

BEFORE THE ~~ARKANSAS~~ <sup>RECEIVED</sup> SECURITIES COMMISSIONER

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IN THE MATTER OF  
TIMOTHY ALONZA LILLY, d/b/a  
COVENANT SENIOR ADVISORS, LLC

Case No. S-08-053

Order No. S-08-053-08-CD01

**CEASE AND DESIST ORDER**

On June 30, 2008, the Staff of the Arkansas Securities Department (Staff) filed its Request for Cease and Desist Order (Request), alleging that it has information and evidence indicating that Timothy Alonza Lilly (Lilly), doing business as Covenant Senior Advisors, LLC (Covenant), and others unknown to the Staff connected with the Lilly and Covenant (collectively, Respondents), have violated provisions of the Arkansas Securities Act (Act), codified at Ark. Code Ann. §§ 23-42-101 to -501. The Arkansas Securities Commissioner (Commissioner) has reviewed the Request, and based upon the representations made therein, finds:

**FINDINGS OF FACT**

1. The Staff's Request asserts the following representations of fact:
  - A. Lilly is an insurance agent licensed with the Arkansas Insurance Department and is a resident of Maumelle, Arkansas.
  - B. Covenant is an Arkansas limited liability company organized on March 30, 2006. Lilly is listed as the organizer and manager of Covenant. Covenant is not registered with the Arkansas Securities Department (Department) as an investment adviser, but it is licensed with the Arkansas Insurance Department as a resident agency associated with Lilly. Lilly does business using the Covenant name, as well as one other name, First Fidelity Financial Group of Maumelle, LLC.

- C. Lilly passed a series 65 securities exam without being sponsored by a present or future employer. Because he took the test without sponsorship by an employing firm or state, the results will not be posted on the Central Registration Depository (CRD) until Lilly is hired by an employing investment adviser firm. As of this date, Lilly is not registered with the Department either as an investment adviser or agent of an investment adviser.
- D. Lilly contacted a couple close to retirement living in rural Arkansas (Mr. and Mrs. AR). Referred to them by Mr. AR's brother, Lilly met with them on June 18, 2008, and recommended that they roll over their investments in a 401(k) deferred compensation plan, an individual retirement account (IRA) and certain certificates of deposit (CDs) – altogether worth about \$50,000 – into an equity indexed annuity with a ten-year maturity date. Mr. AR is sixty-two years old, and is still employed but eligible to retire soon. Mrs. AR is fifty-nine years old and still employed. The 401(k) deferred compensation plan contained securities in the form of mutual funds which contained stocks and bonds. In recommending that Mr. and Mrs. AR sell their securities in order to purchase an equity indexed annuity, Lilly was recommending the sale of securities and opining that the re-investment of the funds realized from the sale of those securities into an equity indexed annuity would be a suitable investment for Mr. and Mrs. AR.
- E. On May 20 and 21, 2008, the Staff conducted an examination of Lilly's office. That examination revealed that Lilly recommended the sale of securities to fund the purchase of equity indexed annuities and facilitated the liquidation of securities accounts by completing various forms for customers who had an existing account holding securities. These forms included: (i) new account forms

to open new accounts with a broker-dealer in Florida, (ii) forms instructing the Florida broker-dealer to transition all the securities in an existing account holding securities to the new account, (iii) forms instructing the new broker-dealer to liquidate all securities in the new account and, finally, (iv) forms instructing the new broker-dealer to transfer the money realized from the sale of all securities in the account to the insurance company to fund the purchase of one or more equity indexed annuities.

- F. The Staff has in its possession a copy of a post card invitation to a “Free Lunch and Informative Workshop” at a restaurant in Sherwood, Arkansas, that was scheduled to take place on June 24, 2008, at 11:30 a.m. It was received by the recipient on or about June 16, 2008. In the upper left hand corner, where a return address could be posted, Lilly and Covenant are identified as follows:

Tim Lilly, CSA  
Covenant Senior Advisors®

- G. The term CSA refers to Certified Senior Advisor. According to the Society of Certified Senior Advisors (SCSA), Lilly completed the SCSA training and passed a test based on the training, but his membership expired on May 15, 2008. In March 2007, the SCSA issued a new policy regarding CSA designation. In order to use the CSA designation, the following disclosure statement was supposed to be placed on all materials produced for consumers:

Certified Senior Advisors (CSA) have supplemented their individual professional license, credentials and education with knowledge about aging and working with seniors. You should ask what those licenses, credentials and education signify. *The CSA designation alone does not imply experience in financial, health or social matters.* [Emphasis added.]

This disclosure does not appear on the invitation post card referred to above or on Lilly's website. In fact, on Lilly's website it more prominently and explicitly states "Certified Senior Advisor" and "Certified Retirement Financial Advisor."

- H. The designation "Certified Retirement Financial Advisor" is granted by the Society of Certified Retirement Financial Advisors (CRFA). A check of that organization shows that Lilly is not registered with the CRFA and has never applied for membership or registration with the CRFA.
- I. On this same invitation post card, Lilly refers to himself as a "Registered Financial Advisor." The National Association of Personal Financial Advisors (NAPFA) grants this designation to fee-only financial planners who fit several qualifications, including the requirement that members "make all appropriate filings . . . with regulatory authorities," which "shall include, but is not limited to, Form ADV." Form ADV is the form used to register as an investment advisor on the CRD. Although he is a licensed insurance agent, Lilly is not registered as an investment adviser with the Department or the United States Securities and Exchange Commission. The CRD shows no registration for Lilly as an investment adviser or agent of the investment adviser. Lilly's having passed the series 65 is not the equivalent of being registered as an investment adviser.
- J. On May 23, 2008, a cease and desist order was issued against Lilly by the Commissioner relating to Lilly's sale of certain certificates of deposit. *See Cease and Desist Order No. S-08-043-08-CD01, In the Matter of Timothy Alonza Lilly, et al.* This order was not disclosed to Mr. and Mrs. AR.

## CONCLUSIONS OF LAW

2. Stocks, bonds, evidences of indebtedness, and investment contracts are all securities as defined in the Act. ARK. CODE ANN. §§ 23-42-102(15)(A).

3. An investment adviser is any person who, for compensation, engages in the business of advising others of, among other things, the value of securities, or the advisability of purchasing or selling securities. ARK. CODE ANN. § 23-42-102(8). Respondents were acting as an investment adviser when dealing with Mr. and Mrs. AR and other clients. Respondents recommended that Mr. and Mrs. AR liquidate the 401(k) deferred compensation plan, the IRA, and the CDs, and invest all the proceeds in an equity indexed annuity. The Respondents advised Mr. and Mrs. AR as to the securities held by Mr. and Mr. AR, and recommended the sale of those securities in return for the fee Respondents would have received from the sale of the equity indexed annuity. Respondents act with many customers as an unregistered investment adviser in advising them as to previously purchased securities, recommending the liquidation of such securities, and facilitating the liquidation of those securities in order to fund the purchase of equity indexed annuities.

4. It is unlawful for any person to transact business in Arkansas as an investment adviser without first being registered as such, unless such person is an investment adviser or agent of an investment adviser registered with the United States Securities and Exchange Commission or is exempt from registration under the Investment Advisers Act of 1940. ARK. CODE ANN. § 23-42-301(c). The Respondents were not registered as investment advisers. Accordingly, Respondents have violated and continue to violate Ark. Code Ann. § 23-42-301(c).

5. It is unlawful for any investment adviser: (i) to employ any device, scheme, or artifice to defraud another person; (ii) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon another person; or (iii) to make any untrue

statement of material fact or omit to state a material fact necessary in order to make the statement made, in light of the circumstances in which it is made, not misleading. ARK. CODE ANN. § 23-42-307. The same conduct constitutes unlawful fraud or deceit when utilized by any person in connection with the offer, sale, or purchase of any security. ARK CODE ANN. § 23-42-507.

6. Rule 308.02 of the Rules of the Arkansas Securities Commissioner sets forth a number of fraudulent, deceptive, dishonest, or unethical practices of investment advisers which support the issuance of a cease and desist order. As is stated in Rule 308.02, “[e]ach investment adviser and representative shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business.” Specifically, Rule 308.02(H) prohibits misrepresenting the qualifications of an investment adviser. Rule 308.02(M)(5) prohibits distributing any advertisement containing any untrue statement of material fact or which is otherwise false or misleading.

7. Respondents have violated, and continue to violate, Ark. Code Ann. §§ 23-42-307 and 23-42-507, and Rule 308.02(H) and (M)(5) of the Rules of the Arkansas Securities Commissioner. Lilly used the CSA designation without disclosing that he was no longer a member of the SCSA and without the disclosure statement required by the SCSA. The use of that designation without the SCSA disclosure statement, particularly when used on the website where it is provided as “Certified Senior Advisor” and placed next to the title, “Certified Retirement Financial Advisor,” is materially misleading as Lilly used the certifications to imply improperly that he possessed specialized experience in financial, health, or social matters that were unique to senior citizens. Further, Lilly used the “Certified Retirement Financial Advisor” designation that he had not actually earned. Lilly referred to himself as a “Registered Financial Advisor,” when Lilly had neither earned nor was qualified to receive this designation. Lilly is not registered as an investment adviser and cannot legally render advice concerning securities for

a fee. Lilly's use of the senior-specific and other professional certifications through advertisements and a website were material misstatements implying that Lilly had special certification or training in senior-specific issues and as an investment professional, when in fact, Lilly had not earned or was ineligible to use the certifications. These material misstatements misled Mr. and Mrs. AR and other clients and constitute violations of Ark. Code Ann. §§ 23-42-307 and 23-42-507, and Rule 308.02(H) and (M)(5) of the Rules of the Arkansas Securities Commissioner.

8. Whenever it appears to the Commissioner, upon sufficient grounds or evidence satisfactory to the Commissioner, that any person has engaged or is about to engage in any act or practice violating the Act, or any rule or order under the Act, the Commissioner may summarily order the person to cease and desist from the act or practice. ARK CODE ANN. § 23-42-209(a)(1)(A). Based on the Findings of Fact and Conclusions of Law, this Order is in the public interest and is appropriate pursuant to Ark. Code Ann. § 23-42-209.

### **OPINION**

IT IS ORDERED that Timothy Alonza Lilly, doing business as Covenant Senior Advisors, LLC, and others unknown to the Staff connected with the Respondents, cease and desist from the acts and practices set forth above which violate the Arkansas Securities Act and the Rules and Orders promulgated pursuant to the Arkansas Securities Act.

A hearing on this Order shall be held if requested by the Respondents in writing and such written request is received by the Commissioner within thirty days of the date of the entry of this Order, or if otherwise ordered by the Commissioner. Such request should be addressed to the Commissioner and submitted to the following address:

Arkansas Securities Commissioner  
201 East Markham  
Suite 300  
Little Rock, Arkansas 72201

If no hearing is requested and none is ordered by the Commissioner, this Order will remain in effect until it is modified or vacated by the Commissioner. ARK. CODE ANN. § 23-42-209(a)(2).

WITNESS MY HAND AND SEAL this 1<sup>st</sup> day of July, 2008.



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A. Heath Abshure  
Arkansas Securities Commissioner