



STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

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In the Matter of the Applications
and/or Licenses of

DAVID LERNER ASSOCIATES INC.,

STIPULATION
No. 2010-0150-S

Respondent.

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WHEREAS, Respondent David Lerner Associates Inc. ("Respondent") is licensed as an agent pursuant to Section 2103(a) of the New York Insurance Law ("Insurance Law") by and through David E. Lerner, President and sublicensee; and

WHEREAS, Respondent may be charged with having violated the Insurance Law and/or New York State Insurance Department ("Department") Regulations; and

WHEREAS, Respondent has been advised and is aware of its statutory right to notice and a hearing on said charge and that if it is sustained upon hearing its license may be suspended or revoked, or in lieu thereof, a monetary penalty may be imposed; and

WHEREAS, Respondent wishes to resolve this matter by entering into a Stipulation with the New York State Insurance Department ("Department") on the terms and conditions hereinafter set forth in lieu of proceeding with a formal hearing; **NOW THEREFORE**,

IT IS HEREBY STIPULATED AND AGREED by and between Respondent and the Department, subject to the approval of the Superintendent of Insurance, as follows:

1. Respondent waives its right to further notice and a hearing in this matter and admits that during the approximate period November, 1998 through February, 2004, in connection with the replacement of approximately 527 variable life insurance policies and 259 variable annuity contracts, Respondent violated Section 2123 of the Insurance Law and Section 51.5 of Department Regulation 60 [11 NYCRR 51.5] as follows:

(a) Section 51.5(a) of Department Regulation 60 [11 NYCRR 51.5(a)] requires the agent or broker to obtain, with or as part of each application involving a replacement

of an existing life insurance policy or annuity contract, a completed "Definition of Replacement" form signed by the applicant and the agent or broker, which is to be delivered to the applicant. Instead of completing and delivering the Definition of Replacement form as required, Respondent knowingly permitted its employed agents to have their customers sign blank, undated Definition of Replacement forms, which were subsequently completed by an unlicensed employee of Respondent who had no direct contact with the customer or any direct knowledge or understanding of the reason(s) for the proposed replacement transaction in each particular case.

(b) Section 51.5(c) of Department Regulation 60 [11 NYCRR 51.5(c)] requires the agent or broker to present to the applicant, not later than at the time the applicant signs the application for replacement of an existing life insurance policy or annuity contract, the "IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts" form and a completed "Disclosure Statement," which must include specific information concerning the primary reason(s) for recommending the new life insurance policy or annuity contract and why the existing policy or contract cannot meet the applicant's objectives. In addition, the agent or broker must have the applicant acknowledge that both forms have been received and read. Instead of completing and delivering these forms as required, Respondent knowingly permitted its agents to have their customers sign blank undated forms, which were subsequently completed with standard boilerplate information by an unlicensed employee of Respondent who had no direct contact with the customer or any direct knowledge or understanding of the reason(s) for the proposed replacement transaction in each particular case.

(c) By engaging in the foregoing conduct, Respondent acknowledges that it did not comply with the requirements of Department Regulation 60 [11 NYCRR 51.5] in effectuating replacements of variable life insurance policies and variable annuity contracts.

2. Respondent states in mitigation that in many instances Respondent's sales force provided customers considering a variable life insurance or variable annuity replacement with a variety of disclosure materials other than the Regulation 60 documentation during their meetings with those clients to compare the existing policy or contract with the proposed replacement product. Such alternative materials included: (1) in-force summaries of the current insurance policy or annuity contract, (2) re-projections of the current life insurance policy, (3) hypothetical illustrations of the proposed replacement insurance policy, and (4) historical performance illustrations of the proposed replacement variable annuity contract. Respondent further states that since 2004 it has adopted numerous remedial practices, safeguards and procedures to help ensure that there is adequate and appropriate compliance with the mandates of Regulation 60, as well as comprehensive oversight by management.

3. In consequence of the foregoing, and in lieu of any other disciplinary action which might be taken by the Department against Respondent or any of the individual producers as a result thereof, with the exception of the warning letters that will be issued to the individual producers involved, Respondent consents to the imposition of a civil penalty in the sum of Two Hundred Fifty-Five Thousand Dollars (\$255,000.00), receipt of which is hereby acknowledged.

THE FOREGOING STIPULATION IS HEREBY APPROVED.

Dated: New York, NY
September 1, 2010

JAMES J. WRYNN
Superintendent of Insurance

By:

Martha A. Lees
Martha A. Lees
Deputy Superintendent & General Counsel