NEBRASKA DEPARTMENT
OF INSURANCE

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FILED

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

STATE OF NEBRASKA DEPARTMENT OF INSURANCE, PETITIONER, VS. DAVID H. ANDERSEN, RESPONDENT.	))))))))))	FINDINGS OF FACT, CONCLUSIONS OF LAW, RECOMMENDED ORDER AND ORDER CAUSE NO. A-1593

This matter came on for hearing on the 29th day of October, 2004, before Martin W. Swanson, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance ("Department") was represented by its attorney, Mike Boyd. David H. Andersen (Respondent) was not present and was not represented by an attorney. The proceedings were tape recorded by Tracy Gruhn, a licensed Notary Public. Evidence was received, testimony was adduced and the matter was taken under advisement. As a result of the hearing, the hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. Respondent is a licensed insurance producer whose registered address with the Department of Insurance is 741 N. 120th Street, Omaha, Nebraska 68154. (E2).

2. The Department is the agency of the State of Nebraska charged with licensing insurance producers.

3. Respondent received notice of this hearing. (E1).

4. Respondent violated Neb. Rev. Stat. §44-4059(1)(h) and 44-4059(1)(j) as a result of the following conduct:

a. On or about December 19, 2003, David Alles, through the Hoppe and Harner Law Firm of Lincoln, Nebraska filed a complaint with the Consumer Affairs Division ("CAD") of the Nebraska Department of Insurance against David Andersen, the Respondent in this matter. In his complaint, David Alles told the Department of Insurance that Respondent had contacted David's 87 year old grandmother, Johanna Alles in late summer 2003 and persuaded Johanna Alles to "cash out" a life policy, specifically #0023897, that she had with United Life Insurance Company and use the proceeds from the policy surrendered to purchase an annuity with American Investors Life with David Alles listed as the annuitant, and Johanna listed as the owner and beneficiary. David further stated that the Respondent also convinced Johanna to purchase a second annuity with American Investors Life for $15,000.00 with David Alles again listed as annuitant, and Johanna shown as owner and beneficiary. David Alles claimed that his signature on the $15,000.00 annuity application was forged and denied ever signing that application. (E3).

b. On February 17, 2004, a letter was sent to Respondent at his registered address with the Department of Insurance from Sylvia Gregory-Witherspoon, an Insurance Investigator for the Department, requesting Respondent provide a descriptive statement in response to the complaint of David Alles regarding the sale of the annuity policies to Johanna Alles of Lincoln, NE. (E4).

c. On March 11, 2004, another letter was sent to Respondent at his registered address with the Department of Insurance from Sylvia Gregory-Witherspoon, an Insurance Investigator for the Department, requesting Respondent provide a descriptive statement regarding who signed the purported signature of annuitant David Alles on the $15,000.00 annuity application as David alleged that he had not signed it. (E7).

d. On or about April 7, 2004, David Andersen responded to the letters referred to in subparagraph b. and c. In his letter responses, the Respondent gave background to his handling of the insurance transactions involved in this matter. He met with Johanna Alles in 2003 to discuss insurance policies she owned, including a life policy that named her grandson David Alles as beneficiary. Respondent claimed that Johanna was concerned about leaving David a lump sum death benefit. Since she wanted David to get a systematic pay out, they came up with the idea of cash surrendering her United Life policy and setting up an annuity on David as annuitant. They utilized the cash surrender proceeds from the United Life policy to fund American Investors Life annuity policy #439820. As for the second American Investors Life annuity policy #443817,

Ms. Alles had an additional $15,000.00 she wanted to put in another annuity with David Alles as the annuitant and Johanna as the owner. Respondent admitted in his response to Ms. Gregory-Witherspoon that he signed David Alles name as annuitant on the application for annuity policy #443817. He claimed he did so at Johanna's request as she had a stroke that affected her writing. However, his response to Ms. Gregory-Witherspoon also notes that Johanna signed her own name to that same annuity application as owner. Further, nowhere in his response did Respondent provide any evidence to show that the 32 year-old annuitant, David Alles, had authorized the Respondent to sign David Alles' name as annuitant on the application for annuity policy #443817. (E8).

e. In addition to the aforementioned admission by Respondent, additional evidence adduced at the hearing revealed a striking similarity to the signatures on the application page contained in Exhibit 5. Specifically, the "David" in David Andersen appears to be the same as the "David" in David Alles "signature."

CONCLUSIONS OF LAW

1. The Department has jurisdiction and control over the licensing of Respondent to sell insurance in the State of Nebraska pursuant to **Neb. Rev. Stat.** §44-101.01 and §44-4001 et seq.

2. The Department has personal jurisdiction over Respondent.

3. Respondent violated **Neb.Rev.Stat.** §44-4059(1)(h). **Neb.Rev.Stat.** §44-4059(1)(h) provides that the Director may revoke or suspend an insurance producer's license and/or impose a fine if an insurance producer has demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state. Additionally, Respondent violated **Neb.Rev.Stat.** §44-4059(1)(j), which provides for a penalty for forging another's name to an application for insurance or to any document related to an insurance transaction.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent is to pay a $2,000 fine. The $2,000 fine is due within thirty days from adoption of this recommendation by the Director of Insurance of the State of Nebraska. The failure to pay this fine

within thirty days may result in further administrative action by the Department of Insurance. The Nebraska Department of Insurance will continue to retain jurisdiction over this matter until Respondent has complied with all provisions of this order.

Dated this 9th day of November, 2004.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

Martin W. Swanson
Hearing Officer

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of this Department in the matter of State of Nebraska, Department of Insurance vs. David H. Andersen, Cause No. A-1593.

Dated this 10th day of November, 2004.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

L. TIM WAGNER
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon the Respondent by mailing a copy to Respondent at 741 N. 120th Street, Omaha, Nebraska 68154, by certified mail, return receipt requested, on this 10th day of November, 2004.

Tracy A. Stuhr