



STATE OF MISSOURI  
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF: )  
 )  
ALLEGiant RETIREMENT GROUP )  
and ) Case No. AP-16-05  
RICHARD MODER, )  
 )  
Respondents. )

**CONSENT ORDER**

SUMMARY OF THE SECURITIES DIVISION’S ALLEGATIONS

1. The Missouri Securities Division of the Office of Secretary of State (“Division”) has alleged that Richard Moder (“Moder”) transacted business as an investment adviser representative in the state of Missouri without being registered or exempt from registration at times in the past five years, in violation of Section 409.4-404(a), RSMo (Cum. Supp. 2013)<sup>1</sup>; Allegiant Retirement Group (“ARG”) transacted business as an investment adviser in the state of Missouri without being registered or exempt from registration in violation of Section 409.4-403(a) from approximately October 2013, until February 2015, and that, during this same period, ARG employed or associated with Moder while Moder transacted business in Missouri as an unregistered investment adviser, in violation of Section 409.4-403(d), and that this constitutes grounds to issue an order pursuant to Section 409.6-604.
2. Respondents and the Division desire to settle the allegations and the matters raised by the Division relating to the Respondents’ alleged violations of Sections 409.4-403 and 409.4-404.

CONSENT TO JURISDICTION

3. Respondents and the Division stipulate and agree that the Missouri Commissioner of Securities (“Commissioner”) has jurisdiction over Respondents and these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, *et seq.*

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<sup>1</sup> Unless otherwise noted, all statutory references are to the 2013 cumulative supplement to the Revised Statutes of Missouri.

4. Respondents and Division stipulate and agree that the Commissioner has authority to enter this Order pursuant to Section 409.6-604(h), which provides:

“The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act.”

#### WAIVER AND EXCEPTION

5. Respondents waive Respondents’ rights to a hearing with respect to this matter.
6. Respondents waive any rights that Respondents may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondents specifically forever release and hold harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner, and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter.
7. Respondents stipulate and agree with the Division that, should the facts contained herein prove to be false or incomplete, the Enforcement Section reserves the right to pursue any and all legal or administrative remedies at its disposal.

#### CONSENT TO COMMISSIONER’S ORDER

8. Respondents and the Division stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
9. Respondents agree not to take any action or to make or permit to be made any public statement creating the impression that this Order is without factual basis. Nothing in this paragraph affects Respondents’ (a) testimonial obligations; (b) right to take legal or factual positions in other legal proceedings in which the Commissioner is not a party; or (c) right to make public statements that are factual.
10. Respondents agree that Respondents are not the prevailing parties in this action since the parties have reached a good faith settlement.
11. Respondents neither admit nor deny the allegations made by the Division, but consent to the Commissioner’s Findings of Fact, Conclusions of Law, and Order as set forth below solely for the purposes of resolving this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.

#### COMMISSIONER’S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

#### **FINDINGS OF FACT**

12. Allegiant Retirement Group, LLC (“ARG”), Charter Number LC1344380, is a limited liability company organized under the laws of Missouri on September 24, 2013, and maintains an address at 100 Chesterfield Business Parkway, Suite 200, Chesterfield, Missouri 63005. Moder is listed as the registered agent for ARG, with an address of 387 Shetland Valley Court, Chesterfield, Missouri 63005.
13. Richard J. Moder (“Moder”) is a fifty-one (51) year old Missouri resident with a mailing address of 387 Shetland Valley Court, Chesterfield, Missouri 63005. Moder is registered with DIFP with a license number of 0101130. At some times relevant, Moder operated as Richard Moder & Associates (“M&A”).
14. On September 19, 2013, Moder entered into a consent order with the DIFP that alleged Moder “made false statements under oath or affirmation” and induced an exchange or replacement of an insurance product “with insignificant benefit to the consumer, but for the purpose of accumulating commissions.”
15. At all times relevant to this matter, Moder was not registered as a broker-dealer, agent, investment adviser, or investment adviser representative in the State of Missouri.
16. At all times relevant to this matter, neither ARG nor M&A was registered in Missouri as a broker-dealer or investment adviser.
17. During the years 2012 through 2015, with the exception of the time his insurance license was not renewed (the “Relevant Period”), Moder sold equity-indexed annuities (“EIAs”) and other insurance products to Missouri residents through M&A, and eventually through Allegiant. To reach potential customers and promote their services, Moder, by and through M&A, and/or Allegiant, utilized a website and conducted free lunch or dinner seminars. These internet pages and free lunch/dinner seminar invitations provided, among other things, the following:
  - a. “...attach a guaranteed income stream to your retirement accounts, IRA, 401k, TSP that you or your spouse can never outlive...”;
  - b. “...guarantee your retirement accounts, or a portion of them, [that] can never go below principal due to market downturn and strategies to experience only gains in the market. (Can you afford to rebuild your wealth in another inevitable downturn in the market?)”;
  - c. “...how to maximize your social security benefits...”;
  - d. “...how to update your trust free of charge...”;
  - e. “learn how our retirement strategies can put your mind at ease and ensure you have the retirement you’ve always wanted...”;
  - f. “Allegiant Retirement Group works hard to provide a financial plan that provides the lifestyle you want in retirement”;

- g. “Our team of professionals provides a comprehensive 360-degree level of service”; and
  - h. Services provided were listed as, “retirement planning; estate planning; trusts; life insurance; probate; IRA and 401k rollovers; IRA legacy planning; wealth accumulation; asset protection; tax planning; long-term care; charitable giving; and income planning.”
18. Moder and ARG indicated on the company’s website that ARG was, among other things:
- a. “well positioned to provide comprehensive retirement services...”;
  - b. since 1989, the Allegiant team has been helping retirees in St. Louis meet their retirement needs...”; and
  - c. The Allegiant team consists of: R.J. Moder, President of Allegiant Retirement Group....; Daniel Roemerman (“Roemerman”), Director of Securities and Investments....; Stephen Cox (“Cox”), Attorney....”
19. During the Relevant Period, Moder offered follow-up appointments for people who attended his seminars to discuss their current financial plans.
20. At these appointments, Moder would often meet with customers and discuss customers’ overall retirement portfolios.

**Missouri Resident (“MR”)**

21. In 2012, MR, who was seventy-two (72) years old, was solicited by Moder to purchase EIAs. In order to finance the transactions, MR showed Moder her Morgan Stanley brokerage statements to determine which positions could be liquidated. Since Moder was not licensed to sell securities, Moder enlisted the help of Nicolas A. Hester (“Hester”), CRD No. 4382344, who is the owner of Moder’s field marketing organization, Royalty Financial Group (“RFG”).
22. During all times relevant to this matter, Hester was registered in Missouri as a broker-dealer agent, and Hester was therefore legally authorized to sell MR’s positions in MR’s brokerage account to fund the EIAs that Moder was selling to MR.
23. Prior to enlisting Hester, Moder reviewed the brokerage statements and, according to MR, told MR that she was “getting ripped off by Morgan Stanley and [he] could do a much better job of handling [MR’s] money.”
24. Moder made copies of MR’s brokerage statements and showed them to Hester. Subsequently, Moder, Hester, and MR discussed the liquidation of MR’s securities.

25. On or around January 24, 2012, MR liquidated mutual funds, municipal bonds, certificates of deposit, and five (5) annuities still within the surrender period, all totaling six hundred and thirty-five thousand one hundred and sixty-nine dollars and forty-two cents (\$635,169.42).
26. The surrender of MR's annuities penalized MR in the amount of six thousand four hundred thirty dollars and forty-three cents (\$6,430.43).
27. On or around February 9, 2012, Moder purchased two (2) EIAs with ING and Allianz totaling six hundred and thirty-five thousand one hundred and sixty-nine dollars and forty-two cents (\$635,169.42). Both of the annuities carried 10-year surrender penalties.
28. The assets in these two annuities represented over 80% of MR's total investable assets.
29. Moder stated to MR that and recommended to MR, new ING and Allianz annuities that provided an "upfront premium bonus" to partially offset any surrender penalties incurred from the liquidation of the five (5) annuities.
30. It was not fully explained to MR that MR would not fully realize this "upfront premium bonus" until MR met certain benchmarks and until MR was eighty-two (82) years old.
31. Prior to purchasing the EIAs, Moder failed to disclose to MR, among other things:
  - a. that Moder was not registered to offer or sell securities; and
  - b. that M&A and/or Allegiant were not registered to offer or sell securities.

**Missouri's On the Record ("OTR") with Hester**

32. On January 22, 2015, the Division conducted an OTR with Hester. Hester testified, among other things:
  - a. that Hester owns the field marketing organization, Royalty Financial Group ("RFG");
  - b. that The Leaders Group is Hester's broker-dealer;
  - c. that Hester's understanding was that free lunch/dinner seminars were the only way that Moder acquired clients;
  - d. that during the time of MR's liquidations and surrenders, Moder was using RFG as his field marketing organization;
  - e. that Hester understood that Moder did not have a securities license;

- f. that Moder looks at the person's overall portfolio when attempting to make a sale of an insurance product;
- g. that Moder's standard business practice was to look at brokerage account statements prior to bringing Hester into the client meetings to liquidate securities;
- h. that, on at least one occasion, Hester observed Moder participating in a three-way call between the client and the client's brokerage firm during which securities were liquidated to fund EIAs; that Moder was the person who recommended that MR liquidate securities and surrender annuities to fund two EIAs; and
- i. that Hester was the one who liquidated MR's securities to fund the EIAs that Moder was selling to MR.

**Missouri's On the Record ("OTR") with Roermerman**

33. On March 26, 2015, the Division conducted an OTR with Roermerman. Roermerman testified, among other things:
- a. that Roermerman is an independent contractor who primarily solicits insurance business, but is securities registered;
  - b. that Roermerman's business relationship with Moder consists of client referrals, mainly for Medicare supplements or health insurance;
  - c. that Moder has only referred one securities client to Roermerman and Moder did not state to Roermerman that Moder wanted Roermerman to liquidate the client's securities in order to fund an EIA;
  - d. that Moder paid Roermerman a consulting fee for liquidating securities in the above client's account.
  - e. that Roermerman has never received a referral fee from Moder nor has Roermerman paid a referral fee to Moder;
  - f. that Roermerman has never referred business to Moder;
  - g. that Roermerman has attended one (1) free lunch seminar hosted by Moder;
  - h. that Moder only sells EIAs;
  - i. that prior to the OTR, Roermerman had never seen ARG's Our Team webpage where it lists Roermerman as Director of Securities and Investments;
  - j. that Roermerman did not know that he was listed as the Director of

Securities and Investments at ARG;

- k. that Roemerma does not have twenty-three (23) years of experience, as indicated on ARG's Our Team webpage;
- l. that Roemerma never agreed to employment at ARG;
- m. that Roemerma never agreed to serve as an officer, director, or in any other role at ARG;
- n. that Roemerma was not the Director of Securities and Investments at ARG; and
- o. that Roemerma does not office at any location that ARG offices.

**Missouri's On the Record ("OTR") with Cox**

- 34. On April 10, 2015, the Division conducted an OTR with Cox. Cox testified, among other things:
  - a. that Cox is licensed as an attorney in the State of Missouri and has been practicing law for forty-five (45) years;
  - b. that Cox primarily does estate planning, probate, and trust work;
  - c. that, in or around 2007, Moder had contacted him to refer some of Moder's clients to Cox;
  - d. that Moder has referred approximately twelve (12) clients to Cox;
  - e. that Cox did meet with some of Moder's referrals, although not all individuals with whom Cox met were clients of Moder's at the time;
  - f. that Cox has not personally seen Moder since 2010;
  - g. that Moder at times would compensate Cox for the estate plans of Moder's clients;
  - h. that Cox never paid Moder a referral fee;
  - i. that Cox didn't know anything about ARG until the Division contacted Cox to inquire about the use of Cox's name on ARG's website;
  - j. that to Cox's knowledge he has never been part of the ARG team, as there is no employment contract or agreement in place; and
  - k. that Cox wrote Moder on two (2) separate occasions demanding that Moder remove Cox's name from ARG's website.

### **Missouri's On the Record ("OTR") with Moder**

35. On May 20, 2015, the Division conducted an OTR with Moder. Moder testified, among other things, the following:
- a. that Moder met MR at one of his free lunch/dinner seminars;
  - b. that Moder called MR's annuity carriers to determine if MR would incur any surrender charges if she liquidated the annuities;
  - c. that each surrender schedule for MR's EIAs was ten (10) years;
  - d. that Moder was aware that his seminar invitations did not specifically mention annuities but alluded to this type of insurance product;
  - e. that Moder was aware that ARG's website did not specifically mention annuities but alluded to this type of insurance product;
  - f. that Moder created a website for ARG on which ARG and Moder offered services such as retirement planning, IRA and 401(k) rollovers, IRA legacy planning, wealth accumulation, asset protection, tax planning, long term care, charitable giving, and income planning;
  - g. that Moder acknowledged that ARG was not registered to provide the above services, and ARG relied on Roerman to provide these services, which were advertised on the ARG website;
  - h. that Moder acknowledged that ARG was not licensed to provide trusts, estates, probate, and/or tax planning, and ARG relied on Cox to provide these services, which were advertised on the ARG website; and
  - i. that neither Roerman nor Cox were employees or independent contractors of ARG and never have been employed or otherwise contracted with ARG to provide the services listed in items 35(f) and 35(h).

### **Payment to MR**

36. On or about January 13, 2016, ARG chose to pay, as a courtesy, MR \$1116.00 as the difference in the surrender charge incurred on the four Aviva annuities MR surrendered and the 10% bonus MR realized on the Aviva annuity, and not as an admission of inequity or impropriety in any transaction whatsoever.

### **II. CONCLUSIONS OF LAW**

37. The Commissioner finds that Respondent Moder transacted business as an unregistered investment adviser representative in this state from approximately 2012 until January, 2013, and October, 2013, through February, 2015, in violation



of Section 409.4-404(a), and that this violation constitutes grounds to issue an order pursuant to Section 409.6-604.

38. The Commissioner finds that Respondent ARG transacted business as an unregistered investment adviser in this state from approximately October 2013, through February, 2015, in violation of Section 409.4-403(a), and that this violation constitutes grounds to issue an order pursuant to Section 409.6-604.
39. The Commissioner also finds that Respondent ARG associated with or employed an unregistered investment adviser representative who transacted business in this state on behalf of ARG during the same period noted above in violation of Section 409.4-403(d), and that this violation constitutes grounds to issue an order pursuant to Section 409.6-604.
40. The Commissioner, after consideration of the stipulations set forth above and on consent of the Respondents and the Division, finds and concludes that the Commissioner has jurisdiction over Respondents in this matter and that the following order is in the public interest, necessary for the protection of public investors, and consistent with the purposes intended by Chapter 409, RSMo.

### III. ORDER

**NOW, THEREFORE,** it is hereby Ordered that:

1. Respondents, their agents, employees and servants, and all other persons participating in the above-described violations with knowledge of this order are permanently enjoined and restrained from violating Section 409.4-404(a), Section 409.4-403(a) Section 409.4-403(d);
2. Respondent Moder is ordered to pay a fine of \$6,000 for multiple violations of Section 409.4-404(a);
3. Respondent ARG is ordered to pay a fine of \$4500 for multiple violations of Section 409.4-403(a);
4. Respondent ARG is ordered to pay a fine of \$1,000 for a single violation of Section 409.4-403(d);
5. The total amount of these fines, \$11,500, shall be paid on the following schedule: \$3,500 within thirty days of this Order; \$400 each month thereafter for twenty months. If Respondents miss any payment, all sums become immediately due and payable;
6. Respondents ARG and Moder are ordered to pay, jointly and severally, \$20,000 to the Investor Education and Protection Fund. Within one hundred twenty days of the date of this Consent Order, Respondents shall pay \$4,000 of this above amount to the Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101. This payment shall be made payable to the Missouri Secretary of State's

Investor Education and Protection Fund. The Division will send the money to the Missouri Secretary of State's Investor Education and Protection Fund;

7. Respondents' payment of the remaining \$16,000 is hereby suspended but shall become due immediately upon the sooner of (1) Respondents' noncompliance with the terms of this Consent Order or (2) a finding, after notice and opportunity for a hearing, by the Commissioner or a court of competent jurisdiction that Respondents have violated the Missouri Securities Act. (Such immediately due payments shall be in addition to all other penalties then available under the law.) If, after twenty months from the date of this Consent Order, neither of those two conditions has occurred, the Commissioner waives Respondents' payment of the remaining amount;
8. Respondents are ordered to pay \$5,000.00 as the costs of the Division's investigation, which shall be payable one hundred eighty days from the date of this Consent Order and made payable to the Missouri Secretary of State's Investor Education and Protection Fund, 600 W. Main Street, Jefferson City, MO 65101;
9. Respondent Moder is ordered to attend either a Division-sponsored seminar or other seminar in Missouri which includes discussion of cognitive decline in senior investors not unacceptable to the Division, within the next two years;
10. Allegiant and Moder are ordered not to state or imply, in marketing materials of any kind, including but not limited to in their respective websites, fliers, or person, that Allegiant and/or Moder provide comprehensive financial advice, trusts, estate planning, probate, tax planning, wealth accumulation, and/or retirement planning services, or any other services for which they do not have the proper licenses/registrations, or otherwise violate the Missouri Securities Act.
11. The Commissioner may refer this Order for enforcement as provided in Sections 409.6-603 and 409.6-604; and
12. Respondents shall pay their own costs and attorneys' fees with respect to this matter.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 24<sup>th</sup> DAY OF February, 2016.



JASON KANDER  
SECRETARY OF STATE

*Andrew M. Hartnett*

ANDREW M. HARTNETT  
COMMISSIONER OF SECURITIES

Consented to by:

RESPONDENTS

Allegiant Retirement Group

By: Richard Moder

Name: Richard Moder

Title: member

Richard Moder

Richard J. Moder