

STATE OF MAINE

DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

BUREAU OF INSURANCE

In re:

Thomas Skypeck

National Producer No. 3685989

Maine License No. PRR32583

Docket No. INS-15-212

CONSENT AGREEMENT

Thomas Skypeck, a licensed Maine resident insurance producer, the Maine Superintendent of Insurance ("Superintendent"), and the Office of the Maine Attorney General ("Attorney General") hereby enter into this Consent Agreement pursuant to 10 M.R.S. § 8003(5) (B) to resolve, without an adjudicatory proceeding, violations of the Insurance Code for which the Superintendent may impose discipline pursuant to 24-A M.R.S. §§ 1417 and 1420-K.

PARTIES

1. The Superintendent is the official charged with administering and enforcing Maine's insurance laws and regulations, and the Bureau of Insurance is the administrative agency with such jurisdiction. The Superintendent has jurisdiction over this matter pursuant to 24-A M.R.S. §§ 12-A and 211.
2. Thomas Skypeck is a resident of Maine and has been licensed in Maine as a resident insurance producer with life and health and variable contracts authority since April 29, 1991, and October 1, 1995, respectively. His Maine producer license number is PRR32583. His National Producer Number ("NPN") is 3685989.

STATUTORY AUTHORITY

3. Under 24-A M.R.S. §§ 12-A and 1420-K, the Superintendent may issue a warning, censure, or reprimand to a licensee, may suspend, revoke or refuse to renew the license of a licensee, may impose conditions of probation on the licensee, may levy a civil penalty, or may take any combination of such actions, for violating any insurance laws, or violating any rule, regulation, subpoena, or order of the Superintendent. Pursuant to 10 M.R.S. § 8003(5)(B), the Superintendent may resolve a complaint by entering into a consent agreement with a licensee and with the agreement of the Attorney General.

4. The Superintendent may also order restitution under 24-A M.R.S. § 12-A(6) for “any insured...injured by a violation for which a civil penalty may be assessed pursuant to this section.”

FACTS

5. In or around 2009, Mr. Skypeck began advising J.C. with regard to her annuity holdings and other investments.

6. J.C. at the time was approximately 62 years old, employed as a cashier, and planning to retire in approximately 3 years. She had modest retirement savings, held mostly in annuities. She was not an experienced investor and relied heavily upon Mr. Skypeck for financial advice.

Misappropriation and Misrepresentations

7. During the course of their business relationship, Mr. Skypeck advised J.C. to move a significant portion of her savings from annuities into precious metals.

8. On or about October 12, 2012, Mr. Skypeck placed an order on J.C.’s behalf for a large quantity of silver eagle coins.

9. Shortly thereafter, the coins were delivered to J.C.’s residence, and stored in her basement. J.C. did not learn about the transaction or the fact that the coins were going to be delivered to her home until the day before the delivery. She protested that she did not want the coins to be stored at her house, but Mr. Skypeck told her it was too late. The coins arrived in four boxes.

10. In or about end of 2013, Mr. Skypeck arrived at J.C.’s house, and told her that he was going to take a portion of her coins, and place them in an account in the Royal Metals Group (“RMG”) depository, where the coins would be easily available to sell.

11. Mr. Skypeck never placed the coins in the RMG depository, but instead stored them in the basement of his home in Saco. He did not use a lock box, safe, alarm system, or any other security precautions in storing her coins.

12. J.C. made repeated requests that Mr. Skypeck provide her with a receipt for the coins he took. Mr. Skypeck deflected these requests, responding to an August 6, 2014 request: “Do me a favor, we are old pals. Just trust me, ok?” On February 12, 2015, Mr. Skypeck finally provided J.C. with an emailed description of the coins.

13. On June 12, 2014, without J.C.’s knowledge or permission, Mr. Skypeck sold 220 of the 480 coins he was holding for J.C. to a local gold dealer for \$4,400.

14. On August 4, 2014, again without J.C.’s knowledge or permission, Mr. Skypeck sold an additional 70 of J.C.’s coins to the gold dealer for \$1,330.

15. Mr. Skypeck used the proceeds of these two sales to cover part of the cost of his stepdaughter's college tuition.

16. In response to discomfort expressed by J.C. about her silver holdings, Mr. Skypeck repeatedly assured her that a severe market correction was coming and, as a result, the value of her silver coins would increase greatly in value. On one occasion, Mr. Skypeck promised J.C. that her silver "will go up 6x in value...higher even." Mr. Skypeck expressed these predictions as certainties.

17. In late Fall, 2014, J.C. asked Mr. Skypeck to return her coins. Mr. Skypeck stalled for time, as he had not yet been able to replace all of the coins he had misappropriated from her for his personal use. He made repeated false statements to J.C. intended to make her believe that her coins were stored at his lake house in Limerick, where they were safe but difficult for him to access in winter.

18. In February, 2015, Mr. Skypeck falsely stated to J.C. that he had "some identical sleeves of [his] own handy" if she would like a partial replacement, and that he would return the silver coins if he had to.

19. As of the date of this Consent Agreement, Mr. Skypeck has returned to J.C. all or nearly all of the silver coins that he had taken.

Forgery and Impersonation

20. In or about Fall, 2012, Mr. Skypeck placed five trades with RMG in his wife's name, without his wife's knowledge or authorization, in order to circumvent a prohibition by his broker/dealer on trading in precious metals.

21. On at least two occasions, he forged his wife's signature on documents relating to these transactions.

22. On March 13, 2015, he impersonated his wife in an email to RMG.

Unsuitable Annuity Transactions

23. In or about March, 2009, Mr. Skypeck recommended to J.C. that she exchange her Hartford Life Leaders Annuity purchased in 2005 (the "Hartford Annuity") for a Jackson National Life Perspective II Variable Annuity (the "Jackson Variable Annuity").

24. This recommended annuity transaction was unsuitable for J.C.

25. Mr. Skypeck made misleading statements to J.C. that the Hartford's financial condition was deteriorating, when he knew that her Hartford Annuity was not invested in the Hartford itself, and that she had no risk of loss other than general market fluctuations.

26. Mr. Skypeck misleadingly stated to J.C. that the bonus on the Jackson Variable policy was an offset for the surrender charges on the Hartford Policy, when in fact that

the bonus was consideration for J.C. agreeing to certain other charges, including an enhanced penalty for withdrawals during the surrender period.

27. J.C. followed Mr. Skypeck's recommendation, and exchanged her Hartford Annuity for the Jackson Variable Annuity on July 14, 2009, incurring a surrender penalty of approximately \$5,000.

28. In or about February, 2010, J.C. alerted Mr. Skypeck to the existence of a fixed annuity she had held with American General since 1983 (the "American General Annuity"), and asked for his advice about what to do with it. Mr. Skypeck advised J.C. to exchange the American General Annuity for a Jackson National Ascender Plus Select Indexed Annuity (the "Jackson Indexed Annuity") with a 10 year surrender period.

29. Mr. Skypeck's recommendation to J.C. was unsuitable.

30. On May 20, 2010, J.C. exchanged her American General Annuity for the Jackson Indexed Annuity.

31. In September, 2010, Mr. Skypeck had J.C. withdraw \$59,470 from her Jackson Variable Annuity, incurring an enhanced surrender penalty of \$4,460. Mr. Skypeck had J.C. use \$51,000 of the proceeds, together with a \$30,000 loan at 5.9% interest, to make a leveraged purchase of gold and silver.

32. This investment, representing a substantial portion of J.C.'s liquid net worth, was contrary to J.C.'s investment goals and moderate risk tolerance and was done without J.C. understanding the leveraged nature of the transaction.

33. On January 14, 2013, upon Mr. Skypeck's recommendation, J.C. exchanged her Jackson Variable Annuity with an Allianz 365 Annuity (the "Allianz Annuity"). Because the Jackson annuity was still within the surrender period, J.C. paid a surrender penalty.

34. Mr. Skypeck's recommendation to J.C. was unsuitable.

35. With regard to the above exchanges, Mr. Skypeck admits that he was churning J.C.'s annuities.

CONCLUSIONS OF LAW

36. Title 24-A M.R.S. § 1420-K(1)(H) provides that the Superintendent may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license or may levy a civil penalty in accordance with section 12-A, or take any combination of such actions, for "[u]sing fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere."

37. Title 24-A M.R.S. § 1420-K(1)(B) provides that the Superintendent may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license or may levy a civil penalty in accordance with section 12-A, or take any combination of

such actions, for “[v]iolating any insurance laws, or violating any rule, regulation, subpoena or order of the superintendent or of another state’s insurance commissioner.”

38. Title 24-A M.R.S. § 1420-K(1)(G) provides that the Superintendent may place on probation, suspend, revoke or refuse to issue or renew an insurance producer’s license or may levy a civil penalty in accordance with section 12-A, or take any combination of such actions, for “[h]aving admitted to or been found to have committed any insurance unfair trade practice or fraud.”

39. Title 24-A M.R.S. § 2155 provides, “No person shall make or issue, or cause to be made or issued, any written or oral statement misrepresenting or making incomplete comparisons as to the terms, conditions, or benefits contained in any policy for the purpose of inducing or attempting or tending to induce the policyholder to lapse, forfeit, borrow against, surrender, retain, exchange, modify, convert, or otherwise affect or dispose of any insurance policy.” A violation of § 2155 constitutes an unfair trade practice or fraud. *See* 24-A M.R.S. § 2151.

40. Insurance Rule Chapter 917 § 6(A) provides, “In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, must have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.”

41. Mr. Skypeck committed a violation of § 1420-K(1)(H) by misappropriating J.C.’s silver eagle coins for personal use.

42. Mr. Skypeck committed a violation of § 1420-K(1)(H) by storing J.C.’s coins in an unsecured location without her knowledge or permission.

43. Mr. Skypeck committed a violation of § 1420-K(1)(H) by failing to provide J.C. with a timely receipt for the silver coins he took.

44. Mr. Skypeck committed multiple violations of § 1420-K(1)(H) by making repeated misrepresentations to J.C. with regard to the location of her silver coins and his ability to return them.

45. Mr. Skypeck committed multiple violations of § 1420-K(1)(H) by making repeated unequivocal guarantees to J.C. about the future performance of silver and markets generally.

46. Mr. Skypeck committed multiple violations of § 1420-K(1)(H) by (i) placing five trades with RMG in his wife’s name without her knowledge or authorization; (ii) intentionally circumventing his broker-dealer’s prohibition on trading in precious metals; (iii) forging his wife’s signature on at least two occasions; and (iv) impersonating his wife in an email to RMG.

47. Mr. Skypeck violated 24-A M.R.S. § 1420-K(1)(B), (G), and (H); § 2155; and Insurance Rule Chapter 917 § 6(A) with regard to the exchange of the Hartford Annuity for the Jackson Variable Annuity.
48. Mr. Skypeck violated 24-A M.R.S. § 1420-K(1)(B) and Insurance Rule Chapter 917 § 6(A) with regard to the exchange of the American General Annuity for the Jackson Indexed Annuity.
49. Mr. Skypeck violated 24-A M.R.S. § 1420-K(1)(B) and Insurance Rule Chapter 917 § 6(A) with regard to the exchange of the Jackson Variable Annuity for the Allianz Annuity.
50. Mr. Skypeck violated 24-A M.R.S. § 1420-K(1)(H) with regard to the withdrawal of \$59,000 from the Jackson Variable Annuity and the use of those funds to make a leveraged purchase of gold and silver, contrary to J.C.'s investment goals and risk tolerance.

COVENANTS

51. Mr. Skypeck admits to the Facts as stated above and admits that these Facts constitute a basis for imposing discipline as described in the Conclusions of Law hereinabove.
52. Mr. Skypeck agrees to the imposition of a civil penalty in the amount of One Thousand Dollars (\$1,000.00). The amount of the civil penalty reflects Mr. Skypeck's cooperation with the investigations into his conduct and expressions of remorse for that conduct. The penalty payment must be made by certified check or money order made out to "Treasurer, State of Maine, for the benefit of J.C." and addressed to: Kristina M. Balbo, Esq., Maine Bureau of Insurance, 34 State House Station, Augusta, Maine 04333-0034. The civil penalty shall become due and owing within 30 days of such time that the Superintendent either orders additional restitution pursuant to paragraph 56 or notifies Mr. Skypeck in writing that no additional restitution is required. In the event that additional restitution is ordered, all monies received by the Bureau from Mr. Skypeck shall be treated as payment of restitution to J.C. until such obligation is fulfilled.
53. Mr. Skypeck agrees to the revocation of his Maine resident producer license.
54. Nothing in this Agreement shall affect the rights or interests of any person who is not a party to this Agreement.
55. In consideration of Mr. Skypeck's execution of and compliance with the terms of this Consent Agreement, the Superintendent and Attorney General agree to forgo pursuing against Mr. Skypeck any further disciplinary measures or other civil or administrative sanctions available under the Maine Insurance Code concerning the specific conduct described in this Consent Agreement, other than those agreed to herein. However, should Mr. Skypeck violate any provision of this Consent Agreement, he may be subject to any available remedy for the violation. Mr. Skypeck further acknowledges

and agrees that, upon execution of this Consent Agreement, each of the Covenants herein shall constitute an order of the Superintendent.

56. Mr. Skypeck agrees to make an initial restitution payment to J.C. of One Thousand Dollars (\$1,000.00), payable in five monthly installments of Two Hundred Dollars (\$200.00). Each installment will be due on the first of the month, beginning with August 1, 2015, and ending with December 1, 2015. If Mr. Skypeck is delinquent in making any payment, the remaining amount of the restitution then owing will become immediately due and payable. Mr. Skypeck further acknowledges and agrees that the Bureau has not yet determined the full amount of restitution Mr. Skypeck may owe to J.C. and, notwithstanding Paragraph 55, the Superintendent may seek additional restitution from Mr. Skypeck in accordance with 24-A M.R.S. § 12-A(6). The restitution payments must be made by certified check or money order made out to "Treasurer, State of Maine" and addressed to: Kristina M. Balbo, Esq., Maine Bureau of Insurance, 34 State House Station, Augusta, Maine 04333-0034.

57. This Consent Agreement is enforceable by an action in Maine Superior Court.

58. This Consent Agreement is not subject to appeal. Mr. Skypeck waives any further hearings or appeals regarding the matters that are the subject of this Consent Agreement.

59. This Consent Agreement may be modified only by a written agreement executed by all of the parties hereto.

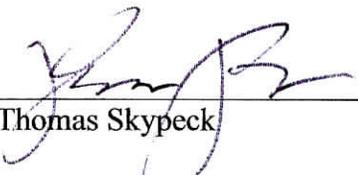
60. This Consent Agreement is a public record subject to the provisions of the Maine Freedom of Access Law, 1 M.R.S. §§ 401 through 410, will be available for public inspection and copying as provided for by 1 M.R.S. § 408, and will be reported to the Regulatory Information Retrieval System database at the National Association of Insurance Commissioners.

61. Mr. Skypeck agrees that he has read this Consent Agreement, that he understands this Consent Agreement, that he has reviewed the statutory provisions set forth herein, that he understands his right to consult with counsel before signing this Consent Agreement, and that he enters into this Consent Agreement voluntarily and without coercion of any kind from any person.

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THOMAS SKYPECK

Dated: June 15, 2015

By: 
Thomas Skypeck

**THE MAINE OFFICE OF THE ATTORNEY
GENERAL**

Dated: June 22, 2015

By: 
Jonathan R. Bolton
Assistant Attorney General

**THE MAINE SUPERINTENDENT OF
INSURANCE**

Dated: June 23, 2015

By: 
Timothy N. Schott
Deputy Superintendent of Insurance
Designated Hearing Officer