

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**Charles E. Atwell, Investment Company
and Variable Contracts Products Principal,
Investment Company and Variable Contracts
Products Representative, and Direct
Participation Programs Representative
[CRD No. 1208702]**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 2005001491701**

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REGISTRATION & DISCLOSURE

COMPLAINT

The Department of Enforcement alleges:

1. Charles E. Atwell entered the securities industry on March 14, 1984 as an Investment Company and Variable Contracts Representative of New England Securities, a member of FINRA (f/k/a National Association of Securities or NASD). Charles E. Atwell, during all periods mentioned herein, was associated with member firm Woodbury Financial Services, Inc., and was registered with FINRA under Article V of the By-Laws as an Investment Company and Variable Contracts Products Principal, Investment Company and Variable Contracts Products Representative, and Direct Participation Programs Representative. Woodbury Financial Services, Inc. terminated Atwell on May 5, 2005. Charles E. Atwell is not currently associated with any member

firm and has not previously been the subject of a formal disciplinary action by any regulatory body. Although Atwell is not currently registered, he remains subject to the jurisdiction of FINRA at least until February 9, 2008. On February 10, 2006, Atwell's notice of termination was amended to reflect the customer complaint of DE. Article V, Section 4 of FINRA's By-Laws provides for a two-year period of retained jurisdiction over formerly registered persons after the filing of an amendment to the notice of termination.

Summary of Charges

2. Atwell made unsuitable recommendations to three customers in connection with the sale of variable universal life policies. In each instance, the customers had no desire to purchase additional life insurance and Atwell could have no reasonable expectation that the customers would be able to pay the amounts necessary to meet their goals of accumulating funds for retirement. In two instances, Atwell could have not reasonable expectation that the customers could pay the premiums required to keep the policies from lapsing. In addition, in the course of making the recommendations, Atwell made material misrepresentations or omitted material facts concerning the transactions. Approximately 85% of Atwell's clients were invested in variable universal life policies. Atwell's total compensation derived from the unsuitable recommendations of variable universal life policies to the three customers in this complaint was \$138,973.83.

Background

3. From December 23, 2002 to March 3, 2003, Charles E. Atwell recommended that public customers MG, DE, and SA purchase variable universal life policies without having a reasonable basis for making the recommendations given the financial needs and circumstances of the customers.
4. The Hartford Stag Accumulator Variable Universal Life policy ("Hartford VUL") sold by Atwell to all three customers was a flexible premium variable life insurance product that allowed the customers to vary the amount and frequency of premiums. Atwell calculated a planned annual premium for each of the customers and provided a policy illustration prepared by Hartford showing the cash value of the policy if the annual planned premium was paid for twenty years and the market performed at 8% or 10%. Although the customers were not contractually required to pay the planned premium, accumulation of retirement funds in the accounts at the levels projected by Atwell was dependent on payment of these planned premiums.
5. A large portion of the annual premium each year funded Atwell's commission, mortality and expense charges, the cost-of-insurance, and other fees. Payment of these costs was contractually required for the lifetime of the policy to prevent the policy from lapsing. For the first ten years of the policy, these fees were covered by an annual payment of a minimum no-lapse guarantee premium. Payment of only this amount would not result in

the accumulation of cash value for retirement. If the policy lapsed due to non-payment of premiums, the customers would lose all premiums previously paid.

6. The dominant feature of the policies was life insurance. Annual fees for the cost of insurance were a percentage of the face amount of the policy. A secondary feature of the policies was investments into subaccounts. Each subaccount also had costs associated with the investment choices. The Hartford VUL also assessed a surrender charge during the first nine policy years. The customer paid a surrender charge upon certain withdrawals of funds from the policy, upon reduction of the face amount, or upon surrender of the policy.

FIRST CAUSE OF ACTION

NASD Conduct Rules 2310 and 2110, Unsuitable Recommendation and Sale to Customer MG, Against Respondent Atwell

7. On or about December 27, 2002, Charles E. Atwell recommended that MG exchange a Nationwide Variable Universal Life policy ("Nationwide VUL") issued in 1998 with a face value of \$700,000, for a Hartford VUL with a maturity date of December 27, 2035 and a face amount of \$1,200,000.
8. Atwell earned a commission of \$42,442.99 on the sale of the Hartford VUL to MG.
9. In order to fund MG's purchase at the higher face amount reflected in the Hartford VUL, Atwell also recommended that MG liquidate mutual fund holdings, totaling \$112,000.
10. MG initially funded the Hartford VUL with two deposits, totaling \$143,372.00. This consisted of the cash value of the Nationwide VUL and the value of the liquidated mutual funds.

11. In addition, in April 2004, Atwell recommended that MG deposit proceeds of approximately \$90,000 from the sale of her home into the Hartford VUL.
12. Atwell provided MG with a policy illustration showing a cash surrender value for the Hartford VUL after 20 years of \$2,040,007. However, the cash surrender value depended upon annual market returns averaging 10% and was based upon planned annual premium payments for twenty years of \$77,348.11.
13. The Hartford VUL also allowed MG to pay less than the planned annual premium. MG could elect to pay the minimum no-lapse guarantee premium of \$19,915.32 annually. However, payment of this amount would operate only to keep the life insurance in place and would not result in the accumulation of retirement funds desired by MG. The no-lapse guarantee premium could be satisfied from the cash value of the policy until the policy was depleted.
14. At the time of Atwell's recommendations, MG was a 62-year-old salesperson at a furniture store with an annual income of \$22,000.
15. MG wished to use her investments to pay living expenses during retirement.
16. MG had a history of taking loans from her Nationwide VUL to pay living expenses.
17. MG had a need for liquidity, given her limited annual income and her history of taking loans from her existing VUL.
18. MG already had life insurance through the Nationwide VUL and was not interested in purchasing additional life insurance.
19. The recommendation to exchange MG's existing Nationwide VUL and mutual funds for the Hartford VUL, and the recommendation to pay premiums on the VUL using proceeds

from the sale of MG's house were unsuitable, in part, because MG did not desire or need additional life insurance.

20. The recommendation was also unsuitable because MG had a need for liquidity and retirement income. The VUL policies each had a surrender period during the initial years of the policies. If certain withdrawals were made or the policy was surrendered, the policy holder would be charged a set percentage of the face amount of the policy as a penalty for an early surrender. The switch to the Hartford VUL recommended by Atwell lengthened the surrender period until MG would have been 72-years old, denying her penalty-free access for an additional three years beyond the surrender period provided for in the Nationwide VUL.
21. Furthermore, the exchange was unsuitable because Atwell had no reasonable expectation that MG would be financially able to pay the minimum no-lapse guarantee premium or any additional amounts necessary to meet MG's goal of accumulating retirement funds. The planned annual premium was \$77,348.11 and the minimum no-lapse premium was \$19,915.32; MG, however, earned only \$22,000 per year and had no additional sources of income. She also had limited financial resources as evidenced by a liquid net worth comprised of her Nationwide VUL and additional savings of approximately \$15,000.
22. The exchange required MG to pay a surrender charge of \$7,205.17, which was not offset by lower fees or added benefits.
23. A factor aggravating Atwell's unsuitable recommendation was his failure to properly disclose the surrender fee necessitated by the exchange. The exchange required MG to pay a surrender charge of \$7,205.17 and required Atwell to submit a 1035 exchange form to Woodbury Financial Services. Atwell left the surrender fee blank on the form.

24. Atwell's recommendation that MG fund the purchase of the Hartford VUL with the proceeds of her home sale was likewise unsuitable.
25. MG had advised Atwell that she would need the funds from her home sale for a down payment on a new home within the next year.
26. Because of Atwell's recommendation that she fund the Hartford VUL in part with the proceeds of her home sale, MG did not have enough liquid funds with which to buy her new home. She had to take a loan from the Hartford VUL and incur unnecessary interest charges at an annual net rate of 2% in order to purchase her new home.
27. By June 2006, MG had contributed a total of \$281,583.16 and paid fees in the amount of \$48,009.94 (not including the \$7,205.17 surrender charge paid to Nationwide). The fees consisted of combined mortality and expense charges of \$29,214.50, cost of insurance of \$9,015.88, surrender charges on the Hartford VUL of \$8,232.57, rider charges of \$1,276.99 and administrative charges of \$270.00. Due to the high fees, MG's account was worth \$289,573.80, an amount only slightly greater than her contributions. Furthermore, the account value did not reflect the true cash value, because the account value included a loan of \$156,636.90 which MG would be obligated to repay if she surrendered the policy.
28. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2310 and 2110 by Respondent Charles E. Atwell.

SECOND CAUSE OF ACTION

NASD Conduct Rules 2310 and 2110, Unsuitable Recommendation and Sale to Customer DE,
Against Respondent Atwell

29. On or about December 23, 2002, Atwell recommended that Customer DE purchase a Hartford Stag Accumulator Variable Universal Life policy ("Hartford VUL") with a maturity date of December 23, 2052, and a face amount of \$1,600,000. DE initially funded the policy with a \$9,000.00 payment.
30. Atwell earned a commission of \$18,488.54 on the sale of the Hartford VUL to Customer DE.
31. Atwell provided DE with a policy illustration showing a cash surrender value for the Hartford VUL after twenty years of \$930,964. The cash surrender value depended upon annual market returns averaging 8% and was based upon planned annual premium payments of \$75,000 for twenty years.
32. The VUL also allowed DE to pay less than the planned annual premium. DE could elect to pay the minimum no-lapse guarantee premium of \$13,429.20 annually. However, payment of this amount would operate only to keep the life insurance in place and would not result in the accumulation of retirement funds desired by DE.
33. At the time of the sale, DE was 45- years old and employed as a Human Resources Manager with an electric utility holding company.
34. At the time of the sale, DE and his wife had a combined annual income of \$180,000.
35. DE already had \$600,000 in life insurance at the time of the sale. The insurance was provided through DE's employer, and DE did not wish to purchase additional life insurance.
36. Atwell's recommendation that DE purchase the Hartford VUL was unsuitable, in part, because DE did not wish to purchase additional life insurance.

37. Although DE's income might have been sufficient to meet the minimum no-lapse guarantee premium, his income was not adequate to pay the planned annual premium or any amount sufficient to meet his retirement goals. Because Atwell could not reasonably expect that DE could make premium payments sufficient to meet DE's goal of accumulating retirement funds, the recommendation was unsuitable.
38. Payment of the minimum no-lapse guarantee premium in the second year of the Hartford VUL required DE to borrow from his 401(k) plan and to take a second mortgage on his home.
39. By June 2006, DE had contributed a total of \$104,819.54 and paid fees in the amount of \$32,317.20. The fees consisted of combined mortality and expense charges of \$23,645.23, cost of insurance of \$6,342.47, rider charges of \$1,654.32, surrender charges of \$405.18, and administrative charges of \$270.00. Due to the high fees, DE's inability to pay either the planned annual premium or an amount sufficient to meet his retirement goals, and withdrawal of \$36,121.07, DE's account was worth only \$35,280.89.
40. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2310 and 2110 by Respondent Charles E. Atwell.

THIRD CAUSE OF ACTION

NASD Conduct Rules 2310 and 2110, Unsuitable Recommendation and Sale to Customer SA, Against Respondent Atwell

41. On or about March 3, 2003, Atwell recommended that Customer SA purchase a Hartford Stag Accumulator Variable Universal Life policy ("Hartford VUL") with a maturity date of March 3, 2032 and a face amount of \$3,000,000.

42. Atwell earned a commission on the sale of the Hartford VUL to Customer SA in the amount of \$78,042.30.
43. Atwell provided SA with a policy illustration showing cash surrender value for the Hartford VUL after twenty years of \$2,857,591. The cash value depended upon annual market returns averaging 10% and was based upon planned annual premium payments of \$90,000 for twenty years.
44. The Hartford VUL also allowed SA to pay less than the planned annual premium. SA could elect to pay the minimum no-lapse guarantee premium of \$63,032.64 annually. However, payment of this amount would operate only to keep the life insurance in place and would not result in the accumulation of retirement funds desired by SA.
45. At the time of Atwell's recommendation, customer SA was 66 -years old, worked as a real estate agent, and had an annual income of between \$150,000 and \$200,000.
46. At the time of Atwell's recommendation, Customer SA needed liquidity, because she planned to retire in the near future and was looking for retirement income.
47. Customer SA informed Atwell that she was not interested in purchasing life insurance.
48. Atwell's recommendation that SA purchase the Hartford VUL was unsuitable, in part, because SA had no desire to purchase additional life insurance.
49. Furthermore, the Atwell's recommendation was also unsuitable because he had no reasonable expectation that SA would be financially able to pay the minimum no-lapse guarantee premium or any additional amounts necessary to achieve SA's goal of accumulating retirement funds. SA's disposable income was less than the amount necessary to pay an annual premium of \$90,000 or the minimum no-lapse guarantee premium.

50. In order to make the minimum no-lapse guarantee premium payment in 2004, SA surrendered a variable annuity held in her retirement account and incurred surrender charges of approximately \$6,000. SA was unable thereafter to make the annual no-lapse guarantee premium payments.
51. By June 2006, SA had contributed a total of \$157,500 and paid total fees in the amount of \$130,794.14. The fees consisted of combined mortality and expense charges of \$94,133.00, cost of insurance of \$36,291.14, and administrative charges of \$270. Due to the high fees and SA's inability to pay either the planned annual premiums or the minimum no-lapse guarantee premiums, SA's account was worth only \$43,748.28.
52. Atwell's recommendation that SA purchase a VUL was unsuitable because SA did not desire additional insurance, SA had a need for liquidity, and SA did not have the disposable income necessary to pay the premiums required for accumulation of retirement funds.
53. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2310 and 2110 by Charles E. Atwell.

FOURTH CAUSE OF ACTION

Securities Exchange Act of 1934, Section 10(b), SEC Rule 10b-5, and
NASD Conduct Rules 2120 and 2110, Material Misrepresentations and Omission of Material Facts,
Against Respondent Atwell

54. Complainant realleges and incorporates by reference all preceding paragraphs of this Complaint as though the paragraphs were stated fully herein.
55. During the period from on or about December 23, 2002, to on or about March 3, 2003, Charles E. Atwell made material misrepresentations or omitted material facts in

connection with the variable life sales set forth in the First, Second, and Third Causes of Action of this Complaint.

56. As referenced in the First Cause of Action, Atwell failed to disclose to MG the surrender fees associated with her exchange of the Nationwide VUL for the Hartford VUL.

Atwell's failure to disclose is evidenced by the incomplete 1035 form that he submitted to Woodbury Financial Services in connection with the exchange.

57. Also as referenced in the First Cause of Action, Atwell failed to disclose to MG the surrender fees that would be associated with a withdrawal from the Hartford VUL and failed to disclose the interest fees associated with taking a loan from the Hartford VUL. Atwell advised MG to deposit \$90,000 in proceeds from the sale of her house into the Hartford VUL, despite the fact that MG planned to use the funds within one year to purchase a new home. When MG expressed concerns about diminishing the amount of principal by withdrawing the funds or taking a loan, Atwell assured her that the policy could "hold" the funds until she was ready to buy her new home. Based upon Atwell's assurances, MG understood that the funds could be invested and withdrawn without diminishing the principal. However, the withdrawal four months later was treated as a loan against the policy, causing MG to incur interest charges at a net annual rate of 2%.

58. As referenced in the Second Cause of Action, Atwell failed to disclose to DE that DE would be required to pay annual premiums of \$13,429.20 to keep the policy from lapsing. Instead, Atwell misrepresented that payments by DE of \$450 per month would be sufficient to fund the policy.

59. As referenced in the Third Cause of Action, Atwell failed to disclose to SA that SA would be required to pay annual premiums of payments of \$63,032.64 to keep the policy from lapsing.
60. Such acts, practices, and conduct constitute separate and distinct violations of Section 10(b) of the Securities Exchange Act of 1934, SEC Rule 10b-5 thereunder, and NASD Conduct Rules 2120 and 2110 by Charles E. Atwell.

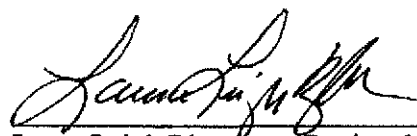
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. Order that one or more of the sanctions provided under NASD Rule 8310(a), including monetary sanctions be imposed including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.
- B. Order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: August 9, 2007



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