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

TENNESSEE SECURITIES DIVISION and TENNESSEE INSURANCE DIVISION Petitioners,	)	
VS.	)	Docket No.: 12.06-104082J No. 09-007
WILLIAM WALTER SPENCER Respondent.	)	No. 09-019

CONSENT ORDER

The Tennessee Securities Division ("TSD") and the Tennessee Insurance Division ("TID") (collectively, the "Divisions") and William Walter Spencer 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.* (the "Act"), which states that the Commissioner of the Department of Commerce and Insurance ("Commissioner") may from time to time make such orders as are necessary to carry out the provisions of the Act, and in accordance with the Tennessee Insurance Producer Licensing Act of 2002, TENN. CODE ANN. §§ 56-6-101, *et seq.* (the "Law").

Respondent, William Walter Spencer, hereby stipulates and agrees, subject to the approval of the Commissioner as follows:

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.

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 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 TSD is the lawful agent through which the Commissioner discharges this responsibility. TENN. CODE ANN. § 48-2-115.

2. The Tennessee Insurance Law, as amended, TENN. CODE ANN. §§ 56-1-101, *et seq.* (the "Law"), places the responsibility for the administration of the Law on the Commissioner. The TID is the lawful agent through which the Commissioner discharges this responsibility.

3. Respondent, William Walter Spencer ("Spencer") (CRD# 1443074) (License # 728225), is a citizen and resident of Williamson County, Tennessee, residing at 4341 South Carothers Road, Franklin, Tennessee, 37064.

4. During the times pertinent to the allegations contained herein, Spencer was registered as an agent under the Act through the following broker-dealer firms: 1) Legg, Mason, Wood and Walker, Inc. ("LMWW") (CRD# 6555) from July 1, 1997 until September 6, 2002; and 2) Wiley Bros. - Aintree Capital, LLC (CRD # 3767) ("Aintree") from September 6, 2002 until May 9, 2008. However, Spencer's registration with Aintree was terminated on May 9, 2008 based upon his discharge from employment with Aintree for violating company policy and for violating Financial Industry Regulatory Authority ("FINRA") [formerly known as the National Association of Securities Dealers ("NASD")] Conduct Rule 2370.

5. At all times pertinent herein (and to the present), Spencer has maintained an insurance producer license (License # 728225; National Association of Insurance Commissioners ("NAIC") # 1245978).

6. Beginning in or around December of 1997, Spencer began selling securities in the form of promissory notes in amounts ranging from one thousand dollars ($1,000) to forty-thousand dollars ($40,000) [See attached Exhibit B], with maturity dates ranging from a few days up to one year.

7. Spencer sold these notes to at least seventy-six (76) people including family members, securities clients and members of his church ("Note Holders") [See attached Exhibit B].

8. The promissory notes sold by Spencer were not registered or exempted from registration under the Act.

9. In addition, since Spencer did not have written approval from LMWW or Aintree (the broker-dealers through whom he was registered with during the times at issue) to sell the promissory notes and since said promissory notes were not recorded on the books and records of LMWW or Aintree as required by the rules promulgated pursuant to the Act, Spencer was not registered to sell the promissory notes despite a valid securities registration for all securities sales that were recorded on the books and records of LMWW or Aintree.

10. Spencer made material, untruthful statements to the Note Holders in order to entice them to invest money with him, such as: (1) advising them that their money was going to be pooled with money from other investors and that each of them would receive the interest rate as stated in their individual promissory notes (said interest rates ranged from five (5%) to fifteen (15%) percent);

and (2) that the notes were guaranteed by his personal estate which totaled over one and one half million dollars ($1.5M).

11. Spencer also omitted material facts by failing to disclose to the Note Holders, before they invested with him: (1) how many promissory notes he had issued that were still outstanding; (2) the total aggregate amount of the promissory notes he had outstanding; (3) how many promissory notes he had issued that were past due; and (4) how many promissory notes he had issued that were being "rolled over" and reissued with the accumulated interest added to the note and a new maturity date set because of his inability to pay the principal and accrued interest.

12. Spencer also engaged in numerous dishonest or unethical practices under the Act by: (1) borrowing money from a customer; (2) by selling securities that were not approved by or recorded on the books and records of LMWW or Aintree; (3) by executing orders for the purchase or sale of unregistered securities that were not exempt under the Act; and (4) by violating rules of a national securities exchange or national securities dealers association of which Spencer was an associated person with respect to any customer, transaction or business in this state.

13. Spencer also engaged in fraudulent, coercive or dishonest practices and/or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state by: (1) engaging in the unregistered sales of unregistered securities; (2) by deceiving the Note Holders about the nature of their investments and the promised return on their investments; (3) by concealing from the Note Holders material information which would have enabled them to make informed decisions about their investments; and (4) by using Note Holders money to pay off other Note Holders and not investing all of the Note Holders' funds in the investment vehicles as presented

to the Note Holders.

CONCLUSIONS OF LAW

14. Pursuant to TENN. CODE ANN. §48-2-115(a), the responsibility for administration of the Act is upon the Commissioner. The TSD is the lawful agent through which the Commissioner discharges this responsibility.

15. Pursuant to TENN. CODE ANN. §§ 56-1-101, *et seq.* (the "Law"), places the responsibility for the administration of the Law on the Commissioner. The TID is the lawful agent through which the Commissioner discharges this responsibility.

16. TENN. CODE ANN. § 48-2-104(a) states 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.

17. TENN. CODE ANN. § 48-2-104(b) provides that "The commissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any regulation, rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars ($10,000) per violation."

18. TENN. CODE ANN. § 48-2-109(a) provides that "It is unlawful for any person to transact business from or in this state as a broker-dealer or agent unless such person is registered as a broker-dealer or agent under this part."

19. TENN. CODE ANN. § 48-2-109(e) provides that "The commissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4,

chapter 5, impose a civil penalty against any person found to be in violation of this section, or any regulation, rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars ($10,000) per violation."

20. TENN. CODE ANN. § 48-2-112(a)(2)(B) provides that "The commissioner may by order deny, suspend, or revoke any registration under this part if the commissioner finds that: ... (2) The applicant or registrant... (B) has willfully violated or willfully failed to comply with any provision of this part or a predecessor chapter or any rule or order under this part or a predecessor chapter...".

21. Tennessee Code Annotated § 48-2-112(a)(2)(G) states, in pertinent part, that the Commissioner by order may deny, suspend, or revoke any registration under this part if she finds that the order is in the public interest, necessary for the protection of investors, and if she finds that the registrant, or in the case of a broker-dealer, any officer, director, or any person occupying a similar status or performing similar functions has engaged in dishonest or unethical practices in the securities business.

22. TENN. CODE ANN. § 48-2-116 provides that the commissioner may make, promulgate, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this Act as long as any such rule, form or order is in the public interest, necessary for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act.

23. Tenn. Comp. R. & Regs. tit. Dep't of Commerce and Ins., ch. 0780-4-3-.02(6)(b) states that it shall be deemed as a "dishonest or unethical business practice" by an agent under Tenn. Code Ann. § 48-2-112(a)(2)(G) to engage in the activity of: (1) Borrowing money or securities from a customer; ... (3) Effecting securities transactions with a customer not recorded on the regular

books or records of the broker-dealer which the agent represents, unless the transactions are disclosed to, and authorized in writing by, the broker-dealer prior to execution of the transactions; ... (16) [e]xecuting orders for the purchase or sale of securities which the agent knew or should have known were not registered under the Act unless the securities or transactions are exempt under the Act; and (17) Violating any rule of a national securities exchange or national securities dealers association of which the agent is an associated person with respect to any customer, transaction or business in this state.

24. FINRA [formerly NASD] Conduct Rule 2370 states that no person associated with a member in any registered capacity may borrow money from or lend money to any customer of such member unless ... (3) the member has pre-approved in writing the lending or borrowing arrangement.

25. TENN. CODE ANN. § 48-2-121(a)(2) states that it is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, directly or indirectly, to: ... (2) 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.

26. TENN. CODE ANN. § 56-6-112(a)(2) provides that "The commissioner may place on probation, suspend, revoke or refuse to issue or renew a license issued under this part or may levy a civil penalty in accordance with TENN. CODE ANN. §§ 56-6-155(b), 56-6-112(e), or 56-2-305(a)(2)" as applicable, "or take any combination of those actions, for any one (1) or more of the following causes: ... (2) Violating any law, rule, regulation, subpoena or order of the commissioner or of another state's commissioner;"

27. TENN. CODE ANN. § 56-6-112(a)(8) provides, in pertinent part, that "The commissioner may place on probation, suspend, revoke or refuse to issue or renew a license issued under this part or may levy a civil penalty in accordance with TENN. CODE ANN. §§ 56-6-155(b), 56-6-112(e), or 56-2-305(a)(2)" as applicable, "or take any combination of those actions, for any one (1) or more of the following causes: ... (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;"

28. For any of the promissory notes issued prior to December 31, 2002, TENN. CODE ANN. § 56-6-155(2000) was in effect. In pertinent part, TENN. CODE ANN. § 56-6-155(2000) stated:

> **56-6-155. Grounds for suspension, etc. – Civil penalty. –**
> (a) The commissioner may suspend, revoke, or refuse to issue or renew any license under this part for any one (1) or more of the following causes:
>
> (10) Being demonstrably incompetent, untrustworthy, or financially irresponsible...[.]
>
> (b) In addition to or in lieu of any denial, suspension, or revocation of a license hereunder, the commissioner may access a civil penalty against any person violating this part in an amount not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each violation. [Acts 1988, ch. 1019, § 25.]

29. TENN. CODE ANN. § 56-6-155(2000) was repealed effective January 1, 2003 and was replaced by TENN. CODE ANN. § 56-6-112(2002). For any of the promissory notes sold after January 1, 2003, but before June 4, 2008, TENN. CODE ANN. § 56-6-112(2002) stated, in pertinent part:

> **56-6-112. License denial, nonrenewal, suspension or revocation.-**
> (a) The commissioner may place on probation, suspend, revoke or refuse to issue or renew a license issued under this part or may levy a civil penalty in accordance with subsection (e) or take any combination of such actions, for any one or more of the following causes:
>
> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating

incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere ...[.]

(e) With respect to any person licensed or required to be licensed under this part, and in addition to or in lieu of any applicable denial, suspension or revocation of a license, the commissioner may assess a civil penalty against such person in an amount not less tha[n] one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each separate violation of a statute, rule or order pertaining to the sale, solicitation or negotiation of insurance in this state. Each day of continued violation constitutes a separate violation.

30. TENN. CODE ANN. § 56-6-112(a)(13)(e)(2002) was replaced by TENN. CODE ANN.§ 56-2-305(a)(2), effective June 4, 2008. For any of the promissory notes sold after June 4, 2008, TENN. CODE ANN.§ 56-2-305(a)(2) states, in pertinent part:

56-2-305. Violations – Commissioner's orders – Penalties. –
(a) If, after providing notice consistent with the process established by § 4-5-320(c) and providing the opportunity for a contested case hearing held in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, the commissioner finds that any insurer, person, or entity required to be licensed, permitted, or authorized by the division has violated any statute, rule or order, the commissioner may, at the commissioner's discretion, order:

(2) Payment of a monetary penalty of not more than one thousand dollars ($1,000) for each violation, but not to exceed an aggregate penalty of one hundred thousand dollars ($100,000), unless the insurer, person, or entity knowingly violates a statute, rule or order in which case the penalty shall not be more than twenty-five thousand dollars ($25,000) for each violation, not to exceed an aggregate penalty of two hundred fifty thousand dollars ($250,000). This subdivision (a)(2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subdivision (a)(2), each day of continued violation shall constitute a separate violation; and

(3) The suspension or revocation of the insurer's person's, or entity's license.

31. The averments in paragraphs one – thirteen of this Consent Order, constitute practices by William Walter Spencer which would provide grounds under TENN. CODE ANN. § 48-2-104(a) and (b) for the entry of an order of sanctions.

32. The averments in paragraphs one – thirteen of this Consent Order, constitute practices by William Walter Spencer which would provide grounds under TENN. CODE ANN. § 48-2-109(a) and (e) for the entry of an order of sanctions.

33. The averments in paragraphs one – thirteen of this Consent Order, constitute practices by William Walter Spencer which would provide grounds under TENN. CODE ANN. § 48-2-112(a)(2)(B) and (d) for the entry of an order of sanctions.

34. The averments in paragraphs one – thirteen of this Consent Order, constitute practices by William Walter Spencer which would provide grounds under TENN. CODE ANN. § 48-2-112(a)(2)(G), Tenn. Comp. R. & Regs. tit. Dep't of Commerce and Ins., ch. 0780-4-3-.02(6)(b), and FINRA [formerly NASD] Conduct Rule 2370 for the entry of an order of sanctions.

35. The averments in paragraphs one – thirteen of this Consent Order, constitute practices by William Walter Spencer which would provide grounds under TENN. CODE ANN. § 48-2-121(a)(2) for the entry of an order of sanctions.

36. The averments in paragraphs one – thirteen of this Consent Order, constitute practices by William Walter Spencer which would provide grounds under TENN. CODE ANN. § 56-6-112(a)(2), TENN. CODE ANN. §§ 56-6-155(b), 56-6-112(e) OR 56-2-305(a)(2) as applicable for the entry of an order of sanctions.

37. The averments in paragraphs one – thirteen of this Consent Order, constitute practices by William Walter Spencer which would provide grounds under TENN. CODE ANN. § 56-6-112(a)(8), TENN. CODE ANN. §§ 56-6-155(b), 56-6-112(e) OR 56-2-305(a)(2) as applicable for the entry of an order of sanctions.

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, the Tennessee Insurance Law and the 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 TENN. CODE ANN. § 48-2-116(a) of the Tennessee Securities Act and TENN. CODE ANN. § 56-6-112(a) of the Tennessee Insurance Law that:

1. Respondent, William Walter Spencer, **IS ORDERED TO AND AGREES** to fully comply with the Tennessee Securities Act, as amended, and all rules promulgated thereunder;

2. Respondent, William Walter Spencer, **IS ORDERED AND AGREES** to amend form U-4 and/or U-5, pursuant to the instructions of said forms and as required by the FINRA, and to file the appropriate Disclosure Reporting Page to disclose the details of this action;

3. Respondent, William Walter Spencer, shall **CEASE AND DESIST** in any further conduct as a broker-dealer, agent of a broker-dealer, investment adviser, or investment adviser representative from or in the state of Tennessee, beginning on the date this Consent Order is executed by the Commissioner for the Department of Commerce and Insurance;

4. Respondent, William Walter Spencer, shall **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;

5. Respondent, William Walter Spencer, shall be **PERMANENTLY BARRED** from applying for or seeking registration with the TSD as a broker-dealer, agent of a broker-dealer, investment adviser, or investment adviser representative, beginning on the date this Consent Order is executed by the Commissioner for the Department of Commerce and Insurance;

6. Respondent, William Walter Spencer, shall be **PERMANENTLY BARRED** from applying for or seeking licensure as an insurance producer with the TID as an insurance producer, beginning on the date this Consent Order is executed by the Commissioner for the Department of Commerce and Insurance.

7. **IT IS ORDERED**, pursuant to TENN. CODE ANN. § 48-2-116(a) of the Tennessee Securities Act that: The agent registration (CRD # 1443074) held by the Respondent, William Walter Spencer, is hereby **REVOKED**.

8. **IT IS FURTHER ORDERED**, pursuant to TENN. CODE ANN. § 56-6-112(a) of the Tennessee Insurance Law that: The insurance producer license (License # 728225), held by the Respondent, William Walter Spencer, is hereby **REVOKED**.

9. Respondent, William Walter Spencer, **IS ORDERED TO AND AGREES** to pay restitution to the Note Holders [See Attachment 1 to Deed of Trust, included in this Order by reference and attachment], in the amount of one million, five hundred and eighty-six thousand, one hundred and thirty-seven dollars and fifty-one cents ($1,586,137.51), to be paid by the execution and filing of the attached Deed of Trust for the Benefit of Spencer Note Holders [See attached Exhibit A,

included in this Order by reference and attachment]. The Note Holders will be paid out of the residual proceeds of the sale of the subject property on a pro-rata basis, the distribution to be paid as follows: initial distribution will be a pro-rata share of the available proceeds based on the principal amount invested by each Note Holder [See attached Exhibit B] and additional distributions, if funds are available, shall be based on a pro-rata share of the accrued interest due on the promissory notes. Any Note Holder made whole based on a prior lien against the subject property shall not share in the distribution under the Deed of Trust for the Benefit of Spencer Note Holders [See attached Exhibit A].

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

IT IS ORDERED that this 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 Commissioner against William Walter Spencer for violations of the Act alleged by the Tennessee Securities Division and the Tennessee Insurance Division to have occurred with respect to the facts contained herein.

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, William Walter Spencer, 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 Divisions, 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 16th day of November, 2009.

Leslie A. Newman, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

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Respondent

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