

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

CONSENT ORDER

SUMMARY OF ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division alleges that Respondent Terry Simpkins ("Simpkins") transacted business as an unregistered investment adviser representative by recommending the sale of securities to purchase an equity indexed annuity.
2. Respondent and the Securities Division desire to settle the allegations and the matters raised by the Securities Division relating to Respondent's alleged activities.

CONSENT TO JURISDICTION

3. Respondent and the Division stipulate and agree that the Commissioner has jurisdiction over Respondent and these matters pursuant to the Missouri Securities Act, Chapter 409, *et seq.*
4. Respondent and the Division stipulate and agree that the Commissioner has authority to enter this Consent Order pursuant to Section 409.6-604(h), RSMo. (Cum. Supp. 2007), 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 right that Respondent 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 Division that, should the facts contained herein prove to be false or incomplete, the Division reserves the right to pursue any and all legal or administrative remedies at its disposal.

CONSENT TO COMMISSIONER'S ORDER

8. Respondent 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. Respondent neither admits nor denies the allegations made by the Division, but consents to the Commissioner's Findings of Fact and Conclusions of Law 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.
10. 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.
11. Respondent agrees that Respondent is not the prevailing party in this action since the parties have reached a good faith settlement.

**COMMISSIONER'S FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

12. Terry W. 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.

13. Senior Benefits Services of Kansas, LLC ("SBS") is an insurance and annuity provider. SBS is located at 4100 International Plaza, Suite 500, Forth Worth, Texas.
14. Wealth Protection Advisors, LLC ("WPA") is a Missouri limited liability company. WPA is an insurance wholesaler and is located at 1401 Triad Center Drive, St. Peters, Missouri 63376. WPA was a Missouri-registered investment adviser from January 1, 2001 through October 31, 2006 through the Investment Adviser Registration Depository System ("IARD") as the Primary Business Name of Gateway Financial Advisors, Inc. (both referred to here as "WPA"). WPA had IARD number of 115025, and an address of 1401 Triad Center Drive, St. Peters, Missouri 63376. WPA is currently located at 1022 Peruque Crossing Court, O'Fallon, Missouri 63366.
15. Retirement Income Advisors, LLC ("RIA"), is a Missouri limited liability company with an office addresses at 2046 Queensbrooke Blvd., Suite 100, St. Peters, Missouri 63376 and at 1401 Triad Center Drive, St. Peters, Missouri 63376. RIA was registered in Missouri through the IARD from October 24, 2005 to October 28, 2008. RIA has an IARD number of 136420. RIA is purportedly owned by WPA and lists its Web Address as www.wealthprotectionadvisors.com.
16. Donald Anton Quante ("Quante") is a Missouri-registered broker-dealer agent and an investment adviser representative. Quante is registered through the Central Registration Depository System ("CRD") with CRD number 1258804. From September 9, 2005 through October 28, 2008, Quante was registered as an investment adviser representative in Missouri for RIA and was listed as the President of RIA with a contact address of 2046 Queensbrooke Blvd., Suite 100, St. Peters, Missouri 63376 and an email address of don@wealthprotectionadvisors.com. Quante also stated under "Other Business" on the CRD that he has been the owner of WPA since July 2001.

Missouri Resident 1

17. Jeff Nabholz ("Nabholz") is an independent insurance agent with WPA and was a Missouri-registered broker-dealer agent with a CRD number of 4105304. Nabholz was employed with RIA from November 21, 2005 through October 28, 2008.
18. 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. "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;
 - b. 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.
19. In June 2006, MR2 was diagnosed with Alzheimer's disease and confined to a nursing home.
20. 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)^[1] to get access to MR2's money.
21. 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").
22. 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).
23. In June 2005, through Simpkins' employment with WPA, Simpkins 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.

^[1]These surrender fees for the products Simpkins sold MR2 were over fifteen thousand dollars (\$15,000.00); however, one annuity company waived the surrender fees. All but one thousand eight hundred seventy dollars (\$1,870) of these surrender fees were subsequently refunded by the annuity companies upon the request of the Enforcement Section, MR1 and Respondent.

24. 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").
25. During the time that Simpkins worked for SBS and WPA, 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 for elderly investors.
26. In the sale of the Mutual EIA, Simpkins earned five thousand nine hundred dollars (\$5,900.00) in commissions.
27. 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).
28. In the Plan, Simpkins noted, among other things, that:
 - a. MR2 had seventy thousand dollars (\$70,000) 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."
29. In the Plan, Simpkins recommended, among other things, that: (1) MR2 move twenty-five thousand dollars (\$25,000) in cash from MR2's Bank Account to a single premium immediate annuity ("SPIA");^[2] (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) from MR2's Edward Jones Account to purchase the Mutual EIA.
30. 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;

^[2]The quote relating to the SPIA was prepared under the agent name "Jeff Nabholz."

- 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,^[3] 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.
31. In November 2005, Simpkins recommended that MR2 invest in another annuity.
 32. 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.
 33. After the implementation of Simpkins' recommendations, a large percentage of MR2's liquid assets had been transferred to illiquid investments.
 34. 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.

35. 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.
36. 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:

^[3]This information is from the American Academy of Actuaries Commissioner's Standard Ordinary Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the National Association of Insurance Commissioners (NAIC) in December 2002.

- a. he started working at WPA in June 2005;^[4]
- 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)^[5]
- c. he knew MR2 "pretty well as a friend;"^[6]
- d. he saw MR2 annually and would stop by periodically because "she liked to make me lunch";^[7]
- e. he knew MR2 fell down the stairs;^[8]
- f. he considered EIAs complicated;^[9]
- 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;"^[10]
- h. he considered it "absolutely" important that the purchaser and the salesman both understand an EIA before a transaction;^[11]
- 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^[12] under those circumstances as well;"^[13]

^[4]This is contained in Simpkins' Deposition Statement at page 34.

^[5]This is contained in Simpkins' Deposition Statement at page 34.

^[6]This is contained in Simpkins' Deposition Statement at page 40.

^[7]This is contained in Simpkins' Deposition Statement at page 40.

^[8]This is contained in Simpkins' Deposition Statement at page 40-41.

^[9]This is contained in Simpkins' Deposition Statement at page 43.

^[10]This is contained in Simpkins' Deposition Statement at page 48.

^[11]This is contained in Simpkins' Deposition Statement at page 43.

^[12]This was not true, however, as the policy provided, among other things, that:

Nursing Home Rider

Benefit If you become confined in a nursing home and a partial or full surrender of the certificate is made, no surrender charge will be deducted from the account value(s). The surrender value will equal the sum of the account value(s) of any options surrendered. If the minimum guaranteed surrender value is greater than the account value which was surrendered, the minimum guaranteed surrender value will be paid.

Conditions You qualify for this benefit if:

- Confinement to such nursing home first begins at least 1 year after the certificates date of issue;

- ii. "she could have access to 10 percent free withdrawal a year;"^[14]
- j. "[b]eing able to access at least 10 percent a year if she needed it"^[15] was the most important feature of the Mutual EIA for MR2;^[16]
- 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;"^[17]
- l. he did not know that MR2's life expectancy was about ten (10) years when MR2 purchased this 15 year policy;^[18]
- m. he did not know the Commissioner's Standard Ordinary Mortality Table in effect at the time of the sale;^[19]
- 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;^[20]

^[13]This is contained in Simpkins' Deposition Statement at page 48.

^[14]This is contained in Simpkins' Deposition Statement at page 48. This was not true, however, see footnote #17 below.

^[15]This also was not true as the policy provided, among other things, that:

Partial Withdrawals Without Surrender Charges

Benefit After the first certificate anniversary, a portion of the account value withdrawn will not be subject to a surrender charge. The amount which can be surrendered without a surrender charge is up to 10% of the premiums paid, less any amounts previously surrendered in the current certificate year which were not subject to surrender charges.

Maximum Benefit: the total maximum amount, which can be surrendered without charge, is 25% of the premiums paid. Once the maximum amount has been surrendered without charges, any additional surrenders will incur a charge, unless additional premium is paid.

^[16]This is contained in Simpkins' Deposition Statement at page 42.

^[17]This is contained in Simpkins' Deposition Statement at page 52. This is not true.

^[18]This is contained in Simpkins' Deposition Statement at page 56-58.

^[19]This is contained in Simpkins' Deposition Statement at page 57.

^[20]This is contained in Simpkins' Deposition Statement at page 69.

- o. registered representatives drew up the recommendations, shown in the Wealth Protection Plan, to transfer MR2's Edward Jones Account;^[21]
 - 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;^[22]
 - q. he considered liquidity an important consideration when making a recommendation to a customer;^[23] and
 - r. he did not talk very much about the liquidity of the Mutual EIA to MR2.^[24]
37. 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."
38. The Commissioner, after consideration of the stipulations set forth above and on the consent of the Respondent and the Securities Division, 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 the Missouri Securities Act of 2003.

ORDER

WHEREAS, the Commissioner, after consideration of the stipulations set forth above and on the consent of Respondent and the Enforcement Section of the Securities Division, finds the following Order to be in the public interest and necessary for the protection of public investors and consistent with the provisions of Chapter 409, RSMo. (Cum. Supp. 2007).

NOW, THEREFORE, it is hereby Ordered that:

1. For a period of three (3) years from the effective date of this order, Respondent is prohibited from applying for registration as an agent or investment adviser representative in the State of Missouri;

[\[21\]](#)This is contained in Simpkins' Deposition Statement at page 69-70.

[\[22\]](#)This is contained in Simpkins' Deposition Statement at page 69-70.

[\[23\]](#)This is contained in Simpkins' Deposition Statement at page 79.

[\[24\]](#)This is contained in Simpkins' Deposition Statement at page 80.

2. Respondent is ordered to pay the remaining surrender fees paid by MR2 in the amount of one thousand, eight hundred and seventy dollars (\$1,870.00) if these fees are not refunded to MR2 by the annuity company within 90 days of the execution of this order. Respondent shall send this payment to the securities division within ninety days of the execution of this order and the Division shall send this payment to MR2. If these funds are paid by the annuity company Respondent shall send an affidavit to the Division within one hundred and twenty (120) days of the execution of this order that such payment was made by the annuity company;
3. Respondent is ordered to pay one thousand dollars (\$1,000.00) 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 due and payable within thirty (30) days from the date of this Consent Order, and shall be submitted to the Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101, provided however that Respondent shall have one hundred and eighty (180) days from the effective date of this order to make this payment if Respondent pays the surrender fees set out in paragraph 2 above;
4. Respondent is ordered to pay to the Missouri Secretary of State's Investor Education and Protection Fund the sum of fifteen thousand dollars (\$15,000.00); this payment will be suspended provided that Respondent complies with the terms of this order and provided that Respondent does not violate the securities act for a period of two (2) years. The suspended payment shall, for two (2) years from the execution of this document, become immediately payable, under operation of law, upon Respondent's failure to comply with the terms of this order, and such immediately due payments shall be in addition to all other penalties then available under the law. The Commissioner may refer this matter for enforcement as provided in Sections 409.6-603 and 409-6-604, RSMo. (Cum. Supp. 2008); and
5. Respondent shall pay his own costs and attorney's fees with respect to this matter.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 11th DAY OF DECEMBER, 2009.

ROBIN CARNAHAN
SECRETARY OF STATE

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

Consented to by:

Mary Hosmer
Missouri Securities Division

Terry W. Simpkins

Approved as to Form

David Sokolowski