STATE OF MISSOURI
DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
John G. Elliott III	)	Case No. 07A000053
	)	
Applicant.	)	
	)	
Serve at:	)	
	)	
265 Coventry Way Highland IL 62249	)	
	)	

REFUSAL TO RENEW INSURANCE PRODUCER LICENSE

On February 7, 2007, Kathyrn Turner, as senior counsel for the Investigations Section of the Division of Consumer Affairs, submitted a petition to the Director of the Department of Insurance, Financial Institutions and Professional Registration ("Director") alleging cause to refuse to renew the insurance producer license of John G. Elliott III ("Applicant"). After reviewing the petition, and the investigative report, the Director issues the following findings of fact, conclusions of law and summary order:

FINDINGS OF FACT

1. Applicant, John G. Elliott III, is an Illinois resident with an address of 265 Coventry Way, Highland Illinois 62249.

2. On January 17, 2007, Applicant's insurance producer renewal application was received by the Director. Applicant's Missouri insurance producer license issued by the Director in 2005 expired on January 17, 2007.

Ms. Wintermeyer Transactions

3. On December 6, 2004, Jan Wintermeyer ("Ms. Wintermeyer") filed a complaint with the Consumer Affairs Division against Applicant on behalf of her mother, Helen Wintermeyer ("Mrs. Wintermeyer"), alleging that recommendations by Applicant to purchase annuities and use assets from those annuities to fund life

insurance premiums for her mother caused financial harm to Mrs. Wintermeyer's estate.

4. Following the death of Ms. Wintermeyer's father, Mrs. Wintermeyer made a decision to sell the family farm at her then-attained-age of 68 years, and seek professional advice concerning estate planning. In March 1997, James E. Lynch ("Lynch") an associate of Applicant and a producer for Massachusetts Mutual Life Insurance Company ("MML") presented a summary estate plan showing Lynch and Applicant as "Advisors". Another page of the written summary was entitled "Summary Information" and revealed that Mrs. Wintermeyer's primary concern for her estate assets was "Safety".

5. Applicant recommended that proceeds from the sale of the farm property ($189,000) be allocated to a MML variable annuity where the assets were subjected to possible market risk.

6. An investment suitability form for Mrs. Wintermeyer dated March 28, 1997 completed by Applicant and submitted with the annuity application, indicated that her investment objective was "Tax Sheltered Accumulation" rather than "Conservation of Principal." The form also indicated that she was comfortable assuming a "Moderate Risk" rather than "Low Risk" which would have been more consistent with her primary concern of "Safety."

7. The non-qualified annuity application dated March 28, 1997 indicated Applicant recommended that 100% of the $189,000 deposited be divided among five stock and bond fund sub-accounts, exposing the entire amount to market risk.

8. A second MML variable annuity application also dated March 28, 1997 was a qualified IRA with a deposit of $73,000. Applicant recommended that 100% of the funds be allocated into stock and bond fund sub-accounts with market risk exposure and no fixed or guaranteed return allocation that would have been consistent with an investment objective of "Safety."

9. On March 28, 1997, Applicant recommended that Mrs. Wintermeyer replace a <u>fixed</u> annuity issued by American Life Insurance Company in 1995 that had no risk exposure for the $111,000 within the contract. Applicant had Mrs. Wintermeyer transfer those assets into a Connecticut Mutual variable annuity, allocating the entire deposit into sub-accounts with full market risk. By replacing the American Life annuity and transferring the assets during the third year of that contract, Mrs. Wintermeyer incurred an 8% surrender penalty of approximately $9,000.

10. Just two months later, Applicant submitted another annuity application to MML for Mrs. Wintermeyer, which indicated that "Capital Appreciation" and "Tax Reduction" were her most important investment objectives rather than "Safety,"

and her risk tolerance was identified as "High."

11. By July of 1997 Applicant had persuaded the Wintermeyers that the potential growth of the family estate would require a large life insurance policy on the life of Mrs. Wintermeyer to pay federal estate taxes after Mrs. Wintermeyer's death. Applicant sold Mrs. Wintermeyer an MML whole life policy with an annual premium of $33,040.90 which provided a total death benefit of $482,676. The annual premium was to be withdrawn from one of the annuity contracts until such time as the life insurance policy dividends would be sufficient to self-fund the contract. On August 5, 1997, MML issued policy # 11520381 to insure the life of Mrs. Wintermeyer at her then-attained-age of sixty-nine years.

12. Applicant recommended that Mrs. Wintermeyer purchase an additional life insurance policy on her own life with a death benefit of $50,000 for the specific purpose of providing for the future welfare of a handicapped grandson. On August 6, 1997, Mrs. Wintermeyer signed an application for another MML whole life insurance policy. MML policy # 11521773 for $50,000 was issued on August 14, 1997 and the annual premium of $1,703 was to be paid by withdrawals from the annuities until such time as the policy dividends would be sufficient to self-fund the policy.

13. In April of 1999, Applicant persuaded the Wintermeyers to change the large MML whole life policy of $482,676 and apply for a $300,000 variable life insurance policy issued by MML Bay State Life Insurance Company. As with the other variable contracts sold to Mrs. Wintermeyer by Applicant, the contract sub-accounts selected were all subject to market risk. On April 6, 1999, a variable life policy of $300,000 with an annual premium of $14,046 was issued on the life of Mrs. Wintermeyer, premium payments to be funded by withdrawals from the annuities.

14. With the entirety of Mrs. Wintermeyer's net worth exposed to fluctuating market risk, the downturn of the stock and bond markets of 2000 and 2001 created serious declines in the asset value of the Wintermeyer estate. Added to the falling values of the variable annuities and variable life policy sub-accounts, the drain of life insurance premium payments from the annuities resulted in significant financial losses to the estate of an elderly widow whose initial primary financial concern had been identified as "Safety."

Dr. Gay Transactions

15. In a letter dated March 28, 2005, Dr. William A. Gay, Jr. ("Gay") filed a complaint with the Consumer Affairs Division against Applicant alleging that Applicant had failed to disclose possible risks of a variable life insurance policy which had been adversely affected by market declines and was about to lapse.

16. Gay indicated that since 1988 he had owned a $1,000,000 MML whole life policy for which he had been paying an annual premium of approximately $17,000. Applicant provided Gay with computer illustrations indicating that by reallocating the then-current cash value of approximately $165,000 from the old policy into a new variable life policy of $1.3 million, Gay would be able to continue to pay an annual premium amount of $17,000. Applicant informed Gay that computer illustrations indicated that with an annual 6% rate of return by the policy sub-accounts, such a replacement policy could maintain a $1.3 million death benefit during the remainder of Gay's life expectancy.

17. On June 22, 1998 upon the recommendation of Applicant, Gay applied for a MML variable life insurance policy with a death benefit of $1,300,000 to replace his previous policy. However, due to a change in Gay's health condition since the original policy was issued in 1988, the replacement variable life policy was issued with a sub-standard rating requiring a higher annual premium than had been illustrated to Gay at the point of sale. Gay's MML variable life premium was issued on September 14, 1998 with a "planned annual premium" of $46,423.

18. Illustrations provided to Gay at the point of sale showed that, for the policy to maintain a $1.3 million death benefit with only a $17,000 annual premium payment, the rate of return from the policy sub-accounts that would have been required would have been 6% for <u>each year</u> for the remainder of Gay's life expectancy. Gay's life expectancy at that time was 18 years. The policy provided no minimum guaranteed rate of return for the sub-accounts recommended by Applicant.

19. Applicant did not alert Gay to the increased premium of the replacement policy issued with a rated premium. Gay was not informed that the annual premiums had increased because of his health status or that these premiums, or the cash in the policy, were in any way linked to the performance of the stock market.

20. When the variable life policy was delivered, Applicant did not discuss the ramifications of the increase in premium, nor did he provide any additional illustrations or recommendations regarding paying the higher premium or maintaining the higher death benefit.

<u>Ms. Lizotte Transaction</u>

21. On September 7, 2006, Missouri Secretary of State, Securities Division, referred a complaint submitted by Joyce Lizotte ("Lizotte") regarding a promissory note dated September 1, 2004 between Lizotte and Applicant. The note revealed that Applicant borrowed $25,000 from Lizotte at an annual interest rate of 35% or $8,750 per year. Applicant had made no payments to Lizotte and she had been unable to contact or locate him.

22. The Promissory Note is printed on letterhead of Mass Financial Group, Inc., identifying Applicant as an insurance representative of Massachusetts Mutual Life Insurance Company and affiliated companies. Applicant did not obtain or seek approval of Mass Financial Group, Inc. or Massachusetts Mutual Life Insurance Company or affiliated companies to represent that the Promissory Note was associated with or through any of those companies.

23. Lizotte was an insurance client of Applicant and had purchased an American General annuity from Applicant on November 18, 2002. Contract number MN028585 shows a deposit of $173,862.42.

24. Applicant represented to Lizotte that he was offering her an opportunity to invest in an initial public offering (IPO) paying 35% annual interest. Applicant further represented to Lizotte that individuals were not able to get into the IPOs and that he would have to invest the money through his own name.

25. Applicant provided no printed material regarding the Promissory Note either at the point of sale or at any time thereafter.

26. On November 6, 2006, Applicant repaid $14,000 to Lizotte leaving a balance owed of $31,562, which includes the 35% interest promised.

27. This order is in the public interest.

CONCLUSIONS OF LAW

28. Section 375.141.1 RSMo 2000 provides, in part:

> The director may revoke or suspend, ...any license of any insurance agent, agency or broker if it is determined...that the licensee or applicant has, at any time:
>
> (4) Demonstrated lack of trustworthiness or competence; ...[or]
>
> (10) Committed unfair practices as defined in section 375.936.

29. Section 375.141.1 RSMo Cum Supp 2006 provides, in part:

> The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director ...; [or]

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

30. Section 375.934 RSMo 2000 provides:

It is an unfair trade practice for any insurer to commit any practice defined in section 375.936 if:

(1) It is committed in conscious disregard of sections 375.930 to 375.948 or of any rules promulgated under sections 375.930 to 375.948; or

(2) It has been committed with such frequency to indicate a general business practice to engage in that type of conduct.

31. Section 375.936 RSMo 2000 provides, in part:

Any of the following practices, if committed in violation of section 375.934, are hereby defined as unfair trade practices in the business of insurance:

(6) **"Misrepresentations and false advertising of insurance policies"**, making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustrations, circular or statement, sales presentation, omission, or comparison which:

(a) Misrepresents the benefits, advantages, conditions, or terms of any policy; [or]

(f) Is a misrepresentation for the purposed of inducing or intending to induce the purchase, lapse, forfeiture, exchange, conversion, or surrender of any policy...

32. Rule 20 CSR 700-1.140 enumerates conduct by a producer that demonstrates untrustworthiness or incompetence. 20 CSR 700-1.140(4) provides, in part:

No insurance producer shall obtain or solicit for a loan from an insurance client or former insurance client.

33. Applicant demonstrated a lack of trustworthiness or competence constituting cause under §375.141.1 (4) RSMo 2000, or alternatively, §375.141.1(8) RSMo Cum Supp 2006 to refuse to renew Applicant's insurance producer license in his

transactions with Mrs. Wintermeyer, in that:

(a) With the recommendations to put 100% Mrs. Wintermeyer's net worth in variable annuities and variable life insurance in moderate to high risk sub-accounts, Applicant exposed her assets to fluctuating market risk, contrary to her estate plan presented by Applicant which indicated her estate goal to be "Safety".

(b) In recommending that Mrs. Wintermeyer replace an existing fixed annuity with no risk exposure with a variable annuity in which he placed the entire deposit into sub-accounts with full market risk, Applicant caused Mrs. Wintermeyer to suffer surrender fees of approximately $9000 and exposed the entire amount to market risk contrary to her estate plan presented by Applicant which indicated her estate goal to be "Safety".

34. Applicant committed unfair practices or violated an insurance law constituting cause under §375.141.1 (10) RSMo 2000, or alternatively, §375.141.1(2) RSMo Cum Supp 2006 to refuse to renew Applicant's insurance producer license in his transactions with Mrs. Wintermeyer, in that:

(a) Applicant violated Section 375.934 RSMo 2000 by committing the unfair trade practice in Section 375.936(6)(f) RSMo 2000, in that he made a sales presentation to Mrs. Wintermeyer wherein he convinced her that a whole life insurance policy in the amount of $482,676 was needed to cover her estate taxes. Two years later, Applicant represented that this policy should be changed to a variable life policy, at a reduced face amount, with the deposit placed in sub-accounts subject to market risk, for a purpose other than covering estate taxes. Applicant misrepresented Mrs. Wintermeyer's needs for life insurance in order to induce the purchase of two different policies.

(b) Applicant further violated Section 375.934 RSMo 2000 by committing the unfair trade practice in Section 375.936(6)(f) RSMo 2000, when he had Mrs. Wintermeyer purchase three life insurance policies in a short period of time, with the premiums to be withdrawn from the annuities purchased from Applicant thereby churning the policies so he could sell more insurance.

35. Applicant demonstrated a lack of trustworthiness or competence constituting cause under §375.141.1 (4) RSMo 2000, or alternatively, §375.141.1(8) RSMo Cum Supp 2006 to refuse to renew Applicant's insurance producer license in his transactions with Dr. Gay, in that:

(a) Applicant induced Dr. Gay to use the cash value in a $1 million whole life policy with a premium of approximately $17,000 annually and a cash

value of approximately $165,000 to purchase a variable life insurance policy in the amount of $1.3 million by showing Dr. Gay an illustration that he could still pay the same amount of premium for more insurance.

(b) Applicant failed to disclose to Dr. Gay that there were no minimum guaranteed rates of return on the sub-accounts chosen, thus subjecting Dr. Gay's value to market risk.

(c) Applicant failed to account for any changed circumstances from the issuance of the policy in 1988 that would affect premium amount.

36. Applicant committed unfair practices or violated an insurance law constituting cause under §375.141.1 (10) RSMo 2000, or alternatively, §375.141.1(2) RSMo Cum Supp 2006 to refuse to renew Applicant's insurance producer license in his transactions with Dr. Gay, in that:

(a) Applicant violated Section 375.934 RSMo 2000 by committing the unfair trade practice in Section 375.936(6)(a) RSMo 2000, by making a sales presentation which misrepresented the benefits, advantages, or conditions, or terms of the variable life insurance policy he sold to Dr. Gay.

(b) Applicant failed to disclose that the assets would be subject to market risk. He also failed to consider Dr. Gay's changed circumstances in affecting the purchase of a higher death benefit at the same premium.

(c) Applicant misrepresented that the policy could earn enough every year for the rest of Dr. Gay's life (18 years) when the sub-accounts chosen had no guaranteed rates of return and were, in fact, subject to no return and losses of principal.

37. Applicant demonstrated dishonest practices or a lack of trustworthiness, competence or financial responsibility constituting cause under §375.141.1 (4) RSMo 2000, or alternatively, §375.141.1(8) RSMo Cum Supp 2006 to refuse to renew Applicant's insurance producer license in his transactions with Ms. Lizzotte in failing to comply with Rule 20 CSR 700-1.140(4), in that:

(a) Applicant solicited a loan, presented her with a promissory note promising repayment with interest in a specified amount of time and has failed to repay the note.

(b) Applicant used dishonest practices in his transaction with Ms. Lizotte in that he told her that he was getting her in on an opportunity in an IPO, when in fact he merely wanted to borrow money.

(c) Applicant used dishonest practices in his transaction with Ms. Lizotte

when he told her that as an individual, she was not able to get involved in the IPO except under his name.

(d) Applicant used dishonest practices in his transaction with Ms. Lizotte by presenting himself as a representative of the Massachusetts Mutual Life Insurance Company and affiliated companies in the promissory note transaction when he had no permission to do so.

38. Although the discretion of the Director in these matters is clear, the Director finds that the nature of the Applicant's conduct directly relate to the financial duties and responsibilities of an insurance producer to his customers. The conduct in the above findings of fact occurred between March 28, 1997 and November 6, 2006, although the debt of the Applicant to Ms. Lizotte remains. Because the conduct directly relates to and occurred during Applicant's licensure, I conclude that at this time the past conduct does reveal significant risk to consumers.

39. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the renewal of the insurance producer license of Applicant John G. Elliott III is hereby summarily REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 22nd DAY OF February, 2007.

DOUGLAS M. OMMEN
DIRECTOR

NOTICE

TO: Applicant and any unnamed persons aggrieved by this Order:

You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri within (30) days after the mailing of this notice pursuant to Section 621.120 RSMo.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of February, 2007, a copy of the foregoing notice, order and petition was served upon the Applicant in this matter by certified mail.

Karen Crutchfield
Karen Crutchfield
Senior Office Support Staff