

No. 2019 - 5898

**Official Order
of the
Texas Commissioner of Insurance**

Date: MAR 15 2019

Subject Considered:

Texas Department of Insurance

v.

Laura Ruth LaBarbera

SOAH Docket No. 454-18-2989.C

General remarks and official action taken:

The subject of this order is the general lines agent license with a life, accident, and health qualification held by Laura Ruth LaBarbera.

Background

After proper notice was given, the above styled case was heard by an administrative law judge for the State Office of Administrative Hearings. The administrative law judge made and filed a proposal for decision containing a recommendation and underlying rationale and including separately stated findings of fact and conclusions of law. The administrative law judge recommended that the Texas Department of Insurance should revoke Ms. LaBarbera's license. A copy of the proposal for decision is attached as Exhibit A.

Staff for the Texas Department of Insurance filed exceptions to the administrative law judge's proposal for decision. Ms. LaBarbera also filed exceptions to the administrative law judge's proposal for decision.

In response to the filed exceptions, the administrative law judge agreed to correct clerical errors in the proposal for decision, but she did not recommend revising the findings of fact or conclusions of law contained in the proposal for decision. A copy of the administrative law judge's response to exceptions is attached as Exhibit B.

Findings of Fact

The findings of fact contained in Exhibit A are adopted by the Texas Department of Insurance and incorporated by reference into this order.

Conclusions of Law

The conclusions of law contained in Exhibit A are adopted by the Texas Department of Insurance and incorporated by reference into this order.

Order

It is ordered that the general lines agent license with a life, accident, and health qualification held by Laura Ruth LaBarbera is revoked.

If enforcement of this order is restrained or enjoined by an order of a court, this order shall become effective upon a final determination by said court or appellate court in favor of the Texas Department of Insurance.

A copy of this order will be provided to law enforcement and other appropriate administrative agencies for further investigation as may be warranted.

Kent C. Sullivan
Commissioner of Insurance

By: _____


Doug Slape
Chief Deputy Commissioner
Commissioner's Order No. 2018-5528



State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

January 17, 2019

Kent Sullivan
Commissioner of Insurance
Texas Department of Insurance
333 Guadalupe, Tower 1, 13th Floor, Mail Code 113-2A
Austin, Texas 78714

INTERAGENCY

RE: Docket No. 454-18-2989.C; Texas Department of Insurance v. Laura Ruth LaBarbera

Dear Commissioner Sullivan:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Tex. Admin. Code § 155.507, a SOAH rule which may be found at www.soah.texas.gov.

LINDA BRITE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

LB/lc

cc: Stephanie Maugham Andrews, Staff Attorney, Texas Department of Insurance, 333 Guadalupe, Tower 1, 13th Floor, Austin, Texas 78701 - VIA INTER-AGENCY
Laura Ruth LaBarbera, 29 Live Oak Lane, Hickory Creek, TX 75065 - VIA REGULAR MAIL

SOAH DOCKET NO. 454-18-2989.C
 TDI CASE NO. 9330

TEXAS DEPARTMENT OF INSURANCE, Petitioner v. LAURA RUTH LABARBERA, Respondent	§ § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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TABLE OF CONTENTS

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY..... 1

II. LEGAL BACKGROUND..... 2

III. ARGUMENT, EVIDENCE, AND ANALYSIS..... 4

A. Violation of Chapter 1114 of the Texas Insurance Code by Requesting Insurers to Circumvent the Replacement Safeguards Process..... 4

1. Argument and Evidence..... 4

2. Analysis..... 5

B. Violation of Insurance Code §§ 541.056(a) and 1114.101 by Engaging in Unfair Methods of Competition and Unfair or Deceptive Acts of Practices; Violation of Insurance Code § 1115.051 by the Sale of Unsuitable Annuities 5

1. Argument and Evidence..... 5

a. Bobbie Lang..... 7

b. Alejandro Garcia 8

c. Judy Martin..... 9

d. Leon Mack..... 9

e. David Petty 10

f. Deborah Beggs..... 10

g. Lloyd Kinnison..... 11

h. Nelia Telese Gray 11

i. Brenda Hoyt-Stenovich 12

j. Thomas Parker..... 12

2. Analysis..... 13

a. Insurance Code § 541.045(a)..... 13

b. Insurance Code § 1114.101..... 13

c. Insurance Code § 1115.051..... 13

C.	Violation of Insurance Code § 4005.053(c)(2) by Providing a Fee or Other Valuable Consideration for Referring Business	14
1.	Argument and Evidence	14
2.	Analysis	15
D.	Violation of Insurance Code § 4005.054 by Accepting an Additional Fee or Other Consideration for Services as an Agent Without Making Proper Disclosures	15
1.	Argument and Evidence	15
2.	Analysis	16
E.	Violation of Insurance Code § 4005.101(b)(5) by Fraudulent or Dishonest Acts or Practices; Violation of Insurance Code § 4005.101(b)(1) by Willful Violation of Insurance Law	17
1.	Argument and Evidence	17
2.	Analysis	21
F.	MISCELLANEOUS	23
1.	Evidence	23
2.	Analysis	24
G.	CONCLUSION	24
IV.	FINDINGS OF FACT	25
V.	CONCLUSIONS OF LAW	27

SOAH DOCKET NO. 454-18-2989.C
TDI CASE NO. 9330

TEXAS DEPARTMENT OF INSURANCE, Petitioner	§	BEFORE THE STATE OFFICE
	§	
	§	
v.	§	OF
	§	
LAURA RUTH LABARBERA, Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (the Department) brought this disciplinary action against Laura Ruth LaBarbera (Respondent). Staff alleges that Respondent violated the Texas Insurance Code by engaging in unfair methods of competition and fraudulent or dishonest acts or practices. Staff seeks to revoke Respondent’s general lines agent license with a life, accident, and health qualification (License). The Administrative Law Judge (ALJ) finds that Staff established violations sufficient to support revocation of Respondent’s License.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no disputed issues of notice or jurisdiction in this case. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing on the merits was held on November 19, 2018, before ALJ Linda Brite at the State Office of Administrative Hearings (SOAH) facilities at 300 West 15th Street, Austin, Texas. Staff attorneys Stephanie Andrews and Cassie Tigie represented Staff. Respondent appeared and represented herself. The record closed on the same day.¹

¹ Respondent submitted an additional written statement dated November 27, 2018 which was not considered, as the record closed on November 19, 2018 upon conclusion of the hearing.

II. LEGAL BACKGROUND

The Insurance Code authorizes the Department to regulate the business of insurance in this state.² The Department's regulatory purview includes complaint resolution and investigation of violations of the Insurance Code and related rules, such as alleged misconduct by insurance agents and adjusters.³ For a violation of the Insurance Code, the Department may revoke, suspend, or deny renewal of a license, place the license holder on probation if the license holder was suspended, assess an administrative penalty, or issue a reprimand.⁴ After notice and opportunity for a hearing, the Department Commissioner may cancel or revoke an authorization if the holder of the authorization is found to be in violation of the Insurance Code or a Commissioner rule.⁵ Staff bears the burden of proof on these allegations.⁶

Among the purposes of Insurance Code Chapter 1114 is to protect the interests of purchasers of life insurance or annuities by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions.⁷ Staff has alleged that Respondent violated this chapter because as an agent, Respondent requested insurers to circumvent the replacement safeguards process.

Insurance Code §§ 541.056(a) and 1114.101 describe prohibited actions that are considered unfair methods of competition or unfair or deceptive acts or practices in the business of insurance. Staff has alleged that Respondent violated these Code sections by providing rebates and/or inducements and replacing annuities.

² Tex. Ins. Code § 31.002(1).

³ Tex. Ins. Code §§ 31.002(3), 521.002.

⁴ Tex. Ins. Code § 4005.102.

⁵ Tex. Ins. Code § 82.051.

⁶ 1 Tex. Admin. Code § 155.427.

⁷ Tex. Ins. Code § 1114.001.

Under Insurance Code § 1115.051, in recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction, the agent must have reasonable basis to believe that:

- 1) the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's financial situation and needs, including the consumer's suitability information;
- 2) the consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and the surrender charge, any potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components, and market risk;
- 3) the consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, or a death or living benefit;
- 4) the particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of the purchase or exchange of the annuity, and any riders or similar product enhancements are suitable, and, in the case of an exchange or replacement, the transaction as a whole is suitable, for the particular consumer based on the consumer's suitability information; and
- 5) in the case of an exchange or replacement of an annuity, the exchange or replacement is suitable, including taking into consideration whether the consumer:
 - a) will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits such as death, living, or other contractual benefits, or be subject to increased fees, investment advisory fees, or charges for riders or similar product enhancements;
 - b) would benefit from product enhancements and improvements; and
 - c) has had another annuity exchange or replacement, and in particular, an exchange or replacement in the preceding 36 months.⁸

Staff has alleged that Respondent violated this Code provision by selling unsuitable annuities.

⁸ Tex. Ins. Code § 1115.051(a).

An agent may not give or offer to give, directly or indirectly, to any person who does not hold a license as an agent a fee or other valuable consideration for referring a customer who seeks to purchase or obtain an opinion or advice regarding an insurance product, based on that customer's purchase of insurance.⁹ Staff has alleged that Respondent violated this Code provision by providing a fee or other valuable consideration for referring business.

Additionally, Insurance Code § 4005.101 authorizes the Department to take disciplinary action against a license-holder for engaging in a fraudulent or dishonest act or practice,¹⁰ or willfully violating an insurance law of this state.¹¹ Among the sanctions authorized is the revocation of a license issued by the Department.¹² Staff has alleged that Respondent has both engaged in a fraudulent or dishonest act or practice and willfully violated an insurance law of this state.

III. ARGUMENT, EVIDENCE, AND ANALYSIS

At the hearing, Staff offered 24 exhibits and 6 witnesses, including Respondent. Respondent offered two exhibits and testified on her own behalf. All offered exhibits were admitted. As explained below, the ALJ finds that staff established three out of seven violations and concludes Respondent's License should be revoked.

A. **Violation of Chapter 1114 of the Texas Insurance Code by Requesting Insurers to Circumvent the Replacement Safeguards Process**

1. **Argument and Evidence**

Insurance Code Chapter 1114 protects the interests of purchasers of life insurance or annuities by establishing minimum standards of conduct to be observed in replacement or

⁹ Tex. Ins. Code § 4005.053(c)(2).

¹⁰ Tex. Ins. Code § 4005.101(b)(5).

¹¹ Tex. Ins. Code § 4005.101(b)(1).

¹² Tex. Ins. Code § 82.051-053.

financed purchase transactions. The statutory obligations of insurers in an annuity replacement transaction are explained in Insurance Code §§ 1114.052-.054. Staff argues that Respondent requested insurers to circumvent the replacement safeguards process required by Insurance Code Chapter 1114.

Staff's exhibits include three contracts for annuity replacements in 2015 for which Respondent instructed each client to write in a waiver of "all conservation efforts."¹³ Respondent testified that she did not know conservation efforts were a statutory requirement and had used forms in the past which incorporated the language to "waive all conservation efforts."¹⁴ Respondent testified that a contributing reason for including the waiver of conservation efforts was Respondent's unsuccessful attempts to contact the insurer.¹⁵

2. Analysis

The evidence establishes that in three annuity replacement transactions, the Respondent instructed clients to "waive all conservation efforts." The record is unclear as to what waiving conservation efforts entails, in relation to the insurers' statutory obligations for annuity replacements under Insurance Code §§ 1114.052-.054. No expert testimony was offered to explain what "conservation efforts" typically means in the insurance industry or its connection to the provisions of Chapter 1114. Therefore, the ALJ concludes there is insufficient evidence to establish a violation of Insurance Code Chapter 1114.

B. Violation of Insurance Code §§ 541.056(a) and 1114.101 by Engaging in Unfair Methods of Competition and Unfair or Deceptive Acts of Practices; Violation of Insurance Code § 1115.051 by the Sale of Unsuitable Annuities

1. Argument and Evidence

¹³ Staff Ex. 14 at 580, 608, 683; Tr. at 62-66.

¹⁴ Tr. at 62, 160-161; Resp. Ex. 1.

¹⁵ Tr. at 62-63.

Insurance Code §§ 541.056(a) and 1114.101 describe prohibited actions that are considered unfair methods of competition or an unfair or deceptive act or practice in the business of insurance. Staff alleges that Respondent violated Insurance Code § 541.056(a) by providing rebates and/or inducements. Staff also alleges that Respondent violated Insurance Code § 1114.101 by replacing annuities. Staff further alleges that Respondent sold unsuitable annuities as contemplated by Insurance Code § 1115.051.

Respondent testified that her appointment with Allianz was terminated at the end of 2014.¹⁶ Staff's exhibits include documentation of Respondent selling to her client's annuity replacements with other companies after Allianz's termination of Respondent's appointment. Respondent testified that she received a commission for every annuity purchase or request to transfer processed on behalf of her clients.¹⁷ Respondent testified that she believed she was working in the best interest of her clients and their needs.¹⁸

Susan Siflinger testified she is a licensed insurance professional who worked with Respondent during her appointment with Allianz. Ms. Siflinger testified that as a field marketing independent contractor under Allianz, she would recruit and train agents, and Respondent was one such agent. Ms. Siflinger testified that she worked with Respondent from approximately 2007 through 2011, but Ms. Siflinger left the marketing organization due to chaos related to Respondent.¹⁹ Ms. Siflinger provided the Department a client list with the clients' names, contract dates, starting funds, accumulation values, income benefits, and the companies to which the funds were surrendered.²⁰ According to her testimony, Ms. Siflinger gathered the information from the client's annual statement, last statement, and website information.²¹ Ms. Siflinger noted that many of the clients were considered to be elderly. Ms. Siflinger explained that Allianz offers bonuses related to the lifetime income, which allows

¹⁶ Tr. at 59.

¹⁷ Tr. at 71.

¹⁸ Tr. at 206.

¹⁹ Tr. at 125-128.

²⁰ Tr. at 130; Staff Ex. 19 at 2906-2907.

²¹ Tr. at 135.

the client to have lifetime monthly or annual income, similar to a pension or guaranteed payment.²² Ms. Siflinger opined that the clients were negatively impacted by Respondent's actions, based on their statements and surrendering information.²³ According to Ms. Siflinger's testimony, the Endurance product had surrender charges if the contract was broken. She also testified the income benefit included bonuses as high as 20%, gains, and compounding, so the client would have a much higher value in the lifetime income benefit than in accumulation value after 10 years. Ms. Siflinger testified that once the policy is surrendered for any reason, the client forfeits all of that lifetime income gain or earnings and bonus. Ms. Siflinger noted that many of the policies were surrendered just weeks before the client's next annual anniversary, meaning the client missed out on a whole year of gains credited to their account if the market was up and paid more in surrender charges. Many clients were five or more years into the policy already and would have to start a new ten year or more surrender charge schedule, according to Ms. Siflinger's testimony.²⁴ Ms. Siflinger stated that she did not contact any of the listed clients and does not know their circumstances or needs.²⁵

a. Bobbie Lang

Staff provided documentation of Respondent selling five annuities to Bobbie Lang in 2005 through 2009 when he was 77 to 81 years old. Each of the five annuities would mature after 10 years and pay out over 5 more years.²⁶ Respondent sold the following annuities to Bobbie Lang:

²² Tr. at 137.

²³ Tr. at 131.

²⁴ Tr. at 133-138.

²⁵ Tr. at 142.

²⁶ Tr. at 28-30; Staff Ex. 14 at 143, 182, 220, 255, 287.

Date	Initial Premium Amount	Annuitant Age
10/25/2005 ²⁷	\$200,000.00	77
11/28/2005 ²⁸	\$111,035.46	77
1/12/2006 ²⁹	\$10,000.00	77
10/14/2008 ³⁰	\$149,613.92	80
5/4/2009 ³¹	\$100,797.07	81

Susan Worth, Bobbie Lang's daughter, testified that the expected lifetime for her father based on an actuary report was approximately 78.2 years. Ms. Worth testified that after her father received a postcard notifying them of a class action lawsuit on three of his annuities and offering 9% return, they decided to withdraw the funds, accepting the offer of 9% return. Ms. Worth testified that the class action lawsuit dealt with suitability: the sales of annuities to people whose lifestyle and wishes did not match. Ms. Worth believes the funds are more appropriate to spend on her father's care, not annuities.³²

Respondent testified that she chose the annuities for Bobbie Lang because they had a guarantee and addressed Bobbie Lang's primary objectives of bypassing probate and protecting his money. Respondent testified that her commission rate ranged from approximately 4 to 6 percent.³³

b. Alejandro Garcia

²⁷ Staff Ex. 14 at 0287.

²⁸ Staff Ex. 14 at 255.

²⁹ Staff Ex. 14 at 220.

³⁰ Staff Ex. 14 at 182.

³¹ Staff Ex. 14 at 143.

³² Tr. at 107-111.

³³ Tr. at 31-32.

Respondent assisted in transferring Alejandro Garcia's annuity from Allianz to American General on January 26, 2015 before the contract ended.³⁴ Respondent testified that American General's policy gave a 5% bonus, allowing Mr. Garcia to recoup any money that was lost. Respondent testified that Mr. Garcia was receiving social security and a pension from the post office, so he did not want to realize the income value of the Allianz policy.³⁵

c. Judy Martin

Respondent assisted in transferring Judy Martin's annuity from Allianz to American General on February 17, 2015 before the contract ended.³⁶ Based on the chart Ms. Siflinger provided, Ms. Martin's contract date was March 15, 2010; the cost basis was \$93,495.12; the accumulation value was \$105,281.00; the lifetime income value was \$127,361.50; the cash surrender value was \$100,410.90; and the policy was surrendered one week prior to anniversary.³⁷ Respondent testified that Ms. Martin received a 5% bonus on \$100,410, so she did not lose money. Respondent testified that Ms. Martin did not need income.³⁸

d. Leon Mack

Respondent assisted in transferring Leon Mack's annuity from Allianz to American General on March 13, 2015 before the contract ended.³⁹ Based on the chart Ms. Siflinger provided, Mr. Mack's contract date was May 19, 2010; the cost basis was \$162,406.30; the accumulation value was \$181,828.80; the lifetime income value was \$220,181.70; the cash surrender value was \$173,279.80; and the policy was surrendered 6 weeks prior to anniversary.⁴⁰

³⁴ Staff Ex. 14 at 542-543.

³⁵ Tr. at 165-166.

³⁶ Staff Ex. 14 at 556-557.

³⁷ Staff Ex. 19, 2906-2907.

³⁸ Tr. at 157-158.

³⁹ Staff Ex. 14 at 579-580.

⁴⁰ Staff Ex. 19, 2906-2907.

Respondent testified that Mr. Mack received a 5% bonus on his \$173,279, making him better off than where he started. Respondent testified that Mr. Mack did not need income.⁴¹

e. David Petty

Respondent assisted in transferring David Petty's annuity from Allianz to American General on May 7, 2015 before the contract ended.⁴² Based on the chart Ms. Siflinger provided, Mr. Petty's contract date was May 22, 2015; the cost basis was \$107,687.80; the accumulation value was \$103,396.00; the lifetime income value was \$126,477.50; the cash surrender value was \$98,563.73; and the policy was surrendered 9 weeks prior to anniversary.⁴³ Respondent testified that Mr. Petty had averaged 1.09% return and was not happy with that. According to Respondent's testimony, the client got a 5% bonus with American General's policy. Respondent testified that Mr. Petty did not need to take anything in income and was more focused on value. Respondent testified that Mr. Petty gained \$1,844 in cash bonus and did not lose any money from transferring the accounts.⁴⁴

f. Deborah Beggs

Respondent assisted in transferring Deborah Beggs's annuity from Allianz to National Western on May 20, 2015 before the contract ended.⁴⁵ Based on the chart Ms. Siflinger provided, Ms. Beggs's contract date was September 13, 2010; the cost basis was \$48,600.30; the accumulation value was \$56,121.86; the lifetime income value was \$62,288.94; the cash surrender value was \$53,098.80; and the policy was surrendered 11 weeks prior to anniversary.⁴⁶ According to Respondent's testimony, Ms. Beggs approached Respondent with a \$10,723.40 check from her employer who had sold his oral surgery practice. Respondent testified that

⁴¹ Tr. at 157-158

⁴² Staff Ex. 14 at 607-608.

⁴³ Staff Ex. 19, 2906-2907.

⁴⁴ Tr. at 153-154.

⁴⁵ Staff Ex. 14 at 682-683.

⁴⁶ Staff Ex. 19, 2906-2907.

Ms. Beggs wanted guarantees. Respondent testified that Allianz only paid 5% if the client took an income at age 60 to 69, and at the new company, Ms. Beggs would get 5.6%, which would allow her to have additional income when she was ready. Respondent testified that with Allianz, Ms. Beggs would get 5.5% at ages 70 to 79, but at the new company she would get 6%.⁴⁷

g. Lloyd Kinnison

Respondent assisted in transferring Lloyd Kinnison's annuity from Allianz to Forethought on December 18, 2015 before the contract ended.⁴⁸ Based on the chart Ms. Siflinger provided, Dr. Kinnison's contract date was March 16, 2011; the cost basis was \$248,092.20; the accumulation value was \$196,423.40; the lifetime income value was \$252,015.65; the cash surrender value was \$170,713.80; and the policy was surrendered 6 weeks prior to anniversary.⁴⁹ According to Respondent's testimony, the Forethought policy gave Dr. Kinnison a 25% bonus plus 5% for waiting another year. Respondent testified that Dr. Kinnison's wife had cancer and he wanted to start receiving income. Respondent testified that the Forethought policy allowed him to receive approximately \$50,000 to \$60,000 more in income and provide a life insurance policy. Respondent testified that the life insurance policy would pay his wife or family tax-free.⁵⁰

h. Nelia Telese Gray

Respondent assisted in transferring Nelia Telese Gray's annuity from Allianz to Forethought on August 7, 2015 before the contract ended.⁵¹ Based on the chart Ms. Siflinger provided, Ms. Gray's contract date was April 23, 2009; the cost basis was \$138,377.30; the accumulation value was \$205,188.80; and the cash surrender value was \$189,671.00.⁵²

⁴⁷ Tr. at 158-159.

⁴⁸ Staff Ex. 14 at 736-738.

⁴⁹ Staff Ex. 19, 2906-2907.

⁵⁰ Tr. at 163-164.

⁵¹ Staff Ex. 14 at 648-650.

⁵² Staff Ex. 19, 2906-2907.

Respondent testified that Ms. Gray lost her job and became self-employed. According to Respondent's testimony, Ms. Gray wanted to retire within ten years and wanted to ensure she would have a guaranteed amount of money. Respondent testified that the Allianz policy did not have a guarantee. Respondent testified that the Forethought policy gave a 20% bonus plus 15% and 15%, guaranteeing Ms. Gray an additional 50% of her money.⁵³

i. Brenda Hoyt-Stenovich

Respondent assisted in transferring Brenda Hoyt-Stenovich's annuity from Allianz to Forethought on January 27, 2016 before the contract ended.⁵⁴ Based on the chart Ms. Siflinger provided, Ms. Hoyt-Stenovich's contract date was December 28, 2010; the cost basis was \$29,695.16; the accumulation value was \$34,516.17; the lifetime income value was \$41,471.09; and the cash surrender value was \$32,971.86.⁵⁵ Respondent testified that Ms. Hoyt-Stenovich was interested in better income, but Allianz did not guarantee any income benefit because the client only made money if there was money made in the market.⁵⁶ Respondent testified that her annuity replacement was done at an annual review to utilize Forethought's 25% guarantee on an income rider, which was an IRA contract in which Forethought gave 25% plus 5% until the tenth year.⁵⁷ Respondent testified that Ms. Hoyt-Stenovich lost approximately \$1,300 to \$1,400 cash value with the annuity replacement.⁵⁸

j. Thomas Parker

Respondent assisted in the surrender of Thomas Parker's annuity on May 5, 2016 before the contract ended.⁵⁹ Based on the chart Ms. Siflinger provided, Mr. Parker's contract date was

⁵³ Tr. at 165.

⁵⁴ Staff Ex. 14 at 780-782.

⁵⁵ Staff Ex. 19, 2906-2907.

⁵⁶ Tr. at 162-163.

⁵⁷ Tr. at 69-70.

⁵⁸ Tr. at 70.

⁵⁹ Ex. 19 at 2906-2907.

July 6, 2010; the cost basis was \$15,586.42; the accumulation value was \$14,063.21; the lifetime income value was \$18,606.47; the cash surrender value was \$7,731.67; and the policy was surrendered 8 weeks prior to anniversary.⁶⁰ Respondent testified that after taking required minimum distributions from his contract for many years, Mr. Parker decided to just cash out the remainder. Respondent believes the funds went to Mr. Parker's checking account.⁶¹

2. Analysis

a. Insurance Code § 541.045(a)

No evidence was presented relating to any offer or provision of rebates or inducements to clients for their purchase or transfer of annuities. Therefore, the ALJ concludes there is insufficient evidence to establish a violation of Insurance Code § 541.056(a).

b. Insurance Code § 1114.101

The evidence establishes that Respondent sold her clients replacement annuities. While Insurance Code § 1114.101 places restrictions on replacing annuities, the replacement of annuities is generally permissible by the statute. Insurance Code § 1114.101(b) explains violations where there is a pattern of replacement annuities for which the application indicates that replacement is not the intention. No evidence has been provided showing Respondent submitted applications indicating replacement was not the intention. Therefore, the ALJ concludes there is insufficient evidence to establish a violation of Insurance Code § 1114.101.

c. Insurance Code § 1115.051

To recommend the purchase of an annuity that results in another insurance transaction, an agent must have reasonable basis to believe: the recommendation is suitable for the consumer's needs in light of the consumer's financial situation; the consumer has been reasonably informed

⁶⁰ Staff Ex. 19, 2906-2907.

⁶¹ Tr. at 163.

of the features of the annuity; the consumer would benefit from certain features of the annuity; and the particular annuity as a whole is suitable. In the case of an exchange or replacement of an annuity, the agent must have reasonable basis to believe the transaction as a whole is suitable, taking into consideration as applicable the surrender charge, new surrender period, loss of existing benefits, increased fees, product enhancements and improvements, and whether the consumer has had another annuity exchange or replacement.⁶²

Respondent provided testimony explaining the financial needs of several of her clients. Respondent's uncontroverted testimony establishes that many of her clients did not need income. Respondent sold Bobbie Lang annuity policies that would allow him to bypass probate as he desired. Ms. Siflinger expressed concern about the clients losing lifetime income value by replacing their annuities. Elderly clients may place less value on lifetime income benefit, as they may not live to reap the full benefits offered. Respondent's testimony explained the benefits of the new annuity policies as they compared to the Allianz policies from which the funds were being transferred and explained in each scenario why the client would benefit from the transfer. Although the clients who replaced annuities incurred surrender charges and were subject to a new surrender period, Respondent provided information on particular clients which described why the benefit from the product enhancements and improvements outweighed the costs of replacing the annuity for that client. Therefore, the ALJ concludes there is insufficient evidence to establish a violation of Insurance Code § 1115.051.

C. Violation of Insurance Code § 4005.053(c)(2) by Providing a Fee or Other Valuable Consideration for Referring Business

1. Argument and Evidence

Staff contends that Respondent violated Insurance Code § 4005.053(c)(2) by providing a fee or other valuable consideration for referring business. Under that section, an agent may not give or offer to give, directly or indirectly, to any person who does not hold a license as an agent a fee or other valuable consideration for referring a customer who seeks to purchase or obtain an

⁶² Tex. Ins. Code § 1115.051(a).

opinion or advice regarding an insurance product, based on that customer's purchase of insurance.

Staff presented as an exhibit the September 12, 2005 agreement (2005 Agreement) between Respondent and Bobbie Lang. The contract provides that Bobbie Lang agrees to refer potential new clients and business to Respondent. As a direct result, Respondent agrees to continue to provide the estate planning organizer and updates at no charge. The agreement states that if there is no new business, Respondent will charge for the estate planning organizer and updates based on 1% of the value of Bobbie Lang's estate.⁶³

2. Analysis

The preponderant evidence establishes that Respondent gave or offered to give Bobbie Lang, who does not hold a license as an agent, valuable consideration in the provision of the estate planning organizer and updates in exchange for Bobbie Lang's agreement to refer new potential clients to Respondent. Furthermore, the agreement stipulated that if no referrals generated new business for Respondent, the value of Respondent's services would be charged at 1% of Bobbie Lang's estate. Accordingly, the ALJ finds Respondent provided a fee or other valuable consideration for referring business in violation of Insurance Code § 4005.053(c)(2).

D. Violation of Insurance Code § 4005.054 by Accepting an Additional Fee or Other Consideration for Services as an Agent Without Making Proper Disclosures

1. Argument and Evidence

Staff contends that Respondent violated Insurance Code § 4005.054. Under that section, a person who holds a license under the Insurance Code and receives a commission or other consideration for services as an agent may not receive an additional fee for those services provided to the same client without making proper disclosures.

⁶³ Staff Ex. 12; Tr. at 33-34.

Respondent testified that she did not enforce the 2005 Agreement until 2013 when she updated the estate planning organizer, which involved updating the values of Bobbie Lang's accounts, leases for oil, and the marriage of his son or grandson. Based on her testimony, Respondent updated the same types of information to the estate planning organizer again in 2014. Respondent testified that she was meeting Bobbie Lang at least on a monthly basis, but only updated the estate planning organizer once a year. Based on Respondent's testimony, the estate planning organizer was unrelated to her insurance and annuities business. Respondent testified that from approximately 2012 to 2014, she received \$39,099.21 to help Bobbie Lang with the estate planning organizer.⁶⁴

Respondent testified she entered into a "flat-fee executor" agreement (FFE Agreement) to inventory Bobbie Lang's belongings and who would receive them after he passes.⁶⁵ The FFE Agreement provided that Respondent would receive a total of \$13,500 over three monthly installments from November 2013 through January 2014. According to her testimony, Respondent's services under the FFE Agreement included listing items in a safety deposit box, listing pictures, and shredding old contracts in a box Bobbie Lang provided, in exchange for the \$13,500 payment.⁶⁶ Respondent testified that she was not sure when these services were rendered. Respondent acknowledged that Bobbie Lang was still alive as of the time of the hearing.⁶⁷

2. Analysis

The record does not establish what services, if any, Respondent provided to Bobbie Lang as an agent, aside from the recommendation and sale of annuities. Respondent asserts without opposition that her estate planning organizer work is separate from her insurance and annuities business. The ALJ finds that Respondent's services inventorying items and decluttering

⁶⁴ Tr. at 35-38.

⁶⁵ Staff Ex. 13; Tr. at 54.

⁶⁶ Tr. at 56-57.

⁶⁷ Tr. at 58.

contracts for Bobbie Lang do not overlap with the services for which Respondent received a commission as an agent. Thus, the ALJ concludes there is insufficient evidence to establish Respondent violated Insurance Code § 4005.054 by accepting an additional fee or consideration for services as an agent to the same client for which she received a commission without making proper disclosures.

E. Violation of Insurance Code § 4005.101(b)(5) by Fraudulent or Dishonest Acts or Practices; Violation of Insurance Code § 4005.101(b)(1) by Willful Violation of Insurance Law

1. Argument and Evidence

Staff argues that Respondent violated Insurance Code § 4005.101(b)(5), which states the Department may discipline a license holder who has engaged in “fraudulent or dishonest acts or practices.” Texas law defines fraud as “an act, omission, or concealment in breach of a legal duty, trust, or confidence justly imposed, when the breach causes injury to another or the taking of an undue and unconscientious advantage.”⁶⁸

Staff provided documentation showing Respondent was Bobbie Lang’s durable power of attorney and alternate medical power of attorney effective January 22, 2014.⁶⁹ On that day, Bobbie Lang also appointed Respondent the executor of his estate in his Last Will and Testament (Will), to serve without compensation.⁷⁰ Respondent testified she believed he was mentally competent at that time.⁷¹ Respondent testified that she dropped Bobbie Lang off at the attorney’s office and was aware he intended to name her as executor, but she had agreed with Bobbie Lang on a flat-fee arrangement by which Respondent will collect \$13,500 to inventory his belongings and not charge anything after Bobbie Lang’s passing.⁷² According to Respondent’s testimony,

⁶⁸ *Flanary v. Mills*, 150 S.W.3d 785, 795 (Tex. App.—Austin 2004, pet. denied).

⁶⁹ Staff Ex. 10 at 89-96.

⁷⁰ Staff Ex. 10 at 97-101.

⁷¹ Tr. at 58.

⁷² Tr. at 54-56.

Bobbie Lang did not want his family to know his financial circumstances.⁷³ No evidence was presented showing Respondent contributed in drafting the Will or had the opportunity to read the Will. Respondent testified that she later realized Allianz had a policy disallowing agent fiduciary roles with clients.⁷⁴ Respondent acknowledged she had entered into an agent agreement with Allianz prohibiting her from entering into a fiduciary relationship with a client.⁷⁵

Staff called Joe Lang, son of Bobbie Lang, to provide testimony. Joe Lang lived on the same street as his father within 300 feet and checked on his father two to three times a week. Joe Lang testified that in November 2014, he went to his father's house upon request to help with property taxes. According to Joe Lang, there were entries on his father's check register that shouldn't have been there. He testified that when he asked his father about the checks, his father said they were for taxes. According to Joe Lang's testimony, his father sometimes could not think logically, which led to occasions such as his father asking for help with property taxes but also thinking they had already been paid. Based on Joe Lang's testimony, the checks were written in Respondent's handwriting with Bobbie Lang's signature. Joe Lang testified that upon discovering the checks, he confronted Respondent by holding up the check register and telling her, "There will be no more of this; this is the last time you're writing yourself a check written out of his account." Respondent said nothing in response.⁷⁶ The following checks to Respondent were found in Bobbie Lang's check register:⁷⁷

Check No.	Date	Amount	Memo
1523	12/3/2012	\$5,000.00	(none)
1534	1/16/2013	\$9,672.18	for 2013
1535	1/24/2013	\$1,692.19	(none)
1589	10/28/2013	\$10,281.37	(none)

⁷³ Tr. at 169; Staff Ex. 2 at 19.

⁷⁴ Tr. at 41-42.

⁷⁵ Tr. at 41-43.

⁷⁶ Tr. at 73-80.

⁷⁷ Ex. 14 at 793-800.

Check No.	Date	Amount	Memo
1596	11/8/2013	\$4,500.00	Executor Fee One of 3 Payments
1608	1/22/2014	\$9,000.00	2nd & 3rd pd in full Estate Installment
1613	2/14/2014	\$500.00	payment for 2 days work
1623	4/8/2014	\$5,290.50	½ of yearly serv. other half due at end of yr.
1664	10/23/2014	\$6,662.97	pd for Balance of 2014
	Total	\$52,599.21	

Susan Worth, Bobbie Lang's daughter, testified she noticed changes in her father based on their phone calls approximately every two weeks. Ms. Worth testified that her father repeated the same conversations during their phone calls, had stopped maintaining the house, and stopped taking care of his dental health.⁷⁸ Ms. Worth explained that her brother, Joe Lang, told her about the checks written to Respondent.⁷⁹ Ms. Worth testified that the checks were written in Respondent's handwriting with just the signature in her father's handwriting.⁸⁰ According to her testimony, when Ms. Worth asked her father what the checks were for, he said he didn't know. Ms. Worth testified that in approximately May 2014, the mold in her father's house cost about \$20,000 to remedy, but he said he did not have the money to fix it. Ms. Worth testified that when she contacted Respondent to inquire about funds, Respondent told Ms. Worth that her father had money and offered to have him pre-sign authorizations with the amount left blank. According to Ms. Worth's testimony, Respondent insisted Ms. Worth would need an authorization form to discuss finances, but Respondent ultimately only would communicate with Joe Lang, not Ms. Worth.⁸¹

Ms. Worth testified that she took her father to his established primary care physician, who provided a letter noting his decline in cognitive function, memory and mental capacities. In the letter dated March 16, 2015, his doctor opined that Bobbie Lang was not competent to make

⁷⁸ Tr. at 82-85.

⁷⁹ Tr. at 87.

⁸⁰ Tr. at 79-80.

⁸¹ Tr. at 87-90.

any financial and legal decisions now and as far back as two years ago.⁸² Ms. Worth testified that she believed the original Last Will and Testament was in Bobbie Lang's safety deposit box. According to Ms. Worth's testimony, she and her brother went to the bank and attempted to access the safety deposit box but were unable to do so without a death certificate. According to Ms. Worth's testimony, the bank told her the safety deposit box was empty so the safety deposit box was closed.⁸³ Ms. Worth testified that she and her brother looked for the estate planning organizer at their father's house but did not find one. Based on her testimony, Ms. Worth found in a shoe box an inventory of items in Respondent's handwriting. Ms. Worth testified that there were no pictures in the shoe box with the inventory list.⁸⁴

Respondent testified she entered into the FFE Agreement to inventory Bobbie Lang's belongings and to whom they would go after he passes.⁸⁵ The FFE Agreement provided that Respondent would receive a total of \$13,500 over three monthly installments from November 2013 through January 2014. Respondent testified that she listed items in a safety deposit box, listed pictures, and shredded old contracts to earn the \$13,500.⁸⁶

According to Respondent's testimony, Bobbie Lang wanted to continue to do business with Respondent as she was leaving Allianz, so they entered into the 2005 Agreement, which accounts for the remaining checks totaling approximately \$39,099.21.⁸⁷ The 2005 Agreement provided that if Bobbie Lang did not provide any referrals that generated new business for Respondent, Respondent would charge 1% of his estate for the estate planning organizer updates.⁸⁸ The value of the estate was not defined in the agreement.⁸⁹ Respondent testified that she did not update Bobbie Lang's estate planning organizer until 2013. Based on Respondent's

⁸² Ex. 9; Tr. at 94-95.

⁸³ Tr. at 91-93.

⁸⁴ Tr. at 99-101.

⁸⁵ Staff Ex. 13; Tr. at 54.

⁸⁶ Tr. at 56-57.

⁸⁷ Tr. at 40.

⁸⁸ Staff Ex. 12.

⁸⁹ Tr. at 35.

testimony, the updates included the values of accounts, leases for oil, and the marriage of a grandson.⁹⁰ Respondent testified that she had also helped Bobbie Lang by bringing him food and driving him to the attorney and the store.⁹¹ According to Respondent's testimony, Bobbie Lang kept the only copy of his estate planning organizer. Respondent testified that the only invoices or itemized bills for the work done to his estate planning organizer were the checks that written.⁹²

2. Analysis

The record establishes Respondent violated her agent agreement with Allianz which prohibits its agents from acting in a fiduciary role for their clients. By agreeing to be Bobbie Lang's power of attorney and executor, Respondent entered into a fiduciary relationship with him in violation of Allianz policy.⁹³ Nonetheless, the ALJ concludes that a violation of company policy alone does not rise to the level of fraudulent or dishonest acts or practices contemplated by Insurance Code § 4005.101(b)(5).

To the extent that Staff alleges Respondent engaged in fraudulent or dishonest acts or practices by accepting payment from Bobbie Lang for executor services under the FFE Agreement despite his Will stipulating no compensation to the executor, the evidence does not establish that Respondent was aware the Will prohibited her from receiving compensation as executor. Based on this transaction, the ALJ finds insufficient evidence to establish a violation of Insurance Code § 4005.101(b)(5).

Bobbie Lang's Check Nos. 1596 and 1608, totaling \$13,500, indicate that they were payments made for the FFE Agreement. When asked about the tasks involved in that agreement, Respondent refers to listing items in a safety deposit box, listing pictures, and shredding old

⁹⁰ Tr. at 36-38.

⁹¹ Tr. at 48, 88.

⁹² Tr. at 36-38.

⁹³ Tex. Estates Code §§ 751.101, 351.101.

contracts. However, Ms. Worth testified that no pictures were found at Bobbie Lang's house, and the safety deposit box was found empty. Furthermore, Respondent testified that she was not sure when the services were provided. In light of the conflicting information and lack of documentation of services, the ALJ concludes that Respondent's services did not warrant payment of \$13,500.

Respondent attributes the other checks in question totaling approximately \$39,099.21 to her work updating Bobbie Lang's estate planning organizer under the 2005 Agreement. While the 2005 Agreement provides Respondent the right to bill for her services updating the estate planning organizer, Respondent failed to keep any billing records, invoices, or a copy of her work. Respondent claims the checks were paid under the 2005 Agreement for estate planning organizer updates, despite Check No. 1613's handwritten memo stating the \$500 was for "2 days work." Respondent did not provide evidence of dates or number of hours for which the services were rendered. When asked about the tasks involved in updating the estate planning organizer, Respondent refers to updating account statements, oil leases, and a recent grandson's marriage as the primary tasks. Given the fact that Respondent did not keep any invoices, records, or copies of the estate planning organizer, the ALJ finds it improbable that Respondent's services with the estate planning organizer warranted payment of \$39,099.21.⁹⁴ Taking into consideration the detailed information Respondent kept regarding her clients' policies and financial circumstances, the ALJ finds it incongruous that Respondent showed a complete lack of documentation regarding her claimed services for Bobbie Lang.

Texas law defines fraud as "an act, omission, or concealment in breach of a legal duty, trust, or confidence justly imposed, when the breach causes injury to another or the taking of an undue and unconscientious advantage."⁹⁵ Respondent presented no credible evidence to warrant Bobbie Lang's payment to Respondent totaling \$13,500 to inventory belongings and \$39,099.21 for updates to the estate planning organizer. The preponderant evidence demonstrates that by writing herself checks from Bobbie Lang's checkbook and having him sign, Respondent

⁹⁴ Although Respondent mentioned she had driven Bobbie Lang and brought him food, there is no evidence of his agreement to pay for these services.

⁹⁵ *Flanary v. Mills*, 150 S.W.3d 785, 795 (Tex. App.—Austin 2004, pet. denied).

misappropriated his funds. The credible evidence establishes that Respondent took unconscientious advantage of her client and breached his trust, causing him financial injury. Therefore, the ALJ concludes Respondent engaged in fraudulent or dishonest acts or practices in violation of Insurance Code § 4005.101(b)(5) by misappropriating funds.

Furthermore, the ALJ also finds that Respondent's actions were willful, because Respondent's misappropriation of Bobbie Lang's funds was knowing and intentional, as opposed to accidental or negligent. The evidence shows that on each occasion, Respondent filled out the check and had Bobbie Lang sign it. As a result, the ALJ finds that Respondent willfully violated Insurance Code § 4005.101(b)(1) by willfully violating insurance laws of this state.

F. MISCELLANEOUS

1. Evidence

Staff presented documentation of the Internal Revenue Service (IRS) tax lien placed on Respondent's property in 2013 for \$40,241.00 which was later released in October 2015. Based on her testimony, Respondent notified the IRS she was an innocent spouse just then finding out her husband had not paid income tax. She testified the IRS released her portion of the lien after she refinanced the mortgage and paid her portion, which was approximately \$10,000.⁹⁶

Donny Hunt, a customer service representative at an inbound call center for AIG, testified that Respondent had called in for multiple policies.⁹⁷ Mr. Hunt provided a copy of his call notes from his communications with Respondent.⁹⁸ In a call note dated June 4, 2015, Mr. Hunt wrote in part, "Agent states that she is in desperate need of the commission on this and requests that we rush the issuance of this policy."⁹⁹

⁹⁶ Tr. at 19-22.

⁹⁷ Tr. at 145.

⁹⁸ Tr. at 146; Ex. 15 at 2149-2150.

⁹⁹ Ex. 15 at 2149.

On September 18, 2015, the Adult Protective Services program of the Texas Department of Family and Protective Services (DFPS) issued a letter to Respondent notifying her of the completion of its investigation into a report of abuse, neglect, or exploitation of Bobbie Lang. The letter from DFPS explained that a finding was made of Unable to Determine.¹⁰⁰ Respondent also testified that she had received notification about a case closing with the Texas Department of Insurance.¹⁰¹ Mr. Lewis Weldon Wright IV testified that a complaint can come from various sources, and each department within the Department of Insurance can open an investigation regarding a complaint. Mr. Wright testified that even if the Consumer Complaint Department closes their investigation, the Department of Insurance as a whole is still interested in the allegations.¹⁰²

2. Analysis

The ALJ does not find the IRS tax lien, Respondent's need for money, and the status of other investigations relevant to the alleged violations. Therefore, there is no further analysis of these matters.

G. CONCLUSION

Insurance Code § 4005.101 authorizes the Department to take disciplinary action against a license-holder for engaging in a fraudulent or dishonest act or practice,¹⁰³ or willfully violating an insurance law of this state.¹⁰⁴ Among the sanctions authorized is the revocation of a license issued by the Department. Based on Respondent's violations of Insurance Code §§ 4005.053(c)(2), 4005.101(b)(5), and 4005.101(b)(1), the ALJ recommends revocation of Respondent's Department-issued license. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

¹⁰⁰ Resp. Ex. 2.

¹⁰¹ Tr. at 169.

¹⁰² Tr. at 200-202.

¹⁰³ Tex. Ins. Code § 4005.101(b)(5).

¹⁰⁴ Tex. Ins. Code § 4005.101(b)(1).

IV. FINDINGS OF FACT

1. Respondent, Laura Ruth LaBarbera, holds a general lines agent license with a life, accident, and health qualification (License) issued by the Texas Department of Insurance (Department) on April 16, 1999.
2. In 2015, Respondent instructed each client in three contracts for annuity replacement to write in a waiver of "all conservation efforts."
3. Respondent recommended annuities and/or annuity replacements for Bobbie Lang, Alejandro Garcia, Judy Martin, Leon Mack, David Petty, Deborah Beggs, Lloyd Kinnison, Nelisa Telese Gray, Brenda Hoyt-Stenovich, and Thomas Parker according to their wishes and financial circumstances.
4. No evidence was presented relating to any offer or provision of rebates or inducements to clients for their purchase or transfer of annuities.
5. No evidence has been provided showing Respondent submitted applications indicating replacement was not the intention.
6. Although the clients who replaced annuities incurred surrender charges and were subject to a new surrender period, Respondent provided information on particular clients which described why the benefit from the product enhancements and improvements outweighed the costs of replacing the annuity for that client.
7. On September 12, 2005, Respondent entered into an agreement (2005 Agreement) with Bobbie Lang to refer potential new clients or new business in exchange for Respondent's provision of the estate planning organizer and its updates at no charge. The agreement further states that should there be no new business from referrals, Respondent would charge 1% of the value of Bobbie Lang's estate for the estate planning organizer and updates.
8. Bobbie Lang does not hold a license as an agent.
9. Respondent's services updating the estate planning organizer, inventorying items, and decluttering contracts for Bobbie Lang do not overlap with the services for which Respondent received a commission as an agent.
10. On March 16, 2015, Bobbie Lang's primary care physician provided a letter to Adult Protective Services stating that Bobbie Lang had been unable to make decisions regarding his financial and legal matters for as far back as two years ago, since approximately March 2013.

11. From November 2013 through January 2014, Respondent unjustifiably acquired from Bobbie Lang a total of approximately \$13,500 ostensibly to inventory his belongings under the "flat-fee executor" agreement.
12. Bobbie Lang is still alive as of the date of the hearing.
13. From 2012 through 2014, Respondent unjustifiably acquired from Bobbie Lang a total of approximately \$39,099.21 ostensibly to update Bobbie Lang's estate planning organizer under the 2005 Agreement.
14. From 2012 to 2014, Respondent misappropriated Bobbie Lang's funds by writing checks from his checkbook to herself for him to sign totaling approximately \$52,599.21, as follows:

Check No.	Date	Amount	Memo
1523	12/3/2012	\$5,000.00	(none)
1534	1/16/2013	\$9,672.18	for 2013
1535	1/24/2013	\$1,692.19	(none)
1589	10/28/2013	\$10,281.37	(none)
1596	11/8/2013	\$4,500.00	Executor Fee One of 3 Payments
1608	1/22/2014	\$9,000.00	2nd & 3rd pd in full Estate Installment
1613	2/14/2014	\$500.00	payment for 2 days work
1623	4/8/2014	\$5,290.50	½ of yearly serv. other half due at end of yr.
1664	10/23/2014	\$6,662.97	pd for Balance of 2014
	Total	\$52,599.21	

15. On April 4, 2018, Staff of the Department filed a Notice of Hearing and sent it to Respondent. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint. On April 24, 2018, Respondent filed a Written Response to Petitioner's Notice of Hearing.
16. The hearing on the merits was held on November 19, 2018, before Administrative Law Judge Linda Brite at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Staff attorneys Stephanie Andrews and Cassie Tigie represented Staff; Respondent represented herself at the hearing. The record closed the same day.

V. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Ins. Code §§ 82.051-.055, 4001.002, 4005.101-.102, 4051.101 and 4054.101.
2. SOAH has jurisdiction to conduct the administrative hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.
3. Proper and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052; Tex. Ins. Code § 4005.104(b).
4. The hearing was conducted pursuant to the Administrative Procedure Act. Texas Gov't Code ch. 2001.
5. Staff had the burden of proof to establish grounds for revocation of Respondent's license. 1 Tex. Admin; Tex. Ins. Code § 155.427.
6. The Department did not meet its burden of proof in establishing Respondent violated Insurance Code §§ 541.056(a), 1114.101, 4005.054, or Chapter 1114.
7. Respondent provided a fee or valuable consideration for referring business in violation of Insurance Code § 4005.053(c)(2).
8. Respondent engaged in fraudulent or dishonest acts or practices in violation of Insurance Code § 4005.101(b)(5).
9. Respondent willfully violated an insurance law of this state in violation of Insurance Code § 4005.101(b)(1).

10. Respondent violated the Insurance Code, which is grounds for taking disciplinary action against a license holder pursuant to Insurance Code §§ 82.051-.053 and 4005.101.
11. The Department is authorized to revoke Respondent's license. Tex. Ins. Code § 4005.101.
12. Respondent's License should be revoked.

SIGNED January 17, 2019.



**LINDA BRITE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

2019- 5898



State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

February 22, 2019

Kent Sullivan
Commissioner of Insurance
Texas Department of Insurance
333 Guadalupe, Tower 1, 13th Floor, Mail Code 113-2A
Austin, Texas 78714

VIA FACSIMILE: (512) 490-1045

**RE: Docket No. 454-18-2989.C; Texas Department of Insurance v.
Laura Ruth LaBarbera**

Dear Commissioner Sullivan:

On January 17, 2019, I issued the Proposal for Decision (PFD) in this case. The staff of the Texas Department of Insurance (Staff) and Laura Ruth LaBarbera (Respondent) each timely filed exceptions on February 1, 2019. Staff filed its response to Respondent's exceptions on February 14, 2019. Respondent filed a response to Staff's exceptions on February 21, 2019, after the deadline to do so had passed.¹

Respondent's exceptions letter reiterates arguments made during the hearing, including discovery objections, complaints of case delay, and the status of other investigations. Respondent's exceptions also introduce factual matters that were not presented at the hearing. Respondent's exceptions letter does not identify any specific errors or suggest any specific corrections to the PFD for my consideration. Therefore, I do not recommend any changes to the PFD in response to Respondent's exceptions.

¹ See 1 Tex. Admin Code § 155.507(b)(2).

SOAH Docket No. 454-18-2989.C
Exceptions Letter
Page 2

Section I of Staff's exceptions regarding the analysis of willful violation is addressed on page 23 of the PFD in the last paragraph of subsection E. Section II of Staff's exceptions addresses evidence of Respondent's motives. Respondent's acute need for money and desire to move her book of business were not material to the alleged violations, since those matters do not prove that she violated the Insurance Code. Therefore, I do not recommend any changes to the PFD in response to Sections I and II of Staff's exceptions.

Section III of Staff's exceptions addresses the suitability of the annuities sold to Mr. Bobbie Lang under Insurance Code § 1115.051. Staff characterizes the settlement agreement notice that Mr. Lang received by mail as an "admission" by the insurer of the unsuitable nature of the annuities. An offer of value to negotiate a claim may not be used to prove the validity of a claim.² Therefore, I did not consider the insurer's offer or Mr. Lang's acceptance arising out of the settlement agreement to be evidence that Respondent sold Mr. Lang unsuitable annuities. Thus, I do not recommend any changes to the PFD in response to this exception.

Section IV of Staff's exceptions point out clerical errors in the PFD that I agree should be corrected. Accordingly, I recommend that the PFD be changed as follows:

- The PFD's section 3, subsection B on page 5, should read "... Engaging in Unfair Methods of Competition and Unfair or Deceptive Acts or Practices..." The same correction should be made to the corresponding heading on the first page of the Table of Contents.
- The PFD's section 2, subsection A on page 13, should read "Insurance Code § 541.056(a)." The same correction should be made to the corresponding heading on the first page of the Table of Contents.

Sections V and VI of Staff's exceptions suggest changes to the Findings of Fact and Conclusions of Law, respectively. Staff's suggestions reinforce its arguments that were made at the hearing. The suggested additions to the Findings of Fact are either not supported by the evidence or not material to the Conclusions of Law that follow. After careful review, I do not recommend any changes to the Findings of Fact or Conclusions of Law.

² Tex. Rules of Evidence, Rule 408(a); *See* *Krenk v. S. Texas Elec. Co-op., Inc.*, 502 S.W.2d 605, 609 (Tex. Civ. App. 1973).

SOAH Docket No. 454-18-2989.C
Exceptions Letter
Page 3

With the changes to clerical errors addressed above on page 5, page 13, and the Table of Contents, the PFD is ready for your consideration.

Sincerely,



Linda Brite
Administrative Law Judge

LB/lc

cc: Micah Mireles, Chief Docket Clerk, Texas Department of Insurance, 333 Guadalupe, Tower, 13th Floor, Austin, Texas 78701 VIA FACSIMILE: (512) 490-1064

2019- 5898

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STYLE/CASE: LAURA RUTH LABARBERA
SOAH DOCKET NUMBER: 454-18-2989.C
REFERRING AGENCY CASE: 9330

STATE OFFICE OF ADMINISTRATIVE HEARINGS ADMINISTRATIVE LAW JUDGE
ALJ LINDA BRITE

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