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

TENNESSEE INSURANCE DIVISION,	)	
Petitioner,	)	
	)	
v.	)	**APD No.: 12.01-130171J**
	)	**TID No.: 14-061**
BETTY S. LACKEY, and	)	
JEFFREY B. LACKEY	)	
Respondents.	)	

CONSENT ORDER

The Tennessee Insurance Division of the Department of Commerce and Insurance ("Division"), Betty S. Lackey, and Jeffrey B. Lackey ("Respondents") hereby stipulate and agree to the entry of this Consent Order subject to the approval of the Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner") as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of an order by the Commissioner.

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

3. Respondents fully understand that this Consent Order will in no way preclude additional proceedings by the Commissioner against Respondents for acts or omissions not specifically addressed in this Consent Order or for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. Respondents fully understands that this Consent Order will in no way preclude proceedings by state government representatives, other than the Commissioner for violations of the Law addressed specifically in this Consent Order, against the Respondents for violations of the law under statutes, rules, or regulations of the State of Tennessee, which may arise out of the facts, acts, or omissions contained in the Findings of Fact and Conclusions of Law stated herein, or which may arise as a result of the execution of this Consent Order by the Respondents.

5. Respondents expressly waive all further procedural steps and all rights to seek judicial review or to otherwise challenge or contest the validity of this Consent Order, the stipulations and imposition of discipline expressly contained herein, and the consideration and entry of said Consent Order by the Commissioner.

6. Respondents fully understand that this Consent Order, when entered, will constitute a public document for purposes of any applicable statutes governing access by the public to government records.

7. Respondents agree that facsimiles of their respective signatures on this Consent Order—scanned in portable document format (PDF) or similar format—returned by electronic means, if accepted by the Division, are effective as original signatures and that the Consent Order may be issued with such facsimile signatures.

FINDINGS OF FACT

8. The Commissioner has jurisdiction over this matter pursuant to the Tennessee Insurance Law ("Law"), Title 56 of the Tennessee Code Annotated ("Tenn. Code Ann"), specifically, Tenn. Code Ann. §§ 56-1-101, 56-1-202, 56-2-305, and § 56-6-112. The Law places on the Commissioner the responsibility of the administration of its provisions.

9. The Division is the lawful agent through which the commissioner administers the Law and is authorized to bring this action for the protection of the public.

10. Upon information and belief, Respondent Betty S. Lackey ("Betty") is a citizen and resident of Dorchester County, South Carolina, residing at 8871 East Fairway Woods Drive, North Charleston, South Carolina 29420.

11. Betty is a licensee of the Division, having been granted Tennessee insurance producer license number 979323 on August 3, 2007.

12. At all times relevant, Betty was responsible for being compliant with the insurance laws, rules, and regulations of the State of Tennessee.

13. The Department's Agent Licensing Division cancelled Betty's active insurance producer license on June 19, 2013, pursuant to a notice of cancellation she submitted, dated May 31, 2013.

14. Upon information and belief, Respondent Jeffrey B. Lackey ("Jeffrey") is a citizen and resident of Dorchester County, South Carolina, residing at 8871 East Fairway Woods Drive, North Charleston, South Carolina 29420.

15. Jeffrey was a licensee of the Division, having been granted Tennessee insurance producer license number 880089 on November 27, 2002.

16. The Division revoked Jeffrey's insurance producer license by consent order on October 17, 2007.

17. As an insurance producer from approximately August 2007 to June 2013, Betty had a fiduciary obligation to properly manage all money received from her respective clients during the course of doing insurance business.

18. As an insurance producer from approximately November 2002 to October 2007, Jeffrey had a fiduciary obligation to properly manage all money received from his respective clients during the course of doing insurance business.

19. On or about November 7, 2013, Betty entered into a consent order with the State of South Carolina Department of Insurance assessing an approximate one thousand two hundred dollar ($1,200.00) administrative fine for allowing Jeffrey, an unlicensed individual in South Carolina, to conduct financial product presentations, thus, leading clients to believe someone other than herself was their agent.

20. On or about October 2006, Mr. Harold E. Shoemaker ("Mr. Shoemaker"), a resident of Tennessee, met Jeffrey at a seminar for financial planning for seniors, hosted by Jeffrey, in Kingsport, Tennessee.

21. At all times relevant, Mr. Shoemaker dealt with Jeffrey in his financial investment planning; at no time did he ever work with Betty.

22. At all times relevant, Mr. Shoemaker did not know Betty was his listed agent.

23. On or about May and June 2007, Mr. Shoemaker purchased two Aviva Life and Annuity Company ("Aviva") variable annuities through Jeffrey.

24. On or about September 2009, Jeffrey contacted Mr. Shoemaker claiming to have a better investment for Mr. Shoemaker, specifically an annuity through Forethought Financial Group ("Forethought").

25. Jeffrey falsely stated that the Forethought annuity offered to pay the surrender penalty for Mr. Shoemaker's Aviva annuities if he transferred those funds into an annuity with Forethought.

26. Jeffrey falsely stated that the Forethought annuity offered a guaranteed five percent (5%) minimum return on investment.

27. On or about September 2009, Mr. Shoemaker relied upon Jeffrey's misrepresentations and transferred his Aviva annuities into an annuity with Forethought.

28. On or about March 2012, Mr. Shoemaker notified Jeffrey that he received a notice from Aviva indicating no surrender penalty had been returned as promised by Jeffrey following Mr. Shoemaker's 2009 switch to the Forethought annuity.

29. As a result, Mr. Shoemaker incurred an approximate surrender penalty of ten thousand one hundred forty-two dollars and sixty cents ($10,142.60).

30. Furthermore, Mr. Shoemaker's Forethought policies did not yield the five percent (5%) guaranteed return Jeffrey promised.

31. On or about July 2, 2013, after Betty surrendered her Tennessee insurance producer license, John and Tammy Oligny ("The Olignys"), residents of Tennessee, met the Lackeys in the Olignys' home in Telford, Tennessee.

32. At the July 2, 2013, meeting, the Olignys dealt with Jeffrey in their financial investment planning. Betty was present for the meeting between the Olignys and Jeffrey, but Jeffrey was the lead insurance sales agent.

33. Jeffrey falsely indicated that the Phoenix annuity offered a guaranteed six and one quarter percent (6.25%) or a six and one half percent (6.5%) minimum return on investment.

34. On or about July 2, 2013, Jeffrey instructed the Olignys to sign blank Phoenix annuity applications rather than filling the applications out in the presence of the Olignys.

35. The Lackeys failed to supply the Olignys with any disclosures, sales materials, or any other information related to the Phoenix annuities purchased by the Olignys.

36. On or about July 2, 2013, the Lackeys falsely indicated on the Olignys' Phoenix annuity application that the Olignys signed their application in South Carolina, when in fact, the application was signed at the Olignys' house in Telford, Tennessee.

37. The Phoenix annuities were cancelled prior to any transfer of money from the Olignys' existing annuities.

CONCLUSIONS OF LAW

38. At all times relevant hereto, Tenn. Code Ann. § 56-6-112(a) (2011) has provided that 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:

> . . . .
>
> (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
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> . . . .
>
> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.][and]
>
> . . . .

39. For all violations occurring prior to July 1, 2011, Tenn. Code Ann. § 56-2-305 (2008) states:

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

(1) The insurer, person, or entity 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), unless the insurer, person, or entity knowingly violates a statute, rule or order, in which case the penalty shall not be more than twenty-five thousand dollars ($25,000) for each violation, not to exceed an aggregate penalty of two hundred fifty thousand dollars ($250,000). This subdivision (a)(2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subdivision (a)(2), each day of continued violation shall constitute a separate violation; and

(3) The suspension or revocation of the insurer's, person's, or entity's license.

(b) In determining the amount of penalty to assess under this section, or in determining whether the violation was a knowing violation for the purpose of subdivision (a)(2), the commissioner shall consider any evidence relative to the following criteria:

(1) Whether the insurer, person or entity could reasonably have interpreted its actions to be in compliance with the obligations required by statute, rule or order;

(2) Whether the amount imposed will be a substantial economic deterrent to the violator;

(3) Whether the amount imposed would put the violator in a hazardous financial condition;

(4) The circumstances leading to the violation;

(5) The severity of the violation and risk of harm to the public;

(6) The economic benefits gained by the violator as a result of noncompliance;

(7) The interest of the public; and

(8) The insurer's, person's, or entity's efforts to cure the violation.

40. For all violations occurring on or after July 1, 2011, Tenn. Code Ann. § 56-6-112 (2011), states in pertinent part:

> (e) The commissioner shall retain the authority to enforce this part and impose any penalty or remedy authorized by this part and this title against any person who is under investigation for or charged with a violation of this part or this title, even if the person's license has been surrendered or has lapsed by operation of law.
>
> (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 subsection (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.

41. As enumerated in the Findings of Fact above and the Conclusions of Law contained herein, Respondents violated Tenn. Code Ann. §§ 56-6-112(a)(5), and (a)(8).

42. The Findings of Fact contained herein constitute grounds for a Consent Order revoking Respondent Betty S. Lackey's Insurance Producer license in accordance with Tenn. Code Ann. §§ 56-6-112(g)(3). Such facts also provide grounds for an order imposing civil penalties against Respondent Betty S. Lackey and Respondent Jeffrey B. Lackey in an amount of one thousand dollars ($1,000) for each separate violation in accordance with Tenn. Code Ann. §§ 56-2-305(a) (2008) and 56-6-112(g).

ORDER

NOW, THEREFORE, based on the foregoing and Respondents' waiver of their rights to a hearing and appeal under the Law and Tennessee's Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 *et. seq.*, and the admission by Respondents of the jurisdiction of the

Commissioner, the Commissioner finds that Respondents, admit to the Findings of Fact and Conclusions of Law and have agreed to the entry of this Consent Order, and that this Consent Order is appropriate, in the best interest of the public, and necessary for the protection of the public.

IT IS ORDERED, pursuant to Tenn. Code Ann. §§ 56-2-305 (2008) and 56-6-112 (2011) that:

1. The Insurance Producer license, numbered 979323, issued to Respondent, Betty S. Lackey, is hereby **REVOKED**, beginning immediately upon final execution of this agreed Consent Order;

2. Respondents shall not, while without a license, conduct further business for which an insurance license is required under the Law; and

3. Respondent Betty S. Lackey shall pay the Division a monetary civil penalty in the total sum of two thousand five hundred dollars ($2,500).

4. Respondent Jeffrey B. Lackey shall pay the Division a monetary civil penalty in the total sum of two thousand five hundred dollars ($2,500).

5. Respondents shall pay their respective penalties in full on January 1, 2016.

6. Any failure to timely make a payment under the terms of this agreed Consent Order may result in additional disciplinary action being taken against the Respondents including, but not necessarily limited to, the assessment of additional civil monetary penalties.

7. Payments shall be considered timely made if it is **received** by the Tennessee Department of Commerce and Insurance by January 1, 2016. All payments shall include a copy of the first page of this Order and shall be made payable to "State of Tennessee." All payments shall be mailed to the following address:

Tennessee Department of Commerce and Insurance
ATTN: James R. Witham
Legal Division
Davy Crockett Tower
500 James Robertson Parkway, 8th Floor
Nashville, TN 37243

8. **IT IS FURTHERED ORDERED** that all persons in any way assisting, aiding, or helping Betty S. Lackey and Jeffrey B. Lackey in any of the aforementioned violations of Tenn. Code Ann. § 56-6-112, shall **CEASE AND DESIST** from all such activities in violation of the Law.

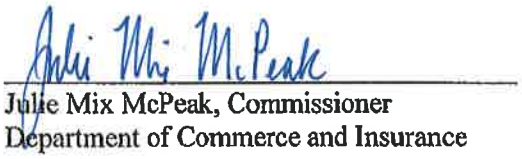
IT IS ORDERED that this Consent Order represents the complete and final resolution and discharge of administrative remedies available to the Commissioner under Tenn. Code Ann. § 56-6-112 against Respondents for violations of the Law arising out of the Findings of Fact set forth in Paragraphs 8 through 38 above. However, this Consent Order shall in no way preclude a third party or other authority from pursuing civil remedies or criminal action against Respondents which may otherwise be available.

This Consent Order is in the public interest, in the best interest of the parties, and represents a compromise and settlement of the controversy between the parties. By their signatures affixed below, Respondents, Betty S. Lackey and Jeffrey B. Lackey, states that they have: (1) freely agreed to the entry of this Consent Order; (2) had the opportunity to effectively consult with legal counsel in this matter; (3) reviewed the Findings of Fact and Conclusions of Law contained herein; and (4) waived their right to a hearing on the matters underlying this Consent Order. Respondents further state that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof with regard to this Consent Order.

By signing this Consent Order, the parties affirm their agreement to be bound by the terms of this Consent Order and confirm that no promises or offers relating to the circumstances described herein, other than the terms of the settlement set forth in this Consent Order, are binding upon them.

IT IS SO ORDERED.

ENTERED this the 24th day of September, 2015.



Julie Mix McPeak, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

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