BEFORE ALLAN L. MCVEY, INSURANCE COMMISSIONER
STATE OF WEST VIRGINIA

MERRI WILLIAMSON,

Complainant,

v. **ADMINISTRATIVE PROCEEDING NO.: 21-IC-02052**

TRANSAMERICA PREMIER LIFE INSURANCE COMPANY,

Respondent.

FINAL ORDER

The undersigned, Insurance Commissioner of the State of West Virginia, does hereby adopt and approve the Recommended Decision of the Hearing Examiner, appended hereto, as well as the findings of fact and conclusions of law therein contained. It is consequently ORDERED that Complainant, Merri Williamson failed to prove that the Respondent, Transamerica Premier Life Insurance Company, violated the West Virginia Unfair Trade Practices Act. Therefore, the consumer complaint of Merri Williamson against Transamerica Premier Life Insurance Company, and the same, is hereby, denied and dismissed.

The objections of any party aggrieved by this Order and to the Recommended Decision herein adopted is preserved.

ENTERED this 31ST day of January, 2022.

Allan L. McVey
Insurance Commissioner
State of West Virginia

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RECOMMENDED DECISION OF THE HEARING EXAMINER

On November 15, 2021, a hearing was held before Hearing Examiner Mark W. Carbone, Esq., via Zoom, at the Office of the Insurance Commissioner, Charleston, West Virginia. Complainant, Merri Williamson (hereinafter "Complainant") and her counsel, Samuel Cook, Esq. were present via Zoom. On behalf of Transamerica Premier Life Insurance Company (hereinafter "Respondent") was Don C. A. Parker, Esq, and Carrie Lynn Yost, also appearing by Zoom.

Based upon a thorough review of the entire record in this case, the undersigned now makes the following Findings of Fact and Conclusions of Law.

1. The Complainant resides at [redacted] West Virginia [redacted]. At all times, relevant to the action, the Complainant was insured by the Respondent. (Ex. 5)

2. The Respondent's address is [redacted], Cedar Rapids, Iowa 52499. And is licensed to engage in the business of insurance in West Virginia. Ms. Carrie Yost is an agent of the Respondent and works out the Respondent's Pittsburgh, Pennsylvania office. (Ex. 4, 5)

3. According to the testimony of the Complainant, Ms. Yost was meeting with family members of the Complainant and the Complainant requested that she and Ms. Yost meet to discuss a new policy. The Complainant testified that it was her understanding that the new policy would only increase the death benefit from her current policy and nothing else would change from her current policy. Her premium and cash value would not be affected. (Tr. P. 7)

4. Per the testimony of Ms. Yost, the reason the parties scheduled their meeting was because of a letter that the Respondent sent out to all clients that had substantial cash value in their current policy. It appears that the purpose of this letter was to allow their insured to review their current policies and determine whether a new policy would be appropriate. (Tr. P. 83)

5. Ms. Yost met with the Complainant on July 25, 2019, at the Complainant's home. The testimony of the Complainant was that Ms. Yost told her that she had a policy that would increase the death benefit, keep the premium the same and it would not affect her cash value. The Complainant went on to state that she told Ms. Yost that the reason for purchasing the new policy was to protect her kids if she died and if not, to have money for retirement. (Tr. P. 7)

6. Ms. Yost testified that the Complainant, in Ms. Yost's opinion, was not focused on the cash value of the new policy during that meeting. However, Ms. Yost and the Complainant did discuss the cash value of her present policy. (Tr. P. 87)

7. Ms. Yost stated that when she meets with a client, she gives them several options of what they can do with the cash value of their present policy. Ms. Yost stated that she did not advise the Complainant that she would be better off to apply her current cash value to her new policy so that her death benefit would increase while maintaining her present premium. (Tr. P. 89-91)

8. During the meeting, Ms. Yost gathered relevant information from the Complainant. According to Ms. Yost, she did not complete the Complainant's application until she returned to her home that evening. Once completing the application that evening, Ms. Yost sent the application to the Complainant for her review and signature. (Tr. P. 85-86; Ex. 1)

9. On that same day, the document titled eDelivery Terms and Conditions of Use was sent to the Complainant. In this document, the very first sentence under the section titled The Policy states the following: "This policy is intended for people whose primary purpose in buying life insurance is for the death benefit." The Complainant testified that Ms. Yost did not go over that sentence with her. (Tr. P. 16-17; Ex. 2)

10. The Complainant admitted that she electronically signed the document titled Important Notice Replacement of Life Insurance or Annuities, on July 25, 2019. On the second page of this document, it states that a new policy usually takes longer to build cash values. The Complainant does not remember reviewing this document and claims that Ms. Yost did not go over the fact that it may take longer to build cash values. In addition, this document states that the Complainant has thirty (30) days, after receiving the policy, to cancel the policy. The Complainant

does not know whether Ms. Yost went over this section. She did state, however, that it would not matter since she did not receive the policy until November 2019, which was more than thirty days from the date she completed the application. (Tr. P. 17-21; Ex. 3)

11. Ms. Yost testified that she went over both the Terms of Condition and Use document, as well as the Important Notice Replacement of Life Insurance or Annuities with the Complainant. (Tr. P. 93-94; Ex. 2, 3)

12. Ms. Yost claimed that she went over, with the Complainant the section of the document which explained that it will take longer for the new policy to build cash values. She stated that she made sure to explain this section since there had been previous complaints by other insured individuals that their cash value was not increasing. In addition, she went over the Complainant's right to cancel the policy. (Tr. P. 95-96, 136; Ex. 3)

13. On July 25, 2019, Ms. Yost provided the Complainant a Life Insurance Policy Illustration. The Complainant does not remember looking at this document. The Complainant testified that Ms. Yost told her that nothing would change on her new policy, other than the death benefit. This is contrary to the information contained in the illustration. The Complainant admits that the information in the illustration is different than what she alleges Ms. Yost told her. Ms. Yost testified that she did review the illustration with the Complainant including the policy value, surrender value and death benefit. (Tr. P. 23-24, 97-98, 104; Ex. 4)

14. The Complainant next received the Express Application. The Application states on page two of the document that the current face amount of the policy was for $200,000.00. The Complainant denied knowing that she knew that the policy values and the death benefit were tied

to investment indexes. (Tr. P. 28-30; Ex. 5)

15. On August 15, 2019, after conducting some research, the Complainant sent Ms. Yost an email asking if universal life insurance costs increase as you age. Following the email, Ms. Yost called the Complainant. The Complainant does not remember the subject matter of the conversation; however, she wrote on the paper copy of the email that she was told by phone that it would not increase with age. (Tr. P. 32-33; Ex. 6)

16. On August 15, 2019, the Complainant signed a document titled IRC Section 1035 Exchange for Life Insurance. The Complainant is sure that she did not talk to Ms. Yost about this form because she does not understand the concept of a 1035 transaction. (Tr. P. 33-34; Ex. 7)

17. On August 2, 2019, the Respondent sent the Complainant a letter to confirm that she understood and accepted the conditions of the new policy. The Complainant admitted that she signed the document. The Complainant stated that even though she signed the document, she had not yet received a copy of her policy at the time she signed the document. The Complainant also testified that she was unaware that she may be held accountable to read her policy. (Tr. P. 35, 39-40; Ex. 8)

18. There was a change to the Complainant's original application to indicate that a policy for $15,000.00 was not going to be used in the purchase of her new policy. The Complainant admitted that she did initial that form. (Tr. P. 40-42 107-108; Ex. 9)

19. On September 27, 2019, the Complainant was provided another illustration of policy costs and benefit information. (Tr. P. 42-43; Ex. 10)

20. On September 30, 2019, Ms. Yost sent the Complainant the signature page for the September 27, 2019 illustration. In response to the email, the Complainant returned the signature page and asked when she would be receiving copy of her new policy. (Tr. P, 43-44; Ex. 11)

21. After signing the signature page for the September 27, 2019, illustration, the Complainant was sent a document to sign confirming that she received a copy of the illustration. In her testimony, she stated that she did receive the September 27, 2019, illustration and she signed the document confirming receipt. In addition, she stated that Ms. Yost did not go over the illustration with her. (Tr. P. 45-46, 60; Ex. 12)

22. Another illustration was sent to the Complainant dated October 1, 2019. Even though the Complainant stated that she had signed this illustration, she testified that she does not remember this document. (Tr. P. 63-65; Ex. 13)

23. On October 14, 2019, the Respondent sent a letter to the Complainant informing her that based on health review, they were going to have to make an adjustment to her policy. While the Complainant does not remember receiving this letter, she does admit that she signed the agreement reflecting the changes to her policy. (Tr. P. 64-68; Ex. 14, 15)

24. The Respondent sent another letter to the Complainant dated October 17, 2019. The purpose of this letter was to confirm that the Respondent would be deducting a $70.00 premium for her new policy. The Complainant does not remember seeing letter prior to the hearing. (Tr. P. 68-69; Ex. 16)

25. The Complainant sent an email to Ms. Yost on October 30, 2019, asking when she would receive a copy of her new policy. In response, Ms. Yost had attached two additional documents that the Complainant had to sign. (Tr. P. 69-70; Ex. 17)

26. The Respondent introduced a document titled Delivery Certificate. Ms. Yost signed this document, but there was no signature by the Complainant. The Complainant stated that she does not remember getting this document and did not sign it. (Tr. P. 71; Ex, 18)

27. The new policy, dated October 9, 2019, was sent to the Complainant. The Complainant claims that she did not receive the policy until after October 30, 2019. The policy stated that the Complainant had 30 days from receipt of the policy to cancel it. (Tr. P. 21, 71-72; Ex. 19.)

28. There were no other documents sent to the Complainant until she was sent a Policy Statement dated October 12, 2020, for the period of October, 2019 and October, 2020. This statement indicated that her cash value had dropped from $14,498.68 to $14,003.84. In addition, the death benefit rose from $200,000.00 to $214,003.00. (Tr. P. 47-48, 73-75; Ex.20)

29. Upon receiving the Policy Statement, the Complainant filed a complaint with the West Virginia Offices of the Insurance Commissioner. In her complaint, she stated that Ms. Yost had misrepresented aspects of her new policy. She alleged that she was told that everything would stay the same as in her old policy with Monumental with the exception that her death benefit would increase to $200,000.00. In her complaint, the Complainant requested that her new policy be cancelled, and the old policy be reinstated. (Ex. 21)

30. Ms. Yost denied that she misled the Complainant. She stated that if the Complainant had told her that she was mainly interested in improving cash value, she would have recommended a different policy. She went on to state that she never recommends that a client purchase a life insurance policy for the retirement benefits. (Tr. P. 125-127)

Issue

Whether the Respondent committed unfair trade practices when it sold a new life insurance policy to the Complainant, and if so, what should be the remedy.

Burden of Proof

The Complainant has the burden of proof to prove, by a preponderance of the evidence, that the Respondent violated the Unfair Trade Practices Act.

Jurisdiction

The West Virginia Offices of the Insurance Commissioner has jurisdiction over this Complaint under West Virginia Code § 33-2-3.

Analysis

The Complainant brought this complaint because she believed that Ms. Yost had misled her when she purchased a new life insurance policy from the Respondent. The basis of this allegation is that the Complainant contends that when she purchased the new policy she was mainly concerned with building cash value and was not overly concerned with an increase in death benefit. The Complainant testified that if she had known that her cash value was not going to increase, she would not have purchased the policy.

The first issue to address is whether Ms. Yost failed to adequately disclose the details of the new policy to the Complainant. The Respondent argues, that based on the amount of paperwork provided to the Complainant, there was more than enough information to educate the Complainant about the terms of the new policy.

There was a conflict between the testimony of the two witnesses, the Complainant and Ms. Yost, concerning their communications. For instance, the Complainant testified several times that she told Ms. Yost that her number one goal for the insurance policy was to build cash value to help fund her retirement. She did concede that she wanted a higher death benefit for her children if she would die before the kids were grown but that was secondary to building cash value.

Ms. Yost stated that the Complainant did not emphasize her desire to build cash value. She contended that if the Complainant had told her that her goal was to build cash value, she would have provided a different insurance product that would be better equipped to meet the Complainant's needs. In addition, Ms. Yost testified that it is never her recommendation to use an insurance policy to fund a client's retirement.

Other than her testimony, the Complainant did not offer any evidence that she had communicated to Ms. Yost that her main concern was building cash value. The Complainant did not call any witnesses or produce any documentation in support of her position that building cash value was her main goal.

Besides the testimony of Ms. Yost, the Respondent entered into evidence several documents to support its position. The first document was Exhibit 2 which states that the new policy is designed for those people interested in a death benefit not building cash value. While the

Complainant said, she did not have any specific memory of signing this document, her electronic signature is present.

Ms. Yost claimed that she sent the Complainant Exhibit 3, which is titled Important Notice Replacement of Life Insurance or Annuities. The document states that the new policy will usually take longer to build cash values. The Complainant testified that she does remember going over this document but contended that Ms. Yost did not go over the part of the document that states it would take longer to build cash value. Whether Ms. Yost went over this section or not, there is no argument that it is in the document and was available for the Complainant to read.

The Complainant stated that she did not know that the increase in cash values and the death benefit were related investment indexes. However, she does not explain how she believed that there would be increases in the death benefit and in cash benefits without some investment strategy. It is difficult to believe that she thought that the values would just increase without any investment factor.

The Complainant was told that the new policy could be cancelled within thirty days. The Complainant stated that she believed that she could only cancel the policy thirty days after she applied for the policy. She argues that she could not exercise this option because she did not even receive the policy until early November 2019. The documents actually say that the Complainant had the ability to cancel the policy thirty days after receipt of the new policy and not thirty days after filling out the application.

The fact that the Complainant misunderstood the cancellation period is irrelevant to the matter at hand. When she did receive the policy in early November, she did not raise the issue of cancellation. If fact, she never did raise that issue of cancellation until she received her annual report and determined that her cash value had decreased.

Another example of the attempts of the Respondent to communicate to the Complainant that her cash value would not increase, at least in the short term, were the Illustrations given to the Complainant. There were two Illustrations provided to the Complainant, Exhibits 10 and 13. While these illustrations are not part of the policy, they are tools given to the Complainant to assist her in understanding the new policy.

In both illustrations given to the Complainant, the cash value of the policy was lower than the cash value of her Monumental policy. The Complainant admitted that she signed the second illustration dated October 1, 2019 but claims that she does not remember the document.

The only evidence that would support the Complainant's position that, Ms. Yost may have misled her, was Exhibit 6. That exhibit contains an email from the Complainant to Ms. Yost. The Complainant stated in the email that she had done some research and found that an indexed universal life insurance policy's costs will increase as you age. There was no written response to the email from Ms. Yost, however, the Complainant wrote down that she was told by Ms. Yost that this research was not accurate. When she was testifying, the Complainant could not remember the conversation between her and Ms. Yost following the email.

Since there was no evidence about the subject matter of this conversation, one cannot conclude exactly what the parties discussed. The question asked by the Complainant does not

directly relate to cash value only that the cost of indexed universal life insurance policies increase with the insured's age. There were no allegations raised during the hearing that suggested that the Complainant's policy costs were increasing, except that the cash value was decreasing. The Complainant admitted that her premium remained at $70.00 per month.

The brief submitted by the Respondent emphasized that the believability of the two witnesses. The brief stated "...Ms. Yost's testimony is believable, because it is consistent with the content of the documentary evidence, and Ms. Williamson's testimony is not believable, because it conflicts with the content of the documentary evidence." While the brief of the Complainant does not directly address the believability of the witnesses, he does urge that we take into consideration the language of the policy and the allegation that the Respondent sold the Complainant a policy that did not accomplish the goals of the Complainant.

The Complainant stated, on numerous occasions during the hearing, that her main goal when she decided to purchase the new life insurance policy was to build cash value. It was clear from the evidence that the policy she purchased would not build cash value, at least not in the short term.

Even though it is clear, from the Illustrations, that the purchased policy does not increase the cash value, the Complainant still argues that she was misled by Ms. Yost on several occasions. I agree with the Respondent that Ms. Yost is more believable of the two since many of the documents placed into evidence clearly indicate that the new policy was not going to increase cash value. The documents that are most persuasive are the Illustrations presented to the Complainant. While it is true that the illustrations are not part of the policy, they do provide the insured

information of what may happen to her death benefit and, most importantly to the matter at hand, the cash value.

Even assuming arguendo that the argument of the Complainant is true that Ms. Yost did not go over any of the documents with her, she acknowledged that she either remembers the documents or it was her signature on the documents. Once the Complainant admitted that she either remembered the document or stated that she signed the documents, it would not have mattered whether Ms. Yost had explained the documents or not.

West Virginia law, American States Ins. Co. v. Surbaugh 231 W.Va. 288, 745 S.E. 2d 179 (2013), Syllabus Point 4 states as follows:

4. " A party to a contract has a duty to read the instrument." Syllabus point 5, *Soliva v. Shand, Morahan & Co., Inc.*, 176 W.Va. 430, 345 S.E.2d 33 (1986), *overruled on other grounds by National Mutual Insurance Co.* [231 W. Va. 290] *v. McMahon & Sons, Inc.*, 177 W. Va. 734, 356 S.E.2d 488 (1987).

Based on this decision, it is well settled law in West Virginia that the Complainant has a duty to read her policy, which is a contract. The Complainant clearly did not read her policy. The Complainant wants to rely on her opinion that Ms. Yost failed to explain various parts of her policy, specifically the cash value. She presented no evidence, other than the Complainant's testimony, that the documents that she signed were not explained to her. Under the law it does not matter whether Ms. Yost explained the documents, the Complainant had a duty to review the documents and she did not.

If the Complainant had argued that she had questioned Ms. Yost about the policy and Ms. Yost refused to answer her question, more weight may be given to her position. However, there was no evidence whatsoever that Ms. Yost refused to answer the Complainant's questions. Even if Ms. Yost had refused to answer the Complainant's questions, the Complainant could have read the documents and if she still didn't understand them, she should have simply walked away from purchasing the policy.

The testimony of Ms. Yost was more credible than the testimony of the Complainant. In addition, the Complainant had a duty to review her policy and if the terms were not acceptable, she should have cancelled the policy within thirty days of receiving the policy.

Therefore, the Complainant failed to meet her burden of proof that the Respondent violated the Unfair Trade Practices Act.

Conclusions of Law

The following are made as conclusions of law:

1. The Complainant has the burden to prove, by a preponderance of the evidence, that the Respondent violated the insurance laws of West Virginia.

2. An insurance policy is a contract; therefore the Complainant had a duty to read her policy, which she did not. American States Ins. Co. v. Surbaugh 231 W.Va. 288, 745 S.E. 2d 179 (2013), Syllabus Point

3. The Complainant failed to prove, by a preponderance of the evidence, that the Respondent misrepresented the policy that the Complainant purchased from Ms. Yost.

Recommended Decision

It is recommended that the Complainant failed to prove, by a preponderance of the evidence, that the Respondent violated the Unfair Trade Practices Act. Therefore, the Complainant's complaint should be dismissed.

Respectfully recommended,

MARK W. CARBONE
HEARING EXAMINER

Date: January 28, 2022