

STATE OF MISSISSIPPI  
OFFICE OF THE COMMISSIONER OF INSURANCE

IN THE MATTER OF DONALD BERNARD COX  
INSURANCE PRODUCER LICENSE No. 8005212

**FINDINGS AND ORDER**

THIS CAUSE came on for hearing before the Commissioner of Insurance of the State of Mississippi (hereinafter "Commissioner"), by and through his specially designated appointee (hereinafter "Hearing Officer"), in the Office of the Commissioner, 10<sup>th</sup> Floor, Woolfolk State Office Building, 501 North West Street, Jackson, MS 39205, on Wednesday, April 30, 2014, at 10:00 a.m., pursuant to a Notice of Hearing and Statement of Charges served on Donald Bernard Cox, License #8005212 (Respondent). The Commissioner by and through the designated Hearing Officer, Ms. Christina Kelsey, having heard and considered all of the testimony and evidence produced by the parties herein, makes the following findings:

**AUTHORITY**

The hearing was held pursuant to the provisions of Miss. Code Ann. § 83-17-71, *et seq.* (Rev. 2011), providing for the licensing of insurance producers by the Mississippi Insurance Department (MID) and disciplinary actions against producers.

**NOTICE AND HEARING**

1. The Notice of Hearing and Statement of Charges was personally served upon Mr. Cox on February 21, 2014, pursuant to Miss. Code Ann. § 83-17-71 (Rev. 2011). Due to inclement

weather, and by mutual consent of the parties, the Hearing was continued to April 30, 2014.

(S-1) (S-2) (S-3)

2. Respondent was advised in the "Notice of Hearing and Statement of Charges" of his right to be accompanied and represented by legal counsel, to cross-examine any witnesses, to present evidence or testimony on his behalf, to have witnesses subpoenaed in order to give testimony and evidence on his behalf and to testify in his own behalf.
3. Pursuant to said notice, a hearing was held at approximately 10:00 a.m. on April 30, 2014.
4. Respondent was present for the hearing, gave testimony and submitted evidence. (R-1) (R-2)
5. The Respondent was specifically charged with the following violations of law in the Notice of Hearing and Statement of Charges dated February 19, 2014:
  - a. Respondent violated the provisions of Miss. Code Ann. § 83-17-71(1) (b) (Rev. 2011), in that Respondent violated MS Code Ann. § 83-23-235 Advertising Prohibition Policy, by referring to and using the State Life and Health Insurance Guaranty Association as a reference in sales presentations.
  - b. MS Code Ann. § 83-23-235 (Rev. 2011) states that:
    - (1) No agent shall make, publish, directly or indirectly, to be made, in any way, any statement, written or oral, which uses the existence of the Insurance Guaranty Association of this state for the purpose of sales, solicitation or inducement to purchase any form of insurance covered by the Mississippi Life and Health Insurance Guaranty Association Act.
  - c. Respondent violated the provisions of Miss. Code Ann. § 83-17-71(1) (g) (Rev. 2011), having admitted or been found to have committed any insurance unfair trade practice or fraud; in that Respondent stated:
    - 1) Every any money you put into contract of this nature this is what we call escrowed,
    - 2) Its insured by your state fund and its insured by the federal government,
    - 3) The government has to pay that amount of money or put into it,
    - 4) It has no risk whatsoever, totally guarantee,
    - 5) You can't possibly lose,
    - 6) Nobody in the country has ever lost a nickel or a dime on life or an annuity,
    - 7) You cannot lose any money on an annuity, period.

Or words to that effect.

### FINDINGS OF FACT

1. Mr. Donald B. Cox holds Mississippi insurance producer license No. 8005212.
2. On August 22, 2012, Ms. Jane Coln, submitted an application to purchase an annuity from Equitrust Financial Services through agent Mr. Cox. ( S-6)
3. After the August 22<sup>nd</sup> meeting and before the September 15<sup>th</sup> delivery of the annuity contract Ms. Coln and her husband met with Mr. Cox when he picked up the Death Certificate for Ms. Coln's mother. Ms. Coln believes it was August 29<sup>th</sup>. (S-4)
4. Ms. Coln decided to make a recording of the conversation to ensure she "understood every detail of the contract because this investment was so important to my livelihood." (S-4)
5. Ms. Coln considers this recording to be an accurate record of what happened; though she submitted to MID a shortened version of the original.
6. On the recording Mr. Cox, responding to questions concerning the safety of the investment, made statements to the effect that:
  - a. Every any money you put into contract of this nature this is what we call escrowed,
  - b. Its insured by your state fund and its insured by the federal government,
  - c. The government has to pay that amount of money or put into it,
  - d. It has no risk whatsoever, totally guarantee,
  - e. You can't possibly lose,
  - f. Nobody in the country has ever lost a nickel or a dime on life or an annuity,
  - g. You cannot lose any money on an annuity, period.

(S-5)



7. Ms. Coln believed that this was a secure investment based on Mr. Cox's statements. (S-4)
8. Ms. Coln notified Mr. Cox that she needed the income from this annuity to replace income that she gave up while taking care of her late mother and that Mr. Cox never dissuaded her from believing this annuity would meet that need. (S-4)
9. Ms. Coln informed Mr. Cox that her goal was to continue receiving \$4,000 per month from the annuity as had her late mother. (S-4)
10. Ms. Coln testified that she has suffered loss of income due to not receiving the \$4,000 per month and potentially an IRS penalty of approximately \$120,000 as a result of relying upon Mr. Cox's advice.
11. Mr. Cox knew that Ms. Coln needed this money for living expenses as he offered to loan her money while waiting for the annuity contract to annuitize and provide payments. (S-4)
12. On August 22, 2012, Ms. Coln, signed an application to purchase an annuity from Equitrust Financial Services through agent Donald B. Cox. ( S-6)
13. Ms. Coln paid \$579,142.86 for an EquiTrust Life Insurance Company Single Premium Fixed Annuity, Contract Number EQ0001148323F, with a contract date of September 10, 2012, using funds from her late mother's annuity. (S-6)
14. Mr. Cox's commission on this annuity contract EQ0001148323F was \$57,000.
15. Ms. Coln received the Annuity Contract on September 15, 2012. (R-2)
16. Annuity Contract Number EQ0001148323F had a "Right to Examine and Return" period of 30 days after the receipt of the contract with a full refund of any premium paid. (S-6)
17. Ms. Coln paid \$91,388.65 for another Annuity Contract prior to the one above. This earlier annuity was an EquiTrust Life Insurance Company Single Premium Fixed Annuity, Contract

Number EQ0001139456F, with a contract date of April 13, 2012. (S-7)

18. Ms. Coln's total funds invested through Mr. Cox in two (2) EquiTrust Annuity Contracts were \$670,531.51.
19. Mr. Cox affirmed that it was him speaking on the recording of the meeting with Ms. Coln though he could not remember the exact date.
20. Mr. Cox admits that he was in error when he told Ms. Coln that the federal and state government protected annuity contracts.
21. Mr. Cox admits that he is guilty of saying that nobody ever lost a nickel on an annuity.
22. Mr. Cox submitted as evidence an article from the June 1, 2009, issue of Senior Market Advisor, titled "Annuity holders need not fear carrier failure", which states, among other things, "You can't tell consumers that no one has ever lost money in a fixed annuity due to carrier failure, because they have". (R-1)
23. Mr. Cox claims that he did not know that the Life and Health Guaranty Health Association was not a government entity.
24. At the time of the Equitrust Contract Annuity purchases, the Life and Health Guaranty Health Association protection was a maximum of \$100,000.00 for annuities. Effective March 17, 2014, the limit was raised to \$250,000.00. (S-8)
25. Since 1991 there have been 55 insurance company insolvencies for which the Mississippi Life and Health Guaranty Health Association has been activated to provide protection to Mississippi policyholders demonstrating there is a risk to individuals holding annuity contracts. (S-9)
26. According to Mississippi Insurance Department Regulation 19 Miss. Admin. Code, Title 19, Part 1, Chapter 24, Rule 24.03, "No insurer may issue or deliver a life, health or annuity policy

or contract to a policy or contract owner in the State of Mississippi unless a summary document describing the general purposes and current limitations of the Mississippi Life and Health Insurance Guaranty Association Act is delivered to the policy or contract owner at the time of delivery of the policy or contract.” Ms. Coln did not receive such a summary document. (S-10)

### CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to Miss. Code Ann. § 83-17-71, *et seq.* (Rev. 2011), providing for the licensing of insurance producers by the MID and specifically providing for disciplinary actions against producers.
2. MID gave proper notice of the hearing and has fulfilled all relevant substantive and procedural requirements of law or rule.
3. MID Regulation Part I, Chapter 15, Rule 15.09, Para L., Rules Regarding the Administrative Practice and Procedure before the Mississippi Insurance Department, states the evidentiary standard for the hearing as follows; “Irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Any other evidence, oral or documentary, not privileged, may be received if it is a type commonly relied upon by reasonably prudent men in the conduct of their affairs.”
4. Regarding the first charge that Respondent referred to and used the State Life and Health Insurance Guaranty Association (LAH) as a reference in sales presentations, Mr. Cox referred to the protection provided by the State Life and Health Insurance Guaranty Association, though he did not refer to it by name. Mr. Cox also incorrectly represented the amount of State Life and Health Insurance Guaranty Association protection provided and that it was an entity of the federal and/or state government in an effort to reassure Ms. Coln that her investment would be safe. For purposes of concluding the sale Mr. Cox falsely exaggerated the coverage



by implying there was protection for the entire amount of her \$670,000 investment when the actual coverage was for \$100,000 leaving \$570,000 unprotected. From the signing of the Annuity Contract Application on August 22, 2012, to the delivery of the contract on September 15, 2012, until the end of the 30 day "Right to Examine and Return of this Contract" on October 15, 2012, Ms. Coln could have chosen to cancel the pending transaction. Instead, Mr. Cox continued to close the sale with misleading, false comments concerning the protection provided by some "federal or state" entity, which by implication was the State Life and Health Insurance Guaranty Association. Mr. Cox clearly did not understand what protection was provided by State Life and Health Insurance Guaranty Association, nor did he understand how it functioned however he continually referred to it as part of his ongoing sales presentation. Mr. Cox violated the provisions of Miss. Code Ann. § 83-17-71(1)(h) (Rev. 2011) and Ms. Code Ann. § 83-23-235 (Rev. 2011) by referring to the protection provided by the State Life and Health Insurance Guaranty Association for the purpose of a sale.

5. Regarding the second charge that Respondent violated the provisions of Miss. Code Ann. §83-17-71(1) (g) (Rev. 2011), Mr. Cox committed insurance unfair trade practice or fraud by inducing Ms. Coln to purchase an annuity contract for \$579,142.86 based on statements that were completely false regarding the safety of her investment and benefit coverage provided by State Life and Health Insurance Guaranty Association. From the signing of the Annuity Contract Application on August 22, 2012, to the delivery of the contract on September 15, 2012, until the end of the 30 day "Right to Examine and Return of this Contract" on October 15, 2012, Ms. Coln was misled concerning the protection and risk to her investments and thereby was denied the opportunity to determine whether or not to cancel the contract. Even

evidence submitted by Mr. Cox states that “you can’t tell consumers that no one has ever lost money in a fixed annuity due to carrier failure, because they have”. Mr. Cox misrepresented the benefits and advantages thereby inducing Ms. Coln to purchase an annuity contract. Mr. Cox, a long-time insurance agent, abused his position of trust by making statements that were completely false and thereby violated the provisions of Miss. Code Ann. § 83-17-73(1) (Rev. 2011).

6. Miss. Code Ann. § 83-17-71(1) (Rev. 2011) provides that the Commissioner may “place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license or may levy a civil penalty in an amount not to exceed One Thousand Dollars (\$1,000.00) per violation”.
7. The aforementioned two (2) violations by Mr. Cox constitute sufficient grounds for the imposition of disciplinary action per Miss. Code Ann. § 83-17-71(1) (Rev. 2011).

**ORDER**


**IT IS, THEREFORE, ORDERED:**

That the license of Respondent, Donald Bernard Cox, to act as an insurance producer in the State of Mississippi is hereby suspended for twelve (12) months from the date this order is effectuated.

That an administrative fine shall be levied against Donald Bernard Cox in the amount of One Thousand Dollars (\$1,000.00) for each of the two charges for a total of Two Thousand Dollars (\$2,000). The penalty shall be payable to the Mississippi Insurance Department, within thirty (30) days of effectuation of this Order,

**SO ORDERED**, this the 5<sup>th</sup> day of may, 2014.





---

**MIKE CHANEY**  
**COMMISSIONER OF INSURANCE**  
**STATE OF MISSISSIPPI**

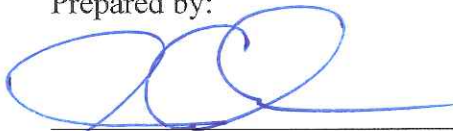
Submitted by:



---

Christina J. Kelsey  
HEARING OFFICER

Prepared by:



---

John W. Eads  
Special Assistant Attorney General