

In the Matter of
Jean Walsh-Josephson,
 Respondent

FINAL DECISION
 DHA Case No. OCI-15-0055
 OCI Case No. 15-C40891

FINAL DECISION

I adopt the Administrative Law Judge's Proposed Decision, including the findings of fact and conclusions of law, which is attached to this Final Decision and which was served on the parties with an opportunity for submitting written objections.

Based on these findings of fact and conclusions of law, I order that:

- (1) Respondent's insurance agent license shall be revoked permanently;
- (2) Respondent shall pay restitution to her victims in the aggregate amount of \$516,434.46 no later than 30 days from the date of this order;
- (3) Respondent shall forfeit \$37,000 to the State of Wisconsin no later than 30 days from the date of this order; and
- (4) Respondent shall additionally forfeit \$1,016,406.18 to the State of Wisconsin no later than 30 days from the date of this order.

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

Walsh-Josephson, Jean
 15-C40891 Closed: Apr 26, 2016
 Ex: Fabry, Renee
 Atty: Jacobs, Robin

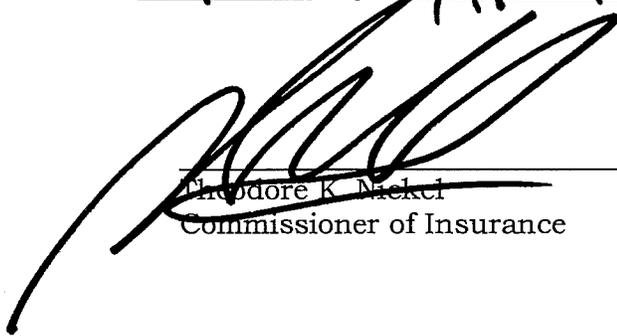
disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

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 21st day of April 2016.



~~Theodore K. Nickel~~
Commissioner of Insurance

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 CASES. (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. . . .



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Jean Walsh-Josephson,
Respondent

DHA Case No, OCI-15-0055
OCI Case No. 15-C40891

NOTICE OF FILING PROPOSED DECISION

TO: Respondent, by
Attorney Kevin Musolf
Robinson Law Firm
103 East College Avenue
Appleton, WI 54911

Office of the Commissioner of Insurance, by
Attorney Robin Jacobs
125 South Webster Street
Second Floor
Madison, WI 53703

PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Commissioner of Insurance. A copy of the Proposed Decision is attached hereto.

If you have objections to the Proposed Decision, you may file them in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. Your objections and argument must be received at the Commissioner of Insurance, State of Wisconsin, P. O. Box 7873, Madison, Wisconsin 53707-7873, within 20 days of the date of the Proposed Decision. You must provide a copy of your objections and argument to all other parties by the same date.

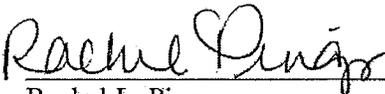
You may also file a written response to any objections to the Proposed Decision. Your response must be received at the Commissioner of Insurance no later than ten days after receipt of objections. You must provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge's recommendation in this case. The Order included in the Proposed Decision is not binding on you. After reviewing the Proposed Decision and objections, if any, the Commissioner of Insurance will issue a binding Final Decision and Order.

The process relating to Proposed Decisions is described in Wis. Stat. § 227.46(2).

Dated at Madison, Wisconsin on March 17, 2016.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
Telephone: (608) 266-3096
FAX: (608) 264-9885

By: 
Rachel L. Pings
Administrative Law Judge



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Jean Walsh-Josephson,
Respondent

DHA Case No. OCI-15-0055
OCI Case No. 15-C40891

PROPOSED DECISION

The PARTIES to this proceeding are:

Respondent, by
Attorney Kevin Musolf
Robinson Law Firm
103 East College Avenue
Appleton, WI 54911

Office of the Commissioner of Insurance, by
Attorney Robin Jacobs
125 South Webster Street
Second Floor
Madison, WI 53703

PRELIMINARY RECITALS

On October 28, 2015, the Office of the Commissioner of Insurance (OCI) issued a Notice of Hearing alleging that Respondent engaged in violations relating to her Wisconsin insurance agent license. The matter was referred to the Division of Hearings and Appeals for hearing and Administrative Law Judge Rachel L. Pings was appointed to preside over a Class II hearing. Judge Pings conducted a telephone prehearing conference with the parties on December 14, 2015, at which time the issues for hearing were confirmed, witness list and proposed exhibit exchange deadlines were established, and a hearing was scheduled. Respondent appeared pro se until February 2, 2016, after which she was represented by Attorney Kevin Musolf.

Pursuant to due notice and agreement by the parties, a hearing was held on February 3, 2016 in Madison, Wisconsin, and on February 4, 2016 in Oshkosh, Wisconsin (for the convenience of citizen witnesses). The hearing was recorded by stenographer. On February 19, 2016, the parties provided oral closing arguments by telephone conference, which was audio recorded. The record includes the hearing transcripts and audio recording, as well as exhibits 1 through 18.

APPLICABLE LAW

Wis. Stat. § 628.34 Unfair marketing practices.

(1) MISREPRESENTATION.

(a) *Conduct forbidden.* No person who is... licensed under chs. 600 to 646... may make or cause to be made any communication relating to an insurance contract, the insurance business, any insurer, or any intermediary that contains false or misleading information, including information that is misleading because of incompleteness. Filing a report and, with intent to deceive a person examining it, making a false entry in a record or willfully refraining from making a proper entry, are "communications" within the meaning of this paragraph. No intermediary or insurer may use any business name, slogan, emblem, or related device that is misleading or likely to cause the intermediary or insurer to be mistaken for another insurer or intermediary already in business. No intermediary may provide a misleading certificate of insurance.

Wis. Stat. § 628.10 Termination of license.

...
(2) REVOCATION, SUSPENSION, AND LIMITATION OF LICENSES.

...
(b) *For other reasons.* ...the commissioner may revoke, suspend, or limit in whole or in part the license of any intermediary or individual navigator if the commissioner finds that the licensee is unqualified as an intermediary or navigator, is not of good character, or has repeatedly or knowingly violated an insurance statute or rule or a valid order of the commissioner under s. 601.41 (4), or if the intermediary's or navigator's methods and practices in the conduct of business endanger, or financial resources are inadequate to safeguard, the legitimate interests of customers and the public. Nothing in this paragraph limits the authority of the commissioner to suspend summarily an intermediary's or individual navigator's license under s. 227.51 (3).

Wis. Stat. § 601.64 Enforcement procedure.

...
(3) FORFEITURES AND CIVIL PENALTIES.

(a) *Restitutory forfeiture.* Whoever violates an effective order issued under s. 601.41 (4), any insurance statute or rule, or s. 149.13, 2011 stats., shall forfeit to the state twice the amount of any profit gained from the violation, in addition to any other forfeiture or penalty imposed.

...
(c) *Forfeiture for violation of statute or rule.* Whoever violates an insurance statute or rule or s. 149.13, 2011 stats., intentionally aids a person in violating an insurance statute or rule or s. 149.13, 2011 stats., or knowingly permits a person over whom he or she has authority to violate an insurance statute or rule or s. 149.13, 2011 stats., shall forfeit to the state not more than \$1,000 for each

violation. If the statute or rule imposes a duty to make a report to the commissioner, each week of delay in complying with the duty is a new violation.

(d) *Procedure.* The commissioner may order any person to pay a forfeiture imposed under this subsection or s. 601.65, which shall be paid into the common school fund. If the order is issued without a hearing, the affected person may demand a hearing under s. 601.62 (3) (a). If the person fails to request a hearing, the order is conclusive as to the person's liability. The scope of review for forfeitures ordered is that specified under s. 227.57. The commissioner may cause action to be commenced to recover the forfeiture. Before an action is commenced, the commissioner may compromise the forfeiture.

Wis. Stat. § 601.41 General duties and powers.

...
(4) ENFORCEMENT PROCEEDINGS.

(a) The commissioner shall issue such prohibitory, mandatory, and other orders as are necessary to secure compliance with the law...

Wis. Admin. Code § Ins 6.59 Licensing of individuals as agents...

...
(5) COMPETENCE AND TRUSTWORTHINESS. The following criteria may be used in assessing trustworthiness and competence:

(d) *Other criteria.* Other criteria which the commissioner considers evidence of untrustworthiness or incompetence, including but not limited to:

...
2. Violating any insurance laws, or violating any regulation, subpoena or order of the insurance commissioner or of another state's insurance commissioner.

...
4. Improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business.

5. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

...
7. Having admitted or been found to have committed any insurance unfair trade practice or fraud.

8. Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

...
10. Forging another's name to an application for insurance or to any document related to an insurance transaction.

...

ISSUES

Did Respondent violate Wisconsin insurance law by: (1) misappropriating customer funds for her own personal financial gain and (2) falsifying documents related to insurance transactions? If so, do the violations constitute sufficient grounds to revoke her intermediary license and impose monetary penalties?

FINDINGS OF FACT

1. Jean Walsh-Josephson ("Respondent") at all material time periods was a resident and licensed insurance intermediary in Wisconsin. She has been a licensed Wisconsin intermediary since 1990 and a registered securities representative since 1996. (Ex. 1) She is subject to the jurisdiction and control of the Wisconsin Commissioner of Insurance.
2. In 1996, Respondent became a financial representative for Thrivent Financial for Lutherans practicing in the areas of Life, Variable Life / Variable Annuity, and Accident / Health. (Ex. 2) At all times herein material, she worked out of a Thrivent office in the area of Oshkosh, Wisconsin. Thrivent's policy is that customer checks for financial products must be made payable to Thrivent or the product being purchased and agents are required to submit said checks to the Thrivent home office in one business day. (Erik Grinde testimony Tr. 2/3/16 p. 136) Agents are never allowed to accept cash. (Id.)
3. Respondent has the following bank accounts at Verve Credit Union (formerly known as Citizens First Credit Union): (1) a personal bank account jointly owned with her husband, Dewey (account no. 52013). (Ex. 18 pp. 3-4; Detective April Hinke testimony Tr. 2/3/16 pp. 55-56), and (2) a business bank account under the name "44 Financial LLC" for which Respondent is the sole owner (account no. 20081910). (Ex. 19 pp. 1-2; Detective April Hinke testimony Tr. 2/3/16 pp. 55-56)
4. Respondent also has a bank account at Thrivent Financial Bank (a.k.a. Thrivent Federal Credit Union) (account no. 192868853). (Dana Hofmann-Geye testimony Tr. 2/3/16 pp. 157-158) Thrivent Financial Bank is not affiliated with Thrivent Financial for Lutherans; they are separate entities and they do not issue checks on one another's behalf. (Id. at pp. 157, 161) Only members of Thrivent Financial Bank may purchase its cashier's checks. (Id. at p. 158) From December 2010 through May 2015, Respondent purchased nearly 100 cashier's checks from Thrivent Financial Bank. (Id. at p. 160; Ex. 9 pp. 77-79)

Roger Culver

5. Respondent became Roger Culver's Thrivent representative in 2005 when he was about 70 years old and recently widowed with no children. (Ex. 9; Roger Culver testimony Tr. 2/4/16 pp. 14-15) Mr. Culver owned one Thrivent product, a relatively small annuity purchased in 2005 for less than \$14,000 for which he received monthly interest income in the amount of approximately \$100. (Ex. 9 p. 1; Erik Grinde testimony Tr. 2/3/16 p. 142; Roger Culver testimony Tr. 2/4/16 pp. 14-15)

6. On or about September 21, 2010, Respondent misappropriated \$302,399 of Mr. Culver's funds. On that day, he arrived at Respondent's office for a scheduled office appointment with two five-gallon buckets containing his life savings in cash. (Maxine Gehrt testimony Tr. 2/3/16 pp. 164-165; Roger Culver testimony Tr. 2/4/16 pp. 15) He gave the money to Respondent to purchase Thrivent annuities that would pay him a monthly income stream from the interest. (Roger Culver testimony Tr. 2/4/16 p. 18) He intended only to use the interest and leave the principal to charity. (Id.) Respondent and her office assistant helped Mr. Culver count the money in Respondent's office and determined that he had \$302,399 in cash. (Ex. 9 pp. 1-17; Maxine Gehrt testimony Tr. 2/3/16 pp. 164-168; Roger Culver testimony Tr. 2/4/16 p. 17) Mr. Culver left the entire amount of cash with Respondent for the purchase of annuities and she gave him a receipt for same. (Roger Culver testimony Tr. 2/4/16 pp. 16-17; Ex. 9 p. 15) Respondent told Mr. Culver that his monthly income check from the resulting annuity would be about \$974. (Roger Culver testimony Tr. 2/4/16 p. 19)
7. Respondent never actually used Mr. Culver's money to purchase any Thrivent products for him. (Erik Grinde testimony Tr. 2/3/16 p. 143) Instead, she kept the money and orchestrated a scheme to make him think that she did. Namely, she purchased cashier's checks from her own bank, Thrivent Financial Bank, on a monthly basis in the amount of \$974.76 and mailed the checks to Mr. Culver under the guise that they were interest income checks from an annuity. (Ex. 9 pp. 29-79; Roger Culver testimony Tr. 2/4/16 pp. 19-21) From December 2010 to May 2015, Respondent purchased and mailed to Mr. Culver 49 such cashier's checks. (Id; Dana Hofmann-Geye testimony Tr. 2/3/16 pp. 160-161)
8. Mr. Culver realized that by giving his entire life savings to Respondent for an annuity, he did not have sufficient liquidity to satisfy his regular financial obligations, such as taxes. (Roger Culver testimony Tr. 2/4/16 pp. 33, 38-39, 41) Thus, Respondent returned \$20,000 to Mr. Culver under the guise of a withdrawal from the principal of the annuity she supposedly purchased on his behalf.
9. On or about April 18, 2013, Respondent misappropriated an additional \$5,000 from Mr. Culver. On that day, he brought \$5,000 cash to Respondent's office to purchase a funeral policy. (Id. at pp. 27-28) Respondent issued Mr. Culver a legitimate Thrivent "Conditional Temporary Life Insurance Agreement and Receipt for Payment" and took the cash, but she did not file the document with Thrivent and did not purchase a financial product on Mr. Culver's behalf with the money. (Id. at p. 28; Ex. 9 p. 19; Erik Grinde testimony Tr. 2/3/16 pp. 145-146)
10. Respondent engaged in at least three additional misrepresentations related to Mr. Culver, as follows:
 - a. The receipt Respondent issued Mr. Culver for his \$302,399 cash was not an official Thrivent Financial for Lutherans form and it falsely stated that the money would be divided equally among three Thrivent annuities for the benefit of charities Mr. Culver specified. (Erik Grinde testimony Tr. 2/3/16 pp. 142-143; Ex. 9 p. 15)

- b. When Mr. Culver did not timely receive one of the checks he believed to be monthly annuity interest, Respondent falsified a letter to him intended to perpetuate her subterfuge. Namely, on January 16, 2015, she issued him a letter which purported to be from Thrivent Financial for Lutherans in which she falsified several details, including that she had permission from Thrivent's Senior General Counsel to issue a replacement check from Verve Credit Union (a.k.a Citizens First). (Ex. 9 p. 18; Erik Grinde testimony Tr. 2/3/16 pp. 143-145; Roger Culver testimony Tr. 2/4/16 pp. 25-26)
- c. When Respondent took Mr. Culver's \$5,000 cash, she falsified a receipt by indicating that a cashier's check – as opposed to cash – was the source of payment. (Ex. 9 p. 19)

Beverly Schneider

11. Respondent became Beverly Schneider's Thrivent representative in or around 2005. (Beverly Schneider testimony Tr. 2/4/16 p. 43) Ms. Schneider was about 65 years old at the time and single as the result of a divorce. (Id.)
12. On June 19, 2015, Respondent misappropriated \$30,000 of Ms. Schneider's funds. Ms. Schneider had received an inheritance and wanted to invest \$30,000 of it in an annuity. (Beverly Schneider testimony Tr. 2/4/16 pp. 47-48) At Respondent's direction, Ms. Schneider wrote a check for \$30,000 payable to 44 Financial for the purpose of purchasing said annuity. (Id. at p. 46; Ex. 8 p. 10) Respondent deposited Ms. Schneider's check into Respondent's business account, quickly moved it to her personal account, and proceeded to spend it. (Ex. 8 p. 11) Respondent did not use any of Ms. Schneider's money to purchase her a financial product. (Erik Grinde testimony Tr. 2/3/16 p. 141)

Muriel Sagmeister

13. Respondent became Ms. Sagmeister's financial representative in 2003 when Ms. Sagmeister would have been about 72 years old and widowed. (Ex. 10 p. 1; Muriel Sagmeister testimony Tr. 2/4/16 p. 57)
14. Between 2003 and 2015, Respondent submitted many insurance forms to Thrivent on Ms. Sagmeister's behalf as the signing agent. (Ex. 11) On 26 occasions therein, Respondent signed Ms. Sagmeister's name without her permission or knowledge. (Ex. 11 pp. 2, 5, 8, 13, 17, 22, 26, 30, 31, 35, 38, 40, 41, 42, 48, 55, 60, 66, 68, 73, 75, 78, 85, 91, 95, 97; Muriel Sagmeister testimony Tr. 2/4/16 pp. 72-78)
15. Between August 29, 2013 and August 6, 2015, Respondent misappropriated \$190,804.09 of Ms. Sagmeister's funds. Respondent did this by recommending to Ms. Sagmeister that she write checks payable to 44 Financial for the purpose of purchasing investment products. In three of five such transactions, Respondent recommended that Ms. Sagmeister fund the new transactions by surrendering or withdrawing money from existing Thrivent policies. In total, Respondent accepted five checks from Ms. Sagmeister for the purpose of purchasing new financial products, deposited them into her own

business account, and then kept the money for herself instead of purchasing any financial product for Ms. Sagmeister. (Erik Grinde testimony Tr. 2/3/16 pp. 146-147) A summary of the respective transactions follows.

- a. On August 28, 2013, Ms. Sagmeister provided Respondent with a personal check made payable to 44 Financial at Respondent's direction in the amount of \$8,000 for the purpose of purchasing a Thrivent product. (Ex. 10E p. 1; Muriel Sagmeister testimony Tr. 2/4/16 pp. 67-68) At the time, Respondent's business account balance was \$22.53 and her personal account balance was \$135.88. (Ex. 10E) Respondent deposited the \$8,000 check into her business account, then immediately transferred \$6,500 of it into her personal account and proceeded to spend it. (Id.)
- b. On November 27, 2013, Ms. Sagmeister provided Respondent with a personal check made payable to 44 Financial in the amount of \$32,115. (Ex. 10F p. 1; Muriel Sagmeister testimony Tr. 2/4/16 pp. 68-69) Respondent's business account was overdrawn by -\$123.77 at the time. (Ex. 10F p. 2) Respondent deposited Ms. Sagmeister's \$32,115 into her business account then immediately transferred \$10,000 of it into her personal account and proceeded to spend it. (Id.) A few days later, on November 29, 2013, Respondent transferred another \$18,000 from her business account to her personal account and proceeded to spend it. (Id.) On December 2, 2013, she transferred \$17,000 from her personal account back to the business account and then wired it to her other bank account at Thrivent Financial Credit Union. (Id. at pp. 2, 10, 15)
- c. On August 31, 2014, Ms. Sagmeister surrendered a whole life policy (8116662) and received proceeds of \$55,743.26. (Ex. 10A p. 3) On September 2, 2014, Ms. Sagmeister provided Respondent with a personal check made payable to 44 Financial at Respondent's direction in the exact same amount of \$55,743.26 for the purpose of purchasing a Thrivent financial product. (Ex. 10G p. 1; Muriel Sagmeister testimony Tr. 2/4/16 p. 67) At the time, Respondent's business account had a balance of only \$37.37 and her personal account was overdrawn by -\$23.79. (Ex. 10G pp. 2-3) Respondent deposited Ms. Sagmeister's \$55,743.26 check into her business account and in the weeks that followed, she made multiple transfers to her personal account until nearly all of it was transferred and spent. (Id.)
- d. On April 23, 2015, Ms. Sagmeister withdrew \$40,000 from an existing universal life policy (7701327). (Ex. 10A p. 4) On April 28, 2015, Ms. Sagmeister provided Respondent with a personal check made payable to 44 Financial at Respondent's direction in the amount of \$45,000, which was funded primarily from the universal life policy withdrawal, for the purpose of purchasing a different financial product. (Ex. 10H p. 1; Muriel Sagmeister testimony Tr. 2/4/16 pp. 62-63) Respondent had less than \$100 in her business account and just over \$1,000 in her personal account at the time. (OCI Ex. 10H pp.2-3) Respondent deposited Ms. Sagmeister's \$45,000 check into her business account and in the month that followed, she transferred nearly all of it to her personal account or bought

cashier's checks with it. (Id.) By the end of the month, there was only about \$5,000 left in Respondent's accounts. (Ex. 10H p. 3)

- e. On August 5, 2015, Ms. Sagmeister surrendered a whole life policy (8122839) and received proceeds of \$49,945.84. (Ex. 10A p. 3) The next day, on August 6, 2015, Ms. Sagmeister provided Respondent with a personal check made payable to 44 Financial at Respondent's direction in nearly the exact same amount (\$49,945.83) for the purpose of purchasing a Thrivent product. (Ex. 10B p. 10; Muriel Sagmeister testimony Tr. 2/4/16 pp 60-61) Respondent had \$423.56 in her business account and \$797.95 in her personal account at the time. (Ex. 10B p. 16) Respondent immediately deposited Ms. Sagmeister's \$49,945.83 into her business account and, in the days that followed, Respondent transferred \$27,000 to her personal account where she spent it on personal expenses, personal checks, and cashier's checks. (Ex. 10B pp. 16-17)
16. On August 20, 2015, the Wisconsin Department of Financial Institutions (DFI) summarily suspended Respondent's securities license. (Ex. 3) On September 8, 2015, Thrivent cancelled her appointment for cause. (Ex. 2) On October 28, 2015, OCI summarily suspended her intermediary license (Ex. 1) and initiated the instant proceedings.

PROPOSED CONCLUSIONS OF LAW

17. OCI bears the burden to prove by a preponderance of the evidence that Respondent engaged in insurance law violations as alleged. Wis. Admin. Code § Ins 5.39(3)(b).
18. OCI proved that Respondent engaged in the following 37 instances of misrepresentation in violation of Wis. Stat. § 628.34(1):
 - a. Three instances of falsifying and/or issuing false insurance documents related to Roger Culver;
 - b. 26 falsifications of Muriel Sagmeister's signature on insurance documents; and
 - c. Eight instances of misappropriation of funds totaling \$508,203.09, as follows:
 1. \$282,399 (\$302,399-\$20,000) cash from Roger Culver,
 2. \$5,000 cash from Roger Culver,
 3. \$30,000 check from Beverly Schneider,
 4. \$8,000 check from Muriel Sagmeister,
 5. \$32,115 check from Muriel Sagmeister,
 6. \$55,743.26 check from Muriel Sagmeister,
 7. \$45,000 check from Muriel Sagmeister, and
 8. \$49,945.83 check from Muriel Sagmeister.

19. Pursuant to Wis. Stat. § 601.64(3)(c), whoever violates an insurance law shall forfeit to the state up to \$1,000 for each violation. The seriousness of each of Respondent's 37 violations warrants the maximum possible forfeiture, for a total of \$37,000.
20. In addition to any other forfeiture or penalty imposed, Wis. Stat. § 601.64(3)(a) provides that whoever violates insurance law shall forfeit to the state twice the amount of any profit gained from the violation. OCI proved that Respondent unlawfully profited from the proven violations in the amount of \$508,203.09. This warrants an additional forfeiture of \$1,016,406.18.
21. In addition to any other forfeiture or penalty imposed, Wis. Stat. § 601.41(4)(a) provides that the Commissioner shall issue other orders as necessary to secure compliance with the law. An order for monetary restitution, with reasonable interest, to Respondent's victims is necessary and warranted in the following amounts:
 - a. \$282,399 to Roger Culver (\$302,399 - \$20,000) (no interest because Respondent made ongoing payments to substitute as interest),
 - b. \$5,438.45 to Roger Culver (\$5,000 + 3% interest compounded annually from 2013 to 2/19/16),
 - c. \$30,604.46 to Beverly Schneider (\$30,000 + 3% interest compounded annually from 2015 to 2/19/16), and
 - d. \$197,992.55 to Muriel Sagmeister (\$8,000 + 3% interest compounded annually from 2013 to 2/19/16; \$32,115 + 3% interest compounded annually from 2013 to 2/19/16; \$55,743.26 + 3% interest compounded annually from 2014 to 2/19/16; \$45,000 + 3% interest compounded annually from 2015 to 2/19/16; and \$49,945.83 3% interest compounded annually from 2015 to 2/19/16).
22. Pursuant to Wis. Stat. § 628.10 (2)(b), permanent revocation of Respondent's intermediary license is warranted because she lacks good character, has repeatedly and knowingly violated insurance statutes and rules, and her methods and practices in the conduct of insurance business endanger the legitimate interests of customers and the public. Furthermore, she lacks sufficient competency and trustworthiness for licensure as set forth in Wis. Admin. Code §§ Ins 6.59(5)(d)2 (violating insurance laws and regulations), Ins 6.59(5)(d)4 (improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business), Ins 6.59(5)(d)5 (intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance), Ins 6.59(5)(d)7 (having been found to have committed insurance unfair trade practices and fraud), 8 (using fraudulent, coercive, and dishonest practices, and demonstrating incompetence, untrustworthiness and financial irresponsibility in the conduct of business), and Ins 6.59(5)(d)10 (forging another's name to any document related to an insurance transaction).
23. OCI is not foreclosed from initiating future action against Respondent for relief related to victims not named in this action.

24. The Division of Hearings and Appeals has authority to issue this proposed decision and order pursuant to Wis. Admin. Code § Ins 5.43 and Wis. Stats. § 227.47.

OPINION

The instant proceeding concerns three particular victims, but it is worth noting at the outset that Respondent is currently being criminally investigated, and in many cases charged, for misappropriating more than \$3.5 million from 16 elderly customers over the last decade. (Ex. 7; Detective April Hinke testimony Tr. 2/3/16 pp. 58-61) Police believe she targeted elderly customers who were either unmarried or widowed and groomed them to trust her with their finances. (Detective April Hinke testimony Tr. 2/3/16 pp. 58-61) She did this by, for example, providing them with dinner or taking candy to nursing homes. (Id. at pp. 58-59) Once she gained a client's trust, she would accept their cash or convince the client to write a check to her business account (as opposed to directly to Thrivent or another financial product). She would then deposit the client's money into her business account, transfer it to her personal account, and spend it rather than purchase a financial product for the client as promised. (Id. at p. 59) She spent client money on credit card debt, making payments to other customers to perpetuate what was essentially a Ponzi scheme, and funding a lifestyle more extravagant than she would otherwise have been able to afford. For example, when police executed a search warrant at her home, they found lavish décor, expensive furnishings, high-end appliances, enormous amounts of clothing some still bearing purchase tags, and a Cadillac SUV and Harley-Davidson motorcycle. (Id. at pp. 117-118) Police also learned that Respondent frequented a plastic surgery facility. (Id. at pp. 122-123) In the end, after managing to carry on her fraudulent scheme for many years to the tune of millions of dollars, police caught onto her in August 2015 when she skimmed \$400 from a \$1,500 customer cash transaction. (Ex. 6)

The record amply supported OCI's allegations that Respondent defrauded customers Roger Culver, Muriel Sagmeister, and Beverly Schneider. Credible and largely un rebutted evidence against Respondent included police reports, testimony by an investigating detective, victim reports and testimony, witness reports and testimony, Thrivent reports and testimony, and Respondent's own bank account records. OCI compiled Respondent's bank account information into flow chart summaries to show how Respondent funneled the victims' money to herself and spent it as described above. Respondent offered virtually no defense; she did not propose a single exhibit, call any witnesses, or elicit any testimony helpful to her defense during cross-examination of OCI's witnesses. Furthermore, she invoked her 5th Amendment right against self-incrimination in response to virtually every question posed to her by OCI at the hearing. In the context of a civil proceeding such as this, the Examiner may take a negative inference from her decision to refuse to answer questions on the basis of the 5th Amendment. *Evans v. City of Chicago*, 513 F.3d 735, 741 (7th Cir. 2008) (taking a negative inference against a witness who invokes the Fifth Amendment in a civil case is permissive); *In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651, 663 (7th Cir. 2002) (the general rule is that an adverse inference may be drawn from a refusal to testify on the grounds of self-incrimination in a civil case). The germane facts surrounding Respondent's misconduct are detailed in the findings of fact section of this decision, but a summary of the manner in which Respondent victimized the particular consumers named in this action follows.

The first named victim in this case is Roger Culver, a widower and self-described "country hick." His formal education ended after he attended only one year of high school. Respondent had been his financial representative for nearly a decade when, in 2010 at age 75, he trusted her with his entire life savings. He presented it to Respondent at her office in buckets of cash and surprised even himself when they counted it and realized he had amassed over \$300,000 from a lifetime of socking away extra cash. He wanted to invest the money and live on the interest. Being a widower with no children, his intention was that the principal would go to the charities of his choice upon his death. Contrary to Thrivent policy, Respondent accepted his cash, agreed to purchase one or more annuities to accomplish his wishes, and issued him a makeshift receipt to that effect. She never actually purchased an annuity for Mr. Culver so no interest income was effectuated. To fool him into thinking it was, however, Respondent purchased and sent Mr. Culver cashier's checks on a monthly basis from a bank with "Thrivent" in its name in the amount of \$974.76 to pose as monthly annuity interest. When, on one occasion, she failed to timely get a check to him, she covered by fabricating a letter purporting to convey authority from Thrivent. She also led him to believe she had purchased an annuity on his behalf by giving him \$20,000 that was purportedly from the principal. In 2013, Mr. Culver brought Respondent another \$5,000 in cash for the purchase of a funeral policy. Contrary to Thrivent policy, Respondent again accepted his cash. She also falsified a Thrivent receipt to make it appear as though he had given her a cashier's check rather than cash and she kept the funds rather than purchase him a policy with them.

Beverly Schneider is the next named victim in this case. For ten years, she took care of her beloved uncle who suffered with Alzheimer's. When he died, he left her an inheritance that she wanted to invest. She was a 75-year-old divorcee at the time and Respondent was her financial representative. Ms. Schneider's goal was to have enough funds to care for herself as she aged or to leave an inheritance to her children in the event she did not need to use all the funds during her lifetime. To that end, on June 22, 2015, she followed Respondent's direction and wrote a \$30,000 check to Respondent's company, 44 Financial, for the purpose of purchasing an annuity. Respondent's own bank accounts were drained at the time, with less than \$80 in her business and personal accounts, respectively. (Ex. 8 p. 11) Respondent did not purchase an investment product for Ms. Schneider as she should have. Instead, she spent the money as if it were her own. She deposited Ms. Schneider's \$30,000 check into her business account and immediately transferred \$10,000 into her personal account. In the days that followed, she used the majority of that money to pay personal credit card and store debt. A few days later, she transferred another \$11,000 from her business account to her personal account and again proceeded to pay several thousand dollars' worth of personal bills. Finally, on July 1, 2015, she transferred \$8,100 to her personal account and spent it on a cashier's check. In short, Respondent blew through Ms. Schneider's \$30,000 within ten days.

The final victim named in this case is Muriel Sagmeister. Respondent had been Ms. Sagmeister's financial representative for many years. In 2013, when Ms. Sagmeister was an 82-year-old widow, Respondent began misappropriating her funds. Frankly, Respondent treated Ms. Sagmeister as a source of income; whenever Respondent's own bank accounts were running low, she would convince Ms. Sagmeister to "buy" another investment and then keep the funds for herself. As with Ms. Schneider, Respondent instructed Ms. Sagmeister to write checks payable to 44 Financial, Respondent's business account, for the purchase of investment products. Respondent deposited five such checks into her business account and kept the funds rather than

purchase policies for Ms. Sagmeister. In three of those transactions, Respondent arranged for Ms. Sagmeister to fund the new transactions by surrendering or withdrawing money from existing Thrivent policies; meaning Ms. Sagmeister withdrew from or surrendered legitimate investment products, trusted Respondent with the proceeds, and then lost them entirely to Respondent. In total, Respondent took five checks from Ms. Sagmeister totaling \$190,804.09, all of which Respondent used for her own purposes. Investigation revealed that Respondent also routinely forged Ms. Sagmeister's signature on insurance transaction documentation.

Respondent's victimization of Mr. Culver, Ms. Schneider, and Ms. Sagmeister was abhorrent. There are no mitigating circumstances whatsoever on this record. Respondent routinely violated the law, including insurance law. She orchestrated over many years a calculated scheme to defraud a particularly vulnerable segment of insurance customers – those who were elderly and alone. They trusted her with their hard-earned money; money they needed and deserved to rely upon in their retirement. Justice demands she make them whole through restitution. And of course her license to act as an insurance intermediary must be revoked to prevent her from preying on any other consumer and to send a message to the insurance industry that this type of behavior will not be tolerated. For these same reasons, all monetary penalties available under the law must be imposed and enforced against Respondent as requested by OCI.

PROPOSED ORDER

NOW THEREFORE, based on the findings of fact and conclusions of law, it is recommended that:

- (1) Respondent's insurance agent license should be revoked permanently.
- (2) Respondent should pay restitution to her victims in the aggregate amount of \$508,203.09 no later than 30 days from the date of the final order.
- (3) Respondent should forfeit \$37,000 to the State of Wisconsin no later than 30 days from the date of the final order.
- (4) Respondent should additionally forfeit \$1,016,406.18 to the State of Wisconsin no later than 30 days from the date of the final order.

Dated at Madison, Wisconsin on March 17, 2016.

STATE OF WISCONSIN
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By: 
Rachel L. Pings
Administrative Law Judge