

State of Missouri  
Office of Secretary of State

Case No. AP-10-16

IN THE MATTER OF:

LPL FINANCIAL CORP., CRD NO. 6413,

Respondent.

Serve:

LPL FINANCIAL CORP.  
One Beacon Street, 22<sup>nd</sup> Floor  
Boston, Massachusetts 02108

**CONSENT ORDER**

SUMMARY OF ENFORCEMENT SECTION'S ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division ("Enforcement Section") has alleged that Respondent LPL Financial Corp. ("Respondent"), failed to reasonably supervise a Missouri-registered agent and that this constitutes grounds to revoke, suspend, condition, or limit Respondent's registration in Missouri pursuant to Section 409.4-412(d)(9), RSMo. (Cum. Supp. 2009).
2. Respondent and the Enforcement Section desire to settle the allegations and the matters raised by the Enforcement Section relating to Respondent's alleged failure to reasonably supervise activities of one of Respondent's former agents.

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. 2009), 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 it 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 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 consents 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

I. FINDINGS OF FACT

12. Respondent has been a registered broker-dealer firm in Missouri since July 18, 1983, and is a member of the Financial Industry Regulatory Authority ("FINRA"). Respondent is registered with the Central Registration Depository ("CRD") with CRD number 6413. Respondent's main office address is One Beacon Street, 22<sup>nd</sup> Floor, Boston, Massachusetts 02108.
13. Neal Von Nickels ("Nickels") was registered in Missouri as an agent of Respondent from August 28, 1987, through March 12, 2010. At all times relevant to this Consent Order, Nickels had a branch office located in Citizens National Bank at 3212 South Glenstone, Springfield, Missouri 65804. Nickels is currently registered with the CRD and has CRD number 733561. Nickels is registered in Missouri as an agent of MidAmerica Financial Services, Inc., CRD Number 47351.
14. On March 19, 2003, Nickels did not renew his insurance license and is no longer licensed to sell insurance in Missouri.
15. On June 15, 2007, the Missouri Securities Division received a complaint from a seventy-six (76) year-old resident of Walnut Grove, Missouri ("MR"), concerning a purchase of a Manulife variable annuity made by MR and his wife through Respondent and Nickels in April 2000.
16. Nickels claimed he met with MR and his wife before they purchased the Manulife annuity. Nickels stated that MR and his wife had owned an annuity since 1993. Nickels stated that MR and his wife were interested in an alternative to their annuity. Nickels stated that he recommended MR exchange their annuity, valued at approximately one hundred and nine thousand, eight hundred and ninety-two dollars and seventy-two cents (\$109,892.72), and invest in a Manulife variable annuity, which could potentially result in superior returns and offer better features.
17. Prior to the exchange, Nickels consulted with Manulife about how the annuity would function. Nickels stated he then related the following information to MR:
  - a. the owner of the contract could take systematic withdrawals of up to 6% of the invested amount, or approximately five hundred and forty dollars (\$540); and
  - b. at the end of seven (7) years, if the contract value was less than the amount of the initial investment, MR could elect to have his entire investment returned to him by Manulife through an election of an income for life based upon the initial investment, which would have been five hundred forty-nine dollars and forty-six cents (\$549.46) per month, with payments guaranteed to be made for twenty (20) years.
18. That is not how the annuity would actually function in a declining market, however. Nickels claimed that Manulife did not explain that, if the value of the contract fell below its original purchase value due to market fluctuation, withdrawals of over six percent (6%) of the value of the contract at the time of the withdrawal would cause the income base from which the six percent (6%) maximum withdrawal would be calculated to decline, and that withdrawals of over six percent (6%) of the new, lower income base would reduce the lifetime income guarantee.
19. During the first few years of MR's ownership of the contract, the market declined in value, causing the value of the contract to decline in value. Because MR's withdrawals continued to be approximately six percent (6%) of the original purchase price, however, they exceeded six percent (6%) of the value allowed by the contract, which reduced the lifetime income guarantee.
20. In the sale of the variable annuity to MR, Nickels, among other things:
  - a. failed to adequately understand the features of the variable annuity; and
  - b. misrepresented the terms of the six percent (6%) annual withdrawal feature and the possible effects of withdrawals during a down market on the lifetime income guarantee to MR.
21. Upon learning that the contract did not function as Nickels had described, MR filed a complaint with the Missouri Securities Division. In September 2007, the Missouri Department of Insurance, Consumer Affairs Division requested a response to the complaint from Manulife, which in turn requested a response from Respondent. At that time, Respondent advised Manulife of the inaccurate information Manulife had provided to Nickels in March 2000. In discussions with the Enforcement Section since July 30, 2009, a representative of Respondent stated that Respondent had expected that Manulife would investigate how such inaccurate information had been conveyed and propose a methodology for resolving the matter with MR. However, Respondent did not follow up with Manulife to ensure that had occurred.
22. In August 2009, Respondent learned that Manulife had offered no resolution to MR. In September 2009, Respondent contacted MR and forwarded to him a settlement proposal that was intended to place him in the same position as if Nickels' understanding had been accurate. MR accepted Respondent's settlement offer and Respondent paid MR ninety thousand one hundred sixty-six dollars and eighty-eight cents (\$90,166.88).

23. On September 11, 2009, Respondent forwarded to the Enforcement Section a copy of its settlement agreement with MR.
24. Respondent failed to reasonably supervise Nickels by, among other things, failing to ensure that Nickels had provided accurate information to MR concerning the features of the Manulife variable annuity. Respondent also failed to timely respond to MR concerning his complaint.
25. Since the transaction in April 2000, LPL has made changes to its training and supervision of variable annuity transactions, including, among other things, the following:
  - a. created a centralized online order-entry system to standardize its overall review of variable annuity transactions before they are submitted to product carriers;
  - b. standardized review of suitability data with respect to variable annuity exchanges;
  - c. provided training through regional annuity workshops, annuity conference calls, recorded "brainsharks," and E-learning modules dedicated to annuities;
  - d. provided access to annuity research tools for contract and rider information both for contracts in current distribution and for closed contracts (over 1000 contracts in total);
  - e. developed comparative grids to compare the features of various contractual riders; and,
  - f. created a home office annuity consulting team.
26. In addition to these procedures, LPL has instituted procedures for the tracking of customer complaints and formalized a standard that it endeavors to respond to all complaints within 45 days of receipt.

## II. CONCLUSIONS OF LAW

27. The Commissioner finds Respondent failed to reasonably supervise a registered agent in Missouri, and that this conduct constitutes grounds to discipline Respondent under Section 409.4-412, (d)(9), RSMo. (Cum. Supp. 2009).
28. 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 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. 2009).

## III. ORDER

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

1. Respondent's registration is hereby CENSURED;
2. Respondent is ordered to pay the sum of twenty-five thousand dollars (\$25,000). This amount shall be sent within ten (10) days of the effective date of this order to the Enforcement Section at 600 W. Main Street, Jefferson City, Missouri 65101, and shall be payable to the Missouri Secretary of State's Investor Education and Protection Fund;
3. Respondent is ordered to pay ten thousand dollars (\$10,000) in restitution and interest. This payment shall be sent within ten (10) days of the effective date of this Consent Order to the Enforcement Section at 600 W. Main Street, Jefferson City, Missouri 65101, and shall be payable to the Missouri Secretary of State's Investor Restitution Fund. These payments will be sent by the Investor Restitution Fund to MR;
4. Respondent is ordered to pay two thousand five hundred forty dollars (\$2,540) as Respondent's share of the cost of this investigation. This amount shall be sent within ten (10) days of the effective date of this Consent Order to the Enforcement Section at 600 W. Main Street, Jefferson City, Missouri 65101 and shall be payable to the Missouri Secretary of State's Investor Education and Protection Fund; and
5. 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 11<sup>TH</sup> DAY OF AUGUST, 2010.

ROBIN CARNAHAN  
SECRETARY OF STATE

(Signed/Sealed)  
MATTHEW KITZI

COMMISSIONER OF SECURITIES

Consented to by:  
MISSOURI SECURITIES DIVISION

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Mary S. Hosmer  
Assistant Commissioner of Securities

LPL Financial Corp.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form:

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Matthew V. Bartle  
Attorney for LPL Financial Corp.