



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)
)
KENNETH EDWARD VOLKERDING,) Case No. AP-16-03
CRD No. 1018371,)
)
Respondent.)

CONSENT ORDER

SUMMARY OF THE SECURITIES DIVISION’S ALLEGATIONS

1. The Missouri Securities Division of the Office of the Secretary of State (“Division”) has alleged that Kenneth Edward Volkerding (“Volkerding”), an agent of MWA Financial Services, Inc. (“MWAFS”), engaged in dishonest and unethical practices when he recommended that a Missouri investor liquidate a \$500,000.00 401(k) and purchase a single Modern Woodmen fixed rate annuity, completing the application for that annuity without any regard to what the investor’s net worth actually was and in some cases knowingly entering inaccurate information in order to pass suitability review, in violation of Section 409.4-412(d)(13), RSMo (Cum. Supp. 2013).¹
2. Respondent and the Division desire to settle the allegations and the matters raised by the Division relating to Respondents’ alleged violation of Section 409.4-412(d)(13).

CONSENT TO JURISDICTION

3. Respondent and the Division stipulate and agree that the Missouri Commissioner of Securities (“Commissioner”) has jurisdiction over Respondent and these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, *et seq.*
4. Respondent and the Division stipulate and agree that the Commissioner has authority to enter this Order pursuant to Section 409.6-604(h), which provides:

¹ Unless otherwise noted, all statutory references are to the 2013 cumulative supplement to the Revised Statutes of Missouri.

“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 Respondent’s right to a hearing with respect to this matter.
6. Respondent waives any rights 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, 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 Enforcement Section 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 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 positions in defense of litigation or in defense of other legal proceedings in which the Commissioner is not a party; or (c) right to make public statements that are factual.
10. Respondent agrees that Respondent is not the prevailing party in this action since the parties have reached a good faith settlement.
11. Respondent neither admits nor denies the allegations made by the Division, 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

I. FINDINGS OF FACT

12. MWAFS has been a Missouri registered broker-dealer since November 2001, and has a home office address of 1701 1st Avenue, Rock Island, Illinois 61201.

MWAFS is registered in Missouri through the Central Registration Depository (“CRD”) with number 112630.

13. Volkerding has been a Missouri registered broker-dealer agent with MWAFS since October 2004. Volkerding is registered in Missouri through CRD with number 1018371, and is located at 1427 Thomas Drive, Suite A, Cape Girardeau, Missouri 63701.
14. Wayne Joseph Zoellner (“Zoellner”) has been a Missouri registered broker-dealer agent with MWAFS since October 2008. Zoellner is registered in Missouri through CRD with number 2158245, and is located at 1427 Thomas Drive, Suite A, Cape Girardeau, Missouri 63701.

Missouri Resident (“MR”)

15. On or around December 10, 2013, a Bloomfield, Missouri, resident (“MR”) learned that MR’s spouse (the “Spouse”) passed away unexpectedly in a cave diving accident in Mexico. MR was 57 years old at the time.
16. On December 21, 2013, after experiencing difficulties recovering the Spouse’s remains from Mexico, MR held a funeral service for the Spouse.
17. Between December 25, 2013 and January 1, 2014, MR received a telephone call from Volkerding, who contacted MR to schedule an appointment to discuss an MWAFS Flexible Premium Deferred Annuity (“Annuity 1”), worth approximately \$79,000.00, from the Spouse’s name to an account in MR’s name as the surviving spouse. He also planned to discuss the with MR the 401(k) with MassMutual Financial Group, worth approximately \$500,000.00 with regard to the possible purchase of a single MWAFS fixed rate annuity (“Annuity 2”) inside an IRA for MR.
18. The meeting with MR and Volkerding was scheduled for January 2, 2014, twelve days after the Spouse’s funeral, at MR’s residence in Bloomfield, Missouri.
19. Volkerding specifically asked Zoellner, his supervisor at MWAFS, to attend the meeting with MR. Volkerding requested Zoellner’s presence at the meeting, in part, because Volkerding also wanted to discuss possible transfer of a 401(k) with MassMutual Financial Group, worth approximately \$500,000.00.
20. On January 2, 2014, Volkerking and Zoellner met with MR at MR’s residence. MR executed the transfer documents for Annuity 1 via hand-written signature.
21. MR signed an electronic signature pad to transfer Annuity 2 to MR’s name.
22. MR’s signature for Annuity 2 was affixed to different locations on the application for Annuity 2.

23. However, Volkerding did not accurately complete the Annuity 2 application.
24. Volkerding submitted a request to MWAFS for the transfer of Annuity 1 and the purchase of Annuity 2 even though Volkerding, among other things:
 - a. Did not ensure the completion of an investment profile questionnaire for MR;
 - b. Entered inaccurate information onto MR's suitability disclosure form, notably that the annuity would constitute only 25 percent of MR's assets, when, in fact, it represented a higher percentage of MR's assets.
25. Volkerding did not provide MR with copies of any documents generated as part of the transfer of Annuity 1 or the purchase of Annuity 2 during the January 2, 2014 meeting.
26. The January 2, 2014 meeting took no longer than one and a half hours.
27. In 2014, MR's gross annual income was under \$30,000.00, which was composed of MR's pension with the State of Illinois and earnings from a seasonal job at Macys.
28. In 2014, MR's net assets (excluding MR's home and auto) were approximately \$1.2 million.
29. On February 13, 2014, Volkerding provided MR with an annuity certificate and policy wallet for Annuity 2.
30. After MR determined that the Spouse's 401(k) had been placed in Annuity 2 and wanted it moved to another firm, Volkerding sent multiple text messages to MR regarding the preservation of the transfer.

Missouri's On the Record ("OTR") with Volkerding

31. On July 2, 2015, the Division conducted an OTR with Volkerding. Volkerding testified, among other things, that:
 - a. At least 10 times Volkerding met with and sold an MWAFS annuity to a client within 15 days of a spouse's funeral;
 - b. Volkerding, as MR's financial advisor, was responsible for helping MR make decisions about where to invest MR's money and to help MR find income;
 - c. Volkerding knew the Spouse's 401(k) consisted of approximately \$500,000.00 of fixed variable annuities before Volkerding and Zoellner met with MR on January 2, 2014;

- d. Regarding the meeting on January 2, 2014 with MR, Volkerding stated, among other things, that:
- e. Volkerding did not know what kind of interest the Spouse's 401(k) was earning;
 - i. Volkerding had very little information about MR's investable assets;
 - ii. Volkerding had very little information about MR's liquidity needs;
 - iii. Volkerding had very little information about MR's income needs;
 - iv. Volkerding did not have answers to any of the questions listed on MWA's investment profile questionnaire concerning MR; and
 - v. Volkerding did not know what assets MR possessed;
- e. MR signed the transfer of ownership for Annuity 1 in paper form;
- f. MR signed an electronic signature pad once and then Volkerding affixed MR's signature to authorize the application for Annuity 2 and the certification for the 401(k) rollover;
- g. Volkerding earned approximately \$20,000.00 for the sale of Annuity 2 on January 2, 2014;
- h. In Section C: Financial Suitability Information in the application for Annuity 2, Volkerding checked MR's gross annual income as \$30,000.00 to \$60,000.00 and MR's net worth (not including MR's home or auto) as \$500,000 to a million;
- i. Volkerding marked that the purchase of Annuity 2 represented approximately 25 percent of MR's assets;
- j. Volkerding marked that the purchase of Annuity 2 represented approximately 25 percent of MR's assets;
- k. Volkerding knew that Annuity 2 would cost \$500,000.00, which would be 50 percent of the net worth Volkerding set out on MR's application;
- l. the meeting on January 2, 2014 with MR took less than one and a half hours;
- m. On February 13, 2015, when Volkerding provided MR with the annuity certificate and policy wallet for Annuity 2, Volkerding explained the surrender charges, the amount transferred from the Spouse's 401(k), and the lookback period;
- n. in or around February 13, 2015, after MR had already invested in Annuity 2, MR provided Volkerding with a list of all the Spouse's assets that

indicated Annuity 2 represented approximately 50 percent of MR's liquid net assets;

- o. at the January 2, 2014 meeting and February 13, 2014 meeting, Volkerding did not know how much money MR had;
- p. Volkerding knew that MR's primary investment objective was income;
- q. Annuity 2 could have provided MR with income through the Internal Revenue Service Section 72(t) rule ("72(t) Rule"), which allows for penalty-free, substantially equal periodic payments from an IRA prior to the age of 59.5;
- r. however, MR did not have access to penalty-free distributions from Annuity 2 because Volkerding never set up the IRA under the 72(t) Rule;
- s. at the January 2, 2014, meeting, Volkerding did not know whether the annuity that he sold to MR was better or worse than the Spouse's 401(k), which consisted of fixed and variable annuities held with MassMutual Financial Group;
- t. Volkerding understood that whenever a person with a 401(k) passes away, the surviving spouse cannot contribute to that 401(k), which is why Volkerding thought the 401(k) had to be disbursed;
- u. Volkerding never looked at the plan documents for the Spouse's 401(k) to see if there were any restrictions on how soon MR had to rollover the 401(k) assets, if at all;
- v. Volkerding never did any kind of research to see if MR may have been able to take distributions from the Spouse's 401(k), or to move those assets around inside of the Spouse's 401(k), if MR had desired to do so;
- w. Volkerding sent MR text messages saying that he was going to lose thousands of dollars, referring to the commission Volkerding earned for the Annuity 2 sale on January 2, 2014 and time spent in meetings with MR; and
- x. Volkerding agreed that all transactions ultimately have to be done with the client's consent, and agents are prohibited from signing a client's name to any document, which includes having an individual sign an electronic pad without showing the person the document to which the signature is being affixed.

Missouri's On the Record ("OTR") with Zoellner

32. On August 27, 2015, the Division conducted an OTR with Zoellner. Zoellner testified, among other things, that:

- a. Zoellner is currently a managing partner at MWAFS and is responsible for recruiting, hiring, and training new agents in his district, which is eastern Missouri;
- b. Zoellner's compensation is primarily dependent on MWAFS agent sales within his district;
- c. When an agent makes a sale, Zoellner receives a percentage of that agent's commission, and Zoellner's percentage varies from product-to-product;
- d. Before the meeting on January 2, 2014, Volkering mentioned the Spouse's 401(k), but not the total value or the assets within the 401(k);
- e. regarding the meeting on January 2, 2014, Zoellner stated, among other things, the following:
 - i. MR seemed upset, distraught, and still in the grieving process;
 - ii. MR cried more than once when Volkerding or Zoellner said the deceased Spouse's name; and
 - iii. Zoellner recalls seeing and discussing the spreadsheet listing all of the Spouse's assets;
- f. it would be suitable for an investor who needs income in the short-term to put all of their investible assets into a single MWAFS fixed rate annuity;
- g. it is not unusual for an agent to ask Zoellner to attend a meeting with a potential client, especially if it is a large case;
- h. MWAFS instructs its agents to go out as quickly as possible to meet with surviving spouses concerning investable assets;
- i. MWAFS does not have training, policies, or procedures for when it is appropriate or not appropriate for an agent to approach a surviving spouse and get him or her to invest in an MWAFS annuity; and
- j. MWAFS does not have a waiting period for moving non-MWAFS money into an annuity for a surviving spouse after the death of an individual.

II. CONCLUSIONS OF LAW

- 33. The Commissioner finds that Respondent engaged in practices in violation of Section 409.4-412(d)(13), and that this violation constitutes grounds to issue an order pursuant to Section 409.6-604.
- 34. The Commissioner, after consideration of the stipulations set forth above and on consent of the Respondent and the Division, finds and concludes that the Commissioner has jurisdiction over Respondent in 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.

III. ORDER

NOW, THEREFORE, it is hereby Ordered that:

1. Respondent is permanently enjoined and restrained from violating Section 409.4-412(d)(13);
2. Respondent Volkerding is hereby CENSURED;
3. Respondent Volkerding is ordered to pay \$10,000 to the Investor Education and Protection Fund for violations of the Missouri Securities Act; but
4. Respondent Volkerding's payment of \$10,000 is hereby suspended but shall become due immediately upon the sooner of (1) Respondent's noncompliance with the terms of this Consent Order or (2) a finding, after notice and opportunity for a hearing, by the Commissioner or court of competent jurisdiction that Respondents have violated the Missouri Securities Act. (Such immediately due payments shall be in addition to all other penalties then available under the law.) If, after one year from the date of this Consent Order, neither of those conditions has occurred, the suspended payment in paragraph 3 above is waived.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 30th DAY OF March, 2016.



JASON KANDER
SECRETARY OF STATE

Andrew M. Hartnett

ANDREW M. HARTNETT
COMMISSIONER OF SECURITIES

Consented to by:

Kenneth Edward Volkerding
Kenneth Edward Volkerding,
RESPONDENT

Approved as to Form:

David Simkins, Attorney for Respondent