat., whether the Respondent should be ordered to pay a forfeiture or forfeitures pursuant to s. 601.64, Wis. Stat., and whether other orders should be issued pursuant to s. 601.41, Wis. Stat.

Based on the record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

(1) Sarah E. Laux (the Respondent), 13907 N Port Washington Rd., Mequon, WI 53097-1756, was at all times material a duly licensed Wisconsin intermediary agent (license #2555954) subject to the jurisdiction and control of the Commissioner of Insurance (the Commissioner).

(2) A Notice of Hearing dated November 7, 2013 was served on the Respondent by certified and first class mail.

(3) The Respondent failed to file a written answer to the allegations contained in the Notice of Hearing as required to do under s. Ins 5.13 Wis. Adm. Code.

Laux, Sarah E
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Atty: Jacobs, Robin S
Closed: 01-09-2014

(4) After the Respondent failed to appear at the prehearing conference held on November 25, 2013, pursuant to the Notice of Hearing, the Administrative Law Judge notified the Respondent by first class letter dated November 25, 2013, that if the Respondent failed to file an answer, and to list witnesses and exhibits and to file a response to OCI's motion for default judgment by December 19, 2013, a final decision would be issued finding the Respondent in default and imposing penalties. The Respondent did not take any of the actions necessary by the deadlines established in the prehearing conference order.

(5) Respondent by her attorney, Michael Fitzgerald on January 3, 2014 faxed a Response to OCI's Motion for Default Judgment basically arguing that a default judgment should not be entered because the Respondent has refused to participate in this action or respond to OCI requests for information as she asserts her Fifth Amendment privilege against self-incrimination in this proceeding because of a pending federal criminal investigation. Attorney Fitzgerald was allowed to appear for Respondent and participate by phone at the January 6, 2014 hearing held on OCI's motion.

(6) The allegations in the Notice of Hearing (which is annexed hereto) are incorporated by reference as if fully set forth herein as findings of fact in this case.

CONCLUSIONS OF LAW

(7) By failing to answer or to appear at the prehearing conference and by failing to comply with other orders entered at the prehearing, the Respondent is in default as provided in s. Ins 5.21(1), Wis. Adm. Code, and the allegations in the Notice of Hearing (NOH) in this proceeding shall be taken as true.

(8) The following findings of fact (set forth in the following Notice of Hearing paragraphs) constitute 28 separate misrepresentation violations of s. 628.34 (1), Wis. Stat. by the Respondent:

1. Respondent falsely stated that the Franzens' annuities would be sheltered from spend down requirements if HF had to go to a nursing home. NOH 10.
2. Respondent falsely stated she had purchased 3 annuity contracts in March-May of 2013 and the contracts were locked in her safe. NOH 19.
3. Respondent falsely stated the funds from SII were transferred to two annuity companies which were holding the funds in a bank account until the annuities were purchase. NOH 19.
4. Respondent falsely stated a lock or hold was placed on the account/funds and MAF would not have access to the account. NOH 20.
5. 3 violations: Respondent provided MAF with three false contract documents for three separate non-existent annuity contracts. NOH 22.
6. Respondent misrepresented to MAF that funds held at US Bank were under MAF's name and accessible to her. NOH 22; 26.
7. Falsely stated there was an 8% bonus on Phoenix annuities. NOH 25.
8. Falsely stated the purchase of the Phoenix annuity funded by check was already in process and could not be stopped. NOH 33.
9. Submitted annuity application paperwork to Phoenix containing forged signatures of MAF. NOH 37-39.

10. Respondent took \$584, 995. from MAF's US Bank account and used the funds for Respondent's personal enrichment and misrepresented to MAF what she had done with these funds. NOH 41-44.
11. 11 violations: Respondent submitted 2 applications to American Equity with 11 false signatures of Julie Guenther (JG). NOH 54-73, Exhs. 1,2.
12. 2 violations: Resp. submitted 2 separate applications containing false addresses for JG. NOH 54-73.
13. Resp. misrepresented by omission in not advising or informing JG of her submission of these applications. NOH 54-73.
14. Resp. withdrew funds from JG's account without obtaining authorization to do so and without informing JG she had done so. NOH 67-68.
15. Resp. misrepresented to American Equity that JG had authorized the purchase of these policies.

(9) The finding set forth in paragraph 49 of the NOH-- Respondent's failure to disclose to MAF and HF compensation from another source -- constitutes a violation of s. 628.32(1), Wis. Adm. Code.

(10) The findings set forth in paragraphs 45-48 of the NOH—Respondent's failure to respond to two OCI written requests for information—constitutes two violations of s. 601.42, Wis. Stats.

(11) The findings set forth in paragraph 25 of the NOH—Respondent's offering a benefit not specified in the policy to induce the sale—constitutes a violation of s. 628.34(2), Wis. Stats.

(12) The acts of the Respondent as set forth above and in OCI's evidentiary exhibits 1-6 establish and prove that the Respondent repeatedly and knowingly violated Wisconsin state statutes and/or a valid order of the Commissioner, that the Respondent's business methods and practices endanger the legitimate interests of the Respondent's customers and the public, that the Respondent is unqualified as an intermediary, and that the Respondent is not of good character, and thereby provide a sufficient basis to revoke the Respondent's permanent insurance intermediary agent's license, pursuant to s. 628.10, Wis. Stat., and to order a forfeiture pursuant to s. 601.64(3), Wis. Stat., in the amount of twice the profit gained from the violations, plus a forfeiture of up to \$1,000 per violation of a statute and to order restitution and remedial orders pursuant to s. 601.41(4), Wis. Stat.

ORDER

NOW, THEREFORE, based on the record and proceedings herein had, and for the reasons stated at the January 6, 2014 motion hearing and incorporated by reference herein, and based on the findings of fact and conclusions of law, I order that:

(13) The Respondent's permanent insurance intermediary agent's license is revoked pursuant to s. 628.10(2)(b), Wis. Stat.

(14) The Respondent shall pay restitution to Mary Ann Franzen in the amount of Five Hundred Eighty Four Thousand Nine Hundred Ninety Five dollars (\$584,995) for Respondent's misrepresentations and misappropriation of that amount from Ms. Franzen's US Bank account pursuant to ss. 601.64 and 601.41(4), Wis. Stat.

(15) As a forfeiture for her 32 separate violations of insurance law as set forth in paragraphs (8) through (11) above, the Respondent shall pay the amount of Thirty Two Thousand dollars (\$32,000) to the State of Wisconsin within 31 days of the date of this Final Decision pursuant to s. 601.64(3)(c), Wis. Stat.

(16) As an additional restitutionary forfeiture, the Respondent shall pay the amount of Six Hundred Thousand dollars (\$600,000) which roughly equals the amount of her profit from the unauthorized taking of money from MAF's funds, such amount shall be paid to the State of Wisconsin within 60 days of this final Decision pursuant to s. 601.64(3)(a), Wis. Stat.

NOTICE OF APPEAL INFORMATION

(Notice of rights for rehearing and judicial review,
the times allowed for each, and the identification
of the party to be named as respondent)

The following notice is served on you as part of the Final Decision:

1. Rehearing.

Any person aggrieved by this Final Decision may petition for a rehearing within 20 days after the service of the decision, as provided in s. 227.49, Wis. Stat. A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

A petition for rehearing must be filed with the Commissioner of Insurance at the address below.

2. Judicial Review.

Any person aggrieved by this Final Decision has a right to petition for judicial review of the decision as provided in s. 227.53, Wis. Stat. The petition must be filed in circuit court within 30 days after service of this Final Decision if there has been no petition for rehearing, or within 30 days after service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

A petition for judicial review must be served on, and name as the Respondent:

Commissioner of Insurance
P. O. Box 7873
Madison, Wisconsin 53707-7873

A copy of the relevant statutory provisions is attached.

Dated at Madison, Wisconsin, this 9th day of January 2014.

Alice M. Shuman-Johnson
Alice M. Shuman-Johnson
Administrative Law Judge

WISCONSIN STATUTES

At all times material, the relevant parts of s. 227.49, Wis. Stat., read as follows:

227.49 PETITIONS FOR REHEARING IN CONTESTED CAS

ES. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. . . .

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. . . .

At all times material, the relevant part of s. 227.52, Wis. Stat., read as follows:

227.52 JUDICIAL REVIEW; DECISIONS REVIEWABLE.

Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter. . . .

At all times material, the relevant parts of s. 227.53, Wis. Stat., read as follows:

227.53 PARTIES AND PROCEEDINGS FOR REVIEW. (1)

Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. . . .

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

. . .

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. . . .

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. . . .

(d) The agency . . . and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. . . .

Count 1 – Harold Franzen and MaryAnn Franzen

(2) On or about August 14, 2013, the OCI received a complaint filed on behalf of Harold Franzen (HF) and MaryAnn Franzen (MAF) by their son Mark Franzen (MF). The OCI investigated this complaint and determined the following facts:

(3) Respondent is a licensed attorney in the state of Wisconsin and operating under Family Foundation Planning, LLC. She was retained as HF's and MAF's estate planning attorney.

(4) As of January 2, 2008, Respondent is the Registered Agent for Laux Law, LLC with a listed address of 8585 W. Forest Home Avenue, Suite 225, Greenfield, WI 53228.

(5) As of May 13, 2010, Respondent is the Registered Agent for Family Foundation Planning, LLC with a listed address of 8585 W. Forest Home Avenue, Suite 225, Greenfield, WI 53228.

(6) In 2012, HF and MAF held over \$2 million in investments in a Wells Fargo Advisor Account.

(7) Respondent recommended that HF and MAF sell their investments and purchase a series of annuities from Phoenix Life Insurance Company and American Equity.

(8) Following Respondent's recommendation, in late 2012 Terrance Schmidt of SII Investments, Inc. (SII) became the broker for the Franzens. Approximately \$2,337,365.27 in assets were transferred from the Franzens' Wells Fargo Advisor Account into brokerage account #ACY-146932 at SII.

(9) In late December 2012, Respondent created an entity called HMFF Investments, LLC on behalf of HF and MAF. As of December 28, 2012, Respondent is the Registered Agent for HMFF Investments, LLC. with a listed address of 8585 W. Forest Home Avenue, Suite 225, Greenfield, WI 53228.

(10) Respondent told HF and MAF that HMFF Investments, LLC would be the owner of the Phoenix and American Equity annuities. Respondent also stated the funds invested in the annuities would be sheltered from the spend down requirements of Medicaid if HF had to go into a nursing home.

(11) On or about January 3, 2013, Laux Law, LLC., had HF and MAF sign a Third Party Check Request for a cash withdrawal from their SII account payable to HMFF Investments, LLC.

(12) A January 7, 2013 SII statement for HF and MAF shows \$2,184,125.30 was paid to HMFF Investments, LLC. At HF's request, a portion of IBM stock was not sold and remains in the SII account.

(13) In late January 2013, without HF's and MAF's knowledge or authorization, Respondent deposited \$2,184,125.30 into a US Bank account. Respondent was the sole signatory on the account opened in the name of HMFF Investments, LLC. Thus, Respondent had sole control over the money belonging to HF and MAF. The sum of

\$1,184,125.30 was deposited into a checking account. The sum of \$1,000,000 was deposited into a money market account.

(14) In February 2013, \$64,125.30 was withdrawn from the US Bank account. MAF informed OCI that she used this money to make gifts to family members. After this withdrawal, there was a total of \$2,120,000 remaining in the US Bank checking and money market accounts to invest in the annuities recommended by Respondent.

(15) Respondent provided to HF and MAF a Memorandum dated February 6, 2013 regarding Proposed Annuity Policies.

(16) The Proposed Annuity Policy Memorandum states in part the following: "I am sending you this Memo to discuss the proposed annuity policies. We previously discussed that the annuities will be tiered, starting every month. There will be eight total and they will accrue interest until the official annuity start date... Please find the following eight (8) recommendations..."

<u>Company:</u>	<u>Start Date:</u>	<u>Amount:</u>
1. American Equity	3-1-2013	\$250,000
2. Phoenix	4-1-2013	\$250,000
3. American Equity	5-1-2013	\$250,000
4. Phoenix	6-1-2013	\$250,000
5. American Equity	7-1-2013	\$250,000
6. Phoenix	8-1-2013	\$250,000
7. American Equity	9-1-2013	\$250,000
8. Phoenix	10-1-2013	\$250,000
9. American Equity	11-1-2013	\$120,000

(17) The list of annuities provided by Respondent in the Memorandum actually consists of nine (9) annuities. The sum of these nine (9) proposed annuities is \$2,120,000.00.

(18) HF passed away on April 17, 2013.

(19) At a family meeting with Respondent on or about June 7, 2013, Respondent made misrepresentations to MAF and family members regarding the purchase of the annuities listed on the February 6, 2013 Memorandum. Respondent falsely stated that she had purchased three \$250,000 annuity contracts for MAF in March, April and May of 2013, totalling \$750,000, and that the contracts were locked up in her office safe. She also falsely stated that after the stock portfolio was liquidated, the funds from SII were transferred to two annuity companies, Phoenix and American Equity. According to Respondent, the companies were holding the funds in a bank account (about \$2,100,000) until the annuities were purchased as per the tiered structure in the Memorandum.

(20) At the June 7, 2013 meeting, Respondent also falsely told MAF that the annuities would not "kick in" until twelve months after purchase. She stated a lock or hold would be placed on the account/funds and they would not be available to MAF. She indicated the companies do not allow customers to access the account until the lock/hold period is over.

(21) After the June 7, 2013 meeting, MF called Phoenix and American Equity and learned that these companies do not hold customer funds in an account or bank until the purchase of annuities, and do not deny account access to customers. MF called Respondent and demanded to see the three annuity contracts which Respondent had said she had purchased.

(22) On June 8, 2013, Respondent met with MAF and MF at her office. Respondent again falsely stated she had purchased annuities for MAF. She provided MAF with three false Contract Specification documents for contract numbers 992438, 993657 and 28170386. She also told MAF and MF that \$2,184,125.30 had been deposited into a US bank account using the funds that came from liquidation of the stock portfolio. Respondent informed MAF and MF the bank account was in the name of MAF and HF under HMFF Investments, LLC.

(23) MF was unable to verify the purchase of the annuity contracts for his mother. MF learned that policies ## 992438 and 993657 exist with American Equity, and that Respondent is agent of record. However, these policies are not issued to MAF or HMFF Investments, LLC.

(24) MF also learned that Respondent is agent of record for policy #28170386. This contract exists with Phoenix Life but is not issued to MAF or HMFF Investments LLC.

(25) Respondent misrepresented to MAF that the Phoenix Life policies she was recommending paid an 8% bonus. The Phoenix Life policy Respondent presented to MAF using the falsified Contract Specification for policy #28170386 did not pay an 8% bonus.

(26) US Bank located at 7325 W Oklahoma Ave., Milwaukee, WI. 53219 verified for MAF and MF that MAF does not hold any accounts with them and Respondent is the holder of the HMFF Investments Inc. account at US Bank.

(27) On June 11, 2013, MF told Respondent not to purchase any annuities in his mother's name until things were cleared up. Respondent agreed to meet MAF and MF at MAF's home.

(28) At the June 11, 2013 meeting, Respondent revealed the following facts.

(29) Respondent without MAF's knowledge or permission took hundreds of thousands of dollars from the HMFF Investment account at US Bank which Respondent used for her personal expenses.

(30) Respondent admitted to MAF and MF that she began making withdrawals to herself from HF and MAF's account beginning in March, 2013 and that she had committed fraud.

(31) Respondent did not purchase \$750,000 in annuities for MAF, contrary to her previous statement to MAF.

(32) At the June 11, 2013 meeting, Respondent provided MAF with five US Bank cashier's checks all dated June 11, 2013 that Respondent procured the same day, June 11, 2013, made out to insurance companies for the following amounts:

1. US Bank Check# 2063507532: Phoenix - \$250,000.00
2. US Bank Check# 2063507533: Phoenix - \$250,000.00
3. US Bank Check# 2063507534: American Equity - \$250,000.00
4. US Bank Check# 2063507535: American Equity - \$250,000.00
5. US Bank Check# 2063507536: American Equity - \$90,827.21

(33) Respondent also showed MAF a copy of US Bank Check# 2063507531 payable to Phoenix in the amount of \$250,000.00. Respondent falsely informed MAF and MF that the purchase of the Phoenix annuity funded by check # 2063507531 was already in process and could not be stopped.

(34) On or about June 12, 2013, at about 10:00 a.m., MAF and MF met with Respondent wherein they all went to the U.S. Bank branch located at 7325 W. Oklahoma Avenue in Milwaukee to cancel the five US Bank checks made out to Phoenix and American Equity insurance companies and had one check for \$1,090,827.21 made out to HMFF Transitional Trust and MAF. Unbeknownst to MAF and MF, just minutes before meeting with them, Respondent had travelled to two other U.S. Bank locations to misappropriate additional amounts of money which zeroed out the checking and money market accounts belonging to HMFF Investments, LLC. (See paragraphs 43-44 below).

(35) The Sunderland Group is an Independent Marketing Organization Respondent uses to submit new insurance business to Phoenix Life Insurance Company.

(36) On or about June 14, 2013, three days *after* Respondent had told MAF the purchase was in process and could not be stopped, Respondent forwarded to Sunderland Group an application for a \$250,000 Phoenix Life annuity with MAF as annuitant along with US Bank check #2063507531.

(37) MAF denies her authentic signature is on all documents Respondent forwarded to Sunderland Group to be submitted to Phoenix Life for the June 2013, MAF \$250,000 annuity.

(38) Changes made to the Phoenix Life Needs Assessment faxed from The Sunderland Group to Phoenix life on 6-18-13 are initialed MF. These initials are dated 6-18-13.

(39) MAF boarded an airplane for Arizona on 6-17-13 and remained there through the week and was not present in Wisconsin to review or initial the changes made on the Phoenix Life Needs Assessment on 6-18-13. Her initials on the form are forged.

(40) Notwithstanding Respondent's confession of misappropriating \$600,000 from MAF, Respondent continued to recommend that MAF purchase annuities from Phoenix and American Equity. Respondent told MAF she would receive a commission

of @ \$50,000 and would return this commission amount to MAF in an effort to pay back the monies Respondent owed MAF.

(41) Of the initial \$2,184,125.30 (and \$822.23 in additional interest) of HF and MAF's money that Respondent had control over, \$64,125.30 was legitimately gifted per the owner's instruction. \$195,000 was withdrawn to pay taxes. MAF has recovered \$1,340,827.21 in cashier's checks. Respondent withdrew for personal use \$584,995.02, as described in paragraphs 42-44 below, that remains owed to MAF by Respondent to date.

(42) Respondent made two \$250,000 withdrawals from the U.S. Bank checking account on March 5, 2013. This money was issued to Respondent in the form of cashier checks. Respondent used this money for her personal enrichment.

(43) On June 12, 2013, *the day after Respondent confessed to MAF and MF that she had committed fraud and promised to repay MF*, at approximately 8:30 in the morning, Respondent withdrew \$822.23 in cash from the money market fund which zeroed out the account. This transaction occurred at the U.S. Bank branch located at 11111 N. Port Washington Road in Mequon, WI. Respondent used this money for her personal enrichment.

(44) On June 12, 2013, at approximately 9:26 in the morning, Respondent withdrew \$84,172.79 from the U.S. Bank checking account which zeroed out the account. This transaction occurred at the U.S. Bank branch located at 5434 South 76th Street in Greendale. The money was issued to Respondent in the form of a cashier's check. Respondent used this money for her personal enrichment.

(45) On or about September 13, 2013, pursuant to s. 601.42, Wis. Stat., the OCI requested in writing that Respondent appear for an interview set for September 26, 2013 at 2:00 p.m.

(46) On or about September 26, 2013, the OCI received a letter via e-mail from Respondent's attorney advising because Respondent is under federal investigation she is declining to provide information to the OCI based on her 5th Amendment constitutional rights.

(47) On or about October 7, 2013, pursuant to s. 601.42, Wis. Stat., OCI requested Respondent to provide an excel spreadsheet listing all of her Wisconsin insurance clients for whom she holds files.

(48) On or about October 16, 2013, the OCI received a letter via e-mail from Respondent's attorney advising because Respondent is under federal investigation she is declining OCI's request for information based on her 5th Amendment constitutional rights.

(49) Respondent charged MAF and HF a one time fee of \$3,500 for her services. Respondent did not clearly and conspicuously in writing inform HF or MAF that she would receive compensation from another source due to their purchase of insurance.

(50) The allegations in paragraph 49 constitute violations of s. 628.32(1), Wis. Stat., in that Respondent failed to disclose in writing to MAF and HF, before they were obligated to pay the \$3,500 retainer fee to Respondent, that she would be receiving compensation from another source.

(51) The acts described in paragraph 25 violate s. 628.34(2), Wis. Stat., in that Respondent sought to induce MAF and HF to purchase an insurance contract by offering benefits not specified in the policy.

(52) The allegations in paragraphs 45-48 constitute violations of s. 601.42(4), Wis. Stat., in that Respondent twice failed to respond to OCI's requests for information under s. 601.42(1g).

(53) The allegations in paragraphs 10, 13, 19, 20, 22, 25, 29, 31, 33, 34, 36-39, and 41-44 constitute violations of s. 628.34(1), Wis. Stat., in that Respondent made multiple misrepresentations about the insurance business and insurance contracts including but not limited to: depositing MAF's funds into the US Bank account without her knowledge or consent; misappropriating nearly \$600,000 from the US Bank account; falsely stating she had purchased \$750,000 in annuities for MAF, providing false annuity contract specifications; falsely representing the funds in the annuities were sheltered from Medicaid spend down rules; falsely stating MAF's funds were being held by the insurers in a locked account and would not be accessible to MAF until the lock/hold period was over; submitting forged insurance documents to Phoenix; and misrepresenting the bonus feature of the Phoenix policy.

Count 2 – Julie Guenther

(54) Respondent is agent of record on American Equity policy 853840, a \$250,000 annuity she wrote on Julie Guenther (JG) and submitted to American Equity on or about December 30, 2010.

(55) Respondent is agent of record on American Equity policy 853838 a \$150,000 annuity she wrote on JG and submitted to American Equity on or about December 30, 2010.

(56) American Equity issued both annuities on or about January 4, 2011

(57) Respondent earned a commission of \$20,500 for policy 853840 and \$12,300 for policy 853838.

(58) On or about October 2, 2013, JG submitted to the OCI, through her attorney her signed affidavit that states the following facts:

(59) JG has reviewed the annuity applications for policies 853838 and 853840.

(60) JG did not authorize Respondent or any other person to apply for or purchase policies 853838 and 853840.

(61) JG did not sign the applications for policies 853838 and 853840 and the signatures that are purported to be JG's are forged.

(62) JG did not authorize Respondent or any other person to sign JG's name to annuity applications for policies 853838 and 853840.

(63) JG reviewed the Suitability Acknowledgment form for policy 853840 which bears JG's name and purported signature.

(64) JG did not authorize Respondent or any other person to complete the Suitability Acknowledgment form for policy 853840.

(65) JG did not sign the Suitability Acknowledgement form for policy 853840 and the signature purported to be JG's on the form is a forgery.

(66) JG reviewed check numbers 1047 and 1048 in the amounts of \$150,000 and \$250,000 respectively, each dated 12-30-2010, drawn on JG Office Checking Account at Associated Bank payable to American Equity.

(67) JG did not sign either of the checks and the signatures purported to be JG's are forgeries.

(68) JG did not authorize Respondent or any other person to write check numbers 1047 and 1048 and did not authorize any person to sign JG's name to the checks.

(69) JG did not intend to purchase annuities from American Equity and did not authorize their purchase.

(70) Respondent nor any other person informed JG of the purchase of annuities in JG's name and the annuity contracts were not delivered to JG.

(71) JG has not authorized any withdrawals from the American Equity annuities purchased in JG's name.

(72) In addition, the OCI obtained from American Equity approximately thirteen (13) additional documents submitted to them by Respondent for policies 853838 and 853840 with JG's signature or initials affixed; JG denies signing or initialing any of these.

(73) Respondent misrepresented to American Equity JG's address on the applications for policies 853838 and 853840, using instead JG's sister AM's address. As a result JG never received any information related to either annuity contract mailed by American Equity.

(74) The allegations as set forth in paragraphs 54-73 constitute violations of s. 628.34(1), Wis. Stat., in that Respondent submitted two entirely forged annuity applications to American Equity and misappropriated JG's funds in order to fund the contracts.

The acts of the Respondent as set forth above indicate that the Respondent is unqualified as an intermediary, or that the Respondent is not of good character, or that the Respondent repeatedly or knowingly violated an insurance statute or rule or valid order of the commissioner, or that the Respondent's methods and practices in the conduct of business endanger, or Respondent's financial resources are inadequate to safeguard, the legitimate interests of the Respondent's customers and the public, and thereby constitute sufficient grounds to: revoke, suspend, or limit in whole or in part the Respondent's permanent insurance intermediary agent license pursuant to s. 628.10, Wis. Stat.; order a forfeiture pursuant to s. 601.64 (3), Wis. Stat., in the amount of twice the profit gained from the violations plus a forfeiture of up to \$1,000

per violation of a statute or order and issue remedial orders pursuant to s. 601.41 (4),
Wis. Stat.

Dated at Madison, Wisconsin, on November 7, 2013.



Robin Jacobs, Attorney
Office of the Commissioner of Insurance
State Bar No. 1036695

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