

**STATE OF VERMONT
DEPARTMENT OF FINANCIAL REGULATION**

In Re: JACK TRAINHAM &)	
RETIREMENT AND COLLEGE.)	Docket Nos. 19-029-I & 19-029-S
FINANCIAL SERVICES OF)	
VERMONT, LLC)	

STIPULATION AND CONSENT ORDER

The Vermont Department of Financial Regulation (the Department), Jack Trainham, and Retirement and College Financial Services of Vermont, LLC (collectively, "Respondents") hereby agree and stipulate as follows:

Introduction and Parties

1. The Department, through its Commissioner, pursuant to 8 V.S.A. §§ 11, 12, 15, and 3661, and 9 V.S.A §§ 5602 and 5604, is charged with enforcing the insurance and securities laws of Vermont and authorized to investigate insurance producers and companies to determine compliance with Vermont law.

2. Jack Trainham is an insurance producer licensed in Vermont holding licenses NPN # 2112894 and Vermont license # 301919. He is the sole member of Retirement and College Financial Services of Vermont, LLC. At all times relevant herein, Respondents offered college and retirement planning services from a principal place of business located in Essex, Vermont.

Findings of Fact

3. On or about May 7, 2018, the Department, through both its Insurance and Securities Divisions, received a consumer complaint (the Complaint) regarding advice offered by the Respondents.

4. In response to the Complaint, the Department began an investigation into the business activities of Respondents.

5. As part of its investigation, and pursuant to an administrative subpoena, the Department received documents from Respondents relative to their college financial planning clients and related business activities. The Department's subpoena requested, and Respondents produced, documents for a period spanning more than five years from January 1, 2014 to March 31, 2019.

6. In relevant part, the documents showed that Respondents were marketing their services to clients using annuity illustrations drafted by Trainham. However, Trainham's illustrations failed to show that the projected values were not guaranteed and that the annuities would be subject to a substantial surrender charge upon liquidation. These overly optimistic, misleading illustrations were found in client files as recently as 2018. Trainham's files included carrier-provided and approved detailed basic illustrations. Trainham contends he did not consider his illustrations to be the equivalent of basic or supplemental illustrations.

7. The illustrations described above were not approved for use by the companies with whom Trainham was an appointed agent.

8. The companies with whom Trainham was an appointed agent, and whose annuity products he sold to clients, required that their agents use only marketing materials, including illustrations, which had been pre-approved by the company.

9. Further, the appointing companies stated, upon reviewing the materials, that the materials being used by Respondents would not have been approved because of their potential to mislead clients.

10. Respondents had not disclosed to the insurance companies that they were using unapproved marketing materials and in fact, had represented to the companies they were using only approved marketing materials.

11. The Department's investigation further revealed:

A. For numerous clients, Respondents recommended a plan which involved liquidating an existing asset, often a fund containing securities, taking out Parent Plus or similar loans, and purchasing a life insurance product.

B. Trainham represented that he verbally informed clients of available options and various costs associated with various products but failed to fully document the options presented. Respondents' files revealed no evidence that Respondents had presented a range of options to clients.

C. Respondents' files further revealed no evidence that Respondents fully disclosed all costs associated with the transactions, so that the clients could evaluate the costs and benefits of a recommended plan.

D. In at least ten files, there was direct evidence that Respondents had advised clients to liquidate securities. Trainham advised clients that certain assets could be liquidated. Some of the assets identified contained securities.

E. In one file, there was evidence Respondents had advised a client to liquidate a trust consisting primarily of securities, where estate counsel expressed concerns that liquidation of trust assets would bring those assets into the client's taxable estate, and was not familiar with financial aid eligibility.

12. Trainham has held a resident insurance producer license in Vermont since 1992 and has not previously been disciplined by the Department.

13. Respondents are not registered in any capacity with the Securities Division and thus are not licensed to give investment advice.

14. Respondents have fully cooperated with the Department in its investigation of this matter.

Conclusions of Law

15. Pursuant to 8 V.S.A. §§ 11, 12, 15 and 3661 and 9 V.S.A. §§ 5602 and 5604, the Commissioner is charged with enforcing the Insurance and Securities laws of the State of Vermont.

16. It is a violation of 8 V.S.A. § 4724(1) for a person to issue any illustration which misrepresents or fails to adequately disclose the benefits, conditions, exclusions, limitations, or terms of any insurance policy. On at least nine occasions, Respondents violated Section 4724(1) by using illustrations which failed to present the full range of guaranteed and non-guaranteed elements.

17. It is a violation of 8 V.S.A. § 4724(13) for a person to misrepresent insurance products or services. On at least nine occasions, Respondents violated Section 4724(13) by using illustrations which did not accurately represent the realistic performance of the relevant insurance product.

18. It is a violation of 8 V.S.A. § 4804(a)(9) to use unapproved marketing materials. On at least nine occasions, Respondents violated Section 4804(a)(9) by using unapproved marketing materials.

19. Pursuant to Reg I-98-1, Section 7 (A)(7) and (9), it is unlawful for a person to use illustrations showing non-guaranteed elements which does not also contain certain required disclaimers and which, on each page, also refers to the guaranteed elements of the policy. On at

least nine occasions, Respondents violated Reg I-98-1, Section 7 (A) (7) and (9) by using illustrations which failed to reference both guaranteed and non-guaranteed elements.

20. Pursuant to Reg I-98-1, Section 7 (A) (11), it is also unlawful to use illustrations which fail to fully disclose surrender charges and applicable policy loans and loan interest. On at least nine occasions, Respondents violated Reg I-98-1(11) by using illustrations which failed to fully disclose surrender charges and related costs.

21. Pursuant to 9 V.S.A. Sections 5403(a) and 5404(a) and Bulletins 161 and 198, it is unlawful for a person to give investment advice without being duly licensed to do so. On at least ten occasions, Respondents violated Sections 5403 (a) and 5404(a) and Bulletins 161 by advising clients to sell assets containing securities without being duly licensed to do so.

22. Pursuant to 8 V.S.A. Sections 3661 and 4726, the Commissioner may enter orders to enforce the insurance laws and regulations of the State of Vermont and may impose administrative penalties for violations of those laws.

23. Pursuant to 9 V.S.A. Section 5604, the Commissioner may enter orders to enforce the securities laws of the State of Vermont and may impose administrative penalties for violations of those laws.

Consent Order

24. If Respondents fail or neglect to comply with any of the terms and conditions set forth in this Stipulation and Consent Order, the Department may, on written notice to Respondent, institute any legal or administrative proceedings it deems appropriate to enforce the Order and to seek such other appropriate sanctions, and Respondents shall consent to the entry of judgment for any unpaid balance.

25. Respondents shall pay administrative penalties to the Department, as follows:
- A. \$50,000 fine for the insurance violations, all of which shall be suspended as long as Respondents remain in compliance with all terms and conditions of this Order.
 - B. \$150,000 fine for the Securities violations, \$120,000 of which shall be suspended as long as Respondents remain in compliance with all terms and conditions of this Order.
 - C. \$5,000 payment toward investigative costs incurred by the Insurance Division.
 - D. Respondents shall pay the sum of \$15,000 to the Department within 30 days of the entry of this Order, \$10,000 of which shall be allocated to the securities fine and \$5,000 of which shall be allocated to the insurance costs. The balance of \$20,000 due on the securities fine shall be paid in equal quarterly installments of \$2,500 starting 90 days from the date of this Order.
 - E. Any violation of Paragraphs 25 and 28 of this Order shall result in all suspended balances becoming due.
26. All Vermont insurance licenses held by Respondents shall be suspended for period of not less than six (6) months, beginning December 20, 2019 and running through June 20, 2020.
27. This Stipulation and Consent Order dissolves and supersedes the Department's July 16, 2019 Ex Parte Order to Cease and Desist in all respects.
28. Respondents agree to take the following corrective action to address the violations outlined in this Order:

A. Respondents permanently cease and desist from using illustrations, charts, or any written marketing materials which have not been approved by the appointing insurance carrier or which fail to comply fully with Regulation I- 98-1.

B. Respondents obtain and document insurance company approval of any written materials provided to clients in connection with life insurance advice.

C. Respondents participate in training, in form and substance acceptable to the Department, relative to the use of illustrations and the documentation of product suitability.

D. Respondents document in writing the suitability of each proposed college financing plan in which insurance products are sold, including all alternatives considered.

E. Until all payments required by Paragraph 25 have been made, Respondents provide the Department with annual reports of his activity in Vermont, including the documents described in paragraphs 28(A) through (D) of this Order.

F. Respondents reimburse the Department for the costs of any future examination or audit of his records regarding the matters resolved by this Stipulation and Consent Order.

29. Nothing in this Stipulation and Consent Order shall be construed as limiting the Commissioner's authority to investigate Respondents for matters not resolved by this Stipulation and Consent Order or for unrelated matters.

30. Nothing herein shall be construed as limiting any private action a person may have.

31. Respondents acknowledge that this Stipulation and Consent Order constitutes a valid order duly rendered by the Commissioner and agree to be fully bound by it.

32. Respondents acknowledge that this Order constitutes a finding by the

Commissioner that Respondent has violated Vermont law as set forth above and agrees not to contest such findings.

33. Respondents acknowledge that noncompliance with any term of this Order shall constitute a violation of a lawful order of the Commissioner.

34. Respondents, without admitting the truth of the Department's allegations and solely for the purpose of resolving this administrative action, have agreed to enter into this Stipulation and Consent Order with the Department on the terms and conditions set forth herein in lieu of proceeding with a hearing and agree not to contest their validity in the event of any future administrative or judicial action by or involving the Department or another state or federal regulator. Respondents acknowledge that the findings of fact, conclusions of law, and claim amounts set forth herein shall be binding on them in any subsequent proceeding which may be filed by either of them under Title 11 of the United States Code.

35. Respondents consent to the entry of this Order and acknowledge their consent is given freely and voluntarily and that no promise has been made to induce them to consent except as otherwise stated herein.

36. Respondents acknowledge that they have been represented by counsel in this matter and voluntarily waive their right to a hearing and to judicial review of this matter, including their right to a hearing before the Commissioner or his designee and all other procedures otherwise available under Vermont law, the rules of the Department, and the provisions of Title 3, Chapter 25.

37. Respondents further acknowledge the Commissioner retains jurisdiction over this matter for purposes of enforcing the Order.

38. This Order shall be governed by and construed under the laws of the State of Vermont.


39. Respondents acknowledge their understanding of all terms, conditions, and obligations contained in the Consent Order and further acknowledge that should they fail to comply with any provision of the Consent Order, the Commissioner may impose additional sanctions and seek appropriate relief, subject to Respondent's right to a hearing pursuant to Vermont insurance laws.

December 20, 2019
Date



Jack Trainham

December 20, 2019
Date



Retirement and College Financial
Services of VT, LLC
By its: Sole Member

Entered at Montpelier, Vermont this 20th day of December 2019.



Michael S. Pieciak, Commissioner
Vermont Department of Financial Regulation