

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

**TENNESSEE SECURITIES and
INSURANCE DIVISIONS,
Petitioners,**

v.

**BARRETT R. DELK,
Respondent.**

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Docket No. 12.01-200477J

AGREED FINAL ORDER

The Tennessee Securities and Insurance Divisions of the Tennessee Department of Commerce and Insurance (“TSD” and “TID, respectively), and Barrett R. Delk (“Respondent”), stipulate and agree, as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Agreed Final Order is subject to the Commissioner’s acceptance and has no force and effect until such acceptance is evidenced by the entry and execution of the Commissioner. Execution of this Agreed Final Order by the Commissioner shall occur when the Commissioner signs and dates this Agreed Final Order.

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

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

4. Other than this proceeding brought by the Commissioner for violations of Title 56 and Title 48 of Tennessee Code Annotated addressed specifically in this Agreed Final Order, the Respondent fully understands that this Agreed Final Order will in no way preclude proceedings by state or local officers, agencies, or civil or criminal law enforcement authorities against the Respondent for violations of law under statutes, rules, or regulations of the State of Tennessee, which may arise out of the facts, acts, or omissions contained in the Statements of Fact and Conclusions of Law stated herein, or which arise as a result of the entry and execution of this Agreed Final Order by the Respondent.

5. The Respondent expressly waives all further procedural steps, and expressly waives the right to seek judicial review of or to otherwise challenge or contest the validity of this Agreed Final Order, the stipulations and imposition of discipline contained herein, and the consideration and entry and execution of this Agreed Final Order.

6. This Agreed Final Order will become effective on the date it is filed with the Administrative Procedures Division of the Tennessee Secretary of State.

AUTHORITY AND JURISDICTION

7. The Commissioner has jurisdiction over this matter pursuant to Tenn. Code Ann. §§ 56-1-101, 56-1-202, and 56-6-112 (“Law”) and Tenn. Code Ann. §§ 48-1-101 to 48-1-201 (“Act”). The Law and Act places on the Commissioner the responsibility of the administration of its provisions.

PARTIES

8. The TSD and the TID are the lawful agents through which the Commissioner administers the Law and Act and are authorized to bring this action for the protection of the public.

9. The Respondent is a citizen and resident of the State of Tennessee and holds a valid Tennessee resident insurance producer license, number 0823016, which became active on or about January 29, 2000, and which is currently scheduled to expire on May 31, 2021. The Respondent is also currently registered with the Financial Industry Regulatory Authority (“FINRA”) and with the Tennessee Securities Division (“TSD”) as a broker-dealer agent, Number 4131669, and has been so registered since 2000. From December 2006 until August 2013, Respondent was

associated with CW Securities, LLC, as a broker-dealer agent, and as a licensed insurance producer. Respondent's address is 60 Brierwood Circle, Piperton, TN 38017.

STATEMENTS OF FACT

10. The Respondent was, at all times material herein, a licensee of the TID holding an insurance produced license and was registered with FINRA and the TSD as a broker-dealer agent.

11. In or about October 2010, the Respondent met with a customer, Ms. Zellner ("Zellner"). At the time, Zellner owned a variable annuity issued by the Hartford having a gross full surrender value of approximately \$212,791 dollars (the "Hartford Variable Annuity") and a variable annuity issued by Pacific Life Insurance Company with a gross full surrender amount of approximately \$380,598 (the "PacLife Variable Annuity"). The variable annuity issued by the Hartford would be out of its 7 year surrender period on or about November 21, 2010, at which time Zellner could surrender that annuity without incurring any surrender charges.

12. In or about October 2010, the Respondent recommended Zellner surrender the Hartford Variable Annuity and the PacLife Variable Annuity to purchase a fixed-rate annuity issued by Phoenix Life Insurance Company ("Phoenix Annuity").

13. Zellner followed the Respondent's recommendation and surrendered the Hartford Variable Annuity and the PacLife Variable Annuity. Because these annuities were within their surrender periods, Zellner was charged surrender fees of approximately \$16,523.

14. Zellner could have avoided the payment of some of these fees by briefly delaying her surrender.

15. Zellner used the proceeds from the surrender of the Hartford Variable Annuity and the PacLife Variable Annuity and purchased the Phoenix Annuity, paying a single premium of \$576,866, which was enhanced by 8%, bringing the benefit base to \$623,016.

16. To achieve the maximum 7% income benefit under the Phoenix Annuity, Zellner could not take withdrawals prior to her 70th birthday in July 2011. Zellner set aside money to use in the interim, but her expenditures exceeded this amount and she began taking withdrawals from the Phoenix annuity reducing her potential income benefit and incurring additional surrender charges.

17. The Respondent violated Tenn. Code Ann. §§ 56-6-112(a)(2) and (8) and Tenn. Comp. R. & Regs. 0780-01-86-.06, and Tenn. Code Ann. § 48-1-121.

18. As a result of the foregoing, the Respondent Mr. Delk is subject to a revocation, civil penalty, and other relief under Tenn. Code Ann. §§ 56-6-112(a) and (g), and §48-1-112 (a)(2)(G).

STATEMENTS OF LAW

19. TENN. CODE ANN. § 56-6-112 providing in pertinent part:

(a) The Commissioner may place on probation, suspend, revoke, or refuse to issue or renew a license issued under Title 56, Chapter 6, Part 1, or issue a civil penalty for the following reasons:

...

(2) Violating any law, rule, regulation, subpoena or order of the commissioner or of another state's commissioner;

...

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

...

(g) If . . . the commissioner finds that any person required to be licensed, permitted, or authorized by the division of insurance pursuant to this chapter has violated any statute, rule or order, the commissioner may, at the commissioner's discretion, order:

(1) The person to cease and desist from engaging in the act or practice giving rise to the violation.

(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). This subdivision (g)(2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subdivision (g)(2), each day of continued violation shall constitute a separate violation; and

- (3) The suspension or revocation of the person's license.
- (h) In determining the amount of penalty to assess under this section, the commissioner shall consider:
- (1) Whether the person could reasonably have interpreted such person's actions to be in compliance with the obligations required by a statute, rule or order;
 - (2) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (3) The circumstances leading to the violation;
 - (4) The severity of the violation and the risk of harm to the public;
 - (5) The economic benefits gained by the violator as a result of noncompliance;
 - (6) The interest of the public; and
 - (7) The person's efforts to cure the violation.

20. TENN. CODE ANN. § 48-1-112 provides, in pertinent part:

(a) The commissioner may by order deny, suspend, or revoke any registration under this part if the commissioner finds that:

- (1) The order is in the public interest and necessary for the protection of investors; and
- (2) The applicant or registrant or, in the case of a broker-dealer or investment adviser, any affiliate, partner, officer, director, or any person occupying a similar status or performing similar functions;

....

(G) Has engaged in dishonest or unethical practices in the securities business[;]

21. TENN. CODE ANN. § 48-1-121 provides in pertinent part:

(a) It is unlawful for any person, in connection with the offer, sale or purchase

of any security in this state, directly or indirectly, to:

- (1) Employ any device, scheme or artifice to defraud;
- (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 the light of the circumstances under which they were made, not misleading; or
- (3) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

...

Without admitting or denying the allegations and statements of law set forth above, (except as to subject matter, and jurisdiction issues which are admitted) the Respondent agrees to the following judgment.

It is, therefore **ORDERED**, that:

1. On or before July 22, 2020, the Division shall receive, and the Respondent will pay One Thousand Dollars \$1,000.00 to the Tennessee Department of Commerce and Insurance.
2. The Respondent will provide payment via check payable to the Tennessee Department of Commerce and Insurance and this Agreed Final Order must accompany the payment for reference.
3. If the Respondent mails the check, he will send it to the attention of:

State of Tennessee
Department of Commerce and Insurance
Attn: Robyn Ryan
Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243

4. Should the Respondent fail to comply with this Agreed Final Order, the Commissioner may seek to enforce the terms of this Agreed Final Order through collections without a hearing or through formal process and seek to impose additional sanctions and other

appropriate relief subject to the Respondent's right to a hearing pursuant to the Tennessee Securities Act of 1980.

This Agreed Final 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. This Agreed Final Order is in the nature of a settlement and shall not be construed as rendering Respondent subject to a statutory disqualification as set defined in 15 U.S.C. 78c(a)(39). In particular, this Agreed Final Order is not intended to be a final order described by 15 U.S.C. § 78o(b)(4)(H). By the signatures affixed below, the Respondent affirmatively states he has freely agreed to the entry and execution of this Agreed Final Order, that he waives his right to a hearing on the matters contained herein, and that no threats or promises of any kind have been made to him by the Commissioner, the TSD and TID, or any agent or representative thereof. The parties, by signing this Agreed Final Order, affirmatively state their agreement to be bound by the terms of this Agreed Final Order and aver that no promises of offers relating to the circumstances described herein, other than the terms of the settlement as set forth in this Agreed Final Order, are binding upon them. This Agreed Final Order may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. The facsimile, email, or other electronically delivered signatures of the parties shall be deemed to constitute original signatures, and facsimile or electronic copies shall be deemed to constitute duplicate originals.

EXECUTED this ____ day of _____, 2020.


Hodgen Mainda (Jul 6, 2020 08:51 CDT)

Hodgen Mainda, Commissioner

APPROVED FOR ENTRY:



Barrett R. Delk



Rachel Jade-Rice (Jul 2, 2020 16:21 CDT)

Rachel Jade-Rice
Assistant Commissioner for Insurance
TN Department of Commerce and Insurance



EB (Jul 3, 2020 17:02 CDT)

Elizabeth Bowling
Assistant Commissioner for Securities
TN Department of Commerce and Insurance



Ryan Baker BPR #024309
Attorney for Respondent
Bass, Berry & Sims PLC
100 Peabody Place, Suite 1300
Memphis, TN 38103-3649



Robyn Ryan (Jun 3, 2020 14:22 CDT)

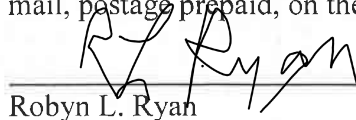
Robyn Lynne Ryan BPR #012782
Assistant General Counsel
TN Department of Commerce and Insurance
500 James Robertson Parkway, 12th Floor
Nashville, TN 37243

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the ____
day of _____, 2020.

Stephanie Shackelford, Director
Administrative Procedures Division

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document will be sent to Respondent Barrett Delk in care of his attorney, Ryan Baker, Bass, Berry & Sims, PLC, 100 Peabody Place, Suite 1300, Memphis, TN 38103-3649 via email and first-class United States mail, postage prepaid, on the 7 day of July, 2020.


Robyn L. Ryan