

BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS

IN THE MATTER OF
TIMOTHY ALONZA LILLY,
LICENSE NO.122347 and COVENANT SENIOR
ADVISORS, LLC, LICENSE NO. 300713

A.I.D. NO. 2009- 035

EMERGENCY SUSPENSION ORDER

On this day the emergency matter of Thomas Alonza Lilly (“Respondent”) and Covenant Senior Advisors, LLC (“Agency”), came before Jay Bradford, Arkansas Insurance Commissioner (“Commissioner”). The Arkansas Insurance Department (“Department”) was represented by Zane A. Chrisman, Associate Counsel. From the facts and law before the Commissioner, he finds:

FINDINGS OF FACT

1. The Commissioner has jurisdiction over the parties and subject matter pursuant to Ark. Code Ann. §23-61-103, §23-64-216 and 23-64-512, among other laws; and the authority to issue summary license suspensions and/or order payment of penalties under Ark. Code Ann. §§ 23-60-108, 23-64-216(e), 23-64-512(a), and 23-66-408.

2. Respondent is licensed as a resident Accident, Health, Sickness, Life and Credit Insurance agent and holds Arkansas resident producer license #122347. Respondent’s address is 650 Edgewood, Suite 100, Maumelle, Arkansas 72113. Respondent’s date of birth is November 14, 1965. Respondent holds appointments with Allianz Life Insurance Company of North America, American Equity Investment Life Insurance Company, American National Insurance Company, Equitable Life & Casualty Insurance Company, Forethought Life Insurance Company, Investors Insurance Corporation, Lincoln National Life Insurance Company, OM Financial Life Insurance Company, Oxford Life Insurance Company, PHL Variable Insurance Company, Sun Life

Assurance Company of Canada, United Security Life and Health Insurance Company, and Washington National Insurance Company.

3. Respondent is president of Agency and maintains a principal place of business at 9301 Maumelle, Blvd., North Little Rock, AR 72113.

4. The Department received a complaint from an Arkansas consumer alleging that Respondent advised her to move her funds from Allianz Life Insurance Company of North America to an AmeriMark Freedom SE Equity Indexed annuity with Americom. The required comparison memorandum was not completed for the replacement. As a result of the replacement, the consumer lost approximately \$8,158.27 in surrender charges, as the bonus for the new annuity did not make up for all surrender charges lost. The consumer also lost the growth she would have received if the replacement never took place.

5. The new Americom policy had an interest cap of 9.25%; however, Respondent told the consumer that the interest cap was 10.25%. Respondent marked out 9.25% on her contract and wrote in 10.25% and initialed it. The consumer later confirmed with Americom that the cap was actually 9.25%.

6. Respondent responded to the allegations stating that he thought the Americom product had an interest cap of 10.25% and when he found that he misinformed the consumer, he offered to personally make up the difference by depositing the difference into her account.

7. As a result of the misrepresentation, Americom rescinded the policy and refunded all premiums paid, leaving the consumer still with the loss of the surrender charges from the replacement.

8. Consumer alleged that Respondent was responsible for the surrender charges lost plus all growth she would have received with the Allianz annuity. Respondent paid \$18,129.21 to the consumer to satisfy all losses due to the replacement.

9. On May 23, 2008, The Securities Department entered a Cease and Desist Order against Respondent, David Larry Puckett, Joe A. Richards and First Fidelity Financial Group of Maumelle, L.L.C. ("First Fidelity").

10. The May 23, 2008 Order found that Respondent was not a licensed securities agent, broker-dealer, or investment advisor and Respondent worked at First Fidelity.

11. The Securities Department received a copy of a newspaper advertisement of First Fidelity advertising "FDIC-Insured CD's" (certificate of deposits), a 4.75% annual percentage yield, and the reports of several consumers who were considering whether to invest with First Fidelity. Fine print in the advertisement states that First Fidelity does not sell certificates of deposit, but locates banks selling certificate of deposits and that "promotional incentive may be included to obtain yield". A copy of that advertisement ran in the *Arkansas Democrat Gazette*. The Securities Department found that many Arkansas residents are responding to this advertisement, which ran for several weeks.

12. In order to achieve the yield advertised on a one-year certificate of deposit, the Respondent would have had to add money to the principal amount. Prospective investors were told that additional money will be added to the FDIC-insured bank certificates of deposit. The Respondent gave investors wanting to purchase an advertised certificate of deposit a document titled, "Certificate of Deposit Bonus Disclosure", which reflects that the certificate of deposit being sold is issued by a bank paying an "Annual Percentage Yield of 3.51%". In the next paragraph of this form, it is revealed that although the investor is writing First Fidelity a check for \$30,000, his "FDIC insured certificate of deposit account will be opened for \$30,118.75." The next sentence states that with the addition of the \$118.78, the investor will realize a 4.75% annual percentage yield on his \$30,000 investment.

13. For investors to receive the quoted yields, First Fidelity would have to create new terms not offered by the FDIC insured bank that actually issues the certificates of deposit. These certificates of deposit are securities issued by First Fidelity and not certificates of deposit issued by the FDIC insured bank. The bank only issues a certificate of deposit paying 3.51% and that amount of risk is insured by the FDIC. There are 2 risks involved with First Fidelity's addition of principal that are not insured, to wit:

- i. The possibility that First Fidelity will not make the deposit of additional principal, and
- ii. The possibility that First Fidelity will make a deposit of additional principal in an amount insufficient for the investor to realize an annual yield of 4.75% on his or her investment.

14. The Securities Department investigation of First Fidelity's office shows that these risks were realized:

- i. Of twenty-three (23) files examined in which investors purchased these certificates of deposit, the required deposits were not made in sixteen cases.
- ii. Of seven (7) files examined where the deposits of additional principal were made, the deposits were insufficient to generate an annual yield of 4.75% in two cases.

15. The First Fidelity securities delivering 4.75% annual yields are not registered with The Securities Department and no proof of exemption appears in the records of The Securities Department.

16. The Securities Department found that Respondent, David Larry Puckett, Joe A. Richards and First Fidelity had violated Ark. Code Ann. § 23-42-501(c) by offering or selling any security which is not registered or which is not exempt from registration under the terms of Ark. Code Ann. § 23-42-501, Ark. Code Ann. § 23-42-507 (2) for making untrue

statements or omitting to state a material fact necessary in order to make the statements made not misleading in light of the circumstances under which they are made. Specifically, be telling potential investors that First Fidelity is offering an FDIC insured certificate of deposit paying a 4.75% annual yield. This statement is a false statement made in connection with the offer or sale of a security. Also, by telling potential investors that they will realize a 4.75% annual yield by First Fidelity's deposit of additional principal, which is also false statement made in connection with the offer or sale of a security.

17. Respondent was ordered to immediately cease and desist from the acts and practices set forth above which violated the Arkansas Securities Act and the Rules and Orders promulgated pursuant to the Arkansas Securities Act. Respondent has the right to request a hearing within thirty (30) days of the date of the Order. If no hearing is requested, the Order will remain in effect until it is modified or vacated by the Commissioner.

18. On July 1, 2008, the Arkansas Securities Department issued a Cease and Desist Order against Respondent and Agency.

19. The July 1, 2008 Order found that Respondent passed a series 65 securities exam without being sponsored by a present or future employer. Because he took the test without sponsorship by an employing firm or state, the results will not be posted on the Central Registration Depository (CRD) until Respondent is hired by an employing investment advisor firm. As of July 1, 2008, Respondent was not registered with the Securities Department either as an investment advisor or agent of an investment advisor.

20. Respondent contacted a senior couple close to retirement living in rural Arkansas in June 2008, and recommended they roll over their 401(k) deferred compensation plan, an individual retirement account (IRA) and certain certificates of deposit (CD's)—altogether worth about \$50,000—into an equity indexed annuity with a ten-

year maturity date. The 401(k) deferred compensation plan contained securities in the form of mutual funds which contained stocks and bonds. In recommending that the couple sell their securities in order to purchase an equity indexed annuity, Respondent was recommending the sale of securities and opining that the re-investment of the funds realized from the sale of those securities into an equity indexed annuity would be a suitable investment for the couple.

21. Respondent did not disclose the May 2008 Cease and Desist Order to the couple.

22. On May 20, 2008 and May 21, 2008, the Securities Department conducted an examination of Respondent's office which revealed that Respondent recommended the sale of securities to fund the purchase of equity indexed annuities and facilitated the liquidation of securities accounts by completing various forms for customers who had an existing account holding securities. These forms included (i) new account forms to open new accounts with a broker-dealer in Florida, (ii) forms instructing the Florida broker-dealer to transition all the securities in an existing accounting holding securities to the new account, (iii) forms instructing the new broker-dealer to liquidate all securities in the new account, and finally, (iv) forms instructing the new broker-dealer to transfer the money realized from the sale of all securities in the account to the insurance company to fund the purchase of one or more equity indexed annuities.

23. The Securities Department obtained a post card to a "Free Lunch and Informative Workshop" at a restaurant in Sherwood, Arkansas, that was scheduled to take place on June 24, 2008 at 11:30 a.m. It was received by the recipient on or about June 16, 2008. In the upper left hand corner, where a return address could be posted, Respondent and Agency are identified as, "Tim Lilly, CSA, Covenant Senior Advisors®.

24. The term CSA refers to Certified Senior Advisor. According to the Society of Certified Senior Advisors (SCSA), Respondent completed the SCSA training and passed a test based on the training, but his membership expired on May 15, 2008. In March 2007, the SCSA issued a new policy regarding CSA designation. In order to use the CSA designation, the following disclosure statement was supposed to be placed on all materials produced for consumers:

Certified Senior Advisors (CSA) has supplemented their individual professional license, credentials and education with knowledge about aging and working with seniors. You should ask what those licenses, credentials and education signify. *The CSA designation alone does not imply experience in financial, health or social matters.* [Emphasis added.]

This disclosure does not appear on the invitation post card referenced or on Respondent's website. On Respondent's website, it more prominently and explicitly states "Certified Senior Advisor" and "Certified Retirement Financial Advisor".

25. The designation "Certified Retirement Financial Advisor" is granted by the Society of Certified Retirement Financial Advisors (CRFA). A check of that organization shows that Respondent is not registered with the CRFA and has never applied for membership or registration with CRFA.

26. On the same invitation post card referenced, Respondent refers to himself as a "Registered Financial Advisor". The National Association of Personal Financial Advisors (NAPFA) grants this designation to fee-only financial planners who fit several qualifications, including the requirement that members, "make all appropriate filings...with regulatory authorities," which "shall include, but is not limited to, Form ADV." Form ADV is the form used to register as an investment advisor on the CRD. Although Respondent is a licensed insurance agent, Respondent is not registered as an investment advisor or agent of the investment advisor. Respondent's having passed the series 65 is not the equivalent of being registered as an investment advisor.

27. The Securities Department found Respondent in violation of Ark. Code Ann. § 23-42-301 (c) for transacting business in Arkansas as an investment advisor without first being registered as such. He is also in violation of Ark. Code Ann. § 23-42-307, 23-42-507 Rule 308.02 (H) and (M)(5) by using the CSA designation without disclosing that he was no longer a member of the SCSA and without the disclosure statement required by the SCSA. The use of that designation without the SCSA disclosure statement, particularly when used on the website where it is provided as “Certified Senior Advisor” and placed next to the title, “Certified Retirement Financial Advisor,” is materially misleading as Respondent used the certifications to imply improperly that he possessed specialized experience in financial, health or social matters that were unique to senior citizens. Further, Respondent used the “Certified Retirement Financial Advisor” designation that he had not actually earned. Respondent referred to himself as a “Registered Financial Advisor” when Respondent had neither earned nor was qualified to receive this designation. Respondent is not registered as an investment advisor and cannot legally render advice concerning securities for a fee. Respondent’s use of the senior-specific and other professional certifications through advertisements and a website were material misstatements implying that Respondent had special certification or training in senior-specific issues and as an investment professional, when in fact, Respondent had not earned or was ineligible to use the certifications. These material misstatements misled the couple he met with and other clients and constitute violations of the above statutes.

28. It was ordered that Respondent and Agency cease and desist from the acts and practices set forth above which violated the Arkansas Securities Act and the Rules and Orders promulgated pursuant to the Arkansas Securities Act.

29. Respondent was provided with the right to request a hearing within thirty days of the date of the order. If no hearing is requested, the Order will remain in effect until it is modified or vacated by the Commissioner.

VIOLATIONS

Respondent is in violation of:

12. Ark. Code Ann. §23-64-216(a) (1) which provides that a license may be suspended or revoked for violation of any of the causes listed in Ark. Code Ann. § 23-64-512;

12. Ark. Code Ann. § 23-64-512 (a)(1), which provides that a license may be suspended or revoked for intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

13. Ark. Code Ann. § 23-64-512(a)(8) which provides that a license may be suspended or revoked for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

14. Ark. Code Ann. § 23-64-506(e) (1) & (2), which provide that a resident applicant or producer must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation, and that such qualifications must continue for an individual to remain licensed.

15. Ark. Code Ann. § 23-66-307(a)(1), which provides that life, accident and health insurance agents shall provide reasonable and professional service to each insured or prospective insured. Unfair trade practices are prohibited by Ark. Code Ann. §23-66-205;

16. Ark. Code Ann. § 23-66-307(a)(2), which provides that each agent is charged with the responsibility of exercising discretion and good faith in the sales presentation or transaction. Unfair trade practices are prohibited by Ark. Code Ann. §23-66-205;

17. Ark. Code Ann. § 23-66-307(a)(3), which provides that each agent, when it is professionally advisable, shall improve upon or change the type of insurance that any insured or prospective insured presently has by providing either better coverage or an overall program or insurance more suitable for the needs of the insured, his or her family, or a business. Unfair trade practices are prohibited by Ark. Code Ann. §23-66-205;

18. Ark. Code Ann. § 23-66-307 (c), which provides that whenever any agent in a sales presentation seeks to induce the holder of any permanent life insurance policy to permit it to lapse, or to surrender, forfeit, or change the existing permanent life insurance coverage, the agent shall: furnish the policy holder a written memorandum, dated, comparing the existing and the proposed life insurance coverage and the instrument shall be signed by the agent and the insured to acknowledge receipt. The instrument shall also be filed with the company. Unfair trade practices are prohibited by Ark. Code Ann. §23-66-205;

19. Ark. Code Ann. § 23-66-308, which provides that no agent shall pay, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insure or after insurance has been effected, any rebate, discount abatement, credit, or reduction of the premium named in the policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever not specified in the policy except to the extent provided for in an applicable filing with the Insurance Commissioner as provided by law. Unfair trade practices are prohibited by Ark. Code Ann. §23-66-205;

20. Ark. Code Ann. § 23-66-206(2), which provides that “churning of business” is wherein the licensee replaces an existing policy of life insurance and that replacement is not in accordance with Ark. Code Ann. §23-66-307 or that replacement is without objective demonstration by the licensee of the purpose of replacing the policy for the benefit and betterment of the insured, and is defined as an unfair method of competition and unfair or deceptive act or practice in the business of insurance. Unfair trade practices are prohibited by Ark. Code Ann. §23-66-205;

21. Ark. Code Ann. § 23-66-206 (8)(a) and (b), which provides that , “Misrepresentation and false advertising of insurance policies is making, issuing, circulating or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison, which misrepresents the benefits, advantages, conditions, or terms of any insurance policy, misrepresents the dividends or share of the surplus to be received on any insurance policy, and is also defined as an unfair method of competition or unfair and deceptive acts or practice in the business of insurance. Unfair trade practices are prohibited by Ark. Code Ann. §23-66-205.

22. At the upcoming hearing detailed in the enclosed Notice of Hearing, the Department seeks administrative penalties and sanctions, up to and including revocation of the Arkansas insurance license of Respondent based on the above allegations.

CONCLUSIONS OF LAW

23. Based on the allegations contained herein, Respondent and Agency is in violation of Ark. Code Ann. § 23-64-216; § 23-64-506; § 23-64-512; § 23-66-206; §23-66-307; and § 23-66-308.

IT IS THEREFORE ORDERED AND ADJUDGED, as follows:

1. Due to the gravity of the allegations and averments, it is found that a public emergency exists and the public welfare imperatively requires emergency action of the immediate suspension of Respondent's and Agency's insurance licenses.

2. Pursuant to Ark. Code Ann. § 23-64-216(e), any and all licenses issued by the Department, whether acquired by Respondent or Agency, for being a broker, agent, agency, solicitor, insurance producer or consultant in this State, are hereby suspended, pending a promptly instituted hearing on the above matter. Respondent's or Agency's failure to appear at the administrative hearing will prompt a recommendation to the Commissioner and the hearing officer to immediately revoke all insurance licenses issued to Respondent and/or Agency.

3. The Department reserves the right to amend and/or supplement the facts contained in this Order to include additional violations of state law, with notice to Respondent and/or Agency.

4. A Notice of Hearing is enclosed. At the Hearing, the Department will seek to revoke all insurance licenses of Respondent and Agency based on the above allegations.

IT IS SO ORDERED THIS 3rd day of April, 2009.


JAY BRADFORD
INSURANCE COMMISSIONER
STATE OF ARKANSAS