

STATE OF OHIO  
DEPARTMENT OF INSURANCE  
50 West Town Street  
Third Floor, Suite 300  
Columbus, Ohio 43215

IN RE:  
SUITABILITY OF BRIAN S. WILLMS  
NPN # 182951 TO BE LICENSED AS  
AN INSURANCE AGENT IN THE  
STATE OF OHIO

MARY TAYLOR  
LT. GOVERNOR/DIRECTOR

THOMAS E. BERRIDGE  
HEARING OFFICER

HEARING NO. LGL-0003060-H

**ORDER**

Pursuant to a review and consideration of the Report and Recommendation issued on the 26<sup>th</sup> day of January, by Hearing Officer Thomas E. Berridge and the transcripts of testimony and exhibits, and the objections filed, I, Mary Taylor, Superintendent of Insurance (“Superintendent”), hereby make the following findings:

1. Brian S. Willms (“Respondent”) is currently licensed as an insurance agent in the State of Ohio.
2. This matter comes before the Ohio Department of Insurance (“Department”) for a determination of whether Respondent is suitable to be licensed as an insurance agent in the State of Ohio. The Department, on behalf of the Superintendent, has conducted an investigation of the activities of Respondent, and as a result of such investigation alleges that Respondent has committed violations of the laws and regulations of this State, and that the Respondent is not suitable to be licensed as an insurance agent.

In his Report and Recommendation the Hearing Officer, in his FINDINGS OF FACT stated:

3. On July 28, 2014, the Department issued a Notice of Opportunity for Hearing and cover letter to Respondent advising Respondent that the Superintendent intended to suspend, revoke, or refuse to renew the Respondent's license and/or take any of the action or actions authorized pursuant to Revised Code section 3905.14(D) including civil penalties and/or administrative costs. The grounds for such action are alleged below:

COUNT ONE

Between approximately 2011 through 2013, Willms misrepresented life insurance policies as being investments to several insureds. Furthermore, Willms advised his clients that whole life policies would pay dividends and would make policies "self-supporting" after a few years. Pursuant to Section 3905.14(B)(5) the Superintendent may suspend, revoke, or refuse to renew the license of an agent for intentionally misrepresenting the terms, benefits, value, cost or effective dates of any actual or proposed insurance contract or application for insurance.

COUNT TWO

On or about August 2013, Willms was charged with sales to and use by underage persons: Securing public accommodations. Willms failed to report the charge to the Department within the required thirty day time period. Section 3905.22(B) provides that an insurance agent shall provide notice to the superintendent of insurance of any criminal prosecution of the agent by any jurisdiction, other than misdemeanor traffic, within thirty days after the agent's initial appearance before a judge or magistrate. Section 3905.14(B)(2) provides that the Superintendent may impose a civil penalty in an amount not exceeding twenty-five thousand dollars; assess administrative costs; order corrective action; or accept a surrender for cause offered by licensee.

(State's Exhibit A)

4. Respondent requested a Hearing and after numerous requests for continuances by both sides, received a Notice and Order to Continue Formal Hearing dated September 23<sup>rd</sup>, 2015 setting the Hearing for December 10, 2015 at 9:00 a.m. Eastern Standard Time at the Ohio Department of Insurance, 50 West Town Street, Third Floor—Suite 300, Columbus, Ohio. (Hearing Officer Exhibits 2 and 3-14)
5. The Hearing was held as scheduled on December 10, 2015. (transcript 1:10-399:21).
6. The Respondent is an advocate of the whole life sales strategy known as Life Economic Acceleration Process (commonly referred to as "LEAP"). The first step in the LEAP process is to determine the "appropriate" amount of whole life insurance the customer needs so they are protected to full economic value of their life. (transcript 279:6-21). LEAP is not accepted as a mainstream life insurance concept in the industry.

7. LEAP opposes maintaining or growing equity in real estate, opposes 529 Plan investments, rejects the value of compound interest, recommends stopping of payments into 401(k), and over time cashing out (“paying down”) all brokerage accounts and other investments. (transcript 281:4-8; 287:17 - 290:3; 294:16-25; 350:12 – 351:2)
8. Respondent testified that LEAP requires a number of assumptions and calculations and financial analysis. (transcript 284:16 - 292:22; 295:6 – 296:6; Respondent’s Exhibit 31) Respondent testified “whatever we do has to increase wealth, reduce risk, create no additional out-of-pocket outlay for the client. It has to protect the client better, and if we can’t prove it using math and science, we don’t do it, period.” (transcript 295:8- 12)
9. It was represented to the Boyce’s by Respondent, that the whole life policy would have immediate “value” if they would liquidate their other investments, mortgage their farm, and use the income and cash on hand of Crispin Auto Wrecking (and then the proceeds of its sale) and invest the same into the LEAP proposed whole life policies for premiums and into Paid Up Additions. Respondent said the LEAP proposal and the whole life policies would then be self-supporting – no cash out of the Boyce’s’ pockets. If it pays for itself as the Respondent repeatedly represented, the policy would be of value (Respondent’s Exhibit 2, page 2; transcript 357:8 – 360:14; 373:8 - 15)
10. Respondent in his LEAP proposal intended to ultimately move all of each client’s investments into the whole life policies (transcript 361:20 - 362:5)
11. The LEAP method of sales and its financial manipulation of client assets is designed to induce the prospective client to purchase large whole life insurance policies with large commissions on the premise that the policies will pay for themselves if the LEAP process is followed. (transcript 295:8-10)
12. Respondent knowingly and intentionally advised his prospective customers and then existing clients that if they followed his LEAP “strategies” in the arranging of their finances, assets, and investments, then the LEAP whole life policy purchasing process would pay for itself and the policy would become self-supporting.
13. Respondent has lead his clients to believe that the use of the LEAP system and its resulting whole life insurance policy is an investment.
14. Kuhr lost approximately \$100,000 by following Respondents recommendation to take out as much equity as he could in the form of a Home Equity Line of Credit mortgage loan. After three years, he was forced by inadequate cash flow to stop making whole life premium payments and withdraw the nominal \$2,820.00 cash value of the policy, he still owed the Home Equity Loan. (States Exhibits B, B-1, B-2, B-3, and C)
15. Boyce’ lost approximately \$700,000 by following Respondents recommendation to take out a \$1 Million dollar mortgage on their farm. After 2.5 years, they were forced by

inadequate cash flow to stop making whole life premium payments and withdraw the approximate \$400,000 cash value of the policy which they immediately applied to the mortgage to bring it down to a remaining outstanding loan balance of \$700,000. (transcript 129:18 – 130:8)

16. Respondent states that the Boyces losses occurred because they did not stick to his LEAP plan. (356:4 – 362:5) Respondent had no comment regarding Kuhr or the Stewart's on the reasons they decided to stop the LEAP strategies.
17. Respondent expressed no concern over the financial losses to his clients the Boyce's or Kuhr.
18. Respondent reported to the Superintendent his City of Dublin Mayor's Court citation on the misdemeanor charge of "sale to or use by underage persons; securing public accommodations" with his renewal Ohio Resident Insurance Agent License renewal on January 30, 2014. (State's Exhibit Q).
19. Respondent's first appearance (either in person or by counsel) before a judge or a magistrate on the misdemeanor charge of "sale to or use by underage persons; securing public accommodations" was in June of 2014.

In his Report and Recommendation the Hearing Officer, in his CONCLUSIONS OF LAW stated:

As to Count One

1. The State has proven by a preponderance of reliable, probative, and substantial evidence that Respondent has been guilty of violating Revised Code Section 3905.14(B)(5) by intentionally misrepresenting the terms, benefits, value, cost, of any actual or proposed insurance contract by:
  - a) Respondent knowingly used terms and complex LEAP analysis and recommendations for the purpose of selling whole life insurance policies that reasonably led buyers to assume the LEAP/whole life insurance process was an investment that replaced, or would replace, their previous investments and not just a policy of whole life insurance.
  - b) Respondent knowingly misrepresented the value of the whole life insurance policies being sold to the Boyce's, Kuhr, and Stewarts by stating, to each client, that it would pay for itself, would not increase any out-of-pocket, and would actually increase the client's wealth and make cash available for other items.

Therefore Count One stands and is affirmed.

As to Count Two

1. Section 3905.22 (B) provides “An agent shall provide notice to the superintendent in a criminal prosecution of the agent by any jurisdiction, other than misdemeanor traffic, within 30 days after the agent’s initial appearance before a judge or magistrate.

- a) The State has failed to prove by a preponderance of reliable, probative, and substantial evidence that Respondent did not notify the Superintendent of Respondent’s appearance before a magistrate in a criminal prosecution within the statutorily required 30 days after Respondent’s first appearance before a judge in a criminal prosecution.

Therefore Count Two cannot stand and is dismissed.

The Hearing Officer recommends that Respondent's Ohio insurance agent license be revoked and that Respondent be assessed administrative costs of three thousand dollars (\$3,000.00) to be paid within 120 days of billing.

I, the Director of Insurance, have considered the factors enumerated in Revised Code Section 3905.14 which may considered in matters such as this. I have also considered all of the evidence including the testimony as shown in the transcript of the Hearing as well as all the Exhibits offered at the Hearing, and the Objections filed to the Hearing Officer’s Report and Recommendation. I concur with the Hearing Officer’s recommendation.

The recommendation of the Hearing Officer is hereby accepted, confirmed, and approved. It is **THEREFORE ORDERED** that the insurance agent license of Brian S. Willms is hereby revoked. Willms is further ordered to pay administrative costs in the amount of three thousand dollars (\$3,000.00) within 120 days of billing by the Departments Fiscal Division. This order is effective immediately.

Any Party desiring to appeal shall file a Notice of Appeal with the Department of Insurance, to the attention of Elizabeth Chase, Hearing Administrator, setting forth the order appealed from and stating that the agency’s order is not supported by reliable, probative and substantial evidence and is not in accordance with law. The notice of appeal may, but need not, set forth the specific grounds of the party’s appeal beyond the statement that the agency’s order is not supported by reliable, probative and substantial evidence and is not in accordance with law. The notice of appeal shall also be filed by the appellant with the appropriate court of common pleas. In filing a notice of appeal with the agency or court, the notice that is filed may be either the original notice or a copy of the original notice. Such notices of appeal shall be filed within fifteen (15) days after the mailing of the notice of the Agency’s Order as provided in section 119.12 of the Ohio Revised Code.

An order issued pursuant to an adjudication denying an applicant admission to an examination, or denying the issuance of renewal of a license or registration of a licensee, or revoking or suspending a

license, may be appealed to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident. A party who is not a resident or, and has no place of business in Ohio may appeal to the Court of Common Pleas of Franklin County.

Signed this 28 day of April, 2016, at Columbus, Ohio.

  
Mary Taylor  
Lt. Governor/Director

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Order was sent this 29 day of April, 2016, by certified mail, return receipt requested, to Respondent:


Christopher Pettit, Esq  
Lane Alton Horst LLC  
Two Miranova Place, Suite 500  
Columbus, OH 43215

Brian S. Willms  
9040 Moors Place, North  
Dublin, OH 43017

and by regular U.S. Mail to:

Attorney General of Ohio

By: Scott Myers, Assistant Attorney General  
30 East Broad Street, 26th Floor  
Columbus, OH 43215  
On behalf of the Ohio Department of Insurance

  
Elizabeth Chase  
Hearing Administrator