

**BEFORE THE INSURANCE COMMISSIONER OF THE  
STATE OF OKLAHOMA**

**FILED**

JAN 08 2016

INSURANCE COMMISSIONER  
OKLAHOMA

STATE OF OKLAHOMA, ex rel. JOHN D. )  
DOAK, Insurance Commissioner, )  
 )  
Petitioner, )  
v. )  
 )  
BILLIE MAE MESSER, a licensed )  
insurance producer in the State of Oklahoma )  
 )  
Respondent. )

Case No. 15-0988-DEN

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ADMINISTRATIVE  
ORDER**

**JURSDICTION AND AUTHORITY**

1. Respondent, Billie Mae Messer ("the Respondent" and/or "Ms. Messer"), requested an Administrative Hearing after Petitioner, State of Oklahoma ex rel. John D. Doak ("the Insurance Commissioner"), filed an Administrative Order of Suspension Instante on September 21, 2015, ordering summary suspension of Respondent's Oklahoma insurance producer license number 100523(NPN) as an emergency measure under 75 O.S. §§ 314(C) (2); 314.1; and O.A.C 365:1-7-9 (a) .

2. Pursuant to Article II of the Oklahoma Administrative Procedures Act, 75 O.S. §§ 250 et seq., and the Oklahoma Insurance Code, 36 O.S. §§ 101 et seq., the Respondent timely requested an Administrative Hearing.

3. Consequently, this matter came on for Administrative Hearing on December 14, 2015. Independently Appointed Hearing Officer, Stephan S. Mathis, presided over the Administrative Hearing.

4. Petitioner Insurance Commissioner appeared by and through his counsel, Kelley C. Callahan, Senior Attorney, Oklahoma Insurance Department (“the Department”). Respondent Mrs. Messer appeared by and through her counsel, Natalie Sears of Monroe & Keele PC, Tulsa, Oklahoma.

5. Petitioner Insurance Commissioner must administer and enforce all provisions of the Oklahoma Insurance Code, 36 O.S. §§ 101 et seq., including 36 O.S. §§ 1435.1 et. seq (“the Producer Licensing Act”). The Insurance Commissioner may place on probation, censure, suspend, revoke or refuse to issue or renew a license issued under the Producer Licensing Act and/or may levy a fine up to \$1,000 for each producer conduct that violates said Act, pursuant to 36 O. S. §§ 1435.13(A) and (D).

6. In this proceeding, the Insurance Commissioner alleged Respondent violated 36 O.S. §1435.13(A)(8) by using fraudulent, coercive or dishonest practices or demonstrated incompetence, untrustworthiness or financial responsibility in her dealings with Mr. William Lloyd Mitchell (“Mr. Mitchell”), an elderly farmer living in Wagoner County, Oklahoma. The Insurance Commissioner alleged Mrs. Messer violated the Producer Licensing Act, through two methods.

7. First, by joining with her husband, Roger Sterling, also an insurance producer, to befriend Mr. Mitchell. Mr. Sterling used this relationship to market and sell unsuitable insurance annuities to Mr. Mitchell. (See Final Order in Insurance Department Case No. 15-0763-DIS), revoking Sterling Messer’s insurance producer license). Mrs. Messer admitted she knew about her husband’s sale of the annuities to Mr. Mitchell after the transactions were consummated, but did nothing to stop the sales because Mr. Mitchell was not her client and Mr. Mitchell wanted to do the transactions. As an Oklahoma insurance producer, the Insurance Commissioner asserted,

when Mrs. Messer learned of the nature and scope of the annuities her husband sold to Mr. Mitchell, and did not stop her husband or contact the insurer to rescind or nullify these unsuitable investments, she violated her duty to Mr. Mitchell under the Producer Licensing Act.

8. Second, Mrs. Messer herself prepared and drafted various estate documents for Mr. Mitchell, including trust and will amendments or variations and durable power of attorney documents. Mrs. Messer gave these documents to Mr. Mitchell to sign, and contends she told Mr. Mitchell to seek legal consultation about them. Mrs. Messer offered no evidence she followed up with Mr. Mitchell to make sure he received legal advice.

9. Mrs. Messer offered no evidence of being qualified to manage an estate as large and valuable as Mr. Mitchell's. These instruments eventually named Sterling Messer and Respondent, Mrs. Messer, as Mr. Mitchell's trustees, personal representatives and durable power holders, thus placing the Messers into a position of control over Mr. Mitchell's personal, business and financial affairs.

10. The Administrative Law Judge heard testimony and admitted certain exhibits offered by the Petitioner and Respondent at the December 14, 2015 Hearing. The Hearing was recorded by audiotape as provided by 75 O. S. § 309(G).

### **FINDINGS OF FACT**

1. The evidence showed that on June 1, 2015, the Insurance Commissioner received a citizen complaint charging insurance producer Ms. Messer---a resident of Owasso---with changing Mr. Mitchell's trust, will, durable powers of attorney and taking financial advantage of Mr. Mitchell, an elderly farmer living near Wagoner, Oklahoma.

2. The evidence showed Mr. Mitchell, while a skilled farmer, had an eighth grade education, was sometimes overwhelmed by even routine matters such as dealing with his mail

and basic financial tasks. Mr. Mitchell had a number of chronic health conditions common to a man his age, and had experienced some hearing loss during his service in World War II.

3. The evidence showed the citizen complaint included charges Respondent had been redrafting various documents integral to Mr. Mitchell's estate plan, in conjunction with her husband, Mr. Sterling Messer, also at the time a licensed Oklahoma insurance producer. Mrs. Messer contends she told Mr. Mitchell to seek legal consultation about these documents, but offered no evidence she followed up with Mr. Mitchell to make sure he received legal advice.

4. Mr. Rick Koch, Special Investigator with the Department's Anti-Fraud Unit, and a former Tulsa Police Detective, testified about his decades of experience in investigations of white collar crime with state and federal task forces. Mr. Koch testified he received the assignment to investigate the complaint against Mrs. Messer. Mr. Koch testified about his investigation of the complaint the Insurance Commissioner received and his investigation of Mrs. Messer's dealings with Mr. Mitchell. Mrs. Messer testified she and her husband were long standing friends of Mr. Mitchell.

5. Respondent Mrs. Messer testified about her several decades in the business of insurance, including her most recent employment as an Account Manager in the Tulsa office of Arthur J. Gallagher & Co., where she described her experience dealing with advanced surplus and commercial lines of insurance and risk management. Mrs. Messer also testified about the course of personal and business dealings she and her husband had with Mr. Mitchell.

6. The evidence showed and Mr. Koch testified that between January 8, 2009 and June, 2013, Mr. Messer, acting as a licensed insurance producer, solicited and sold two separate annuity contracts to Mr. Mitchell when he was age 82 and 83, respectively. Annuity No. 1 had a ten year term and a face amount of \$92,500, was owned by Mr. Mitchell and named his Trust

as beneficiary. The face amount of Annuity No. 2 was \$59, 273.64, with a seven year term and was owned by Mr. Mitchell. Mr. Mitchell originally named his nephew as beneficiary, but later changed the beneficiary to a long-time female friend. The evidence showed both annuities had substantial surrender fees if redeemed before end of term.

7. Mrs. Messer admitted she knew about her husband's sale of the annuities to Mr. Mitchell after the transactions were consummated, but did nothing to stop the sales because Mr. Mitchell was not her client and Mr. Mitchell wanted to do the transactions. When Mrs. Messer learned of the nature and scope of the annuities her husband sold to Mr. Mitchell, she did not stop her husband or contact the insurer to rescind or nullify these transactions.

8. The William Lloyd Mitchell original Trust and revisions were admitted into evidence within the body of Exhibits 1, 2 and 3. The evidence and Mr. Koch's testimony showed that Mrs. Messer drafted and revised the various amendments to the original Mitchell Trust to reflect changes in named trustees and successor trustees. The final result was that by November, 2009, Sterling Messer was named as trustee and Mrs. Messer successor trustee for the Mitchell Trust.

9. The William Lloyd Mitchell original Will and amendments or revisions were admitted into evidence within the body of Exhibits 4 and 5. The evidence and Mr. Koch's testimony showed that Respondent Mrs. Messer drafted and prepared the various amendments or revisions to the original Mitchell Will to reflect changes in named personal representatives and successor personal representatives. The final result was that by November, 2009, Sterling Messer was named as the personal representative and Respondent Mrs. Messer successor personal representative for the Mitchell Will and estate. In one amendment or revision of the will that Mrs. Messer prepared, the Messers signed the document as Witnesses while also acting

as personal representatives. (See within the body of Exhibit 5, Mrs. Messer's will revision reflecting date of November 9, 2009).

10. A Durable Power of Attorney dated November 19, 2009 granting powers over William Lloyd Mitchell was admitted into evidence as Exhibit 5. The evidence and Mr. Koch's testimony showed that Mrs. Messer drafted this Power, naming both Messers as Attorneys-in-Fact. The final result was that by November, 2009, Sterling Messer and Mrs. Messer had a broad power of attorney over Mr. Mitchell's financial and personal affairs.

11. Exhibits 6 and 7 were admitted into evidence and Mr. Koch identified them as checks from Mr. Mitchell. Exhibit 7 is a check from Mr. Mitchell to Mrs. Messer dated August 25, 2012, for \$500, and memo noted as a gift. Exhibit 8 is a check from Mr. Mitchell to Mrs. Messer dated August 25, 2012, for \$1,000 and a blank memo space.

12. The evidence and Mr. Koch's testimony showed that when Mrs. Messer and her husband dealt with Mr. Mitchell, that on August 25, 2012, Mr. Mitchell issued a check for \$500 to Sterling Mitchell memo noted as a gift. On January 31, 2013, Mr. Mitchell issued a check for \$13,000 to Sterling Mitchell also memo noted as a gift.

13. The evidence and Mr. Koch's testimony showed that when Mrs. Messer and her husband dealt with Mr. Mitchell, Mr. Mitchell wrote a contribution payable to the Cornerstone Baptist Church of Owasso, Oklahoma for \$22,000. Mrs. Messer and her husband are members of and attend this church. Mr. Mitchell visited this church on a few occasions, but was not a member of the church nor did he ever regularly attend its services or functions. Cornerstone Baptist Church of Owasso used Mr. Mitchell's \$22,000 contribution to build an external sign for the church.

## CONCLUSIONS OF LAW

1. Pursuant to Title 75, Sections 250 et seq. of the Oklahoma Administrative Procedures Act and Title 36, Sections 101 et seq. of the Oklahoma Insurance Code, the record shows the Hearing in this matter was properly noticed for an Individual Hearing to be held on December 14, 2015 at 10:00 a.m. at the Oklahoma City Office of the Insurance Commissioner.

2. Pursuant to the Producer Licensing Act, the Insurance Commissioner may place on probation, censure, suspend, revoke or refuse to issue or renew a license issued under the Producer Licensing Act and/or may levy a fine up to \$1,000 for each of Respondent's acts that violate said Act. See 36 O. S. § 1435.13(A) and (D).

3. Respondent Mrs. Messer violated her duties as an Oklahoma insurance producer under 36 O. S. § 1435.13(A)(8):

- By using fraudulent, coercive or dishonest practices, in her dealings with Mr. William Lloyd Mitchell ("Mr. Mitchell"), an elderly man in Wagoner County, Oklahoma;
- Through demonstrated incompetence, untrustworthiness or financial irresponsibility in her dealings with Mr. Mitchell;
- By entering into a questionable financial relationship with Mr. Mitchell, while her husband was Mr. Mitchell's insurance agent and she involved herself in that association while she was herself an insurance producer; and
- By redrafting various documents integral to Mr. Mitchell's estate plan when unqualified to do so, in conjunction with her husband, Mr. Sterling Messer, also at the time a licensed Oklahoma insurance producer.

4. Mrs. Messer's violation of the Oklahoma Producer's Act occurred as follows: First, Mrs. Messer joined her husband, Roger Sterling, also an insurance producer, to befriend Mr. Mitchell. Mr. Sterling then sold unsuitable insurance annuities to Mr. Mitchell. Mrs. Messer admitted she knew about her husband's sale of the annuities soon after the transactions were consummated, but explained she did nothing to stop the transactions because Mr. Mitchell was

not her insurance client and Mr. Mitchell wanted to do the transactions. As an Oklahoma insurance producer, when Mrs. Messer learned of the nature and scope of the annuities her husband sold to Mr. Mitchell, and did not stop her husband or contact the insurer to rescind or nullify the unsuitable investments, she violated her duty to Mr. Mitchell under the Producer Licensing Act.

5. Second, Respondent Mrs. Messer herself drafted and prepared various estate documents for Mr. Mitchell. These included trust, will and durable power of attorney instruments. Mrs. Messer offered no evidence of being qualified to manage an estate as large and valuable as Mr. Mitchell's. Mrs. Messer was not an estate or tax attorney, CPA or financial expert. Mrs. Messer contends she told Mr. Mitchell to seek legal consultation about these documents, but offered no evidence she followed up with Mr. Mitchell to make sure he received legal advice. Mrs. Mitchell never referred Mr. Mitchell to a bank or other institution with a bona fide trust department.

6. Mr. Mitchell signed the documents drafted and revised by Mrs. Messer based on his trust and confidence in the Messers largely due to the trust cemented by the agent/client relationship here. Important legal and formal elements of the various documents Mrs. Messer drafted and redrafted were not met, severely damaging Mitchell and placing his finances in jeopardy.

7. These instruments eventually named Sterling Messer and Respondent, Mrs. Messer, as Mr. Mitchell's prime or successor trustees, personal representatives and durable power holders as of November, 2012, thus placing Mrs. Messer and her husband in a position of complete de facto and legal control over Mr. Mitchell's personal, business and financial affairs, and allowing them unfettered access to his finances, bank accounts, cash and possessions.



8. Mrs. Messer testified she and her husband were long standing friends of Mr. Mitchell. Mrs. Messer and her husband were not neighbors, blood relatives or natural objects of Mr. Mitchell's bounty. They were not attorneys, CPAs or financial experts. The Messers injected themselves into Mr. Mitchell's affairs when he became an insurance client, and they used the trust and confidence they built up with Mr. Mitchell through the business of insurance, not only to sell him unsuitable insurance products, but also to assume the duties of estate and financial advisors. In so doing, Mrs. Messer and her husband crossed the conflict of interest line the Producer's Licensing Act draws.

9. The record shows Mrs. Messer attended several Continuing Education course on ethical insurance practices and professional producer ethics.

10. Along with her husband, Mrs. Messer obtained cash from Mr. Mitchell, as the Findings of Fact demonstrate. Together with her husband, Mrs. Messer encouraged Mr. Mitchell to make gifts to Cornerstone Baptist Church in Owasso---the Messers' church home, including a cash gift for \$22,000, used to erect a sign on the outside of the building, rather than in any pastoral service or ministry. Mr. Mitchell was not a member or attendee of this church.

### **ORDER**

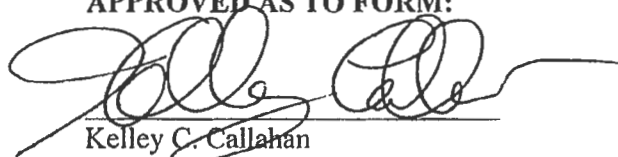
**IT IS THEREFORE ORDERED** by the Insurance Commissioner that Respondent Billie Mae Messer violated each and every element of her professional and ethical duties as an Oklahoma insurance producer under 36 O.S. § 1435.13(A)(8) in the course of her dealings with Mr. William Lloyd Mitchell, and thereby placed the welfare of Mr. Mitchell at risk. Consequently, Respondent's Oklahoma insurance producer license number 100523(NPN) should be, and is hereby, **REVOKED**.

**IT IS FURTHER ORDERED** that Respondent pay costs of this action in the amount of three hundred and seventy five dollars (\$375.00). Respondent shall pay these assessed costs to the Insurance Commissioner within thirty (30) days of receipt of this Final Order, or face further administrative action.

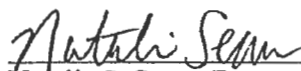


Done this 5<sup>th</sup> day of January, 2016.  
Stephan S. Mathis  
STEPHAN S. MATHIS  
INDEPENDENT HEARING EXAMINER  
OKLAHOMA INSURANCE DEPARTMENT

**APPROVED AS TO FORM:**



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**CERTIFICATE OF SERVICE**

I, Kelley C. Callahan, hereby certify that a true and correct copy of the above and foregoing *Findings of Fact, Conclusions of Law and Final Administrative Order* was mailed by certified mail, return receipt requested, on the 8<sup>th</sup> day of January, 2016 to:

Natalie S. Sears, Esq.  
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Kelley C. Callahan  
Senior Attorney

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