BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

W. DALE FINKE, Director, Missouri Department of Insurance, Financial Institutions and Professional Registration,	)	
Petitioner,	)	
v.	)	**Case No.: 06-1352 DI**
MICHAEL G. GRIMES,	)	
Respondent.	)	

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Administrative Hearing Commission

PETITIONER'S FIRST AMENDED COMPLAINT

W. Dale Finke, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, through counsel, complains and requests the Administrative Hearing Commission find that cause exists for disciplinary action against Respondent, Michael G. Grimes, because:

INFORMATION RELEVANT TO ALL COUNTS

1. Petitioner is the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration (hereinafter "Petitioner"), whose duties include, pursuant to RSMo Chapters 374 and 375, the regulation, supervision, and discipline of licensed insurance producers.

2. The Missouri Department of Insurance, Financial Institutions and Professional Registration (hereinafter "the department") issued a producer license to Respondent on May 30, 1978 (license # PR 135825). Respondent's producer license is set to expire on May 30, 2008.

3. The Commission has jurisdiction over this Complaint pursuant to § 621.045, RSMo (Cum. Supp. 2005).

COUNT I

4. Respondent failed to report administrative action taken against him by another governmental agency in this state within thirty (30) days of the final disposition of the matter as required by § 375.141.6, RSMo (Cum. Supp. 2005), a violation of the insurance laws of Missouri, and grounds for discipline of Respondent's insurance producer license pursuant to § 375.141.1(2), RSMo (Cum. Supp. 2005).

5. The facts are as follows:

a. In March of 2005, Respondent entered into Consent Order No. AP-05-01 with the Missouri Commissioner of Securities.

b. The Consent Order stipulated, inter alia, that Respondent provided investment advice to Missouri residents without being registered as an investment adviser representative.

c. As a result of this administrative action, Respondent consented to, inter alia, being prohibited from offering investment advice, and from applying for registration as a securities agent or investment adviser representative in Missouri for five (5) years. Respondent also paid twenty-seven thousand, five hundred dollars ($27, 500.00) to the Secretary of State's Investor Education and Protection Fund.

d. Respondent did not report the above administrative action to the department within thirty (30) days of the final disposition of the matter as required by § 374.141.6, RSMo (Cum. Supp. 2005).

6. As a result, sufficient grounds exist to discipline Respondent's insurance license pursuant to § 375.141.1(2), RSMo (Cum. Supp. 2005).

COUNT II

7. Respondent made false or fraudulent statements or representations on or relative to an application for a policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, agency, broker or other person, a unfair trade practice prohibited by § 375.934, RSMo (2005), and grounds for discipline of Respondent's insurance producer license pursuant to §§ 375.141.1(7) and (5), RSMo (Cum. Supp. 2005).

8. The facts are as follows:

a. On or about February 24, 2004, Respondent completed and signed an initial insurance producer application for Triumph Marketing, a field marketing organization, which was to be used, per his authorization, as a model for further insurance producer applications.

b. The initial Triumph Marketing application did not include any questions regarding past adverse regulatory or administrative history which might have affected the issuance of an insurance license.

c. Respondent verbally advised Julie Hackett, President of Triumph Marketing, that he previously paid a fine in relation to his Missouri securities license. When Respondent signed his initial application with Triumph Marketing, he failed to disclose the details or extent of the following regulatory or administrative actions:

i. Consent Order No. AO-98-03 signed by Respondent and the Missouri Commissioner of Securities in July of 1998. The Consent Order stipulated,

among other things, that Respondent, while a registered securities agent, promoted himself as the author of a book entitled *The Retirees Complete Guide to the Secrets of a Secure and Peaceful Retirement*. The front cover of the book identified Respondent as the author and the back cover contained a photograph of Respondent and biographical information under the heading "Meet the Author." Respondent later submitted a statement to the Securities Division that he had "purchased the right to use the book" from a company in Naperville, Illinois. The Consent Order further stipulated that such activity by Respondent was an act, practice, or course of business which operated or would operate as a fraud or deceit upon any person. Respondent consented to, among other things, not use his name as the author of the book and paid ten thousand dollars ($10,000.00) to the Secretary of State's Investor Education Fund;

ii. Consent Order No. AO-00-20 signed by Respondent and the Missouri Commissioner of Securities in November of 2000. The Consent Order stipulated, among other things, that Respondent made unsuitable securities investment recommendations to an inexperienced investor resulting in financial losses. The Consent Order further stipulated Respondent engaged in a dishonest or unethical practice in the securities industry. Respondent consented to, among other things, be subject to special supervision by any broker-dealer firm for which Respondent might seek registration, paid fifteen thousand dollars ($15,000.00) restitution to the investor, and paid one

thousand dollars ($1,000.00) to the Secretary of State's Investor Education Fund;

iii. In March of 2001, Respondent signed a letter of Acceptance, Waiver and Consent from NASD Regulation, Inc (National Association of Securities Dealers). The letter stipulated, among other things, that Respondent made unsuitable investment recommendations regarding mutual fund shares inconsistent with just and equitable principles of trade in violation of NASD Conduct Rules. Respondent consented to, among other things, the imposition of a thirty (30) day suspension of his securities license and paid a fine of thirty thousand dollars ($30,000);

iv. In December of 2002, the Certified Financial Planner (CFP) Board of Standards, Inc. determined that Respondent had, among other things, engaged in a pattern of misrepresentation, made unsuitable investment recommendations, failed to disclose material facts and the risks associated with certain investments, and failed to disclose several matters to the CFP Board as required. After a hearing, the CFP Board of Professional Review permanently revoked Respondent's right to use the CFP certification marks; and

v. Consent Order No. AP-05-01 signed by Respondent and the Missouri Commissioner of Securities, described in paragraph 5, above.

d. Respondent signed, or Triumph Marketing affixed Respondent's authorized signature to, twelve (12) insurance applications.

e. Respondent's failure to fully advise Triumph Marketing of the above administrative or regulatory actions made his initial application fraudulent, materially incorrect, misleading, incomplete or untrue.

f. At least four (4) of the twelve (12) insurance applications authorized by Respondent and completed by Triumph Marketing inquired into Respondent's past regulatory or administrative history.

g. Per Respondent's authorization dated February 24, 2004, and in reliance upon Respondent's failure to notify Triumph Marketing otherwise, Triumph Marketing completed twelve (12) applications which indicated Respondent had no regulatory or administrative history that would negatively impact his insurance license.

h. Upon learning of Respondent's regulatory and administrative history, Triumph Marketing and twelve (12) companies severed ties with Respondent

i. The Division's allegation in paragraph 3, above, is further based upon Respondent's association with another field marketing organization, Preferred Financial Brokers, LLC.

j. The facts regarding paragraph 8(i), above, are as follows:

    i. On or about February 28, 2004, Respondent signed an initial Application for Agent Agreement. In response to the question: "Have you ever…[b]een the subject of a penalty, inquiry or action by a regulatory agency?" Respondent indicated "No." Respondent also indicated "No" to the question: "Have you ever…[h]ad a license refused/suspended/revoked or currently restricted or under investigation?"

ii. Respondent's answers were fraudulent, materially incorrect, misleading, incomplete or untrue.

iii. Respondent knew the answer in question was fraudulent, materially incorrect, misleading, incomplete or untrue.

9. As a result, sufficient grounds exist to discipline Respondent's insurance producer license pursuant to §§ 375.141.1(5) and (7), RSMo (Cum. Supp. 2005).

COUNT III

10. Respondent engaged in an act, practice, or course of business which operates as a fraud or deceit upon any person in violation of § 375.144, RSMo (Cum. Supp. 2005), grounds for discipline of Respondent's insurance producer license pursuant to § 375.141.1(2), RSMo (Cum. Supp. 2005).

11. The facts are as follows:

a. In March of 2005, Respondent entered into Consent Order No. AP-05-01 with the Missouri Commissioner of Securities. See paragraphs 5(a) – 5(c), above.

b. As a result of the Consent Order, Respondent consented to being prohibited from offering investment advice, and from applying for registration as a securities agent or investment adviser representative in Missouri for five (5) years. As such, Respondent is prohibited from being affiliated with any National Association of Securities Dealers (NASD) firm for a period of five (5) years.

c. 20 CSR 700-1.147 implements § 375.141.1(8), RSMo, with respect to the demonstration of incompetence, untrustworthiness or financial irresponsibility by producers in the offer, sale, or exchange of variable life and variable annuity products. 20 CSR 700-1.147 provides, in part, with regard to individual producers:

"[e]ach individual producer licensed to sell variable life and variable annuity products shall be supervised by a member of the National Association of Securities Dealers (NASD), which member shall also be licensed as a business entity producer with the Department of Insurance (supervision member).

d. In a recent letter to his many Missouri clients dated November 6, 2006, Respondent stated, "Indexed annuities are regulated by the Department of Insurance, for which I am properly licensed in Life, Health, Fixed, and Variable Annuities."

e. Because Respondent cannot be affiliated with an NASD firm until March of 2010 pursuant to Consent Order No. AP-05-01, and because Respondent's variable contracts license requires that he be affiliated with an NASD member, Respondent's statements that his license to sell variable annuities is in good standing operates as a fraud or deceit upon any person who reads such statements.

12. As a result, sufficient grounds exist to discipline Respondent's insurance producer license pursuant to § 375.141.1(2), RSMo (Cum. Supp. 2005).

COUNT IV

13. Respondent's actions demonstrate incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere, grounds for discipline of Respondent's insurance producer license pursuant to § 375.141.1(8), RSMo (Cum. Supp. 2005).

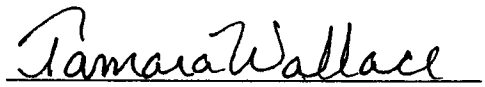
14. The facts are as follows:

a. Petitioner realleges and expressly incorporates the allegations in paragraphs 4 – 11.

15. As a result, sufficient grounds exist to discipline Respondent's insurance producer license pursuant to § 375.141.1(8), RSMo (Cum. Supp. 2005).

WHEREFORE, based on the foregoing, Petitioner respectfully requests that the Commission make findings of fact and conclusions of law stating that Petitioner has established cause to discipline Respondent's insurance producer license under §§ 375.141.1(2), (5), (7), and (8), RSMo (Cum. Supp. 2005).

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the foregoing was mailed first class, with sufficient postage attached, via the United States Postal Service on this 3rd day of January, 2007, to:

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