

State of Missouri
Office of Secretary of State

Case No. AP-11-20

IN THE MATTER OF:

WILLIAM P. KELLY d/b/a
FINANCIAL STABILITY GROUP, INC.

Respondent.

Serve at:

William P. Kelly
12620 Lamplighter Square
St. Louis, Missouri 63128

CONSENT ORDER

SUMMARY OF ENFORCEMENT SECTION'S ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division ("Enforcement Section") has alleged that William P. Kelly ("Kelly") doing business as Financial Stability Group, Inc. ("FSG") transacted business in the State of Missouri as an unregistered investment adviser representative and that this constitutes grounds to issue a cease and desist order.
2. Respondent and the Enforcement Section desire to settle the allegations and the matters raised by the Enforcement Section relating to Respondent Kelly's violation of Section 409.4-404, RSMo. (Cum. Supp. 2009).

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 his right to a hearing with respect to this matter.
6. Respondent waives any rights that he 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. Kelly is a registered insurance producer with the Missouri Department of Insurance with license number of PR#235483. Kelly is not registered as an investment adviser representative with the Missouri Securities Division. Kelly does business as FSG. FSG is licensed with the Missouri Department of Insurance with license number of AG8021230. FSG is not authorized to transact business as a corporation in the State of Missouri and Kelly has not filed a fictitious name registration for FSG in the State of Missouri. FSG is not registered as an investment adviser with the Missouri Securities Division. Kelly has a business address of 12620 Lamplighter Square, St. Louis, Missouri 63128.
13. On July 15, 2008, the Enforcement Section received a consumer complaint from two Missouri residents ("MR1" and "MR2").
14. In 2008 and 2009, MR1 and MR2 provided information to an investigator with the Enforcement Section. This information indicated, among other things, that:
 - a. in April of 2008, Kelly came to their place of business in Perryville, Missouri in connection with the issuance of a health insurance policy. Kelly told MR1 and MR2, among other things, that:
 - i. his true area of expertise was in retirement planning; and
 - ii. he was an IRA specialist and would like to come back and discuss a retirement plan;
 - b. on April 21, 2008, Kelly returned to see MR1 and MR2. MR1 and MR2 explained to Kelly that MR1 and MR2 had five thousand three hundred twenty three dollars and fifty-eight cents (\$5,323.58) invested with Edward D. Jones & Co., L.P. ("EDJ Account");
 - c. on April 21, 2008, Kelly strongly recommended as an IRA specialist that MR1 and MR2 liquidate their securities in the EDJ Account to purchase an equity indexed annuity ("EIA");
 - d. on April 21, 2008, Kelly completed a form titled, Direct Custodial Transfer Request that authorized the liquidation and transfer of MR1 and MR2's investments from their EDJ Account to an EIA;
 - e. on or about May 9, 2008, MR1 and MR2 received a letter from Kelly that stated, among other things, the following:

"Your Edward Jones stock salesman might be in touch with you when he's notified that your account is moving. If he's on the ball, you should receive a call from him to try to conserve the account. He may use fear tactics and misinformation about annuities. This is their normal and usual approach to conserve the account. Because billions of dollars are coming out of broker accounts into indexed annuities, the salesman are instructed to approach their clients in this manner. I would do the same if the tables were turned;"
 - f. MR1 and MR2 stated that after they received this letter, they tried to contact Kelly to cancel the purchase of the EIA. They made repeated attempts to contact Kelly because they were apprehensive about an investment that would tie up their money for sixteen (16) years;
 - g. on July 11, 2008, MR2 sent a certified letter to Kelly, asking for a return of MR1 and MR2's funds invested in the EIA; and
 - h. on August 15, 2008, MR1 and MR2 received a refund check from the EIA company for the funds that they had invested with Kelly.
15. On or about September 4, 2008, the Enforcement Section sent an inquiry to Kelly and FSG requesting, among other things, the following:
 - a. disclosure of all compensation or remuneration received directly or indirectly by the firm or its representatives for selling equity indexed annuities to Missouri investors;
 - b. names, addresses and telephone numbers of all Missouri investors age sixty or older who have purchased equity indexed annuities from FSG;
 - c. documents detailing where these Missouri investors' funds were invested prior to each equity indexed annuity purchase;
 - d. all materials used to adequately train agents regarding the intricacies of equity indexed annuities, to include information given to Missouri investors prior to purchasing equity indexed annuities;
 - e. any exemption from registration or exception from the definition of investment adviser upon which the firm relied in offering investment advice in connection with the sale of equity indexed annuity products in this state; and

- f. the names, addresses, telephone numbers and Central Registration Depository, if applicable, of all investment adviser representatives and/or producer identification of agents who have offered investment advice in connection with the sale of an equity indexed annuity product.
16. On October 3, 2008, Kelly dba FSG provided a written response to the Enforcement Section, which stated, among other things, that:
 - a. Kelly dba FSG had four Missouri investors over the age of sixty (60) years of age who had purchased EIAs;
 - b. Kelly dba FSG had never offered securities or given investment advice that would require investment adviser representative registration; and
 - c. all fees were in the form of insurance commissions.
 17. Kelly provided information to the Enforcement Section that on or about February 20, 2007, Kelly met with a seventy-eight (78) year-old Missouri resident ("MR3"). Records received from Kelly indicated that during this February meeting, Kelly, among other things:
 - a. completed a financial suitability acknowledgment document contained in the annuity application for MR3.
 - b. recommended that MR3 purchase an EIA by liquidating MR3's investments in the following products:
 - i. MetLife Variable Annuity;
 - ii. Hennessy Cornerstone Value Fund;
 - iii. Hennessy Cornerstone Growth Fund;
 - iv. Hennessy Total Return Fund;
 - v. Hennessy Focus 30 Fund; and
 - vi. Wells Fargo Small/Mid Cap Value Fund;
 - c. completed and submitted the transfer forms titled, *Direct Custodial Transfer Request* that authorized the liquidation and transfer of funds from MR3's securities account to purchase an EIA; and
 - d. sold MR3 an equity indexed annuity for the amount of sixty-one thousand dollars (\$61,000) that had a sixteen (16) year surrender charge period.
 18. According to the *Commissioners Standard Ordinary Mortality Table*¹, MR3's life expectancy was under eight (8) years.
 19. MR3 died within one year of the issuance of this EIA.
 20. On October 23, 2008, the Enforcement Section sent a request for additional information to Kelly regarding his status as an IRA specialist.
 21. On November 13, 2008, Kelly provided a written explanation that stated, among other things, that Kelly had designated himself as an "IRA Specialist" after reading books and attending seminars.
 22. On April 2011, during an on-the-record examination, Kelly stated, among other things, that he had not sold EIAs for two years.

II. CONCLUSIONS OF LAW

23. The Commissioner finds Respondent Kelly dba FSG transacted business as an unregistered investment adviser representative in violation of Section 409.4-404, RSMo (Cum. Supp. 2009).
24. 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, his 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 transacting business as an unregistered investment adviser representative, in violation of Section 409.4-404, RSMo. (Cum. Supp. 2009);

2. Respondent Kelly is prohibited from applying for registration as an agent or investment adviser representative in the State of Missouri for two (2) years from the date of this order;
3. Respondent shall pay two thousand dollars (\$2,000) to the Missouri Secretary of State's Investor Protection Fund. Respondent shall send this amount to the Enforcement Section in twenty-four monthly installments consisting of twenty-three payments at eighty-three dollars and thirty-three cents (\$83.33) and one final payment of eighty-three dollars and forty-one cents (\$83.41). The first installment will be due on June 1, 2011, and all other installments will be due on the first of each month with the last installment due on May 1, 2013. Should Respondent fail to make any payment as described above, the entire principal sum then remaining will be immediately due and payable without notice or demand;
4. Respondent is ordered to pay fifteen hundred dollars (\$1,500) as the cost of this investigation. This amount will be suspended provided Respondent is in compliance with the provisions of this Consent Order and with the Missouri Securities Act;
5. For two (2) years from the execution of this document, the suspended payment in paragraph four (4) immediately above shall become payable, under operation of law, upon Respondent's failure to comply with the terms of this Consent Order or the Missouri Securities Act following reasonable notice, and such payments shall be in addition to all other penalties then available under the law;
6. Any payments due under this Consent Order shall be sent 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; The Enforcement Section will send the money to the Missouri Secretary of State's Investor Education and Protection Fund; and
7. Respondent shall pay his 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 14TH DAY OF JULY, 2011.

ROBIN CARNAHAN
SECRETARY OF STATE

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

Consented to by:
MISSOURI SECURITIES DIVISION

Mary S. Hosmer
Assistant Commissioner of Securities

Respondent

WILLIAM P. KELLY

[\[1\]](#) This mortality table was adopted by the National Association of Insurance Commissioners in December 2002.