

State of Missouri
Office of Secretary of State

Case No. AP-10-11

IN THE MATTER OF:

MICHAEL LEES,

Respondent.

Serve Michael Lees at:
12404 Beverly Street
Leawood, Kansas 66209

CONSENT ORDER

SUMMARY OF ENFORCEMENT SECTION'S ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division ("Enforcement Section") has alleged that Michael Lees ("Respondent"), materially aided an individual in transacting business as an unregistered securities agent and as an unregistered broker-dealer in the State of Missouri and that these activities constitute violations of the Missouri Securities Act and are grounds for the Missouri Commissioner of Securities to issue an order pursuant to Section 409.6-604, RSMo. (Cum. Supp. 2009).
2. In 2004, while working at Bankers Life and Casualty Company ("Bankers"), James Otto ("Otto"), with the help of a branch manager at Bankers Life and Casualty Company ("Bankers"), Respondent Lees, formed a transfer business to help Bankers' insurance agents liquidate customer funds held in securities brokerage accounts. Otto opened accounts at two Missouri-registered broker-dealers for customers and moved the securities held by these customers to these brokerage firms. Each customer gave Otto limited trading authority over this new brokerage account. Otto then liquidated the securities held in the brokerage account and transferred the liquidated funds to Bankers.
3. Insurance agents at Bankers assisted these customers in the purchase of equity indexed annuities or other insurance products with these liquidated funds. Insurance agents of Bankers paid Otto a fee or part of the agent's insurance commission for Otto's "in-house brokerage" services ("Otto's In-House Brokerage"). Otto's In-House Brokerage business liquidated over seven million dollars (\$7,000,000) from securities in over one hundred eighty (180) customer accounts. During this time Otto was not registered to sell securities in Missouri or to offer investment advice. Otto's In-House Brokerage business was not registered as a broker-dealer or an investment adviser.
4. Respondent and the Enforcement Section desire to settle the allegations and the matters raised by the Enforcement Section relating to the Respondent's materially aiding an unregistered agent and an unregistered broker-dealer transact business in the State of Missouri.

CONSENT TO JURISDICTION

5. 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.*
6. 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

7. Respondent waives his right to a hearing with respect to this matter.
8. Respondent waives any right 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.
9. 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

10. 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.
11. 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.
12. Respondent agrees that Respondent is not the prevailing party in this action since the parties have reached a good faith settlement.
13. 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**

A. Respondent and Related Parties

13. Bankers is a Missouri-licensed insurance company with National Association of Insurance Commissioners ("NAIC") number 61263. Bankers has a main address of 600 West Chicago Avenue, Chicago, Illinois 60654.
14. Otto, dba Otto's In-House Brokerage, is an insurance agent and is licensed to sell life and health insurance through the Missouri Department of Insurance, Financial Institutions, and Professional Registration ("Missouri DOI"). Otto was registered as a securities agent in Missouri through the Central Registration Depository System ("CRD") from October 1986 to May 2002 with CRD number 1566081. Otto has not been registered to sell securities in the State of Missouri since May 2002. From May 2002 until August 2006, Otto was an insurance agent with Bankers where he started the In-House Brokerage business. Otto is currently an insurance agent affiliated with Hayes Consultants. Otto has an address of 13425 W. 128th Street, Overland Park, Kansas 66213. Otto is not registered as a broker-dealer or investment adviser in the State of Missouri.
15. Lees is an insurance agent and is licensed to sell life and health insurance through the Missouri DOI. Lees has a CRD number of 867965 but has never been registered as a securities agent in Missouri. Lees has never been affiliated with a registered broker-dealer. Lees has a last known address of 12404 Beverly Street, Leawood, Kansas 66209.
16. Sherry Wood Hayes ("Hayes") is an insurance agent and is licensed to sell life and health insurance through the Missouri DOI. From approximately 2005 until March 2006, Hayes worked with Otto. Hayes has never been registered in the State of Missouri to sell securities. Hayes has an address of 905 NE 80th Terrace, Kansas City, Missouri 64118.
17. Brokerage Firm X is a Missouri-registered broker-dealer and has a main address in Nebraska. Brokerage Firm X is one of the broker-dealers Otto used for Otto's In-House Brokerage service.
18. Brokerage Firm Y is a Missouri-registered broker-dealer and has a main address in Rhode Island. Brokerage Firm Y is one of the broker-dealers Otto used for Otto's In-House Brokerage service.
19. As used herein, the term "Respondent" refers to Otto.

B. Enforcement Section Investigation

20. The Enforcement Section opened an investigation and obtained documents and other information that revealed, among other things, the following information.
21. In 2004, Otto approached Bankers' Branch Manager Lees about Otto's In-House Brokerage business.
22. Otto claimed he could assist insurance agents at Bankers by, among other things:
 - a. transferring customer brokerage accounts to Brokerage Firm X or Brokerage Firm Y;
 - b. liquidating securities from the customer's brokerage account at Brokerage Firm X or Brokerage Firm Y; and
 - c. requesting the transfer of money from Brokerage Firm X or Brokerage Firm Y to Bankers and other insurance companies.
23. From May 2004 through August 2006, Otto made both group and individual presentations to insurance agents at Bankers regarding Otto's In-House Brokerage business.
24. During these presentations Otto claimed, among other things, that liquidating a customer's brokerage account through Otto's In-House Brokerage:

- a. was less costly;
 - b. would take a shorter time; and
 - c. would involve less paperwork than going through a brokerage firm.
25. Packets for Otto's In-House Brokerage business were maintained at the front of the office at Bankers' branch office located in Overland Park, Kansas. These packets, which Otto had developed, contained all the forms needed to open an account with Brokerage Firm X or Brokerage Firm Y and to transfer securities the customer already held to a new account. Insurance agents of Bankers obtained a packet and assisted their customers with the completion of the forms in the packet. The insurance agent gave the completed forms to Otto, and Otto established the accounts at Brokerage Firm X or Brokerage Firm Y.
26. In an on-the-record statement, Otto stated that thirty to thirty-five (30-35) Bankers' insurance agents used Otto's In-House Brokerage service.
27. On accounts that Otto set up with Brokerage Firm X or Brokerage Firm Y, Otto gave himself limited trading authority on the account and often listed Otto's email on Brokerage Firm X forms in order to receive customer statements. These account documents were signed by the customer.
28. Upon opening the account, Otto also set up an on-line account that allowed Otto to directly access the customer's brokerage account electronically.
29. Otto used this direct on-line access to sell the securities in the brokerage account and move the money to cash.
30. Otto executed liquidation orders and had the money from the brokerage account sent to Bankers for the purchase of an annuity or other insurance product.
31. Agents paid Otto ten percent (10%) of the commission they received on the insurance product the customer purchased or a flat fee of one hundred fifty dollars (\$150), whichever was greater for this brokerage service.
32. From at least 2005, Otto contacted elderly investors in the Kansas City area and assisted them in selling securities in their brokerage accounts. In addition, Otto:
- a. recommended to some of these investors that the investor:
 - 1) consolidate their accounts at Brokerage Firm X;
 - 2) reposition their 401(k)s into annuities;
 - 3) liquidate mutual funds;
 - 4) retain certain securities because the security "diversifies you" and/or had "good performance"; or
 - 5) purchase complex equity indexed annuities that had long surrender periods.
 - b. told some of these investors that he worked for Brokerage Firm X;
 - c. told some of these investors that he did investment work;
 - d. did not state to all of these investors that:
 - 1) Otto was an insurance agent with Bankers; or
 - 2) Otto and Otto's In-House Brokerage were not registered to offer or sell securities in Missouri.
33. In the on-the-record interview, Otto stated, among other things, that:
- a. while at Bankers, he could only sell Bankers' products; and
 - b. the Bankers' annuity that Otto typically sold to customers had a guaranteed competitive interest rate for one year and then decreased to the minimum interest rate at the end of the first year.
34. After Otto's resignation from Bankers, Otto and Hayes contacted Bankers' customers and talked to these customers about exchanging their Bankers' annuities to a new annuity.

35. Approximately fifty percent (50%) of the annuities sold by Bankers' agents using Otto's In-House Brokerage were surrendered. These Bankers' customers paid surrender fees in excess of two hundred seventy thousand dollars (\$270,000).

Lees Interview

36. On June 23, 2010, the Enforcement Section conducted an on-the-record interview of Lees. Lees stated, among other things that:
- a. Otto was a registered securities agent at the time Otto conducted Otto's In-House Brokerage business;
 - b. Otto offered to act as a registered securities agent for Banker's insurance agents;
 - c. Lees did not check to see if Otto was registered to offer or sell securities; and
 - d. Lees understood that Otto performed the same securities services for other Bankers' branch offices.

Insurance Agent Interviews

37. The Enforcement Section conducted interviews of insurance agents that used Otto's In-House Brokerage business. The interviews revealed, among other things, that:
- a. Otto gave a presentation at a branch meeting for the Hutchinson, Kansas, branch office detailing the business; and
 - b. agents in the Hutchinson branch were told that Otto was a registered securities agent at the time he was conducting the service for Bankers.

I. CONCLUSIONS OF LAW

38. The Commissioner finds Respondent materially aided an unregistered agent and an unregistered broker-dealer transact business in the State of Missouri and that this conduct constitutes grounds to issue an order pursuant to Section 409.6-604, RSMo. (Cum Supp. 2009).
39. 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).

II. ORDER

NOW, THEREFORE, it is hereby Ordered that:

1. Respondent is prohibited from applying as a securities agent or an investment adviser representative in Missouri for five (5) years;
2. Respondent is prohibited from selling variable annuities or equity indexed annuities in Missouri for three (3) years;
3. Respondent is ordered to pay ten thousand dollars (\$10,000) as the cost of this investigation. Nine thousand dollars (\$9,000) of this amount will be suspended provided Respondent is in compliance with the provisions of this Consent Order and with the Missouri Securities Act. Respondent shall send the remaining one thousand dollars (\$1,000) to the Securities Division in five (5) equal monthly installments of one hundred sixty-six dollars (\$166) each, and a final installment of one hundred seventy dollars (\$170). The first installment will be due on January 31, 2011, and all other installments will be due on the last work day of each month with the final installment due on June 30, 2011. This money shall be sent to the Enforcement Section at 600 W. Main Street, Jefferson City, Missouri 65101, and shall be made payable to the State of Missouri
4. For two (2) years from the execution of this document, the suspended payments in paragraph three (3) 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;
5. Any payments under this Consent Order shall be mailed to the Enforcement Section at 600 W. Main Street, Jefferson City, Missouri 65101. All penalties will be made payable to the State of Missouri. The Secretary of State shall forward all penalties received to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. Any payment for costs will be forwarded to the Missouri Secretary of State's Investor Education and Protection Fund;
6. 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 21ST DAY OF JANUARY, 2010.

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

Michael Lees, RESPONDENT

Approved as to Form:

David Guastello
Attorney for Respondent