

BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS

IN THE MATTER OF
DAVID LARRY PUCKETT,
LICENSE NO. 22044

A.I.D. NO. 2009- 049

CONSENT ORDER

On this day, Jay Bradford, Arkansas Insurance Commissioner ("Commissioner"), and David Larry Puckett ("Respondent") agree to enter into this Consent Order for the reasons stated below.

Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth below.

From the facts and law before the Commissioner, he finds:

FINDINGS OF FACT

1. The Commissioner has jurisdiction over the parties and subject matter pursuant to Ark. Code Ann. §23-61-103, §23-64-216 and 23-64-512, among other laws; and the authority to issue summary license suspensions and/or order payment of penalties under Ark. Code Ann. §§ 23-60-108, 23-64-216(e), 23-64-512(a), and 23-66-408.

2. Respondent is licensed as a resident Accident, Health, Sickness, Life, Casualty, Credit Insurance, Marine, Property, Surety, and Variable Products agent and holds Arkansas resident producer insurance license #22044. Respondent's address is #3 Nancy Lopez Court, Maumelle, Arkansas 72113. Respondent's date of birth is March 5, 1947. Respondent holds appointments with Allianz Life Insurance Company of North America, American Family Home Insurance Company, American General Life Insurance Company, American Home Life Insurance Company d/b/a American Home Life Insurance Company of Kansas, American Modern Home Insurance Company, American Modern Select Insurance Company, American Underwriters Insurance Company, Annuity Investors Life Insurance Company, Arkansas Community Care, Inc., Columbian Life Insurance Company, EMC National Life Company, Forethought Life Insurance Company, Golden Rule Insurance Company, Humana Insurance Company, ING USA Annuity and

Life Insurance Company, Kanawha Insurance Company, Liberty Life Insurance Company, Life Insurance Company of the Southwest, Med America Insurance Company, Metropolitan Life Insurance Company, MTL Insurance Company, Mutual of Omaha Insurance Company, OM Financial Life Insurance Company, Oxford Life Insurance Company, PacifiCare Life & Health Insurance Company, Penn Treaty Network America Insurance Company, Prudential Insurance Company of America, Union Security Insurance Company, United of Omaha Life Insurance Company, United Security Life and Health Insurance Company, United Teacher Associates Insurance Company, United World Life Insurance Company, Unity Financial Life Insurance Company, West Coast Life Insurance Company, and Woodmen of the World and/or Assured Life Association.

3. On May 23, 2008, The Securities Department entered a Cease and Desist Order against Respondent, Timothy Alonza Lilly, Joe A. Richards and First Fidelity Financial Group of Maumelle, L.L.C. ("First Fidelity").

4. The March 18, 2008 Order found that Respondent was not a licensed securities agent, broker-dealer, or investment advisor and Respondent worked at First Fidelity.

5. The Securities Department received a copy of a newspaper advertisement of First Fidelity advertising "FDIC-Insured CD's" (certificate of deposits), a 4.75% annual percentage yield, and the reports of several consumers who were considering whether to invest with First Fidelity. Fine print in the advertisement states that First Fidelity does not sell certificates of deposit, but locates banks selling certificate of deposits and that "promotional incentive may be included to obtain yield". A copy of that advertisement ran in the *Arkansas Democrat Gazette*. The Securities Department found that many Arkansas residents are responding to this advertisement, which ran for several weeks.

6. In order to achieve the yield advertised on a one-year certificate of deposit, the Respondent would have had to add money to the principal amount. Prospective investors were told that additional money will be added to the FDIC-insured bank certificates of deposit. The Respondent gave investors wanting to purchase an advertised certificate of deposit a document

titled, "Certificate of Deposit Bonus Disclosure", which reflects that the certificate of deposit being sold is issued by a bank paying an "Annual Percentage Yield of 3.51%". In the next paragraph of this form, it is revealed that although the investor is writing First Fidelity a check for \$30,000, his "FDIC insured certificate of deposit account will be opened for \$30,118.75." The next sentence states that with the addition of the \$118.78, the investor will realize a 4.75% annual percentage yield on his \$30,000 investment.

7. For investors to receive the quoted yields, First Fidelity would have to create new terms not offered by the FDIC insured bank that actually issues the certificates of deposit. These certificates of deposit are securities issued by First Fidelity and not certificates of deposit issued by the FDIC insured bank. The bank only issues a certificate of deposit paying 3.51% and that amount of risk is insured by the FDIC. There are 2 risks involved with First Fidelity's addition of principal that are not insured, to wit:

- i. The possibility that First Fidelity will not make the deposit of additional principal, and
- ii. The possibility that First Fidelity will make a deposit of additional principal in an amount insufficient for the investor to realize an annual yield of 4.75% on his or her investment.

8. The Securities Department investigation of First Fidelity's office shows that these risks were realized:

- i. Of twenty-three (23) files examined in which investors purchased these certificates of deposit, the required deposits were not made in sixteen cases.
- ii. Of seven (7) files examined where the deposits of additional principal were made, the deposits were insufficient to generate an annual yield of 4.75% in two cases.

9. The First Fidelity securities delivering 4.75% annual yields are not registered with The Securities Department and no proof of exemption appears in the records of The Securities Department.

10. The Securities Department found that Respondent, Timothy Alonza Lilly, Joe A. Richards and First Fidelity had violated Ark. Code Ann. § 23-42-501(c) by offering or selling any security which is not registered or which is not exempt from registration under the terms of Ark. Code Ann. § 23-42-501, Ark. Code Ann. § 23-42-507 (2) for making untrue statements or omitting to state a material fact necessary in order to make the statements made not misleading in light of the circumstances under which they are made. Specifically, by telling potential investors that First Fidelity is offering an FDIC insured certificate of deposit paying a 4.75% annual yield. This statement is a false statement made in connection with the offer or sale of a security. Also, by telling potential investors that they will realize a 4.75% annual yield by First Fidelity's deposit of additional principal, which is also false statement made in connection with the offer or sale of a security.

11. Respondent was ordered to immediately cease and desist from the acts and practices set forth above which violated the Arkansas Securities Act and the Rules and Orders promulgated pursuant to the Arkansas Securities Act. Respondent has the right to request a hearing within thirty (30) days of the date of the Securities Department's Order. If no hearing is requested, the Order will remain in effect until it is modified or vacated by the Securities Commissioner.

VIOLATIONS

Respondent is in violation of:

12. Ark. Code Ann. §23-64-216(a) (1) which provides that a license may be suspended or revoked for violation of any of the causes listed in Ark. Code Ann. § 23-64-512;

13. Ark. Code Ann. § 23-64-512(a)(8) which provides that a license may be suspended or revoked for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

14. Ark. Code Ann. § 23-64-506(e) (1) & (2), which provide that a resident applicant or producer must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation, and that such qualifications must continue for an individual to remain licensed.

CONCLUSIONS OF LAW

15. Based on the allegations contained herein, Respondent is in violation of Ark. Code Ann. § 23-64-512 and § 23-64-506.

IT IS THEREFORE ORDERED AND ADJUDGED, as follows:

16. Respondent's resident producer license shall be, and hereby is, placed on probation for a period of one (1) years from the date of this order pursuant to Ark. Code Ann. § 23-64-512(a). Any failure to comply with the provisions of this order or the Arkansas Insurance Code, or the receipt of similar or related complaints against the Respondent, during the period of probation may result in the suspension or revocation of the Respondent's producer license.

17. In addition to the one hour of ethics training required annually pursuant to Ark. Code Ann. § 23-64-301(b)(3), the Respondent shall complete one additional hour of ethics training each year during both 2009 and 2010. The additional hour of ethics training imposed by this order shall not count toward the continuing education requirements imposed by the Arkansas Insurance Code.

18. Proof of compliance with the requirements imposed herein shall be promptly provided to the Department within ten (10) business days of the completion of each requirement.

19. Failure to meet these requirements or violation of another law may result in the immediate suspension of Respondent's license and a hearing before the Commissioner.

IT IS SO ORDERED this 7 day of May, 2009.


DAVID LARRY PUCKETT


JAY BRADFORD
INSURANCE COMMISSIONER