



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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In the Matter of

**AMERICAN FAMILY LIFE ASSURANCE COMPANY OF** No. 2017-0083-S  
**NEW YORK,**

Respondent.

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**CONSENT ORDER**

**WHEREAS**, the Department of Financial Services (the "Department") conducted a Market Conduct Examination (the "Examination") of the affairs of American Family Life Assurance Company of New York (hereinafter "Respondent") for the period from January 1, 2009 through December 31, 2011 and issued its Report on the Examination on April 27, 2017.

**WHEREAS**, this Consent Order contains the Department's findings and the relief agreed to by the Department and Respondent.

**NOW, THEREFORE**, the Department and Respondent are willing to resolve the matters cited herein in lieu of proceeding by notice and hearing.

**FINDINGS**

1. Respondent is a domestic insurance company authorized to transact life, annuities and accident and health insurance business in this State pursuant to Section 1113(a) of the New York Insurance Law.

2. Respondent, for the time period 2009 to 2011:
- a) failed to adequately train its agents to comply with the requirements of Department Regulation No. 60;
  - b) failed to require with or as part of each application a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy and proof of receipt by the applicant of the *IMPORTANT* Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts and the completed Disclosure Statement;
  - c) failed to reject the application where the required forms were not received or the forms did not meet the requirements of Department Regulation No. 60;
  - d) failed to establish and implement procedures to ensure compliance with the requirements of Department Regulation No. 60;
  - e) failed to include disclosure language on premium notices provided to whole life insurance policyholders informing such policyholders that unless payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit;
  - f) failed to maintain a complete advertising file for life insurance advertisements including a notation indicating the manner and extent of distribution at its home office in New York;
  - g) failed to maintain a complete advertising file for accident and health insurance advertisements including a notation indicating the manner and extent of distribution at its home office in New York;
  - h) failed to place in a prominent place and style in its advertisements, the appropriate statement regarding the expected benefit ratio for the coverage provided;
  - i) failed to include a statement in advertisements for policies with accelerated death benefit provisions that receipt of accelerated death benefits may affect eligibility for public assistance programs;
  - j) failed to include a statement in advertisements for policies with accelerated death benefit provisions that receipt of accelerated death benefits may be taxable;

- k) failed to maintain the information necessary for reconstructing the rating and underwriting of a contract or policy;
  - l) failed to maintain at its home office a complete file containing a specimen copy for each of the preliminary information forms and policy summary forms authorized by the insurer for each policy form sold in New York;
  - m) failed to provide preliminary information to prospective applicants at or prior to the time that the application was taken;
  - n) added the automatic policy loan provision to a policy, without prior written consent from the applicant (or policy owner), in cases where the automatic policy loan provision was not affirmatively selected on the application; and
  - o) failed to notify whole life insurance policyholders that their policy contains a cash surrender value and that further information, including the amount thereof, is available from the insurer upon written request from the policyowner.
3. Respondent's violations during the aforementioned time period contravened New York Insurance Law.

### **VIOLATIONS**

4. By reason of the foregoing, as reflected in the Department's Report on the Examination, Respondent violated:
- Insurance Regulation 60, 11 NYCRR Section 51.6(a)(1); Insurance Regulation 60, 11 NYCRR Section 51.(b)(2); Insurance Regulation 60, 11 NYCRR Section 51.6(b)(7); Insurance Regulation 60, 11 NYCRR Section 51.6(e); Insurance Regulation 34-A, 11 NYCRR Section 219.5(a); Insurance Regulation 34, 11 NYCRR Section 215.17; Insurance Regulation 34, 11 NYCRR Section 215.5(c); Insurance Regulation 143, 11 NYCRR Section 41.3(a); Insurance Regulation 143, 11 NYCRR Section 41.3(b); Insurance Regulation 152, 11 NYCRR Section 243.2(b)(1)(iv); and Insurance Regulation 74, 11 NYCRR Section 53-1.4; and
- New York Insurance Law Sections 3211(b)(2); 3209(b)(1)(A); 3204(d); and 3211(g).

## **AGREEMENT**

**IT IS HEREBY UNDERSTOOD AND AGREED** by Respondent, its successors and assigns (on behalf of its agents, representatives, employees, parent company, holding company, and any corporation, subsidiary or division through which Respondent operates) that:

5. Respondent will correct the violations cited herein and demonstrate to the Department's satisfaction that it has taken the necessary corrective action within one month from the date of Respondent's signing of this Consent Order. Respondent will also take all necessary steps to comply with the New York Insurance Law and Regulations with respect to its insurance products in the future. Respondent has rectified items 2a to item 2e cited herein, provided full restitution to affected policyholders who were harmed and demonstrated to the Department's satisfaction that it has taken the following corrective action:
  - i. Consequent to the examination findings, for all internal and external policy replacements processed between August 24, 2007 and October 2012 and for which the Company committed a Violation, the Company provided a revised Disclosure Statement for internal replacements and performed a detailed analysis to determine if the consumer was harmed by any internal or external replacement. The Company refunded all premium paid into the new policy, including interest, for the internal replacement that the Company determined not to be in the best interests of the policyowner. The Company refunded all premiums paid in to the new policy, including interest if such interest exceeded \$10, for all internally replaced policies that are no longer in force. Restitution totaling \$42,999.43, consisting of \$37,351.39 in refunded premium plus \$5,647.34 for accrued interest on the refunded premium, was paid to the consumer for the internal replacements for which the Company committed a Violation. The Company's investigation of externally replaced policies did not reveal any instances where the consumer was harmed as a result of the replacement.
  - ii. For all policyholders whose policy lapsed and they received a deficient premium due notice, the Company placed the policies back in force for one year from the date of

default pursuant to Section 3211(a)(1) of the New York Insurance Law. For all such policies where the one-year period had already passed, the Company determined if the insured was living. For all insureds that were identified as deceased, the Company made prompt restitution to the beneficiary for benefits afforded by the policy (including interest from the date of death to the date of payment) or escheated the proceeds in accordance with applicable state law, if after due diligence, the Company was unable to locate the beneficiary. Research indicated that 49 of the affected insureds were deceased. Restitution totaling \$918,479.40 was paid to the beneficiary in 44 instances.

#### **PENALTY**

6. Within seven (7) days of the execution of this Consent Order, Respondent shall pay a civil penalty of One Hundred Seventy-Six Thousand Eight Hundred Ninety Dollars (\$176,890.00). Respondent agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order.
7. The above referenced payment shall be payable to the New York State Department of Financial Services via electronic transfer in accordance with instructions provided by the Department..

#### **BREACH OF THE CONSENT ORDER**

8. In the event that the Department believes Respondent to be materially in breach of this Consent Order ("Breach"), the Department will provide written notice of such Breach to Respondent and Respondent must, within ten (10) business days from the date of receipt of said notice, or on a later date if so determined in the sole discretion of the Department, appear before the Department and have an opportunity to rebut the evidence, if any, of the Department that a Breach has occurred and, to the extent pertinent, to demonstrate that any such Breach is not material or has been cured.

9. Respondent understands and agrees that Respondent's failure to appear before the Department to make the required demonstration within the specified period as set forth herein is presumptive evidence of Respondent's Breach. Upon a finding of Breach, the Department has all the remedies available to it under New York or other applicable laws and may use any and all evidence available to the Department for all ensuing examinations, hearings, notices, orders, and other remedies that may be available under New York or other applicable laws.

#### **OTHER PROVISIONS**

10. If Respondent defaults on any of its obligations under this Consent Order, the Department may terminate the Consent Order, at its sole discretion, upon ten (10) days' written notice to Respondent. In the event of such termination, Respondent expressly agrees and acknowledges that this Consent Order shall in no way bar or otherwise preclude the Department from commencing, conducting, or prosecuting any investigation, action, or proceeding, however denominated, related to the Consent Order, against Respondent or from using in any way the statements, documents, or other materials produced or provided by Respondent prior to or after the date of this Consent Order, including, without limitation, such statements, documents, or other materials, if any, provided for purposes of settlement negotiations.
11. The Department has agreed to the terms of this Consent Order based on, among other things, representations made to the Department by Respondent and the Department's own factual examination. To the extent that representations made by Respondent are later found to be materially incomplete or inaccurate, this Consent Order or certain provisions thereof are voidable by the Department in its sole discretion.
12. Upon the request of the Department, Respondent shall provide all documentation and information reasonably necessary for the Department to verify compliance with this Consent Order.

13. All notices, reports, requests, certifications, and other communications to the Department regarding this Consent Order shall be in writing and shall be directed as follows:

If to the Department:

New York State Department of Financial Services  
One State Street, 19<sup>th</sup> Floor  
New York, NY 10004-1511  
Attention: Scott Fischer, Executive Deputy Superintendent for Insurance

If to the Company:

American Family Life Assurance Company of New York  
22 Corporate Woods Boulevard  
Albany, New York 12211  
Attention: Thomas L. McDaniel, Jr., Senior Vice President and Chief Compliance Officer

14. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.
15. Respondent waives its right to further notice and hearing in this matter as to any allegations of past violations up to and including the Effective Date and agrees that no provision of the Consent Order is subject to review in any court or tribunal outside the Department.
16. This Consent Order may not be amended except by an instrument in writing signed on behalf of all parties to this Consent Order.
17. This Consent Order constitutes the entire agreement between the Department and Respondent relating to the violations identified herein and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Consent Order. No inducement, promise, understanding, condition, or warranty not set forth in this Consent Order has been relied upon by any party to this Consent Order.
18. In the event that one or more provisions contained in this Consent Order shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Consent Order.

19. Upon execution by the parties to this Consent Order, no further action will be taken by the Department against Respondent for the conduct set forth in this Consent Order, subject to the terms of this Order.
20. This Consent Order may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the parties hereto and So Ordered by the Superintendent of Financial Services.

AMERICAN FAMILY LIFE ASSURANCE COMPANY OF NEW YORK

By: Thomas L. McDaniel Dated: May 11, 2018  
Thomas L. McDaniel, Jr.,  
Senior Vice President and Chief Compliance Officer

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

By: Scott Fischer Dated: 6/6/18  
Scott Fischer  
Executive Deputy Superintendent for Insurance

**THE FOREGOING CONSENT ORDER IS HEREBY APPROVED.**

By: Maria T. Vullo Dated: 7/2/18  
Maria T. Vullo  
Superintendent of Financial Services