

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

In the Matter of)
AMERICO FINANCIAL LIFE AND) Docket No. 3518–MC
ANNUITY INSURANCE COMPANY)

ORDER

Pursuant to the authority conferred to the Commissioner of Insurance in K.S.A. 40-222, Sandy Praeger, the duly elected, qualified and serving Commissioner of Insurance hereby adopts the Kansas Insurance Department’s Report of Market Conduct Examination of Americo Financial Life and Annuity Insurance Company, as of March 30, 2005, (attached herein as Attachment A) by incorporating the same in its entirety with specific findings stated as follows:

Findings of Fact

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-222.
2. The Kansas Insurance Department (hereinafter “KID”) completed a targeted market conduct examination of the Americo Financial Life and Annuity Insurance Company (hereinafter “Americo” or “the company”), specifically, the Peak Performer Equity Indexed Annuity program offered by the company in December 2005.
3. KID contracted with Lewis & Ellis, Inc., Actuaries & Consultants (L&E), to review the Peak Performer Equity Indexed Annuity program offered by Americo.
4. On or about August 30, 2005, the examiner-in-charge provided Americo with a draft of the written Report of Market Conduct Examination with request of the

company's response by October 7, 2005, in written comments, additions, or acceptance as to any and all matters contained in the draft report. This deadline was extended by KID to October 17, 2005

5. Americo timely responded with written suggestions for revision of the draft report on October 14, 2005.
6. KID promptly modified the draft report in accordance with Americo's suggestions and remitted the same to the Company for its acceptance.
7. On December 21, 2005, Americo accepted the Report of Market Conduct Examination as revised. (*See Attachment B*).
8. The Kansas Commissioner of Insurance has since fully reviewed said Kansas report which is attached herein as Attachment A.
9. Correct index values are being used in the Peak Performer Equity Indexed Annuity program for determination of the policy values.
10. Errors in reported account values existed for all policies where complaints had previously been filed, but such errors were unintentional and were corrected by Americo as soon as the errors were found. L&E found that Americo developed thorough procedures to ensure correct index values months in advance of the targeted market examination. All current account values for all such policies are now correctly stated.
11. The terminated policies reviewed, received the correct termination value.
12. Errors in account values previously reported were due primarily to incorrect index values used in the account value calculation. These unintentional errors were corrected as soon as they were found, months in advance of the targeted

market conduct examination. All policies checked now use the correct index values.

13. L&E determined that all valuation systems are working properly, the current data is correct, and changes have been made to resolve any past problems. L&E concluded that it did not have any recommendations for improvements to administration or systems used by Americo.

Applicable Law

14. K.S.A. 40-2404 states, in pertinent part:

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

...

(1) *Misrepresentations and false advertising of insurance policies.* Making, issuing, circulating or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission or comparison which:

...

(a) Misrepresents the benefits, advantages, conditions or terms of any insurance policy;

...

K.S.A. 40-2404(1)(a).

Conclusion

Based upon the Findings of Fact and Applicable Law enumerated in paragraphs #1 through #14 above,

IT IS, THEREFORE, ORDERED BY THE COMMISSIONER OF INSURANCE:

- a. The Kansas Insurance Department's Report of Market Conduct Examination of Americo Financial Life and Annuity Insurance Company, as of March 30, 2005, is herein adopted in its entirety.

- b. The utilization of erroneous index values by Americo in determining the accounts values of its Peak Performer Equity Indexed Annuity program may constitute a violation of K.S.A. 40-2404(1)(a). Americo denies that there has been such a violation.
- c. The remedial measures taken by Americo after the discovery of the said errors minimized the potential negative impacts on its policyholders.
- d. All unintentional errors involving erroneous index values have now been corrected.
- e. All terminated policies affected by the said errors received the correct termination value.
- f. Taking into consideration of the company's willingness and cooperation in correcting the above-stated errors, Americo is herein directed to institute necessary and proper procedures assuring that the similar errors in account valuations pertaining to its Peak Performer Equity Indexed Annuity program will never recur.
- g. Americo shall be responsible for all expenses, in the total sum of Twenty-Nine Thousand Seven Hundred Sixty Dollars, (\$29,760) incurred by KID in hiring Lewis & Ellis, Inc., to conduct technical and professional actuary services in the Americo market conduct examination. Americo has complied with this requirement as to the date of this Order.

IT IS SO ORDERED THIS 16th DAY OF FEBRUARY 2006, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



/s/ Sandy Praeger
Sandy Praeger
Commissioner of Insurance
BY:

/s/ John W. Campbell
John W. Campbell
General Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing Order on this 16th day of February, 2006, by causing the same to be deposited in the United States Mail, registered mail with return-receipt requested postage prepaid, addressed to the following:

Jeanie A. Botkin
Attorney at Law
Polsinelli, Shalton, Welte & Suelthaus
700 W 47th Street
Kansas City, MO 64112-1802
Counsel of Americo Financial Life and Annuity Insurance Company

/s/ Hsingkan Chiang
Hsingkan Chiang, Staff Attorney

NOTICE OF RIGHTS

Americo Financial Life and Annuity Insurance Company. (“Americo”) is entitled to a hearing pursuant to K.S.A. §77-537, the Kansas Administrative Procedure Act. If Americo desires a hearing, the company must file a written request for a hearing with:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

This request must be filed within fifteen (15) days from the date of service of this Order. If Americo requests a hearing, the Kansas Insurance Department will notify the company of the time and place of the hearing and information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing, before commencement of same.

If a hearing is not requested in the time and manner stated above, this Order shall become effective as a Final Order upon the expiration of time for requesting a hearing, pursuant to K.S.A. §77-613. In the event that Americo files a petition for judicial review, pursuant to K.S.A. §77-613(e), the agency officer to be served on behalf of the Kansas Insurance Department is:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing Notice of Rights on this 16th day of February, 2006, by causing the same to be deposited in the United States Mail, registered mail with return-receipt requested postage prepaid, addressed to the following:

Jeanie A. Botkin
Attorney at Law
Polsinelli, Shalton, Welte & Suelthaus
700 W 47th Street
Kansas City, MO 64112-1802
Counsel of Americo Financial Life and Annuity Insurance Company

_/_s/ Hsingkan Chiang_____

Hsingkan Chiang, Staff Attorney