

1 MFS/Regatta. The annuity had a first year six percent early
2 withdrawal penalty provision.

3 4. In less than one year, Respondent suggested to
4 Schmerbach that her funds invested in the MFS/Regatta annuity
5 might be in jeopardy and further discussing the option of
6 withdrawing her funds from the annuity. Subsequently,
7 Schmerbach did withdraw her funds within one year and paid a
8 six percent early withdrawal penalty.

9 5. On or about August 26, 1991, Respondent placed
10 the remainder of Schmerbach's funds withdrawn from the
11 MFS/Regatta annuity into a John Hancock mutual fund.
12 Respondent received a commission on the John Hancock mutual
13 fund.

14 CONCLUSIONS OF LAW

15 1. The Director has jurisdiction over this matter.

16 2. Respondent misrepresented to Schmerbach that her
17 MFS/Regatta funds were in jeopardy for the purpose of inducing
18 Schmerbach to lapse, forfeit, surrender, retain or convert the
19 annuity to the John Hancock mutual fund, in violation of A.R.S.
20 § 20-443(5).

21 3. The Director has grounds to issue an Order to
22 Cease and Desist and impose a civil penalty upon Respondent
23 pursuant to A.R.S. §§ 20-456(A) and 20-456(B).

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ORDER

NOW, THEREFORE, IT IS ORDERED:

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3 1. Respondent shall cease and desist from engaging
4 in any act or practice defined in or prohibited under § 20-443
5 as an illegal or unfair method of competition or an unfair or
6 deceptive act or practice.

7 2. Respondent shall pay a civil penalty to the
8 Department in the sum of \$500.00 within 60 days of the entry of
9 this Consent Order.

10 DATED in Phoenix, Arizona this 5th day of August,
11 1994.



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13 CHRIS HERSTAM, Director
Arizona Department of Insurance

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15 CONSENT TO ORDER

16 1. The undersigned acknowledges that he has read the
17 foregoing Findings of Fact, Conclusions of Law and Order and is
18 aware of his right to an administrative hearing in this matter
and has waived same.

19 2. The undersigned admits the jurisdiction of the
20 Department and admits the foregoing Findings of Fact and consents
21 to the entry of the foregoing Conclusions of Law and Order.

22 3. The undersigned states that no promises were made
23 to him to induce him to enter into this Consent Order and
24 declares that he has entered into this Consent Order voluntarily.
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1 4. The undersigned acknowledges that acceptance of
2 this Consent Order is for the purpose of settling this litigation
3 as against him and does not preclude the Department, or any other
4 agency or officer of this State, or subdivision thereof, from
5 instituting other civil or criminal proceedings as may be
6 appropriate now or in the future.

7 5. The undersigned waives all rights to challenge such
8 Findings of Fact, Conclusions of Law and Order on appeal or
9 otherwise, and agrees to be bound by the foregoing Order.

10
11 Date: 7-25-94



DALE E. PAYNE, Respondent

12
13 COPY of the foregoing mailed this
14 5th day of August, 1993, to:

15 Kathryn L. Leonard
16 Assistant Attorney General
17 Consumer Protection and Antitrust Section
18 Attorney General's Office
19 1275 West Washington
20 Phoenix, Arizona 85007

21 GayAnn Williams, Deputy Director
22 Charles R. Cohen, Executive Assistant Director
23 Jay Rubin, Assistant Director
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25 Maureen Catalioto, Supervisor
26 Department of Insurance
2910 N. 44th Street, Suite 210
Phoenix, Arizona 85018

Juanita Schmerbach
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3 & Drury, P.A.
4 617 North Second Avenue
5 Phoenix, AZ 85003
6 Attorney for Respondent

7 Dale E. Payne
8 270 Riverview Drive, #A
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10 *Chris Crawford*
11 _____
12 3844c:CPA92-332
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