

MAY 12 2003

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE
BY Kath

In the Matter of:)
)
ROGER GEORGE LANCETTE and)
NATIONAL ESTATE SERVICE &)
PLANNING, L.L.C.,)
)
Respondents.)

Docket No. 03A-007-INS

ORDER

On April 25, 2003, the Office of Administrative Hearings, through Administrative Law Judge Allen Reed, issued an Administrative Law Judge Decision ("Recommended Decision"), a copy of which is attached and incorporated by this reference. The Director of the Department of Insurance has reviewed the Recommended Decision and enters the following Order:

1. The recommended Findings of Fact and Conclusions of Law are adopted.
2. Respondents' insurance licenses shall be revoked, effective the date of this Order.

NOTIFICATION OF RIGHTS

Pursuant to A.R.S. § 41-1092.09, the aggrieved party may request a rehearing with respect to this order by filing a written motion with the Director of the Department of Insurance within 30 days of the date of this Order, setting forth the basis for relief under A.A.C. R20-6-114(B). Pursuant to A.R.S. § 41-1092.09, it is not necessary to request a rehearing before filing an appeal to Superior Court.

The final decision of the Director may be appealed to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal must notify the Office

1 of Administrative Hearings of the appeal within ten days after filing the complaint commencing the
2 appeal, pursuant to A.R.S. § 12-904(B).

3 DATED this 9th of May, 2003

4
5 

6 Charles R. Cohen
7 Director of Insurance

8 A copy of the foregoing mailed
9 this 2th day of May, 2003

10 Sara M. Begley, Deputy Director
11 Gerrie L. Marks, Executive Assistant for Regulatory Affairs
12 Mary Butterfield, Assistant Director
13 Catherine O'Neil, Consumer Legal Affairs Officer
14 Rebecca Sanchez, Producer Licensing Administrator
15 Arnold Sniegowski, Investigations Supervisor
16 Bob Hill, Investigator
17 Arizona Department of Insurance
18 2910 N. 44th Street, 2nd Floor
19 Phoenix, AZ 85018

20 Office of Administrative Hearings
21 1400 W. Washington, Suite 101
22 Phoenix, AZ 85007

23 Jennifer Boucek
24 Assistant Attorney General
1275 W. Washington
Phoenix, AZ 85007

Roger George Lancette
National Estate Service & Planning, L.L. C.
6857 E. Montreal Place
Scottsdale, AZ 85254

National Estate Service & Planning, L.L.C.
6857 E. Montreal Place
Scottsdale, AZ 85254

1 American National Insurance Company
One Moody Plaza
2 Galveston, TX 77550-7999

3 American Pioneer Life Insurance Company
P.O. Box 3509
4 Orlando, FL 32802

5 Indianapolis Life Insurance Company
P.O. Box 1230
6 Indianapolis, IN 46206

7 Southland Life Insurance Company
P.O. Box 105006
8 Atlanta, GA 30348-5006

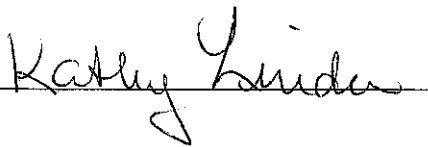
9 Legacy Marketing Group, Inc.
2090 Marina Avenue
10 Petaluma, CA 94954-6714

11 American Independent Life Insurance Company
P.O. Box 190160
12 Atlanta, GA 31119-0160

13 IL Annuity and Insurance Company
P.O. Box 7149
14 Indianapolis, IN 46207-7149

15 Monumental Life Insurance Company
Two East Chase Street
16 Baltimore, MD 21202

17 Transamerica Life and Annuity Company
1150 S. Olive Street
18 Los Angeles, CA 90015-0101

19 
20

21

22

23

24

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In The Matter Of:

No. 03A-007-INS

4 Roger George Lancette and National
5 Estate
6 Service & Planning, L.L.C.

**ADMINISTRATIVE LAW JUDGE
DECISION**

7 Respondents.
8
9

10
11 **HEARING:** April 25, 2003

12 **APPEARANCES:** Jennifer Boucek, Assistant Attorney General, on behalf of the
13 Department of Insurance.

14 No one appeared for the Respondents who voluntarily absented themselves
15 from the hearing

16 **ADMINISTRATIVE LAW JUDGE:** Allen Reed
17

18 **Preliminary Matters**

19 For the purpose of this decision and where applicable, reference to the
20 Respondent, George Lancette, includes National Estate Service and Planning LLC.

21 The hearing of this matter was initially scheduled to commence on March 4,
22 2003. The hearing was continued to April 25, 2003, on the Respondent's motion to
23 continue.
24

25 On April 24, 2003, the Respondent's counsel sent a facsimile to the office of
26 Administrative Hearings stating the Respondent would not be appearing at the hearing,
27 and that the Respondent would permit the Department of Insurance (Department) to
28 revoke his license.

29 The matter came on for hearing at the scheduled time on April 25, 2003.
30 Counsel for the Department was present. Telephone contact was made on the record
with Respondent's counsel in order to clarify the Respondent's position. According to

Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007
(602) 542-9826

1 the Respondent's counsel, the Respondent is not admitting the violations alleged in the
2 Notice of Hearing but merely not contesting those allegations. In light of this, the
3 Department still has the burden of proof by a preponderance of the evidence under
4 *Culpepper v. State*, 187 Ariz. 431, (App. 1996). The technical rules of evidence do not
5 apply to administrative hearings under A.R.S. §41-1092.07(F). The evidence must be
6 relevant, probative and substantial.

7 Since the Respondent is not contesting the allegations and offering no evidence
8 to rebut the allegations, the Department need only offer competent evidence which
9 presents sufficient facts pertaining to the violations which are alleged. Based on the
10 evidence presented, the following findings are made.

11 **Findings of Fact**

- 12 1. The Respondent, Roger Lancette (Lancette), is licensed by the Department to
13 transact insurance as a resident life and accident /health producer, license no.
14 729701.
- 15 2. National Estate Service and Planning LLC (NESP), is licensed by the
16 Department as a resident agency to transact life and accident/health insurance,
17 license no. 32745.
- 18 3. Lancette and Wallace Butterworth (Butterworth) are listed as the principals for
19 NESP.
- 20 4. On October 9, 2002, Lancette entered a Consent Order (Order), Docket No. S-
21 03444A-01-0000 with the Arizona Corporation Commission (Commission). The
22 Order consisted of an Order to Cease and Desist and Order for Administrative
23 penalties.
- 24 5. In summary, the substance of the Order is:
 - 25 a. That Lancette and others engaged in the sale of certain "alternative
26 investments" (Hotel Connect and World Cash).
 - 27 b. The Respondent would earn commissions up to 20% on sales of these
28 alternative investments.

- 1 c. The Respondent encouraged insurance clients to sell their annuities to
2 invest in the alternative investments. Some investors sustained penalties
3 and termination charges when terminating their annuity.
- 4 d. The Respondent sold Hotel Connect investments in \$10,000.00
5 increments. The investment was touted as having high returns (between
6 14% and up to 20%), minimal risk, good collateralization and liquidity.
- 7 e. The Respondent sold other "business opportunities" consisting of
8 equipment and service agreements. Investors were to receive a share of
9 the profits. The Respondent sold World Cash ticket machines (World
10 Cash -CTM), from January, 1999 to January, 2000. World Cash stopped
11 paying investors monthly revenues in or before June, 2000. The
12 Respondent also sold Mobile Cash wireless terminal machines (Mobile
13 Cash-WTM) with service agreements from January 2000 to June 2000.
14 Investors received payments approximately 90 days after the investment.
15 No machines were ever placed into operation (payments were not being
16 made from the operation of the machines or service agreements). The
17 payments stopped in approximately March, 2001.
- 18 f. The Respondent made untrue statements of material fact or omitted to
19 state material facts, failed to disclose risks, failed to disclose financial
20 background information of issuers and principals, failed to disclose inter
21 company transfer of funds, misrepresented delivery dates of equipment,
22 misrepresented the source of monthly distributions, and failed to disclose
23 other relevant and material information regarding the alternative
24 investments.

- 25 6. The Order also provided that the Respondent admitted to violating A.R.S. §44-
26 1841 by offering or selling securities that were neither registered nor exempt
27 from registration, A.R.S. §44-1842, offering or selling securities while not
28 registered as a dealer, salesman or exempt from registration, A.R.S. §44-1991,
29 making untrue statements or misleading omissions of material fact.
- 30 7. The Respondent admitted during oral testimony before the Commission on
August 17, 2000, that he would reimburse some investors who incurred a penalty

1 for cashing in their annuity, by using part of the commission from the sale of the
2 alternative investment to pay the investors for part of the penalty (also noted for
3 this decision is Exhibit 26, the Wallace Butterworth letter).

- 4 8. Under the Commission Order, the Respondent agreed to make restitution (jointly
5 and severally) to Hotel Connect investors in the amount of \$610,000.00 plus
6 interest at 10% per annum; to CTM investors in the amount of \$172,000.00 plus
7 interest at 10% per annum; and WTM investors in the amount of \$550,000.00
8 plus interest at 10% per annum. In addition the Respondent was also assessed
9 a civil penalty of \$25,000.00.

10 **Conclusions of Law**

11 The Notice of Hearing alleges violations of A.R.S. §20-295(A)(8), using
12 fraudulent, coercive or dishonest practices, or demonstrating incompetence,
13 untrustworthiness or financial irresponsibility in the conduct of business; A.R.S. §20-
14 442, unfair or deceptive act or practice in the business of insurance; A.R.S. §20-443(5),
15 misrepresentation to any policyholder for the purpose of inducing or tending to induce
16 the policyholder to lapse, forfeit, surrender, retain or covert any insurance policy; A.R.S.
17 §20-452 (sub (4) was identified by counsel for the Department), inducement by
18 providing prizes, goods, wares or tangible property.

- 19 1. The evidence clearly establishes violations of A.R.S. §20-295(A)(8). The
20 alternative investments were shown to be speculative, high risk, unsound, poorly
21 collateralized and to offer no financial security to the investor. The Department
22 moved for conclusions of incompetence, financial irresponsibility and
23 untrustworthiness for this violation. Although the argument could be made that
24 the evidence supports a conclusion of fraudulent and dishonest practices, the
25 facts also support the conclusion as to incompetence, financial irresponsibility
26 and untrustworthiness. The reasoning is simple. Investors were induced to give
27 up reasonably secure annuities and invest in speculative, insecure, non
28 collateralized unregistered securities, and to incur penalties for cashing in the
29 annuity. It does not require legal hairsplitting to conclude that if the
30 Respondent's activity was not fraudulent, it was incompetent and financially
irresponsible. The Respondent's transactions were also untrustworthy because

1 they could not be trusted or relied upon to produce the results which were
2 represented. The amount of restitution which was ordered clearly shows
3 investors lost significant amounts and possibly all of their investment.

- 4 2. A.R.S. §20-443(5) was also violated. The misrepresentations-inducements are
5 evident in the admissions made in the Commission Order. Investors were
6 induced to cash in their annuities based on false promises of financial security,
7 and receipt of high income. The misrepresentations were multiple. The
8 Butterworth letter (Exhibit 26) of February 2, 2000 is on joint venture letterhead
9 with NESP. It promises 13% annual tax free income for investment in Mobile
10 Cash. It offers the inducement of a rebate of any penalties for cashing in the
11 annuities.
- 12 3. A.R.S. §§20-442 prohibits unfair or deceptive acts or practices in the business of
13 insurance. The facts as presented and conclusions already made show that the
14 Respondent's acts and practices in the sale of the various securities were clearly
15 unfair and deceptive. They were directed toward having persons cash in their
16 insurance products (annuities) and are therefore related to the insurance
17 business. This being the case, the statute has been violated.
- 18 4. The additional alleged violation of A.R.S. §20-452(4) does not need to be
19 addressed. Suffice it to say that the inducements listed in that statute refer to
20 tangible property which generally has a separate meaning from the inducements
21 (rebates or false promises) which are involved in this case.
- 22 5. There is no evidence which would constitute mitigation in this case.

23 **Recommended Order**

24 In view of the foregoing it is recommended that on the effective date of the Order
25 entered in this matter, the resident life and accident /health producer license no.
26 729701 of Roger Lancette, and the resident agency life and accident/health
27 insurance license no. 32745 of National Estate Service & Planning, LLC, be
28 revoked.
29
30

1 Done this day, April 25, 2003

2
3 

4 Allen Reed
5 Administrative Law Judge

6
7 Original transmitted by mail this
8 25th day of April, 2003, to:

9
10 Charles R. Cohen, Director
11 Department of Insurance
12 ATTN: Kathy Linder
13 2910 North 44th Street, Ste. 210
14 Phoenix, AZ 85018

15 By Nancie Schenk