

State of Missouri
Office of Secretary of State

Case No. AP-09-02

IN THE MATTER OF:

SECURIAN FINANCIAL SERVICES, INC. (CRD #15296);

Respondent.

Serve: Securian Financial Services, Inc, at:
400 Robert Street North
St. Paul, Minnesota 55101-2098

CONSENT ORDER

SUMMARY OF ENFORCEMENT SECTION'S ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division (the "Enforcement Section") has alleged that Respondent Securian Financial Services, Inc. ("Securian") failed to supervise a Missouri-registered agent, Susan Kay Coon ("Coon") who made an unsuitable recommendation in an elderly customer's account by placing a large amount of the customer's net worth into an illiquid variable annuity that the customer did not understand. The Enforcement Section alleges that this transaction was not in the best interest of the customer and that this constitutes grounds to discipline the registration of Securian pursuant to Section 409.4-412, RSMo. (Cum. Supp. 2008).
2. Respondent and the Enforcement Section desire to settle the allegations and the matters raised by the Enforcement Section relating to Securian's alleged failure to reasonably supervise its agent's activities.

CONSENT TO JURISDICTION

3. Respondent and the Enforcement Section stipulate and agree that the Commissioner has jurisdiction over the Respondent and these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, *et seq.*
4. Respondent and the Enforcement Section stipulate and agree that the Commissioner has authority to enter this Order pursuant to Section 409.6-604(h), RSMo. (Cum. Supp. 2008), 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. Respondent waives its right to a hearing with respect to this matter.
6. Respondent waives any rights that they may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondent specifically forever releases and holds harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner of Securities and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter.
7. Respondent stipulates and agrees with the Enforcement Section 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. Respondent and the Enforcement Section 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. Respondent agrees not to take any action or to make or permit to be made any public statement creating the impression that this Order is without a factual basis. Nothing in this paragraph affects Respondent's (a) testimonial obligations; (b) right to take legal or factual position in defense of litigation or in defense of other legal proceedings in which the Commissioner of Securities is not a party; or (c) right to make public statements that are factual.
10. Respondent agrees that Respondent is not the prevailing party in this action since the parties have reached a good faith settlement.
11. Respondent neither admits nor denies the allegations made by the Enforcement Section but consent to the Commissioner's Findings of Fact, Conclusions of Law and Order as set forth below solely for the purposes of 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**

I. FINDINGS OF FACT

A. Respondent and Other Related Parties

12. Securian is a Minnesota corporation with an address of 400 Robert Street North, Saint Paul, Minnesota 55101. Securian has been a registered broker-dealer and investment adviser in Missouri since March 1985. Securian is registered in Missouri through the Central Registration Depository System ("CRD") and has a CRD number of 15296.
13. Coon has been a Missouri-registered investment adviser representative and a securities agent with Securian from September 1994 through the present. Coon has a business address of 9326 Olive Boulevard, Saint Louis, Missouri 63132. Coon has a CRD number of 2139624.

B. Missouri Resident

14. In early June of 2004, Coon met with a Missouri resident ("MR"), an eighty-five (85) year-old widow, who had lost her husband and son shortly before this meeting. MR was accompanied to this initial meeting by her daughter-in-law.
15. MR told Coon, that MR wanted Coon to devise a plan that would provide adequate monthly income for MR's living expenses using MR's available assets. MR told Coon, among other things, that:
 - a. MR's living expenses were going to be six thousand dollars (\$6,000.00) a month;
 - b. MR received income of two thousand dollars (\$2,000.00) a month from Social Security;
 - c. MR had an investment portfolio with a value of approximately two hundred ten thousand dollars (\$210,000.00) which consisted of preferred stock, common stock, bonds, and mutual funds;
 - d. MR wanted to sell her home;
 - e. MR needed her investments to generate four thousand dollars (\$4,000.00) per month; and
 - f. MR wanted to preserve as much principal as possible to leave to her heirs
16. Coon did a financial assessment for MR. To meet MR's required six thousand dollars (\$6,000.00) per month living expenses, Coon recommended that MR invest the proceeds from the sale of MR's home in a variable annuity. Coon used a hypothetical illustration which projected that MR could initially withdraw four thousand dollars (\$4,000.00) a month from this annuity without incurring surrender charges. Coon's hypothetical illustration assumed: (1) that MR would receive three hundred fifty thousand dollars from the sale of MR's home based on what MR told Coon; and, (2), would earn an eight percent (8%) annual growth rate in this tax deferred product every year, based upon historical performance.
17. Coon recommended that MR consolidate her equities, mutual fund and income-producing securities into a Schwab account and reinvest many of the equities into mutual funds. Coon recommended that when the variable annuity was depleted in approximately seven (7) years, MR would use money in MR's investment account at Schwab to pay MR's living expenses.
18. Based on Coon's recommendations, on June 16, 2004, MR signed a variable annuity application with Minnesota Life. The annuity application was completed by Coon and reflected that MR had fifty thousand dollars (\$50,000.00) annual income^[1], a moderate risk tolerance, and an overall time horizon of 9-11 years.
19. MR had never invested in annuities prior to this time but had 20 years of prior investment experience with mutual funds, stocks and bonds.
20. On June 18, 2004, two days after signing the annuity application, MR wrote to the vice president of investment services at a Securian branch office of supervisory jurisdiction. In this correspondence, it was clear that MR was anxious about her money and did not understand the monthly withdrawals that Coon helped establish for MR. MR stated, among other things, that:

"Since my husband and son died within a period of two months, I have been functioning in the moment and not really focusing in on anything. I have some questions. When will this income begin and will I get new checks. I've already destroyed the Schwab checks that I had. After the sale of my house, will [the] \$50,000 withdrawal begin. The 27,000 in cash will be mine to use freely at any time. You've already relieved by anxieties about money."
21. In December 2004, MR sold her home for two hundred thousand dollars (\$200,000.00), not the three hundred fifty thousand dollars (\$350,000.00) originally anticipated. Based on this change, Coon revised the plan and recommended that MR only draw two thousand, five hundred dollars (\$2,500.00) monthly from the variable annuity and the remaining one thousand, five hundred dollars (\$1,500.00) would have to be withdrawn from MR's Schwab account.
22. On December 14, 2004, MR deposited two hundred thousand dollars (\$200,000.00) into the variable annuity from the

proceeds of the sale of her home.

23. On or about March 21, 2005, MR received the first payment from the annuity in the amount of two thousand, five hundred dollars (\$2,500.00) and it continued monthly until July 21, 2008, when the amount was changed to one thousand, five hundred dollars (\$1,500.00). In addition, one thousand, five hundred dollars (\$1,500.00) was withdrawn from the Schwab account.
24. In March 2005, MR reviewed her accounts after the withdrawals were made. MR stated that she thought if she continued with the plan, she had a chance of outliving her money.
25. In the Spring of 2005, MR cancelled her relationship with Coon.

C. Enforcement Section Investigation

26. In January 2006, the Enforcement Section became aware of MR's investments with Coon and Securian.
27. On or about January 5, 2006, the Enforcement Section sent an inquiry to Securian and Coon, requesting additional information and documentation from Securian and Coon related to MR's account.
28. On February 1, 2006, Securian provided a written response to the Enforcement Section's inquiry. Included in the response were copies of Securian's written policies and procedures regarding the suitability of variable annuities and copies of the supervisory procedures in place at the time of MR's investment that ensured that the company's policies and procedures were being followed. The policies and procedures stated, in part, the following:
 - a. Additional considerations apply to clients over the age of 65. The guide states that additional scrutiny is needed if this is a first time variable annuity purchase.
 - b. The guide requires the Field Supervisor to consider whether the customer has adequate income & liquid net worth to cover living expenses and to meet reasonable unexpected expenses.
 - c. The guide states that for new money in an annuity that exceeds 25% of net worth, considerations must be given for liquidity needs, source of funds, investment experience, and age of client.
 - d. The guide requires that the supervisor consider whether the client has enough available funds to meet reasonable living expenses
29. Securian also provided a copy of their compliance guide for registered representatives. This guide contains a variable products section which stated, in part, the following:
 - a. Section 14.03 – Variable Annuity Suitability – Deferred variable annuities are only suitable if the customer has long-term investment objectives (i.e. long-term should be at least as long as the CDSC schedule). Immediate annuities would be suitable for investors with an immediate need for a guaranteed income stream.
 - b. Section 14.06 – Standards for Preparing Variable Product Communications – All communications with the public must be based upon traditional standards of truthfulness and fair dealing. They must state all matters necessary in order for the statements not to be misleading. Basic investment risks of fluctuating prices and yields should not be forgotten. Exaggerated, flamboyant, or unwarranted superlatives, and promissory, inaccurate, and misleading statements or claims are prohibited.
30. In February 2006, Coon provided a written response to the Enforcement Section's inquiry which stated, in part, that Coon recommended the variable annuity to meet MR's income needs and that MR was to take systematic withdrawals of fifteen percent (15%) per year until the annuity funds were exhausted. Under the plan there were to be no contingent deferred sales charges incurred by these withdrawals
31. In response to the Enforcement Section's inquiry as to the specific factors considered by the firm that in their opinion made the transaction suitable, Securian stated, among other things, that:
 - a. MR had sufficient liquidity;
 - b. MR had the option of guaranteed income payments if she annuitized the contract;
 - c. MR's time horizon for the annuity was stated as 4-8 years and the surrender period was within this time frame;
 - d. MR had 20 years prior investment experience with mutual funds, stocks, and bonds;
 - e. MR appeared knowledgeable in investments; and
 - f. MR signed all necessary disclosure paperwork and disclosure statements.
32. There is no indication that anyone other than Coon spoke to MR regarding her understanding of the complexities of the

variable annuity or the costs and fees MR would pay for the products and services she was to receive.

33. In February 2006, the Enforcement Section received from Securian the correspondence between MR, Securian and Coon. This correspondence demonstrated that MR's confusion regarding her accounts continued, as exemplified by, among other things, the following:
- a. in August 2004, in response to a telephone conversation with MR, Coon sent a letter to MR explaining, again, the investments MR had with Coon and Securian;
 - b. in January 2005, MR attempted to open a second account at Schwab. After conversations with Securian personnel and Schwab, MR's second account at Schwab was closed;
 - c. on January 5, 2005, Coon sent a letter to MR confirming a conversation Coon had with MR and again explained how MR's income needs would be met by the variable annuity and the Schwab account;
 - d. in January 24, 2005, MR sent an email to Coon stating, among other things, that:

"I received a letter from Schwab stating that transfer from my Schwab acct. \$1,500 will begin on 6/20/05. Do I have to withdraw from my [variable annuity] to make up the amount that I will need to pay my expenses? I need everything clearly outlined. This is all new to me. I should have asked at our first meeting for you to explain all the percentages since they meant nothing to me...";
 - e. in response to this email, Coon sent an email to MR again attempting to explain to MR how MR's monthly income needs would be met by withdrawals from MR's variable annuity and Schwab accounts;
 - f. on March 15, 2005, MR sent an email to Coon terminating their relationship and asking that Coon, "Please clarify exactly what you had set up with Schwab and [the variable annuity] concerning any withdrawals for me. What had you set up for March? Have you set up any withdrawals for any time after March...";
 - g. in another email sent three days later MR stated that she was hasty in terminating their relationship and asked Coon to explain the surrender period on the variable annuity. In this email MR asked Coon: "What does 'seven years' in [the variable annuity] contract mean?";
 - h. on March 30, 2005, a few days after the monthly systematically withdrawals were to begin, MR sent an email saying, among other things, that "I expected money from Schwab and from [the variable annuity] and nothing has come. My cash in Schwab has been depleted as of today from \$1772.75 to \$633.25. [A]s of today. None of that is in U.S. Bank. Maybe you can explain that to me...";
 - i. on April 5, 2005, MR again terminated her relationship with Coon stating, "Having evaluated my dealings with [Coon], I realized it was time to put a stop to the losses. I know that the economy is in a downturn and so I had no choice but to sever our relationship."

D. Refund of Money to Missouri Investor and Changes in Securian Procedures

34. As a result of the Enforcement Section's investigation Securian allowed MR to surrender her variable annuity policy. Securian reimbursed MR one hundred forty two thousand, three hundred thirty-five dollars and fifty-one cents (\$142,335.51) for all deposits MR made plus interest less any withdrawals that MR received.
35. Since 2004, Securian has enhanced its procedures with respect to sales to seniors and sales of variable annuities, including among other things, the following:
- a. required additional variable annuity disclosures;
 - b. provided additional training for representatives and principals on senior issues including issues related to customers with diminished capacity;
 - c. required additional training of representatives on suitability issues of variable annuities;
 - d. required field principal contact of customers over 65 to ensure that the customer understands the transaction; and
 - e. enhanced review of customer complaints involving seniors to determine if customer understood product's features, riders and if the product was in the customer's best interest.

II. CONCLUSIONS OF LAW

36. The Commissioner, after consideration of the stipulations set forth above and on the consent of Respondent and the Enforcement Section, finds and concludes that the Commissioner has jurisdiction over the Respondent and 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. (Cum. Supp. 2008).

III. ORDER

NOW, THEREFORE, it is hereby ordered that:

1. Respondent's registration is hereby CENSURED;
2. Respondent shall pay to the Missouri Secretary of State's Investor Education and Protection Fund the sum of seventy-five thousand dollars (\$75,000.00) immediately upon the effective date of this Order. This amount shall be sent to the Enforcement Section and the Enforcement Section will send the money to the Missouri Secretary of State's Investor Education and Protection Fund;
3. Respondent is ordered to pay four thousand four hundred forty-five dollars (\$4,445.00) as the cost of this investigation. This amount shall be payable to the Missouri Secretary of State's Investor Education and Protection Fund. This amount shall be immediately due and payable, and shall be submitted to the Enforcement Section at 600 W. Main Street, Jefferson City, Missouri 65101; and
4. Respondent shall pay its 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 17TH DAY OF FEBRUARY, 2009.

ROBIN CARNAHAN
SECRETARY OF STATE

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

Consented to by:
Mary S. Hosmer
Assistant Commissioner of Securities
Missouri Securities Division

Securian Financial Services, Inc.

Approved as to form
Cheryl Haas-Goldstein,
Attorney for Respondent

[1]MR's income from Social Security was only two thousand dollars a month. The remainder of this income was presumably to be generated by MR's funds pursuant to Coon's recommendations.