

**BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA**

IN RE: GARY J. SPIRK 133 Carol Drive Washington Boro, PA 17582 Trading as LANCASTER ANNUITY SERVICES, COMPANY, INC. 2148 Embassy Drive Lancaster, PA 17603 Respondent	: ALLEGED VIOLATIONS: : : Sections 208, 209, 604, 607, and 639 of the : Insurance Department Act of 1921, Act of : May 17, 1921, P.L. 789, No. 285 (40 P.S. §§ : 46, 47, 234, 237, 252, 279). : : : : Docket No. SC03-07-031 : :
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SETTLEMENT AGREEMENT

THIS AGREEMENT is made this 27th day of January 2004 between the Insurance Department of the Commonwealth of Pennsylvania ("Department") and Gary J. Spirk, trading as Lancaster Annuity Services Company, Inc. ("Respondent").

BACKGROUND

WHEREAS, Respondent maintains a residential address at 133 Carol Drive, Washington Boro, PA 17582 and, prior to this Agreement, was licensed by the Pennsylvania Insurance Department ("Department") as a resident insurance agent under certificate of qualification number 60592.

WHEREAS, Respondent sold charitable gift annuities for the Mid-America Foundation ("MAF") to residents of this Commonwealth. None of these charitable gift annuities are "qualified charitable gift annuities" as defined in the Commonwealth's Charitable Gift Annuity Exemption Act, 10 P.S. §§ 361-364.

WHEREAS, on December 20, 2001, the United States District Court for the District of Arizona (Phoenix Division) issued an Order in response to a Petition filed by the United States Securities and Exchange Commission appointing a receiver for MAF and freezing all assets held by MAF and its principle officers. MAF is not, and has never been, licensed as an insurance carrier or any other insurance entity authorized to do business in the Commonwealth.

WHEREAS, as a result of the misconduct described above, the Department filed an Order to Show Cause with the Administrative Hearings Office on July 16, 2004 seeking the revocation of Respondent's license(s), the payment of restitution to the Ganses and the imposition of a civil penalty.

WHEREAS, the disputes between the Department and Respondent have resulted in litigation in the Pennsylvania Insurance Department's Administrative Hearings Office. In an effort to settle the disputes arising out of Respondent's selling charitable gift annuities for MAF, an unlicensed entity, the parties hereto have agreed to settle, inter alia, all claims asserted in the litigation previously described and all claims which the Department, on the one hand, and Respondent, on the other hand, have against each

other, arising out of, or in any way related to, Respondent's selling charitable gift annuities for MAF, an unlicensed entity, all subject to, and on the terms and conditions hereinafter set forth.

AGREEMENTS

NOW THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Respondent shall cease and desist from the activities described in the Order to Show Cause filed by the Department with the Administrative Hearings Office on July 16, 2004.
2. Respondent shall surrender any and all licenses issued to him by the Department and shall not apply for licensure with the Department in any capacity for a period of four years from the date on page one of this Settlement Agreement.
3. Respondent shall make restitution to any and all persons to whom he sold a MAF charitable gift annuity; such restitution shall be in the amount of any premium paid to MAF for such charitable gift annuities less any amount received by the annuitant or owner of the annuities as a payment, dividend, refund, distribution as a result of the liquidation of MAF, or other thing of value received from MAF or its receiver as a result of the charitable gift annuity.

4. In addition to the 4 years referenced in paragraph 2 above, in no event may Respondent be licensed by the Department in any capacity until he provides adequate proof to the Department's satisfaction that all restitution has been paid pursuant to paragraph 3 above.

5. After 4 years from the date of this Consent Order and the payment of all restitution Respondent may apply for licensure by the Department, and the Department agrees that it will not consider any of the misconduct or violations addressed in the Order to Show Cause filed by the Department with the Administrative Hearings Office on July 16, 2004 in rendering a decision on Respondent's license application. The Department may, however, consider any misconduct or violations occurring after the date of this Settlement Agreement or not otherwise addressed in the Order to Show Cause filed by the Department with the Administrative Hearings Office on July 16, 2004.

6. If Respondent should ever become licensed in the future, his certificates and licenses may be immediately suspended by the Department following its investigation and determination that: (i) any terms of this Order have not been complied with; or (ii) any complaint against Respondent is accurate and a statute or regulation has been violated. The Department's

right to act under this paragraph is limited to a period of five (5) years from the date of issuance of such certificates and licenses.

7. Respondent specifically waives his right to prior notice of said suspension, but will be entitled to a hearing upon written request received by the Department no later than thirty (30) days after the date the Department mailed to Respondent by certified mail, return receipt requested, notification of said suspension, which hearing shall be scheduled for a date within sixty days of the Department's receipt of Respondent's written request.
8. At the hearing referred to in paragraph 7 of this Settlement Agreement, Respondent shall have the burden of demonstrating that he is worthy of an insurance certificate and license.
9. In the event Respondent's certificates and licenses are suspended pursuant to paragraph 6 above, and Respondent either fails to request a hearing within thirty days or at the hearing fails to demonstrate that he is worthy of a certificate and license, Respondent's suspended certificates and licenses shall be revoked.
10. This agreement is made solely for the purpose of resolving the differences between the parties addressed herein, and nothing in this Agreement shall

be construed as or constitutes an admission of liability by any party hereto or an admission of the validity or enforceability of any claims or demands released hereby.

11. For and in consideration of Respondent's release and discharge of the Pennsylvania Insurance Department from any action, claim or demand arising out of Respondent's selling charitable gift annuities for MAF, an unlicensed entity, the Pennsylvania Insurance Department hereby releases and discharges Respondent from any claims in any court which the Pennsylvania Insurance Department has or may have as a result of the allegations made in the Order to Show Cause filed by the Department with the Administrative Hearings Office on July 16, 2004. It is agreed and understood that the aforementioned release and discharge include all costs and attorneys' fees arising out of Respondent's selling charitable gift annuities for MAF, an unlicensed entity.

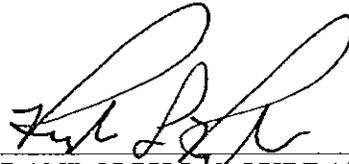
12. For and in consideration of the Pennsylvania Insurance Department's release and discharge of Respondent from any action, claim or demand arising out of Respondent's selling charitable gift annuities for MAF, an unlicensed entity, Respondent hereby releases and discharges the Pennsylvania Insurance Department from any claims in any court which Respondent has or may have as a result of the allegations made in the

Order to Show Cause filed by the Department with the Administrative Hearings Office on July 16, 2004.

13. Captions used herein are for convenience only, and are not a part hereof, and shall not be used in construing this Agreement.
14. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns, and, in addition hereto, shall be binding upon any receiver, liquidator, rehabilitator, conservator, supervisor and any other person or entity governmental or non-governmental, exercising or seeking to exercise the powers of the persons named above.
15. This Agreement shall be governed by, and construed in accordance with the laws of the Commonwealth of Pennsylvania.
16. This Agreement contains the entire agreement of the parties respecting the subject matter herein and supersedes all previous communications, representations, or agreements, either verbal or written, among the parties.

Executed this day and year first above written.


GARY J. SPIRK



RANDOLPH L. ROHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania