



4. Respondents fully understand that this Consent Order will in no way preclude additional proceedings by the Commissioner against Respondents for acts and/or omissions not specifically addressed in this Consent Order or for acts and/or omissions that do not arise from the facts or transactions herein addressed. Respondents also understand that this Consent Order may be used by the Commissioner or any Commissioner, Department or Board to revoke or refuse to issue any license Respondents currently hold or for which Respondents apply in the future.

5. Respondents expressly waive all further procedural steps and expressly waive all rights to seek judicial review of or to otherwise challenge or contest the validity of this Consent Order, the stipulation and imposition of discipline contained herein and the consideration and entry of said Consent Order by the Commissioner.

#### **JURISDICTION**

6. The Commissioner has jurisdiction pursuant to the Tennessee Insurance Law (the "Law"), TENN. CODE ANN. § 56-6-101 *et seq.*, and the Law places the responsibility for the administration of the Law on the Commissioner.

#### **PARTIES**

7. The Insurance Division is the lawful agent through which the Commissioner administers the Law and is authorized to bring this action for the protection of the public.

8. Respondents are citizens and residents of Tennessee, residing at 609 Moon Cove, Hermitage, Tennessee 37076. Mrs. Wincek's insurance producer license, numbered 950316, was issued in 2006. Mr. Wincek's insurance producer license, numbered 707140, was issued in 1995. Respondents are married to one another and conducted insurance business as business partners.

## FINDINGS OF FACT

9. On approximately May 15, 2001, Mr. Wincek received an appointment with Allianz Life Insurance Company of North America ("Allianz"). On approximately June 16, 2006, Mrs. Wincek received an appointment with Allianz.

10. From approximately July 28, 2006 through August 28, 2006, Mr. Wincek advised multiple Allianz annuitants to surrender their Power 7 annuity policies and open new individual retirement accounts ("IRAs") with Old Hickory Credit Union ("OHCUC"). After the OHCUC IRAs were opened, the annuitants were then presented with investment options by Mr. Wincek, including the MasterDex 10 annuity policy. The annuitants were advised that the MasterDex 10 annuity policy would entitle them to a ten (10) to twelve (12) percent increase in annuity payments. Respondents maintain that every annuitant was fully informed of the terms surrounding the MasterDex 10 annuity policy, illustrated by the annuitants signing a "Statement of Understanding" and a "Suitability Form." The Insurance Division maintains that Respondents failed to advise the annuitants that they were not entitled to any increased annuity payments until after the MasterDex 10 annuity policies had been in effect for five (5) years and then would only be entitled to incrementally increased annuity payments for the next ten (10 years), effectively taking approximately fifteen (15) years to reach their full value. Some of the applications for the MasterDex 10 annuity policies were signed by Mrs. Wincek as the agent of record.

11. The Insurance Division finds that the annuitants incurred surrender charges when their annuities were transferred from Allianz to OHCUC and back to Allianz. In response, Respondents assert that that the surrender value of the Power 7 annuity policies were worth more than the actual annuitization value of said policies, and hence, no surrender charges were incurred by the annuitants.

12. Respondents, based on information and instructions given by Keith Lavender at GamePlan, a licensed broker for Allianz, did not notify Allianz on the annuity applications that the MasterDex 10 annuity policies were replacement annuity policies. Respondents maintain that they were under the belief, based on instructions given by Keith Lavender, that by placing the Power 7 annuity proceeds in an IRA at OHCU, the subsequent purchase of the MasterDex 10 annuity policies did not constitute the purchase of a "replacement policy."

13. Beginning on approximately May 27, 2008, some policyholders notified Allianz that Mr. Wincek had misrepresented the terms of the MasterDex 10 annuity policy.

14. On approximately January 5, 2010, after having received a complaint against Mr. Wincek, Allianz investigated the Winceks and the circumstances surrounding the payment of commissions to the Winceks on the MasterDex 10 annuity policies. Allianz has since received reimbursement of a portion of the commissions paid to Respondents and considers the matter resolved as it relates to commissions paid to Respondents; however, Allianz is currently in the process of resolving all outstanding issues with its current and former annuitants who have been affected, including reimbursing any surrender charges levied and permitting annuitants the option of electing whether to have the Power 7 or the MasterDex 10 annuity in force.

#### **CONCLUSIONS OF LAW**

15. TENN. CODE ANN. § 56-6-112(a)(8) (Supp. 2007) provides that the Commissioner may place on probation, suspend, revoke or refuse to issue or renew a license and/or may levy a civil penalty for anyone who uses fraudulent, coercive or dishonest practices or demonstrates incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

16. Based on the Findings of Facts, the Commissioner finds that Respondents acted incompetently in explaining and setting forth the terms of an actual or proposed insurance contract

and demonstrated incompetence and financial irresponsibility in the conduct of business in this state.

17. Such facts constitute grounds for an Order revoking Respondents' insurance producer licenses and assessing a civil penalty against Respondents based on violations of TENN. CODE ANN. § 56-6-112(a)(8) (Supp. 2007). Respondents admit that the Findings of Facts are accurate and concedes that the Conclusions of Law are fair and reasonable. Respondents enter into this Consent Order for the purpose of avoiding further administrative action with respect to this cause.

### **ORDER**

**NOW, THEREFORE**, based on the foregoing and the waiver of Respondents of their rights to a hearing and appeal under the Law and Tennessee's Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101 *et seq.*, and the admission by Respondents of the jurisdiction of the Commissioner, the Commissioner finds that Respondents have agreed to the entry of this Consent Order and that this Consent Order is appropriate and in the public interest.

**IT IS ORDERED**, pursuant to TENN. CODE ANN. § 56-6-112(a) (Supp. 2007) that:

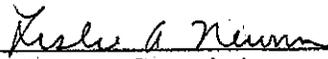
The insurance producer licenses, numbered 950316 and 707140, issued to Sherrie Ann Wincek and Ronald Wincek, respectively, are hereby **REVOKED**.

This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By signature affixed below, Sherrie Ann Wincek and Ronald Conrad Wincek, affirmatively state that they have freely agreed to the entry of this Consent Order, that they have been advised that they may consult with legal counsel in this matter, that they waive their right to a hearing on the matters underlying this Consent Order and that no threats or promises of any kind have been made by the Commissioner, the Insurance Division or any agent thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no

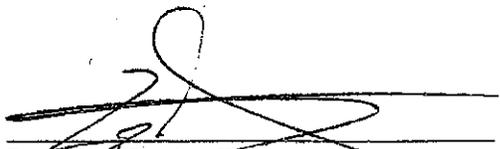
promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

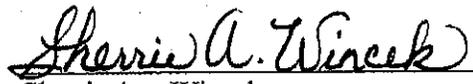
**SO ORDERED.**

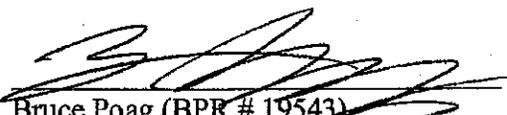
ENTERED this the 8<sup>th</sup> day of November, 2010.

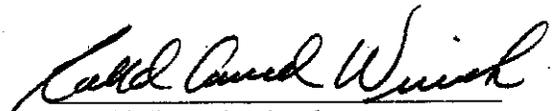
  
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Leslie A. Newman, Commissioner  
Department of Commerce and Insurance

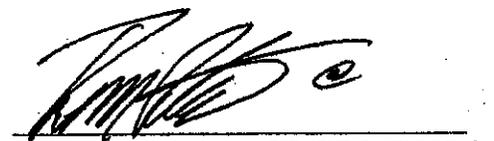
**APPROVED FOR ENTRY:**

  
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Larry C. Knight, Jr.  
Assistant Commissioner for Insurance  
Department of Commerce and Insurance

  
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