

State of Missouri
Office of Secretary of State

Case No. AP-08-11

IN THE MATTER OF:

TERRY W. SIMPKINS,

Respondent.

Serve at:

1746 Arrow Court

Lake Sherwood, Missouri 63357

**ORDER TO CEASE AND DESIST AND ORDER TO SHOW CAUSE WHY CIVIL
PENALTIES AND COSTS SHOULD NOT BE IMPOSED**

On April 9, 2008, the Enforcement Section of the Securities Division of the Office of Secretary of State, through its Assistant Commissioner of Securities Mary S. Hosmer, submitted a Petition for Order to Cease and Desist and Order to Show Cause Why Civil Penalties and Costs Should Not Be Imposed. After reviewing the petition, the Commissioner issues the following findings of fact, conclusions of law and order:

I. FINDINGS OF FACT

1. Terry W. Simpkins ("Simpkins") is a Missouri-licensed insurance agent. Simpkins is licensed to sell life, accident, and health insurance coverage. Simpkins is not registered as an agent of a broker-dealer or as a representative of an investment adviser in the State of Missouri, however, Simpkins claimed to be a Certified Senior Advisor ("CSA"). From June 2005 to present Simpkins has been employed as an insurance agent with Wealth Protection Advisors, LLC ("WPA"). From 2000 to June 2005, Simpkins was employed by Senior Benefit Services of Kansas, LLC ("SBS"). While employed with SBS, Simpkins worked out of his home in Florissant, Missouri. Simpkins' current address is 1746 Arrow Court, Lake Sherwood, Missouri 63357.
2. SBS is an insurance and annuity provider located at 4100 International Plaza, Suite 500, Fort Worth, Texas.
3. WPA is a Missouri limited liability company that is an insurance wholesaler and is located at 1401 Triad Center Drive, St. Peters, Missouri 63376. RIA is purportedly owned by WPA.
4. Retirement Income Advisors, LLC ("RIA"), is a Missouri limited liability company with an office address at 2046 Queensbrooke Blvd., Suite 100, St. Peters, Missouri 63376 and at 1401 Triad Center Drive, St. Peters, Missouri 63376.
5. Donald Anton Quante ("Quante") is managing member of RIA and WPA.
6. Jeff Nabholz ("Nabholz") is an independent insurance agent with WPA and former investment representative with RIA.
7. As used in this Order, the term "Respondent" refers to Simpkins.
8. In 2006, the Missouri Securities Division was contacted by a Missouri resident ("MR1") regarding annuity sales to her mother ("MR2"). MR1 stated, among other things, that:
 - a. prior to 2001, MR2 suffered from heart arrhythmia, high blood pressure, diabetes and arthritis;
 - b. in 2001, MR2 started having additional health problems that included, among other things, black out spells, falls, and problems remembering;
 - c. at the time her additional health problems began, MR2 was a seventy-five (75) year-old Missouri resident;
 - d. MR2 continued experiencing health problems after 2001;
 - e. MR2 often fell and injured herself and would often have bruises as a result of these falls. On two occasions MR2 received stitches in her head after falling down. After one of these falls, MR2 was required to stay in the hospital overnight;
 - f. in 2004, MR2's doctor recommended that MR2 get tested for Alzheimer's disease after MR2 fell in her home. MR2 subsequently canceled this test;
 - g. in 2004 or 2005 MR2's mental capacity became noticeably diminished and her confusion increased regarding financial matters;

- h. during this time, MR1 stated that Simpkins began to put pressure on MR2 to become "totally risk-free," and began marketing financial products to her, as described below in paragraphs 19 through 23, and paragraphs 28 through 36, below;
 - i. MR2 did not receive a bill from Simpkins and MR2 told MR1 that Simpkins was not making any money from MR2 and Simpkins must be looking out for MR2's best interest; and
 - j. in March 2006, MR2 was scheduled to undergo a quadruple bypass. While awaiting surgery MR2 was examined and the doctors found that MR2 had suffered from several small strokes.
9. In June 2006, MR2 was diagnosed with Alzheimer's disease and confined to a nursing home.
10. After MR2 became confined to a nursing home MR1, who had power of attorney over MR2's assets, liquidated MR2's investments to pay for MR2's care. MR1 paid surrender charges of over twelve thousand dollars (\$12,000.00) to get access to MR2's money.
11. Prior to transferring assets pursuant to recommendations made by Simpkins, MR2 had funds in a bank account ("MR2's Bank Account") for emergencies and had stocks, bonds, mutual funds, certificates of deposit and two (2) annuities. MR2 had two (2) securities accounts: (1) a brokerage account valued at over seventy thousand dollars (\$70,000.00) at Edward D. Jones & Co., L.P. ("MR2's Edward Jones Account"), a Missouri-registered broker-dealer; and (2) a brokerage account valued at over thirty-nine thousand dollars (\$39,000.00) at A.G. Edwards & Sons, Inc. ("MR2's A.G. Edwards Account"), a Missouri-registered broker-dealer (collectively these accounts will be referred to hereinafter as "MR2's Brokerage Accounts").
12. The investments in MR2's Brokerage Accounts, before the transfers pursuant to recommendations made by Simpkins, among other things:
 - a. **were profitable:** MR2's Brokerage Accounts gained over twenty-three percent (23%) in the two (2) years prior to their liquidation;
 - b. **were low cost:** eighty percent (80%) of MR2's Brokerage Accounts were in stocks and bonds that had no fees or expenses;
 - c. **provided income:** MR2 collected over five thousand, seven hundred dollars (\$5,700.00) in dividend and interest income from her Brokerage Accounts and much of the income was tax-free;
 - d. **had few transactions and almost no commission charges:** MR2's accounts had not had any transactions since 2003;
 - e. **provided MR2 with tax advantages:** two (2) bonds in the Brokerage Accounts were tax-exempt municipal bonds. Interest on these bonds were state, local and federally tax-exempt. The tax equivalent yield on these bonds were between five and seven percent (5.45% & 7.20%); and
 - f. **were liquid:** none of the securities or annuities that MR2 held in these accounts had surrender charges.
13. If these accounts had been held to the date of liquidation by MR1 they would have provided MR2 with income and profits, would have incurred no surrender fees, and MR2 would have been primarily taxed at a lower capital gains rate.
14. As a result of Simpkins' recommendations, MR2 had to pay over twelve thousand dollars (\$12,000.00) in surrender fees to obtain access to her money. In addition, by transferring MR2's tax-exempt municipal bonds to taxable annuities, Simpkins turned tax-exempt interest into taxable interest.
15. In meeting with and making recommendations to MR2, Simpkins promoted himself as a CSA. The website for the Society for Certified Senior Advisors ("SCSA") states that:

"SCSA educates professionals to work more effectively with their senior clients. We believe that the right kind of planning, recommendations and referrals can make aging a state to be savored instead of a fate to be feared. For those who work with seniors, that means understanding the key health, social and financial factors that are important to seniors—and how these factors work together."
16. Even though Simpkins promoted himself as a CSA, he did not identify or recognize, or act upon the fact, that MR2 had a cognitive disorder, even though he had known MR2 for several years and had spoken with MR2 on numerous occasions during the time she was experiencing these health problems, and even though Simpkins knew MR2 "pretty well as a friend."
17. In addition, even though Simpkins recognized, in general, that seniors may need to have more liquid assets and he knew that MR2 had injured herself after falling down the stairs, Simpkins did not identify or recognize, or act upon the fact, that, as a result of MR2's deteriorating health which included heart arrhythmia, high blood pressure, diabetes, arthritis, strokes and dementia, MR2 would have a greater need for liquidity and unfettered access to her money because of the real possibility that she would need to make arrangements for assisted living.

18. A review of MR2's transactions reveals that from 2001 to 2005, Simpkins, through SBS and later WPA, recommended that MR2 purchase three (3) fixed annuities and one (1) equity indexed annuity ("EIA") for over one hundred and twenty thousand dollars (\$120,000.00).
19. On October 2, 2001, Simpkins met MR2 at MR2's home in Columbia, Missouri. At this time Simpkins was employed by SBS. Simpkins' handwritten notes from this October meeting, included, among other things:
 - a. that MR2 had her assets in a bank account, certificates of deposit, stocks, mutual funds, and two (2) annuities; and
 - b. information about MR2's Brokerage Accounts and the products in those accounts, including a note that the "bonds pay good 1 not tax free" (Emphasis in original).

There were no notes relating to MR2's health.

20. While at SBS, Simpkins sold MR2 the following:
 - a. On November 13, 2001, Simpkins sold MR2 an Amerus fixed annuity for five thousand dollars (\$5,000.00) from proceeds of a bank certificate of deposit. The Amerus annuity had a twelve (12) year surrender charge period. The Amerus annuity initially came with a one (1) year "teaser" rate of eight point twenty-five percent (8.25%). In year two (2) the rate dropped to four percent (4%); and in year three (3) the rate dropped to the minimum of three point twenty-five percent (3.25%) and stayed at that rate until the annuity was surrendered by MR1 to pay for MR2's care.
 - b. On January 31, 2002, Simpkins sold MR2 a second Amerus fixed annuity for thirteen thousand, four hundred sixty-three dollars (\$13,463.00) from proceeds of an IRA bank certificate of deposit. The Amerus annuity had a twelve (12) year surrender charge period. The Amerus annuity came with a one (1) year "teaser" rate of seven percent (7%). In year two (2) the rate dropped to the minimum of three point twenty-five percent (3.25%) and stayed at that rate until the annuity was surrendered by MR1 to pay for MR2's care.
21. Following Simpkins' January 31, 2002, sale of this annuity to MR2, MR2 had her funds in four (4) separate annuities.
22. In June 2005, through Simpkins' employment with WPA, Simpkins again met with MR2. In Simpkins' handwritten notes from this meeting he stated, among other things, that:
 - a. MR2 had "70K in checking wants accessibility in case of emergency only making 0.15;" and
 - b. MR2 wanted more income and wanted a safe secure return.

There were no notes relating to MR2's health.

23. After meeting with MR2 in June 2005, Simpkins stated that he took this information back to his office and that a registered representative of RIA reviewed the securities in MR2's accounts and recommended that MR2 move her assets from MR2's Edward Jones Account to an Old Mutual Financial equity indexed annuity ("Mutual EIA").
24. During the time that Simpkins worked for SBS and WPA, and Nabholz and Quante worked for RIA, there was ample discussion and coverage in mass media, industry journals and other sources that called into question the suitability of equity indexed annuities as an investment vehicle.
25. While RIA was a member, the Financial Industry Regulatory Authority ("FINRA" formerly known as the National Association of Securities Dealers "NASD") issued a "Notices to Members" addressing the suitability of equity indexed annuities.
26. In June 2005, the NASD issued an Investor Alert regarding the suitability of these products titled, *Equity-Indexed Annuities-A Complex Choice*.
27. In the sale of the Mutual EIA, Simpkins earned five thousand nine hundred dollars (\$5,900.00) in commissions after spending approximately three (3) hours explaining this product to MR2.
28. Subsequent to the June 2005 meeting, Simpkins prepared a six (6) page document titled, Wealth Protection Plan (the "Plan"). A copy of this document is attached hereto as Exhibit A (MR2's name has been redacted).
29. In the Plan, Simpkins noted, among other things, that:
 - a. MR2 had seventy thousand dollars (\$70,000.00) in MR2's Bank Account;
 - b. MR2's Brokerage Accounts both "charged annual fees" and were "at risk in the stock market;" and
 - c. Simpkins would develop a retirement plan that would: (1) increase monthly income; and (2) "reposition risky accounts to one hundred percent (100%) guaranteed safe fixed accounts."

30. In the Plan, Simpkins recommended, among other things, that: (1) MR2 move twenty-five thousand dollars (\$25,000.00) in cash from MR2's Bank Account to a single premium immediate annuity ("SPIA"); (2) MR2 move twenty-five thousand dollars

(\$25,000.00) in cash from MR2's Bank Account to a fixed annuity; and (3) MR2 move sixty-five thousand dollars (\$65,000.00) from MR2's Edward Jones Account to purchase the Mutual EIA.

31. MR2 did not implement Simpkins' recommendation to move money from MR2's Bank Account. However, records obtained by the Securities Division regarding Simpkins' recommendation and MR2's purchase of the Mutual EIA indicated, among other things, that:
 - a. at the time of the sale of the Mutual EIA, MR2 was seventy-eight (78) years-old;
 - b. the Mutual EIA had a fifteen (15) year surrender charge period;
 - c. the first year the annuity paid a monthly cap of three percent (3%) in interest;
 - d. the second year the cap adjusted down to two point sixty percent (2.60%) in interest;
 - e. according to the effective standard mortality table then in use, MR2's life expectancy was only ten point three (10.3) years; and
 - f. On August 9, 2005, the majority of MR2's Edward Jones Account was transferred to the Mutual EIA pursuant to a document titled *Authorization for Inter-Institutional Transfer of Funds* prepared for MR2 by Simpkins. This document was signed by Simpkins.
32. In November 2005, Simpkins recommended that MR2 invest in another annuity.
33. On December 1, 2005, Simpkins completed a document titled, *Request to Transfer Funds to AIG Annuity*, for a total withdrawal of MR2's assets in MR2's A.G. Edwards Account. This transfer form was signed by Simpkins and signed and accepted by Quante.
34. After the implementation of Simpkins' recommendations, a large percentage of MR2's liquid assets had been transferred to illiquid investments.
35. The Mutual EIA Simpkins sold to MR2 had a confinement waiver of surrender charges that stated if the owner became confined in a nursing home and a partial or a full surrender of the certificate is made, no surrender charge would be deducted from the account value. To qualify for this waiver of surrender charge, however, the owner had to be confined to a nursing home at least one (1) year after the issuance of the policy.
36. MR2 was confined to a nursing home nine (9) months after Simpkins sold MR2 the Mutual EIA and, therefore, MR2 did not qualify for the confinement waiver.
37. On November 2006, Simpkins sent a letter to the Securities Division ("Simpkins' Letter to Division") and on April 20, 2007, Simpkins appeared with counsel at the Securities Division and answered questions regarding this investigation while under oath ("Simpkins' Deposition Statement"). During questioning by the staff of the Enforcement Section of the Securities Division, Simpkins stated, in part, the following:
 - a. he started working at WPA in June 2005;
 - b. WPA was a "group of people that help seniors with lots of different things - insurance, life insurance, long-term care. **They have investment advisors there to help with investments.** They have geriatric care managers, gerontologists." (Emphasis added)
 - c. he knew MR2 "pretty well as a friend;"
 - d. he saw MR2 annually and would stop by periodically because "she liked to make me lunch;"
 - e. he knew MR2 fell down the stairs;
 - f. he considered EIAs complicated;
 - g. when asked if an elderly person with a cognitive disorder would understand the intricacies of EIAs he stated: "[p]robably not. But, yeah, some of them do;"
 - h. he considered it "absolutely" important that the purchaser and the salesman both understand an EIA before a transaction;
 - i. he stated that MR2 knew, among other things, that:
 - i. "if she ever had an impairment where she was concerned about needing care, that there was a waiver in it to where she could have her money under those circumstances as well;"
 - ii. "she could have access to 10 percent free withdrawal a year;"

- j. "[b]eing able to access at least 10 percent a year if she needed it" was the most important feature of the Mutual EIA for MR2;
 - k. when asked to explain what participation rates were in general, he stated "[w]here they guarantee a percentage of money that's in there towards your principal. Like, if there's a 90 percent rate, 90 percent of the money is guaranteed by the contract policy values;"
 - l. he did not know that MR2's life expectancy was about ten (10) years when MR2 purchased this 15 year policy;
 - m. he did not know about the Commissioner's Standard Ordinary Mortality Table in effect at the time of the sale;
 - n. the Plan that he presented to MR2 was designed by "people in our office" after Simpkins had supplied these individuals with the notes from Simpkins' conversation with MR2;
 - o. registered representatives drew up the recommendations, shown in the Wealth Protection Plan, to transfer MR2's Edward Jones Account;
 - p. a registered representative drew up the recommendations, and that this registered representative "absolutely" knew what was in MR2's "accounts because he looked at MR2's statements." And the registered representative knew exactly what MR2 had in MR2's Edward Jones Account;
 - q. he considered liquidity an important consideration when making a recommendation to a customer; and
 - r. he did not talk very much about the liquidity of the Mutual EIA to MR2.
38. On May 11, 2007, Nabholz provided a statement to Securities Division. Nabholz stated, among other things, that:
- a. when Simpkins was new to the business Simpkins would come in on Friday mornings and worked in a study group with Nabholz and Dave Brown. Simpkins would "basically ask our opinions on things. And I said well, if this was our client this is what I would recommend;"
 - b. he never met or talked to MR2; and
 - c. he had not drawn up the recommendations for MR2 contained in the Plan.
39. On May 22, 2007, Quante provided a statement to the Securities Division. Quante stated, among other things, that:
- a. he never made a recommendation to MR2; and
 - b. he did not assist Simpkins in the preparation of the WPA for MR2.
40. On July 19, 2007, Simpkins sent the Division an affidavit correcting his previous statement. In the affidavit Simpkins stated, among other things, that:
- "To the best of my recollection, the two people who assisted me in MR2's situation were Jeff Nabholz and Dave Brown. Don Quante assisted me with clients, but not this time."
41. This Order is in the public interest and consistent with the purposes intended by the Missouri Securities Act of 2003. See Section 409.6-605(b) RSMo. (Cum. Supp. 2007).

II. STATUTORY PROVISIONS

42. Section 409.6-601(a), RSMo. (Cum. Supp. 2007), provides that the Missouri Securities Act of 2003 "shall be administered by the commissioner of securities"
43. Section 409.1-102(16), RSMo. (Cum. Supp. 2007), defines "Investment adviser representative" as "an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing."
44. Section 409.1-102(26), RSMo. (Cum. Supp. 2007), defines "Sale" to include, "every contract of sale, contract to sell, or disposition of, a security or interest in a security for value." That same section defines "offer to sell" as "every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value."
45. Section 409.4-404(a), RSMo. (Cum. Supp. 2007), states:

"It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this act as an investment adviser representative or is exempt from registration as an

investment adviser under subsection (b)."

46. Section 409.5-501, RSMo. (Cum. Supp. 2007), states:

"it is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

- (1) To employ a device, scheme, or artifice to defraud;
- (2) To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading; or
- (3) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person."

47. Section 409.5-502(a), RSMo. (Cum. Supp. 2007), states, in part:

"that it is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities:

- (1) To employ a device, scheme, or artifice to defraud another person; or
- (2) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person."

48. Section 409.6-604(a), RSMo. (Cum. Supp. 2007), states:

"If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice or course of business constituting a violation of this act or a rule adopted or order issued under this act or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act, the commissioner may:

- (1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary and appropriate to comply with this act;
- (2) Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under section 409.4-401(b)(1)(D) or (F) or an investment advisor under section 409.4-403(b)(1)(C); or
- (3) Issue an order under section 409.2-204."

49. Section 409.6-604(d), RSMo. (Cum. Supp. 2007), states:

"In a final order . . . the commissioner may impose a civil penalty up to one thousand dollars for a single violation or up to ten thousand dollars for more than one violation."

50. Section 409.6-604(e), RSMo. (Cum. Supp. 2007), states:

"In a final order, the commissioner may charge the actual cost of an investigation or proceeding for a violation of this act or a rule adopted or order issued under this act. These funds may be paid into the investor education and protection fund."

51. The Missouri Commissioner of Securities is empowered to issue such orders as he may deem just. Section 409.6-604(a), RSMo. (Cum. Supp. 2007).

III. CONCLUSIONS OF LAW

Multiple Violations of Transacting Business as an Unregistered Investment Adviser Representative

52. Paragraphs 1 through 51 are incorporated by reference as though fully set forth herein.

53. At all times relevant, records maintained by the Missouri Commissioner of Securities contained no registration or granted

exemption as an investment adviser representative for Respondent in the State of Missouri.

54. Respondent was employed by or associated with RIA and WPA. RIA is a registered investment adviser and WPA transacts its business without being registered as an investment adviser. Respondent offered investment advice regarding securities by, among other things:
- a. holding himself out as a CSA;
 - b. making recommendations regarding securities;
 - c. preparing the Plan for MR2 by working with "investment advisors . . . to help with investments;"
 - d. recommending in the Plan that securities in MR2's Brokerage Accounts be "repositioned" into insurance products. The investments in MR2's Brokerage Accounts were securities as contained in the definition of "securities" in Section 409.1-102(28), RSMo. (Cum. Supp. 2007).
 - e. presenting the Plan and its recommendations from these registered representatives regarding securities to MR2;
 - f. assisting MR2 with the liquidation of MR2's Brokerage Accounts by completing transfer forms; and/or
 - g. receiving compensation for this investment advice through the payment of commissions from the sale of the products Simpkins recommended.
55. Respondent's actions constitute providing investment advice regarding securities for compensation and are a violation of Section 409.4-404, RSMo. (Cum. Supp. 2007), and constitutes an illegal act, practice, or course of business under Section 409.6-604(a), RSMo. (Cum. Supp. 2007).

**Multiple Violations of Engaging in an Act, Practice, or Course of Business
that Would Operate as a Fraud or Deceit upon Another
Person In Connection with Investment Advice**

56. Paragraphs 1 through 51 are incorporated by reference as though fully set forth herein.
57. Respondent advised others for compensation, either directly or indirectly, as to the value of securities or the advisability of investing in, purchasing or selling securities.
58. In offering this investment advice, Respondent engaged in an act, practice, or course of business that would operate as a fraud or deceit upon MR2 by, among other things, the following:
- a. holding himself out as a CSA when, in fact, Respondent was and is only licensed to sell insurance products in the State of Missouri;
 - b. recommending the sale of securities for the account of another without being registered as an investment adviser representative;
 - c. recommending MR2 "reposition" her securities into complex investments that Simpkins did not understand and/or could not adequately explain;
 - d. recommending that MR2 "reposition" her securities into complex illiquid investments that were unsuitable for MR2, an elderly investor with deteriorating health;
 - e. recommending that MR2 "reposition" her securities into complex investments that were to pay Simpkins large commissions;
 - f. recommending that MR2 "reposition" her securities into a complex investment that Simpkins stated would allow MR2 to "have access to 10 percent free withdrawal a year;" when, in fact, this was not true;
 - g. recommending that MR2, an elderly investor with deteriorating health, transfer a large portion of her liquid assets to an illiquid product;
 - h. telling MR2 that "if she ever had an impairment where she was concerned about needing care, that there was a waiver in it to where she could have her money," when, in fact, this was not true;
 - i. providing the Plan that recommended that MR2 "reposition" MR2's Brokerage Accounts because they were "at risk in the stock market" and MR2 was "paying an annual fee" without including in this written Plan the risks and fees of the complex products Simpkins recommended;
 - j. providing the Plan that recommended that MR2 move her funds from MR2's Edward Jones Account to a complex Mutual EIA "with a 3% bonus" without including in this written Plan the costs and fees associated with this "bonus;"

- k. preparing sales materials to convince MR2 to move her assets from MR2's Brokerage Accounts to an EIA and other insurance products in the guise of an objective "Wealth Protection Plan" that would protect and build MR2's assets to:
 - i. "reposition risky accounts [MR2's Brokerage Accounts] to 100% guaranteed safe fixed accounts;"
 - ii. produce income;

without adequately analyzing or accurately comparing the costs, fees, and features of the complex insurance products recommended with the costs, fees, and features of the products in MR2's Brokerage Accounts.

59. The Respondent's actions constitute a violation of Section 409.5-502, RSMo. (Cum. Supp. 2007), and constitute an illegal act, practice, or course of business under Section 409.6-604(a), RSMo. (Cum. Supp. 2007).

**Multiple Violations of Making an Untrue Statement of a
Material Fact in Connection with the Offer to Purchase or Sale of a Security**

60. Paragraphs 1 through 51 are incorporated by reference as though fully set forth herein.
61. Respondent violated Section 409.5-501(2), RSMo. (Cum. Supp. 2007), when, in connection with the offer to purchase or to sell securities, he made untrue statements of material fact, including:
 - a. that if MR2 accepted Respondent's recommendations, she would "have access to 10 percent free withdrawal a year;" when, in fact, this was not true; and
 - b. "if MR2 ever had an impairment where she was concerned about needing care, that there was a waiver in it to where she could have her money," when, in fact, this was not true.
62. Making an untrue statement of material fact, in connection with the offer, sale or purchase of a security, constitutes an illegal act, practice, or course of business under Section 409.6-604(a), RSMo. (Cum. Supp. 2007).

IV. ORDER

NOW, THEREFORE, it is hereby ordered that Respondent, his agents, employees and servants, and all other persons participating in or about to participate in the above-described violations with knowledge of this Order are prohibited from:

- A. making any recommendations or otherwise offering investment advice regarding the purchase or sale of securities in or from the State of Missouri, managing accounts or portfolios of clients, determining which recommendations or advice regarding securities should be given, providing investment advice or holding himself out as providing investment advice, receiving compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervising any employee who performs any of the foregoing;
- B. violating or materially aiding in any violation of Section 409.5-502(a), RSMo. (Cum. Supp. 2007), by or in connection with advice given to others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities to engage in an act, practice, or course of business that would operate as a fraud or deceit upon another person;
- C. violating or materially aiding in any violation of Section 409.5-501, RSMo. (Cum. Supp. 2007), by or in connection with the offer to sale or purchase of securities, by making untrue statements of material facts or omitting to state material facts necessary in order to make statements made, in the light of the circumstances under which they were made, not misleading.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2007), the Commissioner will determine whether to grant the Enforcement Division's petition for an imposition of a civil penalty of up to ten thousand dollars (\$10,000.00) against Respondent for multiple violations of Section 409.4-404, RSMo. (Cum. Supp. 2007), in a final order, unless Respondent requests a hearing and shows cause why the penalty should not be imposed.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2007), the Commissioner will determine whether to grant the Enforcement Division's petition for an imposition of a civil penalty of up to ten thousand dollars (\$10,000.00) against Respondent for multiple violations of Section 409.5-502(2), RSMo. (Cum. Supp. 2007), in a final order, unless Respondent requests a hearing and shows cause why the penalty should not be imposed.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2007), the Commissioner will determine whether to grant the Enforcement Division's petition for an imposition of a civil penalty of up to ten thousand dollars (\$10,000.00) against Respondent for multiple violations of Section 409.5-501(2), RSMo. (Cum. Supp. 2007), in a final order, unless Respondent requests a hearing and shows cause why the penalty should not be imposed.

IT IS FURTHER ORDERED that, as the Enforcement Section has petitioned for an award for the costs of the investigation against Respondent in this proceeding, the Commissioner will issue a final order, pursuant to Section 409.6-604(e), RSMo. (Cum.

Supp. 2007), awarding an amount to be determined after review of evidence submitted by the Enforcement Section, unless Respondent requests a hearing and shows cause why such an award should not be made.

SO ORDERED.

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 21st DAY OF APRIL, 2008.

ROBIN CARNAHAN
SECRETARY OF STATE

(Signed/Sealed)
MATTHEW D. KITZI
COMMISSIONER OF SECURITIES

-


State of Missouri
Office of Secretary of State

Case No. AP-08-11

IN THE MATTER OF:

TERRY W. SIMPKINS,

Respondent.

Serve at:
1746 Arrow Court
Lake Sherwood, Missouri 63357

NOTICE

TO: Respondents and any unnamed representatives aggrieved by this Order:

You may request a hearing in this matter within thirty (30) days of the receipt of this Order pursuant to Section 409.6-604(b), RSMo. (Cum. Supp. 2007), and 15 CSR 30-55.020. Within fifteen (15) days after receipt of a request in a record from a person or persons subject to this order, the Commissioner will schedule this matter for a hearing.

A request for a hearing must be mailed or delivered, in writing, to:

**Matthew D. Kitzi, Commissioner of Securities
Office of the Secretary of State, Missouri
Kirkpatrick State Information Center
600 West Main Street, Room 229
Jefferson City, Missouri, 65102.**

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of April, 2008, copies of the foregoing Order and Notice in the above styled case was **mailed by certified U.S. Mail, postage prepaid, to:**

Terry W. Simpkins
1746 Arrow Court
Lake Sherwood, Missouri 63357

And by regular U.S. mail to:

Mr. David J. Sokolowski
Barbour, Sokolowski & Tucker, LLC
1405 Jungerman, Suite D
St. Peters, Missouri 63376
ATTORNEY FOR RESPONDENT

And hand delivered to:

Mary Hosmer
Assistant Commissioner
Securities Division

John Hale, Specialist

EXHIBIT A