

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF )  
FINANCIAL SERVICES, )  
 )  
Petitioner, )  
 ) Case No. 07-1901PL  
vs. )  
 )  
FENTON EUGENE TURNER, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Notice was provided and on July 19, 2007, a formal hearing was held in this case. The hearing commenced at 9:00 a.m. Authority for conducting the hearing is set forth in Sections 120.569 and 120.57(1), Florida Statutes (2007). The hearing took place at the offices of the Division of Administrative Hearings, the DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida. The hearing was held before Charles C. Adams, Administrative Law Judge.

APPEARANCES

For Petitioner: James A. Bossart, Esquire  
Department of Financial Services  
Division of Legal Services  
200 East Gaines Street  
Tallahassee, Florida 32399-0333

For Respondent: Felton Eugene Turner, pro se  
8464 Vickers Road  
Hahira, Georgia 31632

STATEMENT OF THE ISSUE

Should Petitioner impose discipline against Respondent's insurance agent's license for violation of various provisions within Chapters 624 and 626, Florida Statutes (2004)?

PRELIMINARY STATEMENT

On January 31, 2007, in Case No. 83179-07-AG, before the Department of Financial Services, an Administrative Complaint was filed against Respondent within three separate counts involving three separate customers. Respondent was accused of violating Sections 624.11(1), 626.611(7), 626.611(8), 626.621(2), 626.621(6), 626.901(1) and 626.9541(1)(a)1., Florida Statutes (2004).

The Administrative Complaint provided Respondent an explanation of his rights in addressing the Administrative Complaint. To facilitate that choice, Respondent was provided a form referred to as an "Election of Proceeding." He executed the form by choosing the third option, in which he disputed one or more of the factual allegations within the Administrative Complaint and requested a hearing pursuant to Section 120.57(1), Florida Statutes, to be held before the Division of Administrative Hearings (DOAH).

On April 30, 2007, consistent with Respondent's request, Petitioner forwarded the case to DOAH to assign an administrative law judge to conduct a hearing. The assignment

was made by Robert S. Cohen, Director and Chief Judge of DOAH in reference to DOAH Case No. 07-1901PL. The assignment was to the present administrative law judge.

Notice was provided and the hearing took place on July 19, 2007.

Prior to the hearing Petitioner moved to amend the Administrative Complaint. That motion was unopposed. On June 12, 2007, an order was entered granting the motion to amend. The case proceeded on the Amended Administrative Complaint. The Amended Administrative Complaint added Count IV alleging a violation of Sections 624.11(1), 626.611(7), 626.611(8), 626.621(2) and 626.901(1), Florida Statutes (2004). The Amended Administrative Complaint incorporated the original Counts I through III as well, and addressed the possibility of the imposition of punishment or penalties consistent with the expectations of the provisions of Sections 626.611, 626.621, 626.681, 626.691, and 626.9521, Florida Statutes (2004).

At hearing Petitioner called Patti Turpine as its witness. Petitioner's Exhibits numbered 1 through 7 were admitted. Petitioner's Exhibits numbered 2 through 4 are the depositions of the witnesses S.T., G.H., and J.H.C., respectively.

At hearing Respondent testified in his own behalf and called Marlene Renaud to testify. Respondent's Exhibits

numbered 1 through 23, 112 through 115, 118 and 119 were admitted.

Upon agreement of the parties the deposition of Earl Saulter was taken post-hearing, and was filed August 10, 2007. It has been considered together with the hearing testimony and exhibits presented at hearing.

On August 21, 2007, the hearing transcript was filed. Petitioner filed a proposed recommended order that was considered in preparing the Recommended Order. Respondent did not file any form of post-hearing submission.

#### FINDINGS OF FACT

##### License

1. On April 2, 1997, Respondent was licensed in Florida as a non-resident life and health agent (Type class 8-18). Respondent continues to have active appointments in Florida for American Heritage Life Insurance Company.

##### Money Tree

2. Money Tree Lending Group, Inc. (Money Tree) was licensed by the Department of Financial Services, Office of Financial Regulation as a mortgage lending company. Its license type was CL. The license number was Reg. License I.D.: L100000236977.

3. Money Tree was the subject of court action in State of Florida, ex. rel., the Department of Financial Services of the State of Florida, Relator, vs. The Money Tree Lending Group, Inc., a Florida corporation, Respondent, in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, Case No. 2005 CA 1103. In that matter, on May 11, 2005, the circuit court judge entered an order to seize Respondent's property. Under the court order, the Relator took possession and control of "property, books, documents, accounts, including bank accounts, and other records . . ." of Money Tree. Beyond that date Money Tree was not allowed to transact business, except with the Relator's written consent under terms in the court order.

4. On June 23, 2005, the circuit court judge in Case No. 2005 CA 1103 entered an "Order Appointing the Florida Department of Financial Services Receiver of the Money Tree Lending Group, Inc., for Purposes of Liquidation, Injunction and Notice of Automatic Stay." As the order contemplates, Petitioner was granted authority to "take immediate possession of all the property, assets, and estate, and all property of every kind whatsoever and wherever located belonging to Respondent . . .", referring to Money Tree. The Relator was further allowed to liquidate the assets of Money Tree.

5. Patti Turpin is employed by Petitioner in its Division of Rehabilitation and Liquidation. She served as a receiver for Money Tree under authority in Circuit Court Case No. 2005 CA 1103.

6. Ms. Turpin also is aware that Money Tree was never issued a certificate of authority from Petitioner authorizing the sale of insurance or annuities.

7. As of the hearing date, Money Tree was still in liquidation and Petitioner was preparing to offer additional distribution of monies recovered from Money Tree. In advance of the liquidation, Petitioner has paid out monies to annuitants who purchased annuities from Money Tree. Money recovered on behalf of Money Tree amounts to approximately \$850,000.00, with the expectation that 80 percent of monies paid for the original investments in annuities be returned to the annuitants. The possibility exists that an additional five percent would be returned to the annuitants.

8. Respondent was affiliated with Money Tree in a manner that will be explained. Ms. Turpine, as receiver in association for Money Tree, has not received any return of money from Respondent pertaining to his affiliation with Money Tree. Respondent earned approximately \$130,000.00 in commissions for selling annuities for Money Tree. The level of his involvement is reflected in Petitioner's Exhibit numbered seven, which shows

approximately 90 sales of annuities through Respondent's association with Money Tree, the amount invested by customers and the rate of return.

Affiliation

9. On March 2, 2005, Petitioner wrote Respondent care of his company First Capital Financial Incorporated (First Capital), asking that a response be made to Petitioner's Division of Consumer Services. The basis of the inquiry was pertaining to an investigation of Money Tree. The inquiry stated:

It has been brought to our attention that you are selling an investment for a three year term. The product resembles an annuity but appears not to be. We are further advised that you are selling this product while operating out of The First Capital Financial Incorporated in Winter Haven, FL. Your licensing record suggests you hold a non-resident license that lists your permanent address as Hahira, GA. We ask that you provide our office with complete documentation of this product offered by the Money Tree. This should include a definition of what it is, under what regulatory authority it falls and how you are able to offer it in Polk County, FL while a resident of Hahira, GA.

So that we may properly respond to this request, please furnish us with a complete report of your position on the matter, including any documentation that supports your position. Please reference Service Request number 1-100931056 on all reports and attachments. Your complete reply, to Daniel G. Amend, must be received by March 17, 2005.

10. On March 3, 2005, a fax was sent from Jerry Patterson an employee with Petitioner, in which he asked Respondent to "Please provide the Florida License Company Code Number of the Money Tree Lending Group, Inc., or the annuity company they use. As you know they must be licensed in the State of Florida." In turn Phil Sampiere, president of Money Tree, told Respondent to send information to the Petitioner that had been prepared by Mr. Philip A. Sampiere, Jr. Respondent dispatched that information to Petitioner. The information prepared by Mr. Sampiere is reflected in Respondent's Exhibit Numbered 11. The document is on a letterhead by the Money Tree and in the body its states:

Fees. When you buy a fixed immediate annuity, you will pay no loads or management fees. That's generally true for many kinds of "fixed" annuities. But if you buy a "variable" annuity, however, you will pay what's known as a "mortality and expense" fee plus an investment management fee to cover the cost of managing the underlying investments. You may also pay an annual account maintenance fee.

THE EXEMPTIONS LISTED BELOW ARE SELF-EXECUTING AND DO NOT REQUIRE ANY FILING WITH THE DEPARTMENT EXEMPT SECURITIES

517.051 Exempt Securities.-

The exemptions provided herein from the registration requirements of s. 517.07 are self-executing and do not require any filing with the department prior to claiming such exemption. Any person who claims

entitlement to any of these exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following securities:

(10) Any insurance or endowment policy or annuity contract or optional annuity contract or self-insurance agreement issued by a corporation, insurance company, reciprocal insurer, or risk retention group subject to the supervision of the insurance commissioner, or any agency or officer performing like functions, of any state or territory of the United States or District of Columbia.

The Money Tree Lending Group, Inc., is supervised by the State of Florida Department of Financial Services and believes it is correct in claiming this exemption according to Florida state law. If you need further explanation please contact Philip Sampiere at the corporate office 941-764-6767 at extension 204.

The Money Tree Lending Group, Inc.

Philip A. Sampiere, Jr.  
President

11. Mr. Sampiere had also faxed Respondent a copy of Section 517.051, Florida Statutes (2004), with emphasis placed on Subsection (10), to Petitioner to answer its inquiry concerning the sale of annuities through Money Tree. Respondent was aware of Section 517.051, Florida Statutes (2004), and its language.

12. Respondent was also aware of information of the Petitioner in its Office of Financial Regulation concerning the Money Tree license type CL, ID L1000005023697.

13. A Randy Menne had also provided Respondent with the language of Section 517.051, Florida Statutes (2004), and licensing information from the Department of Financial Services, Office of Financial Regulation pertaining to Money Tree and its license type CL.

14. In responding to Petitioner concerning Respondent's Georgia residence, and his affiliation with Money Tree, on March 16, 2005, Respondent wrote Petitioner. In that correspondence he said:

Dear Sir:

I have lived in Georgia for over 47 years. Because I live less than 20 miles from the Florida State line I have held a Florida non-resident license for many years. For the last several years I was a State Manager or District Manager for several major insurance companies, over-seeing Georgia and Florida. In my earlier years, when I obtained my non-resident license I was told that if I had a permanent address in Georgia that I only qualified for a non-residence license for Florida.

During this last year I have traveled to Winter Haven Florida, where I have family and decided to sell annuities a few days a week in that county. I drive down and spend a few nights and go back to my home in Georgia. I have attached documents showing that I do live in Hahira Georgia. If I have misunderstood Florida's non-resident license

procedures, please call me, and I will do whatever is necessary to correct the problem.

To answer your question about the Money Tree Lending Group, Inc., I am only a sales rep with that company. I signed on with them a few months ago, and I feel I am not qualified to answer your questions regarding the product issued by The Money Tree Lending Group, Inc. without their consent.

I have contacted the owner of The Money Tree Lending Group, Inc., Philip Sampiere of Port Charlotte Florida on this matter. Because I was in Georgia the last week and 1/2 I only received your letter on March 14, 2005. In order to send something to you before the deadline, Mr. Sampiere faxed me these 3 pages and told me to please tell you that if this does not answer your questions and concerns to please contact him so that he may better explain, in detail, and let you speak with his contacts within your department.

Philip A. Sampiere, Jr.  
3400 Tamiami Trail Suite 203  
Port Charlotte, FL 33952  
Phone: 941-764-6767 Fax: 941-764-7660  
E-mail: TLendingGR@aol.com

If I can be of any help, or you need further information, please call or send me a fax.

Sincerely,

F. Gene Turner

15. After Respondent wrote Petitioner, Mr. Sampiere wrote Respondent on March 30, 2005, concerning this subject. In that letter Mr. Sampiere stated:

Gene,

I wanted to let you know that I have contacted the State of Florida regarding the letter they sent you about our annuity products.

As far as your License and status with the State we hope you are addressing this issue. But with regards to supplying additional information about our products I wanted to let you know that we are and have fully opened our book records, etc to the State for them to review. To date they have not been able to issue a letter claiming any violation of any rules or exemption we are governed to follow.

Our attorney has been in touch with the State head legal advisor how [sic] could not give him a reason or rule that we are in violation of this was about mid day Wed the 30th of March 2005.

So until we are given the rules we are in violation of or a letter demanding we stop selling our products. We will continue to accept application [sic] from the public and thru our third party annuity sales force.

16. Respondent became aware of correspondence dated May 5, 2005, from Gary Klein, Esquire, attorney for Money Tree addressed to Mr. Sampiere. In pertinent part Mr. Klein in his advice to the client Mr. Sampiere said "In issuing an annuity contracts [sic], I am of the opinion that your Company meets the exemption under Florida Statute 517.051(10), as it is written. Your Company is a Florida Corporation, is issuing annuities and is regulated by the bank regulator." Later Mr. Klein states

" . . . I believe your annuity sales are legal under the controlling law of the State."

17. On May 9, 2005, Mr. Klein wrote to Ronald K. Lovejoy, Special Investigator, Bureau of Investigation of the Petitioner, questioning the regulatory activities of Petitioner in relation to Money Tree sales agents and the sale of annuity products. Respondent became aware of this correspondence.

18. On August 10, 2005, Respondent wrote Petitioner on the subject of the sales of annuities of Money Tree. In that correspondence he stated:

August 10, 2005

Re. CS# 8591CA#15628

To the Department of Financial Services:

I am writing this letter in hopes that you will in some way be able to understand that I did everything in my power and everything I knew how to make sure The Money Tree Lending Group was a known, reputable company in good standing with the State of Florida.

I first learned about The Money Tree Lending Group around the first of June 2004 when Randy Menne, the manager of another company I represent called me and told me about an advertisement in the newspaper for a short term annuity. He agreed to check the company out thoroughly and get back with me about his findings. Two weeks later Randy called to inform me that he and his agents were going to start marketing the product because "everything was good with the company and they checked out okay". That same week I drove two hours to meet with Randy and his agents so that we could go over all paper work, I was interested to see

what he had done to investigate this company. Randy showed me several documents stating that the Money Tree was a legitimate company.

After leaving Randy's office I still felt hesitant about the company and the product, so Randy said he would have the President of the company call me and discuss my concerns. This really impressed me, I had never had the president of a company call me personally before. After speaking with the president I was convinced that the company was truly exempt from certain requirements.

After reviewing all documentation and speaking with the president I decided to call the State of Florida Department of Financial Services and ask to speak with someone who understood the "exemption rule". I spoke with Earl Saulter for a very lengthy amount of time and he answered all of my questions in great detail, and just as I hoped, he confirmed that the type of annuity was exempt. At this point everything seemed to be good and I was eager to start marketing this product. I started selling this product in October 2004.

On April 29, 2005, Mr. Ron Lovejoy came into my office. I was not in at the time, however, my secretary called me and I spoke with Mr. Lovejoy over the phone for quite some time to find out what was going on. I was dumbfounded to learn of the situation. Mr. Lovejoy asked that I not contact my manager nor Money Tree at this time. I cooperated and opened my office up for a full investigation.

Mr. Lovejoy revisited my office on May 4, 2005, he stated that he believed Money Tree had moved their money somewhere and that no one knew where it was. At this time I managed to find a new check in one of my client's files which allowed the state to find new routing numbers.

I can assure you that if I had knowledge of any wrong doing from the Money Tree, I would have never sold this product. Furthermore, when I first realized that there could be a potential problem with the Money Tree, I immediately stopped marketing this product on my own. I do feel that I used all of the resources available to me in making the decision to sell the annuity that The Money Tree offered, for example: speaking with a representative from the Department of Financial Services, the president of the Money Tree, and other agents who were currently marketing this product; as well as written documents including information on The State of Florida website, and an active status letter from the State Florida Dept. of Financial Services and a letter from a Florida State Attorney. All of these documents stated that The Money Tree was in good standing with The State of Florida. I have enclosed all of this documentation and I feel that it is pertinent information that confirms the actions I took to check out The Money Tree are as I have stated in this letter.

In closing I would like to add that I am an honest person trying to run an honest company who respects the State of Florida. I would never jeopardize the well-being of my family or my business. If I can help in any way to resolve this matter please let me know.

Sincerely,

Gene Turner

19. Concerning a possible conversation Respondent had with Mr. Saulter, at hearing Respondent said that Mr. Saulter told Respondent about Money Tree "that they were exempt from the securities, that I could sell them from this company, they were

in good standing." This is in reference to the sale of annuities. Then Respondent said that he was not sure whether Mr. Slater used the words "securities" or that Mr. Saulter used the word "insurance" in the conversation. Respondent also stated at hearing that Mr. Saulter told him that Money Tree was ". . . a good, legitimate company, no actions taken against them, no disciplinary action and their status was active." The conversation, if it took place, had nothing to do with Money Tree being licensed as a mortgage broker or mortgage lender when Respondent spoke to Mr. Saulter. Respondent in his testimony said that Mr. Saulter told Respondent ". . . I could sell the annuities . . . ." This is understood to mean sell the annuities offered by Money Tree.

20. As established in his post-hearing deposition, Mr. Saulter works for the Petitioner in its Division of Securities. He reviews securities offerings. He addresses questions related to exemptions recognized in Section 517.051, Florida Statutes. He had those responsibilities at times relevant to this inquiry. Mr. Saulter's duties do not include the regulation of annuities or insurance products pertaining to license requirements to participate in those activities. He would not be authorized to answer questions concerning the opportunity to sell annuities. The securities exemption from registering securities as reflected in Chapter 517, Florida

Statutes, is unrelated to the provisions within the Florida Insurance Code found in Chapters 624 through 628, Florida Statutes. In Mr. Saulter's experience he is not involved with the Florida Insurance Code. Before taking the deposition, Mr. Saulter had never heard the name Money Tree Lending Group. He does not remember speaking to Respondent. He does not remember speaking to Mr. Sampiere.

21. Having considered the testimony of Respondent at hearing and remarks set forth in his August 10, 2005 correspondence concerning his alleged conversations with Mr. Saulter and the deposition testimony from Mr. Saulter, either no conversation took place or the conversation did not transpire as represented by Respondent.

#### Transactions

##### J.C.T., Jr. and S.J.T.

22. The Ts, husband and wife, reside in Avon Park, Florida. Mr. T. was born on April 10, 1935; Mrs. T. was born April 6, 1936. They are retired. Mr. T. is a retired farmer, and, and Ms. T. retired from her profession as an interior decorator.

23. The Ts had received an inheritance from Mr. T's father of \$374,000.00. They were interested in investing some of the money. The Ts saw an advertisement in a newspaper related to the purchase of certificates of deposit (CDs). The

advertisement was in association with First Capital, Respondent's company. The Ts were considering purchasing a CD from a bank and perceived the opportunity from First Capital as an alternative for purchasing the CD.

24. The Ts met with Respondent in his office in Winter Haven, Florida. Respondent asked the Ts what they were interested in by way of an investment. They explained that they were interested in immediately accessing the money that was invested, should they need the money. In particular they were concerned about the ability to address the financial needs of their 46-year-old son, who suffers with rheumatoid arthritis. They also were interested in being able to assist another son, who farms for a living and has cash-flow problems at times in putting out his crop.

25. Instead of purchasing a CD from Respondent, the Ts bought three Money Tree annuities from him. Respondent told the Ts that Money Tree was a new company. Respondent told the Ts that the annuities were a good product, although they were not insured. In particular Respondent told the Ts that the annuities were not FDIC insured. He commented that they were "solid." Respondent explained the annuities return on investment, as contrasted with the amount of return on the CD he offered. The Ts determined that the annuities were a better choice of investment.

26. Respondent in discussing the annuities purchased made no mention of the prospect that the Ts might lose money in the investment. Had they known that was a possibility, the Ts would have been concerned.

27. The Fixed Annuity Disclosure Statements associated with the purchases made it clear that the annuities offered by Money Tree were not a bank deposit, and were not FDIC insured or insured by any federal government agency.

28. Altogether the Ts bought \$200,000.00 worth of annuities; two in increments of \$50,000.00 and one for \$100,000.00.

29. The annuities were purchased utilizing application forms from Money Tree as executed by the Ts and Respondent by providing their signature on February 7, 2005.

30. The first of the fixed annuities was for \$50,000.00, at four percent return for 18 months, as reflected in the Fixed Annuity Disclosure Statement and Fixed Interest and Term Annuity Contract.

31. The second \$50,000.00 annuity was for four and one-half percent return for a period of 24 months. It also involved a Fixed Annuity Disclosure Statement and Fixed Interest and Term Annuity Contract. Finally, the \$100,000.00 annuity, as reflected in the Fixed Annuity Disclosure Statement was for five and a quarter percent return at 36 months. It had the

associated Fixed Interest and Term Annuity Contract as part of the transaction.

32. All Fixed Annuity Disclosure Statements were signed by the Ts and Respondent.

33. In these transactions involving the annuities, Respondent was acting as the agent for Money Tree.

34. In separate installments, the Ts have recovered \$142,000.000 and approximately \$20,000.00 of their purchase price from the Money Tree receiver.

J.H.C.

35. Mrs. J.H.C., born June 7, 1934, lives in Lake Placid, Florida. She retired from the real estate business she conducted in Miami, Florida. Mrs. J.H.C. and her husband Mr. R.L.C. saw ads in the newspapers. One of those ads referred to 12-month CDs that were FDIC insured with a 3.70 annual percentage rate of return. The ad referred to First Capital and Respondent's business address in Winter Haven, Florida. A second newspaper advertisement was similar in nature, with the exception that it referred to a 3.84 annual percentage rate of return.

36. The Cs went to Respondent's office in Winter Haven, Florida. They discussed the CDs that had been advertised. Mrs. C. wanted to roll-over monies from an individual retirement account (IRA) to place in CDs. Respondent told her he could not

do that. He told her that he could put the money into an annuity which would be very safe. At the time Mrs. C. had no precise understanding of what an annuity was or how an annuity functioned as an investment. She relied upon Respondent's expertise in that connection.

37. On February 14, 2005, Mrs. C. purchased a \$10,000.00 annuity from Respondent for an 18-month period, with a four percent interest rate of return. The annuity was through Money Tree. The purchase was made upon a Money Tree application form for the fixed annuity. Mrs. C. made the payment for the annuity to The Money Tree by a check in the amount of \$10,000.00. The check that was written by Mrs. C. in the memo section said that it was in relation to "IRA Fixed Annuity." In completing the transaction, a Fixed Annuity Disclosure Statement upon a form provided by Money Tree was signed by both Mrs. C. and Respondent and a Fixed Interest and Term Annuity Contract was entered into related to the Money Tree annuity.

38. The Fixed Annuity Disclosure Statement made it clear that the annuity offered by Money Tree was not a bank deposit, was not FDIC insured or insured by any federal government agency.

39. In addition, a form was executed related to First Capital and signed by Respondent and Mrs. C., that referred to the guaranteed rate of return, on what was described in the form

as a individual deferred annuity certificate. It explains surrender charges, withdrawal privileges, the free look period, and information about taxes.

40. The check in payment for the annuity was cashed and the money taken out of Mrs. C's checking account.

41. Respondent did not tell Mrs. C. that she might lose some part of her investment when entering into the annuity contract. The possible loss of investment was an important consideration to her.

42. Mrs. C. had \$7,067.00 in one check and an additional \$1,000.00 in a second check returned to her from the Money Tree receiver, pertaining to her \$10,000.00 annuity purchase.

G.R.H. and M.E.H.

43. Mr. G.R.H. and Mrs. M.E.H., his wife, live in Sebring, Florida. He was born January 31, 1935; she was born July 1, 1938. Mr. H. is a retired automobile assembly worker.

44. Mr. H. saw an advertisement in a newspaper which offered a 12-month CD at 3.65 percent rate of return. It referred to First Capital. It gave Respondent's business address at Winter Haven, Florida. Mr. H. was impressed with the fact that the CD advertised was at a higher rate of return than he could receive at local banks where he lived. This advertisement was made sometime in October of 2004.

45. Mr. H. called Respondent's office.

46. The Hs drove to meet with Respondent in his Winter Haven office. Once there, Respondent in discussing the CD advertisement asked Mr. H. if he had access to email. The answer was no. Respondent then told Mr. H. that he could not get the CD in the advertisement because it was not a CD offered locally. Respondent told Mr. H. if Mr. H. had access to email, there would not have been a problem with the purchase. This led to a discussion of an annuity at a 3.75 percent rate of return for an 18-month period as offered through Money Tree. An annuity was purchased by the Hs in the amount of \$25,000.00. It was based upon the completion of the Money Tree Fixed Annuity Application, as signed by the Hs and Respondent on October 7, 2004. A Fixed Annuity Disclosure Statement was also executed and signed by the Hs and Respondent, indicating that the annuity offered through Money Tree was not a bank deposit, not FDIC insured and not insured by any other federal government agency. A Fixed Interest and Term Annuity Contract was entered into in the transaction. The Hs paid the \$25,000.00 cost by a check written by Mrs. H.

47. During the transaction Mr. H. told Respondent that he did not really believe in annuities. In reply Respondent told Mr. H. that he did not need to worry about it because in 18 months it would mature and be surrendered and the principal paid for the annuity with the accrued interest would be returned.

Ultimately Mr. H. thought it was a safe investment to buy the annuity given the short turn around in the maturity date.

48. The Money Tree receiver reimbursed the Hs in an amount in excess of \$20,000.00 for their purchase.

#### Other Customers

49. Respondent concedes the sale of Money Tree annuities to 89 to 90 customers. In the transactions his explanation of risk factors was left to the written information that was provided, saying that the investment was not FDIC insured, implying in his mind that there were some risks. No other explanation was made concerning risks for making an investment in the annuities.

50. For verification of his standing with Money Tree, Respondent relied on explanations provided to him by Mr. Sampiere and Mr. Menne; a review of the underlying information, as Respondent described the process involved with the annuities; a conversation Respondent said that he had with a State of Florida employee and a review of information on a web-site concerning Money Tree. Respondent believed Money Tree was in good-standing with the State of Florida and was not the subject of ongoing disciplinary action.

51. Once problems arose concerning the Money Tree business, Respondent made himself available in his office or by

telephone for a period of several weeks to address his customers' concerns.

CONCLUSIONS OF LAW

52. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding in accordance with Sections 120.569 and 120.57(1), Florida Statutes (2007).

53. Respondent is a licensed non-resident life and health agent (Type class 8-18) in Florida. He was licensed by Petitioner.

54. Petitioner had regulatory authority pursuant to the "Florida Insurance Code" over insurance matters, to include the activities of a non-resident life and health agent (Type class 8-18) at times relevant to this case. That authority is extended through Chapters 624 and 626, Florida Statutes (2004), by citations in the Amended Administrative Complaint.

55. In the general allegations set forth in the Amended Administrative Complaint it is stated:

4. At all times material to the dates and occurrences specific herein, the Money Tree Lending Group, Inc., hereinafter Money Tree Lending Group, transacted insurance or operated as an insurance company in Florida.

5. At no time material to the dates and occurrences herein did Money Tree Lending Group possess certificates of authority from the Department or the Office of Insurance Regulation to engage in the business of

insurance or to operate as an insurance company in Florida.

6. Money Tree Lending Group is not subject to any exception to the licensure requirement of the Florida Insurance Code in order to lawfully engage in the business of insurance or to operate as an insurance company in Florida.

7. On May 11, 2005, the Circuit Court of Leon County Florida, issued an Order to Show Cause and Order to Seize Property, Case No. 2005 CA 1103, against Money Tree Lending Group, prohibiting the company from further engaging in an unauthorized insurance business in this state and ordering the seizure by the Department of all financial assets held by the company.

8. At all times material to the dates and occurrences herein, you, FELTON EUGENE TURNER, did directly or indirectly represent or aid Money Tree Lending Group, as indicated in the numbered counts below, to unlawfully transact insurance in the State of Florida by the direct solicitation and sale of annuities to Florida insurance consumers.

56. Counts I through III refer to the transactions between Respondent, and in turn, J.C.T., Jr. and S.J.T.; J.H.C. and G.R.H. and M.E.H., related to Money Tree.

57. Count IV refers to Respondent's activities with Money Tree, generally described, in the period of January 2005 through April 2005, involving the other sales of annuities to unnamed persons.

58. This is a disciplinary case, and for that reason Petitioner bears the burden of proving the facts alleged.

That proof must be sufficient to sustain the allegations in the Amended Administrative Complaint by clear and convincing evidence. See Department of Banking and Finance Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). The term clear and convincing evidence is explained in the case In Re: Davey, 645 So. 2d 398 (Fla. 1994), quoting with approval from Slomowitz v. Walker, 429 So. 2d 797 (Fla. 4th DCA 1983).

59. Given the penal nature of this case, provisions within Chapters 624 and 626, Florida Statutes (2004), have been strictly construed. Any ambiguity favors the Respondent. See State v. Pattishall, 99 Fla. 296 and 126 So. 147 (Fla. 1930) and Lester v. Department of Professional Occupational and Regulations, State Board of Medical Examiners, 348 So. 2d 923 (Fla. 1st DCA 1977).

60. In deciding this case, it must be determined whether Respondent was transacting insurance in selling annuities for Money Tree. Section 624.10, Florida Statutes (2004), speaks to the transaction of insurance where it states:

**Transacting Insurance.**- "Transact" with respect to insurance includes any of the following, in addition to other applicable provisions of this code:

- (1) Solicitation or inducement.
- (2) Preliminary negotiations.

(3) Effectuation of a contract of insurance.

(4) Transaction of matters subsequent to effectuating of a contract of insurance and arising out of it.

61. The term "insurance" is defined at Section 624.02, Florida Statutes (2004), where it states:

**'Insurance' defined** - 'insurance' is a contract whereby one undertakes to indemnify another or pay or allow a specified amount or a determinable benefit upon determinable contingencies.

62. The term "insurer" is defined at Section 624.03, Florida Statutes (2004), where it states:

**'Insurer' defined.** - 'Insurer' includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance or of annuity.

63. The term "person" is defined at Section 624.04, Florida Statutes (2004), where it states:

**'Person' defined.-** 'Person' includes an individual, insurer, company, association, organization, Lloyds, society, reciprocal insurer or interinsurance exchange, partnership, syndicate, business trust, corporation, agent, general agent, broker, service representative, adjuster, and every legal entity.

64. Some insurance policies and other forms of agreements or services are exempt from the Florida Insurance Code, as described in Sections 624.123 through 624.129, Florida Statutes (2004). Selling the Money Tree annuities does not fit within those categories declared in the exemptions.

65. Subsection 624.401(1), Florida Statutes (2004), makes it incumbent upon Money Tree and Respondent as its agent to not transact insurance without a certificate of authority provided to Money Tree by the Office of Insurance Regulation of the Financial Services Commission, where it states:

(1) No person shall act as an insurer, and no insurer or its agents, attorneys, subscribers, or representatives shall directly or indirectly transact insurance, in this state except as authorized by a subsisting certificate of authority issued to the insurer by the office except as to such transactions as are expressly otherwise provided for in this code.

66. There is no exception to this requirement for Money Tree, as provided in other provisions of the Florida Insurance Code. Money Tree needed a certificate of authority to transact insurance and Respondent as its agent was not allowed to transact insurance in its absence. Money Tree did not have a certificate of authority to transact insurance, specifically in relation to the sale of annuities.

67. Counts I through III refer to identical statutory provisions constituting alleged violations. Count IV is similar in its allegations, with the exception that it does not refer to a violation of Sections 626.621(6) and 624.9541(1)(a)1., Florida Statutes (2004).

68. Counts 1 through IV refer to a violation of Section 624.11(1), Florida Statutes (2004), which states:

(1) No person shall transact insurance in this state, or relative to a subject of insurance resident, located, or to be performed in this state, without complying with the applicable provisions of this code.

69. Clear and convincing evidence was provided to prove that Respondent violated Section 624.11(1), Florida Statutes (2004), in relation to Counts I through IV, as agent for Money Tree. He proceeded to sell annuities without a certificate of authority to transact that form of insurance. Respondent's effort at defending his position by suggesting that Mr. Saulter, as Petitioner's employee, condoned these actions is not persuasive. It has not been found that Mr. Saulter gave Respondent those assurances. Moreover, Respondent's reliance upon Mr. Sampiere's attorney and the attorney's reading of the "Florida Securities and Investor Protection Act" at Section 517.051(10), Florida Statutes (2004), as allowing Money Tree to proceed to sell insurance in the form of annuities without a certificate of authority is misplaced and an unreasonable construction when considering the language of that provision. Section 517.051(10), Florida Statutes (2004) states:

**Exempt securities.**-The exemptions provided herein from the registration requirements of s. 517.07 are self-executing and do not require any filing with the office prior to claiming such exemption. Any person who claims entitlement to any of these exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions

of s. 517.07 do not apply to any of the following securities:

\* \* \*

(10) Any insurance or endowment policy or annuity contract or optional annuity contract or self-insurance agreement issued by a corporation, insurance company, reciprocal insurer, or risk retention group subject to the supervision of the insurance regulator or bank regulator, or any agency or officer performing like functions, of any state or territory of the United States or the District of Columbia.

70. Section 517.07, Florida Statutes (2004), describes in detail the necessity for the registration of securities. Section 517.051, Florida Statutes (2004), establishes exemptions from those registration requirements, annuities among them. Exclusion from the expectations set forth in Section 517.07, Florida Statutes (2004), in the sale or offer to sale of a security before it is registered is limited to that regulatory environment. It is not intended to relieve Money Tree from compliance with the Florida Insurance Code before transacting insurance through annuity sales. Those annuities may not be sold without a certificate of authority which was not obtained. Respondent's participation in those sales is not forgiven by resort to language set forth in Chapter 517, Florida Statutes (2004), the "Florida Securities and Investor Protection Act."

71. Counts I through IV to the Amended Administrative Complaint accuse Respondent of a violation of Section

626.611(7), Florida Statutes (2004), which states:

626.611 Grounds for compulsory refusal, suspension, or revocation of agent's, title agency's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.--The department shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, title agency, adjuster, customer representative, service representative, or managing general agent, and it shall suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist:

\* \* \*

(7) Demonstrated lack of fitness or trustworthiness to engage in the business of insurance.

72. Concerning Counts I through III, clear and convincing evidence has been provided to demonstrate a lack of trustworthiness on Respondent's part in the transactions conducted with those customers violating Section 626.611(7), Florida Statutes (2004). The manner and approach to selling the annuities to the customers when realizing that their interest was in purchasing a CD at a competitive rate, only to be directed away from that choice to the purchase of the unauthorized Money Tree annuity reflects adversely upon Respondent's trustworthiness. The proof is insufficient to show a violation in relation to those customers served as addressed

in Count IV to the Amended Administrative Complaint. Specific information about those transactions was not provided. Without it, no violation to Count IV in relation to Section 626.611(7), Florida Statutes (2004) has been shown.

73. Counts I through IV in the Amended Administrative Complaint refer to a violation of Section 626.611(8), Florida Statutes (2004), which allows for discipline to be imposed where there is a "demonstrated lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license or appointment." The proof is insufficient to show a violation of this provision. The provision addresses circumstances in relation to the exercise of adequate knowledge and technical competence in those transactions that are authorized by the license or appointment. The transactions here are not within the license or appointment, as being outside what would be allowed. Therefore the need for adequate knowledge and technical competence does not enter into the discussion. This provision has no relevance to the underlying factual allegations. Section 626.611(8), Florida Statutes (2004), has not been violated.

74. Counts I through III in the amended administrative complaint refer to a violation of 626.621(6), Florida Statutes (2004), which allows discipline:

**626.621 Grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.**--The department may, in its discretion, deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, adjuster, customer representative, service representative, or managing general agent, and it may suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

\* \* \*

(6) In the conduct of business under the license or appointment, engaging in unfair methods of competition or in unfair or deceptive acts or practices, as prohibited under part IX of this chapter, or having otherwise shown himself or herself to be a source of injury or loss to the public or detrimental to the public interest.

75. Clear and convincing evidence was provided to show that Respondent was a source of injury and loss to consumers who purchased Money Tree annuities from him. Respondent has violated Section 626.621(6), Florida Statutes.

76. Counts I through IV to the amended administrative complaint refer to a violation of Section 626.901(1), Florida Statutes (2004), which states:

(1) No person shall, from offices or by personnel or facilities located in this state, or in any other state or country, directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, any insurer not then authorized to transact such insurance in this state in:

- (a) The solicitation, negotiation, procurement, or effectuation of insurance or annuity contracts, or renewals thereof;
- (b) The dissemination of information as to coverage or rates;
- (c) the forwarding of applications;
- (d) The delivery of policies or contracts;
- (e) The inspection of risks;
- (f) The fixing of rates;
- (g) The investigation or adjustment of claims or losses; or
- (h) The collection or forwarding of premiums; or in any other manner represent or assist such an insurer in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state. If the property or risk is located in any other state, then, subject to the provisions of subsection (4), insurance may only be written with or placed in an insurer authorized to do such business in such state or in an insurer with which a licensed insurance broker of such state may lawfully place such insurance.

77. Clear and convincing evidence was shown to prove that Respondent violated Section 626.901, Florida Statutes (2004), in aiding and assisting Money Tree, not authorized to transact insurance in Florida, by the sell of annuities to the customers.

78. Counts I through IV to the amended administrative complaint refer to Section 626.621(2), Florida Statutes (2004), which subject Respondent to possible discipline for:

(2) Violation of any provision of this code or of any other law applicable to the business of insurance in the course of dealing under the license or appointment.

79. Clear and convincing evidence has been provided to show this violation, as previously described in relation to other substantive violations of the Florida Insurance Code, in the course of dealing with customers under Respondent's insurance license in association with Money Tree.

80. Counts I through III to the amended administrative complaint refer to Section 626.9541(1)(a)1., Florida Statutes (2004), which states:

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.-The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(a) Misrepresentations and false advertising of insurance policies.-Knowingly making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:

1. Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.

81. Clear and convincing evidence was presented to prove that Respondent misrepresented the nature of the annuities as to the safety of the investment. Conduct in violation of Section 626.9541(1)(a)1., Florida Statutes (2004), constituted as a part of the Florida Insurance Code, violated Section 626.621(2),

Florida Statutes (2004), all in relation to Counts I through III.

82. In addition to the penalties set forth in Section 626.611 and 626.621, Florida Statutes (2004), the Amended Administrative Complaint refers to penalties available in accordance with Sections 626.681, 626.691 and 626.9521, Florida Statutes (2004). Recognizing that some violations proven relate to Section 626.611, Florida Statutes (2004), call for a mandatory suspension, probation as envisioned by Section 626.691, Florida Statutes (2004) is not permissible, whereas administrative fines pursuant to Sections 626.681 and 626.9521, Florida Statutes (2004), could be imposed.

83. To decide the appropriate penalty, Florida Administrative Code Rules 69B-231.040, 69B-231.080, 69B-231.090 and 69B-231.160 have been utilized.

#### RECOMMENDATION

Upon consideration of the facts found and the conclusions of law reached, it is

#### RECOMMENDED:

That a final order be entered finding Respondent in violation of Sections 624.11(1), 626.611(7), 626.621(2) and (6), 626.901(1) and 626.9541(1)(a)1., Florida Statutes (2004), and suspending Respondent's non-resident life and health agent (Type class 8-18) license for a period of six months.

DONE AND ENTERED this 26th day of September, 2007, in  
Tallahassee, Leon County, Florida.

S

---

CHARLES C. ADAMS  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 26th day of September, 2007.

COPIES FURNISHED:

James A. Bossart, Esquire  
Department of Financial Services  
Division of Legal Services  
200 East Gaines Street  
Tallahassee, Florida 32399-0333

Felton Eugene Turner  
8464 Vickers Road  
Hahira, Georgia 31632

Honorable Alex Sink  
Chief Financial Officer  
Department of Financial Services  
The Capitol, Level 11  
Tallahassee, Florida 32399-0300

Daniel Sumner, General Counsel  
Department of Financial Services  
The Capitol, Level 11  
Tallahassee, Florida 32399-0307

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.