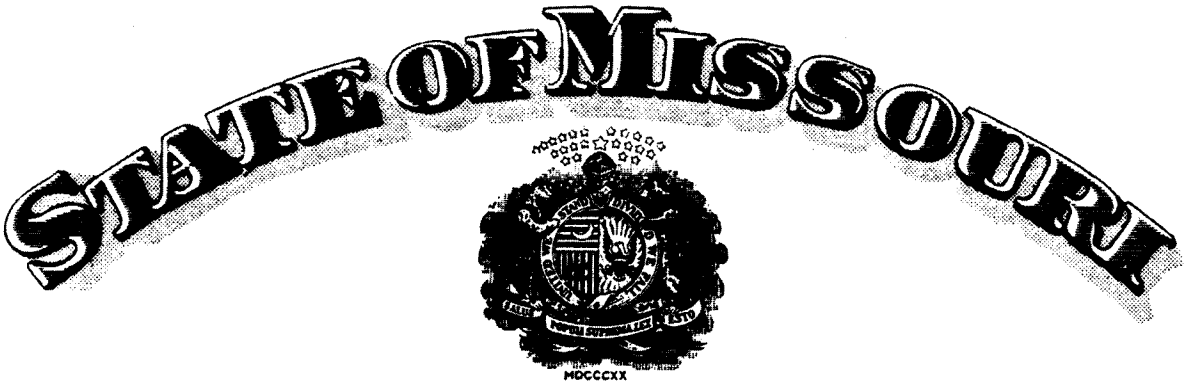

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

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

In the Matter of:	)	
	)	
RAYMOND EDWARD CLAY, SR.,	)	**File No. 081204389C**
	)	
Respondent.	)	
	)	

CONSENT ORDER

KIP STETZLER, Acting Director of the Department of Insurance, Financial Institutions and Professional Registration, takes up the above matter for consideration and disposition. The Division of Consumer Affairs, through Andy Heitmann, counsel, and Raymond Edward Clay, Sr. have reached a settlement in this matter and have consented to the issuance of this Consent Order.

Findings of Fact

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

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

3. The Department issued Respondent Raymond Edward Clay, Sr. ("Respondent Clay") an insurance producer license (PR167135) on December 14, 1993. That license has was renewed several times and remained in effect until October 8, 2008, when it was cancelled upon Respondent Clay's request.

4. On or about June 27, 2008, the Department received a letter from Primerica Life Insurance Company ("Primerica"), advising the Department that Respondent Clay had resigned from his appointment with Primerica and Primerica had therefore terminated Respondent Clay's affiliation with Primerica. The letter further advised that Primerica had received information that Respondent Clay "had obtained funds via the use of promissory notes and had not honored some of these notes." In response, the Department initiated an investigation into Respondent Clay's alleged sales of promissory notes.

5. On or about October 22, 2008, the Consumer Affairs Division referred Investigations File No. 08A000508 ("Investigative Report"), concerning Respondent Clay, to the Director, seeking to discipline Respondent Clay's license.

6. The Consumer Affairs Division alleged in the Investigative Report that Respondent Clay had entered into private investment transactions in the form of

promissory notes with several Missouri residents, involving a total amount of investments by Missouri residents in excess of approximately $140,000.

7. The Consumer Affairs Division included in its Investigative Report copies, provided by Primerica, of promissory notes executed between Respondent Clay and Missouri residents, reflecting the following promises to pay by Respondent Clay:

a. To Corey Johnson or Tara Johnson, $10,000, executed on February 15, 2007 and promising payment forty-eight (48) months from that date;

b. To Corey Johnson or Tara Johnson, $10,000, executed on February 14, 2007 and promising payment forty-eight (48) months from that date;

c. To Tara Johnson or Corey Johnson, $12,000, executed on November 7, 2006 and promising payment forty-eight (48) months from that date;

d. To Marwyne Shalen (Terrell) Mason, $20,000, executed on November 1, 2006 and promising payment thirty-six (36) months from that date;

e. To Neal T. Bennett or Teresa A. Bennett, $30,000, executed on July 28, 2004 and promising payment forty-eight (48) months from that date;

f. To Neal T. Bennett or Teresa A. Bennett, $40,000, executed on August 2, 2005 and promising payment between thirty-six (36) and forty (40) months from that date;

g. To Neal T. Bennett or Teresa A. Bennett, $5,500, executed on July 1, 2005 and promising payment ninety (90) days from that date;

h. To Neal T. Bennett or Teresa A. Bennett, $11,000, executed on September 29, 2005 and promising payment forty-eight (48) months from that date;

i. To Neal Bennett or Terri Bennett, $10,000, executed on February 22, 2006 and promising payment thirty-six (36) months from that date;

j. To Neal or Terri Bennett, $6,500, executed on May 16, 2005 and promising payment thirty (30) days from that date;

k. To Lorine Edwards or George Edwards, $4,000, executed on April 28, 2005 and promising payment sixty (60) months from that date;

l. To Miguel Echavarria or Jessie Echavarria, $21,158, executed on December 12, 2005 and promising payment sixty (60) months from that date;

m. To Delmer E. Murrell or Rillie Ann Murrell, $30,000, executed on March 29, 2006 and promising payment thirty-six (36) months from that date;

n. To Mary Olawaiye-Okuneye, $25,000, executed on April 7, 2004 and promising payment forty-eight (48) months from that date;

o. To Donna Raye LaViolet, $16,000, executed on March 2, 2007 and promising payment twenty-four (24) months from that date;

p. To Joyce Grady, $5,000, executed on November 24, 2007 and promising payment forty-eight (48) months from that date;

q. To Sheldon Haynes, $10,000 (later amended to substitute a promise of payment of $5,000 to the estate of Sheldon Haynes), executed January 18, 2007 and promising payment twenty-four (24) months from that date.

8. Some or all of the individuals named in paragraph 7, from whom Respondent Clay solicited and obtained loans in return for promissory notes, were current, former or prospective insurance clients of Respondent Clay, of Primerica, an

insurance company, or of PFS Financial Services, a broker/dealer affiliate of Primerica and Respondent Clay's employer at the time.

9. None of the individuals named in paragraph 7, from whom Respondent Clay solicited and obtained loans in return for promissory notes, received or processed loan applications to the public as an owner, officer, director or employee of an institution in the business of providing such loans at any time relevant to this Consent Order.

10. None of the individuals named in paragraph 7, from whom Respondent Clay solicited and obtained loans in return for promissory notes, stood in a relationship with Respondent Clay that gave rise to an insurable interest at any time relevant to this Consent Order.

11. 20 CSR 700-1.140, as in effect at all times relevant to this Consent Order, provided in relevant part that:

> (4) No insurance producer shall obtain or solicit for a loan from an insurance client or former or prospective insurance client or any type of ownership interest in any insurance policy held by an insurance client or former or prospective insurance client. This prohibition shall not apply:
>
> > (A) When it is the usual occupation or practice of the insurance client or former or prospective insurance client to receive and process loan applications and to provide loans to the public as an owner, officer, director or employee of an institution in the business of providing such loans; or
> >
> > (B) When there exists a relationship between the insurance client or former or prospective insurance client and the insurance producer which gives rise to an insurable interest.

12. Section 375.141, RSMo (Supp. 2007) provides in relevant part that:

> 1. 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 of another insurance commissioner in any other state;

...

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

13. On or about October 3, 2008, Respondent Clay sent a letter addressed generally to the Department stating, "Please be notified that I no longer desire to maintain a Non-resident Producer License in Missouri."

14. On or about October 5, 2008, Respondent Clay sent a letter to Consumer Affairs Division investigator Ronald D. Harrod, in which Respondent Clay admitted the following:

a. "I did, wrongly, sell unauthorized and unapproved promissory notes to thirteen (including spouses) Missouri resident individuals and failed to repay most of the notes."

b. "To further explain, I notified Primerica on approximately May 30, 2008, that I had sold unauthorized and unapproved promissory notes to customers."

c. "I received approximately $141,479 from Missouri residents over the entire time period and repaid approximately $10,500, as the notes were becoming due."

d. "I advised each person that I received moneys from and gave a promissory note to, that Primerica was not involved at all and; that we could be in trouble if any of the information became exposed."

e. "As an entity of self-disciplinary action I have notified the Missouri Department of Insurance that I no longer desire to maintain a Non-resident Insurance Producer license in Missouri."

15. On or about January 27, 2009, counsel for the Consumer Affairs Division sent a copy of the Division's Investigative Report to Respondent Clay. The Investigative 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. Counsel for the Division advised that Respondent Clay had sixty (60) days review the investigation report and consider the proposed settlement offer.

16. Respondent Clay has been advised that he may, either at the time the Consent Order is signed by all parties, or within fifteen (15) days thereafter, submit the Consent Order to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement constitute grounds for disciplining Respondent Clay's insurance producer license.

Conclusions of Law

17. Respondent Clay violated 20 CSR 700-1.140 repeatedly by soliciting and obtaining loans from insurance clients or former or prospective insurance clients by selling promissory notes to customers as alleged in the Investigative Report, as detailed in paragraph 7 of this Consent Order, and as admitted by Respondent Clay in his October 5, 2008 letter to the Department.

18. Respondent Clay's violations of 20 CSR 700-1.140, as violations of an insurance regulation of this state, each constitute a separate ground for discipline of

Respondent Clay's Missouri insurance producer license under § 375.141.1(2), RSMo (Supp. 2007).

19. By repeatedly soliciting and obtaining loans from insurance clients or former or prospective insurance clients by selling promissory notes to customers as alleged in the Investigative Report, as detailed in paragraph 7 of this Consent Order, and as admitted by Respondent Clay in his October 5, 2008 letter to the Department, and by failing to repay over $130,000 of those loans, Respondent Clay demonstrated untrustworthiness and financial irresponsibility in the conduct of business in this state.

20. Respondent Clay's untrustworthiness and financial irresponsibility in the conduct of business in this state are grounds for discipline of Respondent Clay's insurance producer license under § 375.141.1(8), RSMo (Supp. 2007).

21. The cancellation of Respondent Clay's producer license at Respondent Clay's request does not deprive the Director of jurisdiction to discipline that license. *See* § 375.141.4, RSMo (Supp. 2007).

22. The Director is authorized to settle this matter and the Director is authorized to issue this Consent Order in the public interest pursuant to § 374.046, RSMo (Supp. 2007).

23. 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, including referral of this case to criminal prosecutors.

24. 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.

25. Respondent Clay has the right to consult counsel at his own expense.

26. Respondent Clay stipulates and agrees to waive any rights that he may have to a hearing before the Administrative Hearing Commission or the Director and any rights to seek judicial review or other challenge or contest of the terms and conditions of this Consent 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.

ORDER

IT IS ORDERED THAT Raymond Edward Clay, Sr.'s insurance producer license (No. PR167135) is hereby revoked.

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.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 3RD **DAY OF** APRIL**, 2009.**

~~KIP STETZLER~~ John M. Huff
~~Acting~~ Director, Missouri
Department of Insurance, Financial
Institutions & Professional
Registration

CONSENT AND WAIVER OF HEARING

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

Ray E Clay, Sr. March 16, 2009

Raymond Edward Clay, Sr. Date
Respondent
8809 West 70th Street
Merriam, Kansas 66204

Counsel for Respondent (if any) Date
Printed Name: _____
Missouri Bar No. _____
Address: _____

Telephone: _____
Facsimile: _____

1/27/09

Andy Heitmann Date
Enforcement Counsel
Department of Insurance, Financial
Institutions and Professional Registration
Missouri Bar # 60679
301 West High Street, Room 530
Jefferson City, MO 65101
Telephone: (573) 751-2619
Facsimile: (573) 526-5492