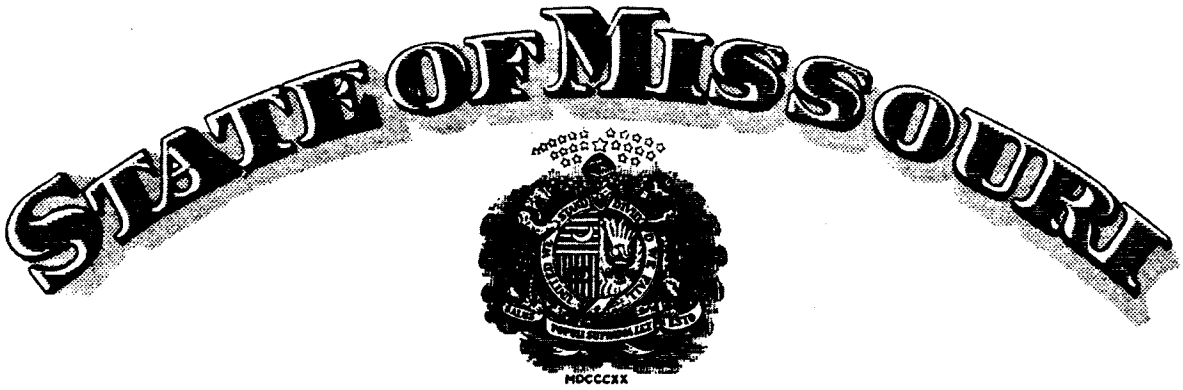


DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

P.O. Box 690, Jefferson City, Mo. 65102-0690

In the Matter of:	)	
	)	**Case No. 07-1030376C**
GARY GIARRATANO	)	
	)	
Respondent.	)	

CONSENT ORDER

DOUGLAS M. OMMEN, Director of the Department of Insurance, Financial Institutions and Professional Registration takes up the above matter for consideration and disposition. The Consumer Affairs Division, through legal counsel Elfin L. Noce, and Gary Giarratano ("Respondent"), through legal counsel Lewis E. Melahn, have reached a settlement in this matter and all parties have consented to the issuance of this Consent Order.

Findings of Fact

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

2. The Consumer Affairs Division of the Department of Insurance, Financial Institutions, and Professional Registration ("Consumer Affairs Division") has the duty of conducting investigations into the unfair or unlawful acts of insurance companies and agents under the insurance laws of this state and has been authorized by the Director to initiate this action before the Director to enforce the insurance laws of this state.

3. The terms set forth in this Consent Order are an appropriate disposition of this matter and entry of this Order is in the public interest because reoccurrence of the conduct prohibited herein may harm the public.

4. The Department issued Respondent an insurance producer license (No. PR132933) on April 29, 1988; and such license has been renewed since, with an expiration date of April 29, 2008.

5. On or about October 10, 2007, the Consumer Affairs Division referred Investigation File No. 07-7030376C, concerning Respondent, to the Director seeking to discipline Respondent's license.

6. The Consumer Affairs Division alleged that Respondent had repeatedly demonstrated untrustworthiness and financial irresponsibility in the recommendation and sale of annuities with long periods of withdrawal and surrender fees to elderly customers, a ground for discipline of Respondent's insurance producer license pursuant to § 375.141.1(8), RSMo (Supp. 2007).

7. The Consumer Affairs Division alleged that Respondent had repeatedly demonstrated untrustworthiness and financial irresponsibility in the recommendation and sale of fixed annuities while recommending that elderly consumers allocate large percentages of their liquid net worth into annuities with restricted access and withdrawal

charges, a ground for discipline of Respondent's insurance producer license pursuant to § 375.141.1(8), RSMo (Supp. 2007).

8. The Consumer Affairs Division alleged that Respondent used coercive practices and demonstrated incompetence and untrustworthiness by providing letters to be signed by consumers which attempted to limit the consumer's knowledge of possible misrepresentation and incomplete disclosure, a ground for discipline of Respondent's insurance producer license pursuant to § 375.141.1(8), RSMo (Supp. 2007).

9. Section 375.141.1(8), RSMo (Supp. 2007), states the director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

10. Respondent has stipulated and agreed to waive any rights he may have to review the Consumer Affairs Division investigation report without admission to the allegations contained in the investigation report. The investigation report described the specific conduct for which discipline was sought and citation to the law and rules allegedly violated, along with documents which were the basis thereof.

11. Respondent has stipulated and agreed to waive any rights he may have to submit this agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement constitute grounds for disciplining Respondent's license.

12. Respondent has stipulated and agreed to waive any rights that he may have to a hearing before the Administrative Hearing Commission and any rights to seek judicial

review or other challenge or contest of the terms and conditions of this Order and forever releases and holds harmless the Department, the Director and his agents, and the Consumer Affairs Division from any and all liability and claims arising out of, pertaining to or relating to this matter.

13. Respondent further acknowledges that he understands he has the right to consult an attorney at his own expense.

14. Each signatory to this Consent Order certifies by signing that he or she is fully authorized, in his or her own capacity, or by the named party he or she represents, to accept the terms and provisions of this Consent Order in their entirety, and agrees, in his or her personal or representational capacity, to be bound by the terms of this Consent Order.

Conclusions of Law

15. The Director is authorized to enforce this Order and should Respondent fail to comply with the conditions set forth herein, the Director or his successors, without any limitation, may initiate any action authorized by law.

12. The Consumer Affairs Division is authorized to settle this matter and the Director is authorized to issue this Consent Order in the public interest pursuant to §§ 374.046, 375.141 and 621.045, RSMo (Supp. 2007), and § 374.280, RSMo (2000).

Settlement Terms

IT IS ORDERED that Respondent take a one month moratorium from any new insurance or annuity business from April 29, 2008 through May 31, 2008. Respondent shall not sell, solicit or negotiate new insurance or annuity contracts. Nor shall Respondent, during the moratorium, conduct any seminars, presentations or workshops on insurance or annuities, or further market or advertise such seminars, presentations or

workshops. Respondent will be allowed to continue servicing customers already under contract with Respondent during the moratorium.

IT IS FURTHER ORDERED that Respondent complete ten (10) hours of continuing education courses on suitability of annuities and/or ethics regarding sales to seniors by October 31, 2008. At least one of these courses must be an in person lecture, however, given limited availability of classes, Respondent may complete the remaining hours online or through self-study. A list of suitable courses is attached as Exhibit A, which is incorporated by reference. Other courses not listed may be accepted with prior approval from the Director. Proof of successful completion of these courses must be submitted to the Department of Insurance, Financial Institutions and Professional Registration by October 31, 2008.

IT IS FURTHER ORDERED that Respondent is permanently prohibited from writing letters to consumers'/clients' prior carriers or investment advisors on the issues of replacement or conservation or in any way directing such prior carriers or advisors from contacting the consumers/clients. Respondent may assist with letters of instruction for directing funds.

IT IS FURTHER ORDERED that Respondent shall pay the amount of one thousand dollars ($1,000.00), as authorized by § 374.046.15 RSMo (Supp. 2007), payable to the Missouri State School Fund. The Department of Insurance, Financial Institutions and Professional Registration shall forward these funds to the state treasury for the benefit of county and township school funds as provided in § 374.280 RSMo (Supp. 2007), and Article IX, § 7 of the Constitution of Missouri. Such payment shall be immediately due and payable by money order or cashier's check and Respondent shall pay the amount

ordered above in satisfaction of this Order no later than ten (10) days after its issuance. If Respondent fails to make the payment under the terms of this provision, the Department of Insurance, Financial Institutions and Professional Registration may pursue additional legal remedies to enforce this order and collect the unpaid balance of this order.

IT IS FURTHER ORDERED that Respondent shall pay the amount of two thousand dollars ($2,000.00) for investigation costs, as authorized by § 374.046.15 RSMo (Supp. 2007), payable to the Department of Insurance, Financial Institutions and Professional Registration. Such payment shall be immediately due and payable by money order or cashier's check and Respondent shall pay the amount ordered above in satisfaction of this order no later than ten (10) days after its issuance. If Respondent fails to make the payment under the terms of this provision, the Department of Insurance, Financial Institutions and Professional Registration may pursue additional legal remedies to enforce this order and collect the unpaid balance of this order.

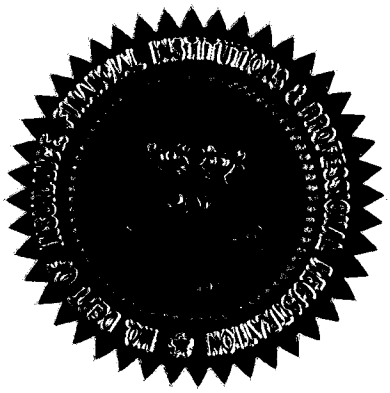
IT IS FURTHER ORDERED that Respondent provide the Department of Insurance, Financial Institutions and Professional Registration a list of the insurance companies with whom he is currently contracted and/or for whom he is an agent. Delivery of this list is due no later than ten (10) days after the issuance of this order.

IT IS FURTHER ORDERED that any violation of this Order is grounds for immediate suspension without the necessity of an Administrative Hearing Commission determination, however, Respondent is entitled to a hearing before the Director to determine if the agreement was violated.

IT IS FURTHER ORDERED any payments ordered by this Consent Order shall be hand delivered or sent by certified mail to the Missouri Department of Insurance, Financial

Institutions and Professional Registration, Attention Elfin Noce, Legal Counsel, P.O. Box 4001, Jefferson City, Missouri 65101. Any correspondence ordered by this Consent Order shall be hand delivered or sent by certified mail to the Missouri Department of Insurance, Financial Institutions and Professional Registration, Attention Elfin Noce, Legal Counsel, P.O. Box 690, Jefferson City, Missouri 65102. Any correspondence and/or checks shall reference the above cited case number.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 1st DAY OF May, 2008.



DOUGLAS M. OMMEN, Director
Missouri Department of Insurance,
Financial Institutions & Professional
Registration

CONSENT AND WAIVER OF HEARING

The undersigned persons understand and acknowledge that Gary Giarratano has the right to a hearing, but that Gary Giarratano has waived the hearing and consented to the issuance of this Order.

Gary Giarratano
15313 Perry
Overland Park, KS 66221

Date 4-29-08

Respondent

Lewis E. Melahn
Missouri Bar # 25396
127A East High Street
P.O. Box 275
Jefferson City, MO 65102
Telephone: (573) 636-5057
Fax: (573) 635-9004

Date 4/30/08

Attorney for Respondent

Elfin Noce
Missouri Bar # 57682
Missouri Department of Insurance, Financial
Institutions & Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: (573) 751-2619
Fax: (573) 526-5492

Date 4/25/08

Counsel for the Consumer Affairs Division

Exhibit A

Acceptable Courses to Meet Continuing Education Requirement:

AD Banker and Company:
ETHICS INVOLVED IN SELLING TO THE SENIOR MARKET
ETHICS OF ANNUITY SALES

Kaplan Financial:
SUITABILITY FOR ANNUITIES

Missouri Association of Insurance and Financial Advisors:
SUITABILITY

WebCE:
SENIOR MARKET SALES ETHICS
MAXIMIZING INTEGRITY IN DECISIONS WITH SENIORS
ETHICS IN SELLING TO SENIORS
EFFECTIVE AND ETHICAL COMMUNICATION WITH SENIORS

Contact information for these providers can be found on the Missouri Department of Insurance, Financial Institutions and Professional Registration website at http://www.insurance.mo.gov/industry/producer/CEsearch.htm.