

**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
OF THE STATE OF TENNESSEE AT NASHVILLE**

TENNESSEE SECURITIES DIVISION,)
 Petitioner)
)
vs.)
)
PRINCIPLE RESOURCES GROUP)
STRATEGIC DIVERSIFIED INVESTMENTS)
O'BRIEN INSURANCE AGENCY, and)
MICHAEL C. O'BRIEN)

Order No. 04-019

CONSENT ORDER

The Tennessee Securities Division ("Division"), and Michael C. O'Brien, Respondent herein, agree to the entry of this Consent Order in accordance with Tenn. Code Ann. § 48-2-116 of the Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. § 48-2-101, et seq. ("Act"), which states that the Commissioner of Commerce and Insurance ("Commissioner") from time to time may make such orders as are necessary to carry out the provisions of the Act.

GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.

2. This Consent Order is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

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**LEGAL SERVICES
DEPT. OF COMMERCE & INSURANCE**

3. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts or omissions not specifically addressed in this Consent Order for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner for the Department of Commerce and Insurance or any other state government representative against the Respondent for violations of law under other statutes, rules, or regulations of the State of Tennessee, which may arise out of the facts, acts, or omissions contained in the Findings of Fact and Conclusions of Law stated herein, or which may arise as a result of the execution of this Consent Order by the Respondent.

5. Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Consent Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Consent Order by the Commissioner.

FINDINGS OF FACT

1. The Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. § 48-2-101, et seq. (the "Act"), places the responsibility for the administration of the Act on the Commissioner of Commerce and Insurance ("Commissioner"). The Division is the lawful agent through which the Commissioner discharges this responsibility. Tenn. Code Ann. § 48-2-115.

2. Respondent, Michael C. O'Brien, ("O'Brien") is a citizen and resident of

Hamilton County, Tennessee. He maintains his address at 1312 Terry Lane, Hixson, Tennessee 37343. O'Brien has never been registered with the Division as a broker-dealer, an agent of a broker-dealer, or as an investment adviser.

3. Vernon E. and Jeanette B. Boies ("Boies") are citizens and residents of the State of Tennessee, and maintain a mailing address of 458 Lupton Drive, Chattanooga, Tennessee 37415.

4. Arnold C. and Treva E. Guess ("Guess") are citizens and residents of the State of Tennessee, and maintain a mailing address of 409 Guess Circle, Chattanooga, Tennessee 37415.

5. Robert M. Bailey ("Bailey") is a citizen and resident of the State of Tennessee, and maintains a mailing address of 166 Montlake Road, Soddy Daisy, Tennessee, 37379.

6. Arnold (Arney) C. Guess, Jr. ("Guess, Jr.") is a citizen and resident of the State of Tennessee, and maintains a mailing address of 431 Golden Oaks Drive, Hixson, Tennessee, 37343.

7. Robert E. and Delores S. Bauer ("Bauer") are citizens and residents of the State of Tennessee, and maintain a mailing address of 430 Appian Way, Chattanooga, Tennessee, 37415.

8. Gerald R. and Barbara G. Bailey ("Bailey2") are citizens and residents of the State of Tennessee, and maintain a mailing address 112 East Meadow Brook Drive, Chattanooga, Tennessee, 37415.

9. Todd Ragner ("Ragner") is believed to be a citizen and resident of the State

of Tennessee, however, his address is unknown to the Division at this time.

10. Todd E. Butler (“Butler”) is believed to be a citizen and resident of the State of Tennessee, however, his address is unknown to the Division at this time.

11. Between August 1998 and June 2000, O’Brien offered and sold viatical settlement contracts representing a total gross investment amount of two million, four hundred and eighty-nine thousand, three hundred and seventy dollars (\$2,489,370) to at least twelve (12) Tennessee residents, including the Boies, Guesses, Bailey, Guess, Jr., Bauers, Bailey2s, Ragner and Butler.

12. O’Brien was not registered with the Division, as required by law, at the time the sales of the viatical settlement contracts occurred and the viatical settlement contracts themselves were not registered with the Division or subject to any recognized exemption from the registration requirement.

13. O’Brien held himself out to be a financial adviser, an estate planner and a life insurance agent, with only the latter claim being validated by any type of license or registration. O’Brien had an insurance license at the time, which lapsed on August 5, 2000.

14. All of the investors were told that viatical settlement contracts were the best investment for them, with low-to-no risk, higher rates of interest than CD’s and short-term maturity dates. The investors were also told that they could not lose their initial investment since C.N.A. Insurance Company would refund their principal within twenty-four (24) hours upon notification of a refund request.

15. The investors were issued “Viatical Certificates” purported to be issued by “Principle Resources Group (a wholly owned subsidiary of C.N.A. Insurance Company)” or

“Strategic Diversified Investments (a wholly owned subsidiary of Lincoln Benefit Life)”. These certificates were, in fact, fabricated by the Respondent.

16. The investors relied on the statements and the representations made by O'Brien, including the bogus certificates believed by the investors to be issued by two respected and well known insurance companies, when making their decisions to invest in the viatical settlement contracts.

17. Some of the investors received checks that bounced and one (1) investor, Gerald R. Bailey, was given a cashier's check for three hundred, seventy-seven thousand, five hundred dollars (\$377,500) which was discovered to be counterfeit.

18. The loss to investors totaled one million, one hundred and fifty dollars and fourteen cents (\$1,000,150.14).

19. O'Brien was investigated by the FBI, prosecuted by the United States Attorney, sentenced to serve thirty-three (33) months in federal prison plus three (3) years probation and ordered to pay restitution for the entire amount of the loss to investors.

20. O'Brien has served twenty-seven (27) months of incarceration in a federal penitentiary and three (3) months in a half-way house in accordance with his sentence and is currently on probation.

21. O'Brien is currently paying the court ordered restitution at a rate of seven hundred dollars (\$700) per month, and is gainfully employed by I.D. Solutions, a printing company, which maintains a business address of 4723 Adams Rd., Hixson, Tennessee, 37343.

CONCLUSIONS OF LAW

22. Pursuant to Tenn. Code Ann. § 48-2-115(a), the responsibility for administration of the Act is upon the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility.

23. Tenn. Code Ann. § 48-2-104(a) states, in pertinent part, that it is unlawful for any person to sell any security in this state unless: (1) It is registered under this part; (2) the security or transaction is exempted under § 48-2-103; or (3) The security is a covered security.

24. Tennessee Code Annotated § 48-2-109(a) provides that it is unlawful for any person to transact business from or in this state as a broker-dealer, agent of a broker-dealer, or investment adviser unless such person is registered as a broker-dealer, agent of a broker-dealer, or investment adviser under this part.

25. Tennessee Code Annotated § 48-2-121 provides that it is unlawful for any person, in connection with the sale or purchase of any security in this state directly or indirectly, (1) to employ any device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, and/or (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

26. The averments in paragraphs eleven – eighteen of this Consent Order constitute practices by O'Brien which would provide grounds under Tenn. Code Ann. §48-2-104(a) for the entry of an order of sanctions against O'Brien.

27. The averments in paragraphs eleven – eighteen of this Consent Order constitute practices by O'Brien which would provide grounds under Tenn. Code Ann. § 48-2-109(a) for the entry of an order of sanctions against O'Brien.

28. The averments in paragraphs eleven – eighteen of this Consent Order constitute practices by O'Brien which would provide grounds under Tenn. Code Ann. § 48-2-121 for the entry of an order of sanctions against O'Brien.

ORDER

NOW, THEREFORE, on the basis of the foregoing, and Respondent's waiver of the right to a hearing and appeal under the Tennessee Securities Act and Tennessee's Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 et seq., and Respondent's admission of jurisdiction of the Commissioner, the Commissioner finds that Respondent, for the purpose of settling this matter, admits the matters herein, has agreed to the entry of this Order and that the following Order is appropriate, in the public interest and necessary for the protection of investors.

IT IS ORDERED, pursuant to Tennessee Code Annotated § 48-2-116(a) of the Tennessee Securities Act that:

1. Respondent, Michael C. O'Brien, **IS ORDERED TO AND AGREES** to fully comply with the Tennessee Securities Act, as amended, and all rules promulgated thereunder.

2. Respondent, Michael C. O'Brien, **IS ORDERED TO AND AGREES** to permanently cease and desist in the further conduct as a broker-dealer, agent of a broker-dealer, investment adviser, or investment adviser representative from, in or into the State

of Tennessee, beginning on the date this Consent Order is executed by the Commissioner for the Department of Commerce and Insurance. Michael C. O'Brien **IS ORDERED TO AND AGREES** to permanently cease and desist in conducting securities transactions on behalf of others from, in, or into the State of Tennessee, beginning on the date this Consent Order is executed by the Commissioner for the Department of Commerce and Insurance. Michael C. O'Brien **IS ORDERED AND AGREES** to be permanently prohibited from applying for or seeking registration as a broker-dealer, agent of a broker-dealer, investment adviser, or investment adviser representative, or otherwise seeking authority to engage in any type of securities transactions on behalf of others from, in, or into the State of Tennessee, beginning on the date this Consent Order is executed by the Commissioner for the Department of Commerce and Insurance. Michael C. O'Brien **IS ORDERED AND AGREES** to be permanently prohibited from applying for or seeking the registration of any securities in the State of Tennessee.

Michael C. O'Brien **IS FURTHER ORDERED AND AGREES** to be permanently barred from applying for or seeking any registration and/or licensure administered by and/or handled through the Tennessee Department of Commerce and Insurance or any division thereof.

3. Michael C. O'Brien **IS ORDERED** to make restitution in accordance with the order of the United States District Court, Eastern District of Tennessee, Case No. 1:00-CR-141: United States of America vs. Michael Curtis O'Brien. Respondent shall abide by the terms of the judgment issued in said cause.

4. Respondent hereby **AGREES** that failure to comply with all the requirements and prohibitions contained in this Order shall result in further enforcement action by the Division, the Department of Commerce and Insurance, and/or the State of Tennessee in order to enforce the provision contained herein.

Execution of this Consent Order is due on or before April 15, 2005.

IT IS ORDERED that this Consent Order represents the complete and final resolution of, and discharge with respect to all administrative and civil, claims, demands, actions and causes of action by the Securities Division against Michael C. O'Brien for violations of the Tennessee Securities Act as alleged to have occurred with respect to the facts contained herein. Nothing herein may be construed as preventing a separate division of the Department of Commerce and Insurance or a separate entity of the State of Tennessee from taking other appropriate action against the Respondent based on the Findings of Fact and Conclusions of Law enumerated herein or the existence of this executed Consent Order.

This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signature affixed below, Michael C. O'Brien, affirmatively states that he has freely agreed to the entry of this Consent Order, that he waives the right to a hearing on the matters underlying this Consent Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Consent Order, affirmatively state their

agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

ENTERED this 12th day of March, 2005.
22nd April

Paula A. Flowers
Paula A. Flowers, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

Michael C. O'Brien
Michael C. O'Brien
Respondent

Daphne D. Smith
Daphne D. Smith,
Assistant Commissioner for Securities
Department of Commerce and Insurance

Barbara A. Doak
Barbara A. Doak (#015802)
Staff Attorney
Department of Commerce and Insurance