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BEFORE THE ARKANSAS SECURITIES COMMISSIONER 14 AUG -1 AM 9:09

CASE NO. S-14-0002

ORDER NO. S-14-0002-14-OR01

ARKANSAS SECURITIES DEPT.

IN THE MATTER OF:

JIMMY EARL POWER, JR.

RESPONDENT

CONSENT ORDER

This Consent Order is entered pursuant to the Arkansas Securities Act, codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509 (“Act”), the Rules of the Arkansas Securities Commissioner (“Rules”) promulgated under the Act, and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann. §§ 25-15-201 through 25-15-219, in accordance with an agreement by and between the Staff of the Arkansas Securities Department (“Staff”) and Jimmy Earl Power, Jr. (“Power”), in full and final settlement of all claims that could be brought against Power by the Staff on the basis of the facts set forth herein.

Power admits the jurisdiction of the Act and the Arkansas Securities Commissioner (“Commissioner”), waives his right to a formal hearing, and without admitting or denying the findings of fact or conclusions of law contained herein, consents to the entry of this Order, and agrees to abide by its terms in the settlement of any possible violations committed by Power concerning the matters detailed in this Order.

RESPONDENT

1. Power (CRD# 3045120) is a resident of Fayetteville, Arkansas, who originally became registered as a broker-dealer agent in Arkansas on June 1, 1998. He was registered as an agent with VALIC Financial Advisors, Inc. (CRD# 42803) (“VALIC”) from August 2, 2010, through January 24, 2013, and with Questar Capital Corporation (CRD# 43100) (“Questar”) from March 26, 2013, through January 3, 2014. Power submitted an application for registration

as an agent with Keystone Capital Corporation (CRD# 10722) (“Keystone”) on January 7, 2014, which is pending approval by the Arkansas Securities Department (“Department”). Moreover, Power is licensed as a resident insurance producer with the Arkansas Insurance Department (License No. 14865).

FINDINGS OF FACT

2. On October 17, 2013, Questar initiated an internal review of Power due to concerns that he was not properly disclosing the sources of funds on new annuity applications for his customers as withdrawals from their existing annuity contracts. On October 31, 2013, Questar suspended Power’s registration status at the firm and prohibited him from conducting any securities-related business based upon admissions made by Power during Questar’s internal investigation. Specifically, Power admitted to submitting annuity applications which failed to properly provide the sources of funds and to failing to submit the appropriate replacement paperwork for annuities for his customers. Additionally, Power admitted to reusing customer account paperwork when he submitted subsequent insurance-product applications, which Questar found included alterations that were not initialed by Power’s customers, as required, and customer signatures that were crossed out or inconsistent with their previous signatures on other documents. Power’s admitted actions were direct violations of Questar’s supervisory and compliance procedures.

3. Power was discharged by Questar on November 14, 2013. As stated in a Central Registration Depository Form U5, the Uniform Termination Notice for Securities Industry Registration filed by Questar on November 18, 2013, Power was discharged after Questar concluded that Power had violated Questar’s policies and procedures regarding the replacement of annuities. As a result of Power’s actions, Questar rejected approximately six customer

applications for annuities and returned the checks associated with the annuity products to the customers. Questar required all new paperwork from Power's customers for the annuity products in question due to the above-referenced discrepancies.

4. On November 6, 2013, the Department received a complaint ("Complaint") from a Little Rock, Arkansas, couple who were customers of Power ("AR1" and "AR2"), which included a number of allegations regarding Power in his role as their agent at VALIC and Questar. Further, the Complaint was signed by the son of AR1 and AR2 ("AR3") and AR3's partner ("AR4") (together with AR1, AR2, and AR3 "Complainants"), both of whom were also customers of Power, and similarly contained allegations regarding Power in his role as their agent at Questar.

5. AR1 and AR2 were customers of Power for over ten years and during that time became close friends with Power. Power would occasionally stay at their home when he traveled to the Little Rock area from Fayetteville. AR3 and AR4 became Power's customers approximately two years ago but knew him throughout the time AR1 and AR2 were customers. It was not uncommon for Power to communicate with the Complainants by text message regarding their securities accounts and personal matters.

6. Power received commissions for transactions in AR1 and AR2's accounts. However, in 2012 while an agent with VALIC, Power requested additional money from AR1 and AR2 for fees that Power indicated he had not been charging AR1 and AR2 in their accounts as preferred customers. Power told AR1 and AR2 that he had been reprimanded at VALIC for not properly charging customers and for giving preferential treatment to selected customers. Further, Power told AR1 and AR2 that VALIC had also required him to charge a close family member \$18,000.00 in fees for the same reason. AR1 and AR2 provided the Staff with copies of text

messages from Power showing his specific requests for additional money to pay for fees. As a result of Power's requests, AR1 and AR2 wrote three separate checks from their joint banking account directly to Power, totaling \$4,500.00 – one dated September 7, 2012, for \$3,000.00; one dated December 10, 2012, for \$1,000.00; and one dated December 10, 2012, for \$500.00. All three checks were endorsed by Power, deposited into his personal banking account, and used to pay for personal expenditures.

7. While an agent with Questar, Power also received commissions on transactions for AR3 and AR4, although AR3 and AR4 indicated to the Staff that they never fully understood how Power was compensated for his work as their agent and that Power had implied he was not being compensated. Power did not specifically request additional money from AR3 and AR4 for uncharged fees, like he did from AR1 and AR2. However, AR3 and AR4 felt compelled by Power to compensate him for his work as their agent and, consequently, wrote a check on March 28, 2013, from their business banking account directly to Power for \$500.00. Power likewise endorsed the check, deposited it into his personal banking account, and used the money for personal expenditures.

8. Power told the Staff that AR1 and AR2 had paid him the \$3,500.00 in personal checks of their own accord and that he had never requested money from them. Furthermore, Power stated that AR1 and AR2 had been so pleased with the performance of their securities accounts with Power that they wanted to compensate him for instances when Power discounted his charges to AR1 and AR2 for his services. Power informed the Staff that he had called a supervisor at VALIC, the identity of whom Power could not recall, for approval to accept the money from AR1 and AR2. According to Power, the supervisor requested that Power draft a letter describing the situation with AR1 and AR2 and send it with Power's next batch of

paperwork into VALIC's compliance department. Power represented that he drafted a letter and sent it to VALIC, per the supervisor's request. After he did not hear back from VALIC, Power told AR1 and AR2 that it was okay to send money to him. Power did not remember ever receiving or depositing the \$500.00 check from AR3 and AR4 despite the fact that it went directly into his personal banking account.

9. VALIC was unable to provide the Staff with a confirmation that Power had contacted a supervisor to request approval to personally accept customer funds and was unable to locate any letter from Power describing the scenario and requesting such approval. In its response to the Staff, VALIC stated that it strictly prohibits the personal acceptance of customer funds by its agents and would not have approved such a request by Power. When requested by the Staff, Power could not provide an original, executed copy of the request letter to VALIC or prove that he ever received approval from VALIC to accept customer funds. Furthermore, Power indicated that he assumed the verbal approval and request letter would be sufficient in order to accept money from AR1 and AR2, despite the fact that VALIC's supervisory and compliance procedures expressly prohibited this action. When asked whether he thought his acceptance of money from customers was in contravention of federal and state securities laws and regulations, Power represented that he thought it would be acceptable to do so under federal and state securities laws and regulations since a supervisor had told him the procedure to follow for approval.

10. Additionally, between January 12, 2012, and November 16, 2012, Power accepted and deposited checks totaling \$117,000.00 from a close family member who was also Power's customer. These checks were gifts from the family member and similarly deposited into Power's personal banking account. However, Power did not inform VALIC of his receipt of this money

as a gift from a customer as required by VALIC's supervisory and compliance procedures. Additionally, Power accepted and deposited personal checks from two other customers totaling \$3,500.00 in December 2012 as payment for the purchase of personal property from Power, the receipt of which was likewise not disclosed to VALIC.

11. In the Complaint, AR1 and AR2 also described concern regarding a \$150,000.00 check Power had written to the insurance company Allianz from their checkbook in September 2013. Through their business with Power, AR1 and AR2 had taken advantage of a "free look" period on an Allianz insurance product, which permitted them to cancel within a specified period of time while receiving a full refund of their payments and not incurring surrender charges. On or about September 27, 2013, Power was staying in the home of AR1 and AR2 while in Little Rock. While AR1 and AR2 were away from the home and Power was there alone, Power called AR2 to let her know he had written a check from AR1 and AR2's checkbook to Allianz for \$150,000.00. Power had not signed the check. AR2 told Power not to take the check and to shred it, which Power indicated he would do. AR1 and AR2 provided the Staff with a carbon copy of the \$150,000.00 check in question, and Power admitted to the Staff that he had written the check to Allianz. Power maintained that AR1 and AR2 requested that he write the check to Allianz which they would sign when they returned home and subsequently send to Power. AR1 and AR2 denied Power's claim that the check's completion was at their request.

12. On November 26, 2012, Power completed VALIC's required 2012 Annual Compliance Questionnaire ("VALIC Questionnaire"). On October 23, 2013, Power completed Questar's Annual Questionnaire and Certification by Registered Representatives ("Questar Questionnaire") (together with the VALIC Questionnaire, "Firm Compliance Questionnaires"). The Firm Compliance Questionnaires contain questions which correspond to the firms'

supervisory and compliance procedures and are used to assist the firms in determining whether their agents are acting in compliance with federal and state securities laws and regulations and the firms' procedures. The Firm Compliance Questionnaires required Power to certify that he had reviewed the firms' supervisory and compliance procedures, had provided honest answers to the specific compliance questions contained within, and had adhered to federal and state securities laws and regulations.

13. In the Firm Compliance Questionnaires, Power affirmed that he had not accepted money from customers. Power also stated that he had not received gifts or compensation from customers that had not been properly reported to VALIC and Questar through the completion of specified forms required by each firm. Additionally, Power answered that he had not utilized prohibited electronic communication methods with customers, including text messages, to discuss securities-related business. In the Questar Questionnaire, Power indicated that he understood that he was prohibited from signing documents for customers, even with their authorization to do so. Power dishonestly answered the above-referenced questions on the Firm Compliance Questionnaires, did not follow the corresponding supervisory and compliance procedures of VALIC and Questar, and, as a result, violated federal and state securities laws and regulations.

14. Power's unwarranted request of and acceptance of money from the Complainants and repeated violations of VALIC's and Questar's supervisory and compliance procedures, which are written to correspond with federal and state securities laws and regulations, exhibit Power's lack of respect for the rules and regulations of regulated industries, in general.

APPLICABLE LAW

15. The Commissioner may by order deny, suspend, make conditional or probationary, or revoke any registration if he finds that the order is in the public interest and the applicant or registrant has willfully violated or willfully failed to comply with any provision of the Act or a predecessor act or any rule or order under the Act or a predecessor act; or the registrant has engaged in dishonest or unethical practices in the securities business. Ark. Code Ann. § 23-42-308(a)(1), (a)(2)(B), and (G).

16. Each agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. The following conduct shall be considered grounds for denial, suspension, or revocation of an agent's registration, in addition to such other unethical practices within the meaning of Ark. Code Ann. §§ 23-42-308 and 23-42-507:

a. Undisclosed Fees. Charging undisclosed, unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to their securities business, except where the fees are negotiated or have been previously disclosed to the customer. Rule 308.01(c).

b. Misuse of Customers' Funds or Securities. Borrowing or unauthorized use of customers' funds or securities. Rule 308.01(p).

c. Failing to Comply with Laws or Rules. Failing to comply with any applicable provision of conduct rules, any applicable fair practice or ethical standard, or

any other applicable law or rule related to conducting business involving securities promulgated by the SEC or any self-regulatory organization. Rule 308.01(x).

d. Other Unfair, Misleading and Unethical Practices. The unfair, misleading, or unethical practices set forth under Rule 308.01 are not exclusive of other activities, such as forgery, embezzlement, non-disclosure or misstatement of material facts, manipulations, and various deceptions, which shall be considered grounds for suspension or revocation and the Commissioner may suspend or revoke a registration when necessary or appropriate in the public interest. Rule 308.01(y).

17. FINRA (“Financial Industry Regulatory Authority”) Rule 2010 states that an agent, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

18. FINRA Rule 2150(a) states that no agent shall make improper use of a customer’s securities or funds.

19. It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading. Ark. Code Ann. § 23-42-507(2).

20. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Commissioner may nevertheless institute a revocation or suspension proceeding under Ark. Code Ann. § 23-42-308(a)(2)(B) within one year after the withdrawal became effective and may enter a revocation or suspension order as of the last date on which registration was effective. Ark. Code Ann. § 23-42-308(e)(3).

21. Nothing in Ark. Code Ann. § 23-42-308 shall prohibit or restrict the informal disposition of a proceeding or allegations which might give rise to a proceeding by settlement or consent. Ark. Code Ann. § 23-42-308(h).

22. The Commissioner may apply to the Pulaski County Circuit Court to temporarily or permanently enjoin an act or practice that violates the Act and to enforce compliance with the Act or any rule or order under the Act without issuing an order under Ark. Code Ann. § 23-42-209(a)(1) or (a)(2). Ark. Code Ann. § 23-42-209(a)(3)(B).

CONCLUSIONS OF LAW

23. Power violated Ark. Code Ann. § 23-42-308(a)(2)(B) and (G) when he repeatedly violated the supervisory and compliance procedures of VALIC and Questar despite attesting to his review and understanding of the firms' supervisory and compliance procedures and federal and state securities laws and regulations, as detailed in paragraphs 2 through 14.

24. Power violated Ark. Code Ann. § 23-42-308(a)(2)(B) and (G) and Rule 308.01(c), (p), and (y) when Power requested and accepted money for nonexistent, undisclosed account fees from AR1 and AR2 and accepted money from AR3 and AR4 as additional, unwarranted compensation for his work as their agent, as detailed in paragraphs 4 through 9.

25. Power violated Ark. Code Ann. § 23-42-507(2) by making untrue statements of material facts regarding the nonexistent account fees Power requested from AR1 and AR2 for his securities work, and by omitting to state material facts necessary in order to make the statements made regarding Power's receipt of money from AR3 and AR4 to compensate him for his securities work, in the light of the circumstances under which they were received, not misleading, as detailed in paragraphs 4 through 9.

26. Power violated Ark. Code Ann. § 23-42-308(a)(2)(B) and (G) and Rule 308.01(x) when he failed to observe high standards of commercial honor and just and equitable principles of trade by requesting and accepting customer money through material misstatements and omissions regarding its use and repeatedly violating VALIC and Questar's supervisory and compliance procedures, in violation of FINRA Rule 2010, and improperly used customers' funds, in violation of FINRA Rule 2150(a), as detailed in paragraphs 2 through 14.

27. Pursuant to Ark. Code Ann. § 23-42-308(a)(2)(B) and (e)(3), Power's registration in Arkansas as a broker-dealer agent should be revoked as of January 3, 2014, the last date on which Power's registration was effective in Arkansas.

OPINION

This Order is in the public interest. The facts set out in paragraphs 2 through 14 support the violations of the Act and Rules set out in paragraphs 23 through 27.

ORDER

By agreement and with the consent of the Staff and Power, IT IS HEREBY ORDERED:

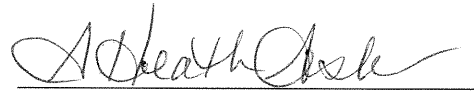
1. Power shall cease and desist from further violations of the Act and Rules;
2. Power's application as a broker-dealer agent in Arkansas with Keystone shall be DENIED as of the date of the entry of this Order;
3. Power's registration as a broker-dealer agent in Arkansas shall be REVOKED as of January 3, 2014, the last date on which Power's registration was effective in Arkansas; and
4. Power shall repay the unlawfully-obtained sums of \$3,500.00 to AR1 and AR2 and \$500.00 to AR3 and AR4 pursuant to the following terms:

a. Within sixty days of the entry of this Order, Power shall make payments totaling \$3,500.00 to AR1 and AR2 jointly, and \$500.00 to AR3 and AR4 jointly, by money order or cashier's check, and shall include with these payments a letter to the Complainants indicating his agreement to repay the unlawfully-obtained sums pursuant to this Order;

b. Copies of all payments to the Complainants should be sent to the Department to evidence payment.

5. Any failure by Power to make the payments to the Complainants when due or to otherwise follow the terms of this Order shall be considered a violation of this Order authorizing the Commissioner to apply to the Pulaski County Circuit Court to enforce compliance with this Order, pursuant to Ark. Code Ann. § 23-42-209(a)(3)(B).

WITNESS MY HAND AND SEAL on this 1st day of August, 2014.


A. Heath Abshure
Arkansas Securities Commissioner

I hereby agree to the entry of this Order, and consent to all terms, conditions, and orders contained therein, and waive any right to an appeal from this Order.

Jimmy Earl Power, Jr. (CRD# 3045120)

Date

a. Within sixty days of the entry of this Order, Power shall make payments totaling \$3,500.00 to AR1 and AR2 jointly, and \$500.00 to AR3 and AR4 jointly, by money order or cashier's check, and shall include with these payments a letter to the Complainants indicating his agreement to repay the unlawfully-obtained sums pursuant to this Order.


b. Copies of all payments to the Complainants should be sent to the Department to evidence payment.

5. Any failure by Power to make the payments to the Complainants when due or to otherwise follow the terms of this Order shall be considered a violation of this Order authorizing the Commissioner to apply to the Pulaski County Circuit Court to enforce compliance with this Order, pursuant to Ark. Code Ann. § 23-42-209(a)(3)(B).

WITNESS MY HAND AND SEAL on this ____ day of _____, 2014.

A. Heath Abshire
Arkansas Securities Commissioner

I hereby agree to the entry of this Order, and consent to all terms, conditions, and orders contained therein, and waive any right to an appeal from this Order.



Jimmy Earl Power, Jr. (CIRD# 3045120)

7-28-14
Date

APPROVED AS TO FORM:

R. Craig Zafis
Counsel for Jimmy Earl Power, Jr.

Date

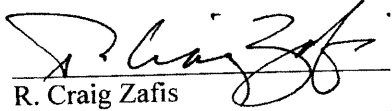
APPROVED AS TO FORM
AND CONTENT:



Amber E. Crouch
Staff Attorney
Arkansas Securities Department

Date July 31, 2014

APPROVED AS TO FORM:



R. Craig Zafis
Counsel for Jimmy Earl Power, Jr.

Date 7/31/14

APPROVED AS TO FORM
AND CONTENT:

Amber E. Crouch
Staff Attorney
Arkansas Securities Department

Date

BEFORE THE ARKANSAS SECURITIES COMMISSIONER
CASE NO. S-14-0002
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IN THE MATTER OF:

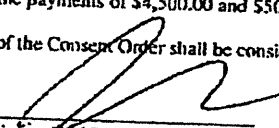
JIMMY EARL POWER, JR.

RESPONDENT

ADDENDUM

I, Jimmy Earl Power Jr., acknowledge that the settlement with the Arkansas Securities Department ("Department") evidenced by order number S-14-0002-14-OR01 ("Consent Order") entered on Friday, August 1, 2014, was to repay my former customers, AR1, AR2, AR3, and AR4, the sums unlawfully paid to me personally while I served as their broker-dealer agent. I signed the Consent Order with the knowledge of the sums I received personally from my former customers and with the understanding that I would be required to repay AR1 and AR2 a total of \$4,500.00, and AR3 and AR4 a total of \$500.00, despite the typographical error of \$3,500.00 to be repaid to AR1 and AR2 included in paragraph 4 of the Order section on pages 11-12 of the Consent Order.

When I signed the Consent Order, I agreed to repay the unlawfully-obtained sums of \$4,500.00 to AR1 and AR2 and \$500.00 to AR3 and AR4 within sixty days of the entry of the Consent Order; consented to all terms, conditions, and orders contained in the Consent Order; and waived any right to an appeal from the Consent Order. I understand that any failure to make the payments of \$4,500.00 and \$500.00, respectively, when due or to otherwise follow the terms of the Consent Order shall be considered a violation of the Consent Order.


Jimmy Earl Power, Jr. (CRD# 3045120)

8-05-14
Date

ARKANSAS SECURITIES DEPT.

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