

**BEFORE THE DEPARTMENT OF COMMERCE AND INSURANCE
FOR THE STATE OF TENNESSEE, AT NASHVILLE**

TENNESSEE SECURITIES DIVISION,

petitioner,

v.

ELIZABETH (BETSY) KATHRYN MADDEN,

respondent.

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) No. 12.06-005434J
>
) No. 99-009
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CONSENT ORDER

WHEREAS, the Respondent, Elizabeth (Betsy) Kathryn Madden, hereby stipulates and agrees, except where noted hereinbelow, and subject to the approval of the Commissioner of the Department of Commerce and Insurance [hereinafter the Commissioner] to the entry of this Consent Order:

General Stipulations

It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of this Consent Order by the Commissioner. In the event the Commissioner does not accept and enter this Consent Order, the stipulations, conclusions and other provisions contained herein shall be of no force or effect; in such event, neither this Consent Order nor its existence or substance shall be admissible in evidence in any administrative or judicial proceeding:

2. This Consent Order is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order

not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings;

3. Respondent fully understands that this Consent Order will in no wise preclude additional proceedings by the Tennessee Securities Division against the Respondent for acts or omissions not specifically addressed in this Consent Order or for acts and/or omissions that do not arise from the facts or transactions herein addressed;

4. Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of this Consent Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Consent Order by the Commissioner.

Stipulated Facts

The Commissioner finds, as a matter of fact, and the Respondent, Elizabeth (Betsy) Kathryn Madden, hereby agrees to the following, that:

5 Respondent, Elizabeth (Betsy) Kathryn Madden [hereinafter sometimes Ms Madden], is currently licensed as an agent in the State of Tennessee, pursuant to Tenn. Code Ann. § 48-2-110;

6. In and around November of 1994, Ms. Madden began working for JMC Financial Corporation a/k/a James Mitchell & Company [hereinafter James Mitchell], a company that was at that time marketing and selling equity products for First Tennessee Bank [hereinafter the Bank].

7. On or about the 1st day of February, 1996, First Tennessee Brokerage, Inc..

[hereinafter sometimes FTBI] or the Bank purchased James Mitchell, and each of the employees then working for James Mitchell began working for FTBI, including Ms. Madden. Ms. Madden continued to be employed by FTBI up until on or about the 3d day of November, 1997;

8 In and around August of 1997, Ms. Madden was introduced to Sanford V Lichterman [hereinafter sometimes Mr. Lichterman] by a bank officer of the Bank. Mr. Lichterman desired to place Individual Retirement Account [hereinafter IRA] monies he and his wife then owned at two different insurance companies, Union Central Life Insurance Company and American United Life Insurance Company [hereinafter the insurance companies], into First Funds, a proprietary mutual fund of the Bank. The IRAs were composed of six (6) fixed annuity contracts, three (3) in Mr. Lichterman's name, and three (3) in his wife's name. Ms. Madden agreed to handle the transaction. At the initial August 7, 1997 meeting, Ms. Madden had Mr. Lichterman sign a personal investment profile, a pre-dispute arbitration agreement, an IRA application, a disclosure statement (which stated that his investment could fluctuate), and a First Tennessee Bank IRA transfer request form. Mr. Lichterman wanted the monies to be held in both his and his wife's name, so he took some of the documents home for his wife to sign. Mr. Lichterman took home the documents that required his wife's signature. On or about the 4th day of September, 1997, after both Mr. and Mrs. Lichterman had signed the appropriate documents, the documents were hand-delivered to FTBI;

9 Ms. Madden sent in the First Tennessee IRA transfer request form to the insurance companies which directed said insurance companies to send Mr. Lichterman's fixed annuity IRA monies to the Bank on or about the 5th day of September, 1997. These funds came to the Bank in the form of six checks, three checks from Union Central Life Insurance Company,

and three checks from American United Life Insurance Company totaling Seventy-Seven Thousand One Hundred Forty Dollars and Thirty-Five Cents (\$77,140.35) [hereinafter collectively the Lichterman checks]. Sometime prior to the 3d day of November, 1997, the Lichterman checks were sent into the bank by the two insurance companies. During the period October 15, 1997 through October 31, 1997, Ms. Madden took vacation and personal days off from FTBI. Her first day back from her leave was the 3d day of November, 1997:

10. On or about the morning of the 3d day of November, 1997, Ms. Madden resigned her position from FTBI and the Bank. Ms. Madden represents that she then left the offices of FTBI at approximately nine o'clock that morning, taking with her her personal files and personal belongings. Sometime after leaving FTBI, Ms. Madden represents that she discovered (for the first time) that someone had placed the Lichterman checks in one of Ms. Madden's personal files without her knowledge. Upon discovering the checks which Ms. Madden represents she had accidentally taken with her, Ms. Madden placed a telephone call to Mr. Lichterman, advising him that she had discovered the checks. Mr. Lichterman then directed Ms. Madden to return the checks to FTBI. During this conversation, Ms. Madden did inform Mr. Lichterman that she would like to do business with him again in the future. Ms. Madden represents that she then immediately directed that the Lichterman checks be sent via the U.S. Mails to FTBI at FTBI's office at 4900 Poplar Avenue:

1 FTBI claims that it never received the Lichterman checks from Ms. Madden, so new checks were issued by said insurance companies, and received by FTBI, in December of 1997; stop payment orders were placed on the Lichterman checks. FTBI and Mr. Lichterman agreed that FTBI would pay interest on such IRA funds to Mr. Lichterman as of the 23d day of

September, 1997;

12. On or about the 6th day of January, 1998, Mr. Lichterman filed a complaint with the Division with respect to the facts as hereinbefore described. Prior to the 6th day of January, 1998, Mr. Lichterman filed a complaint with the National Association of Securities Dealers [hereinafter the NASD]. On or about the 5th day of January, 1998, the NASD issued a letter to Ms. Madden notifying her of Mr. Lichterman's complaint and notifying her that an investigation had been opened at the NASD with respect to Mr. Lichterman's complaint. Ms. Madden received the letter from the NASD shortly thereafter. Ms. Madden did not amend her Form U-4 with respect to her termination to reflect Mr. Lichterman's complaint until 1999, after the Division made her aware of her obligation to file an amendment;

13 On or about the 8th day of December, 1997, an injunction was entered by The Honorable D.J. Alissandralos, Chancellor of the Thirtieth Judicial District of the State of Tennessee, regarding a dispute Ms. Madden had with FTBI respecting a non-compete agreement between she and FTBI

Conclusions of Law

The Commissioner concludes, as a matter of law, and the Respondent, Elizabeth (Betsy) Kathryn Madden, agrees, except where specifically hereinafter noted, to the following, that:

14 Tenn. Code Ann. § 48-2-116(a) states in pertinent part that the Commissioner may from time to time make, promulgate, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of the Act;

5 Tenn. Code Ann. § 48-2-102(2) states in pertinent part that an agent means any individual, other than a broker-dealer, who is employed, appointed, or authorized by a broker-

dealer to sell securities from, in, or into this state and who is paid or given a commission or other remuneration, directly or indirectly, for soliciting a sale of securities to or from any person in this state:

16. Tenn. Code Ann. § 48-2-111(c) states that if the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment;

7. Tenn. Code Ann. § 48-2-112(a) states that the Commissioner may by order deny, suspend or revoke any registration under the Act if the Commissioner finds that (1) the order is in the public interest and necessary for the protection of investors; and (2) the applicant or registrant or, in the case of a broker-dealer, any affiliate, partner, officer, director, or any person occupying a similar status or performing similar functions (B) has willfully violated or willfully failed to comply with any provision of the Act or a predecessor chapter or any rule or order under the Act or predecessor chapter, including, without limitation, any net capital requirements:

18. Tenn. Comp. R. & Regs. tit. Dep't of Commerce and Ins., ch. 0780-4-1-.04(4)(a)(4) & 0780-4-1-.04(4)(b) adopts Form U-4, Uniform Application for Securities Industry Registration or Transfer, and the instructions contained therein;

19. Tenn. Comp. R. & Regs. tit. Dep't of Commerce and Ins., ch. 0780-4-1-.04(4)(a)(5) & 0780-4-1-.04(4)(b) adopts Form U-5, Uniform Termination Notice for Securities Industry Registration, and the instructions contained therein;

20. By failing to timely amend her Form U-4 to reflect the inquiry from the National Association of Securities Dealers, as hereinbefore delineated, and by failing to amend her Form U-4 to reflect the entry of an injunction entered by Chancellor D.J. Alissandralos of the Thirtieth

Judicial District of the State of Tennessee regarding her dispute with First Tennessee Brokerage, Inc. respecting a non-compete agreement between she and First Tennessee Brokerage, Inc., Ms. Madden violated Tenn. Code Ann. §§ 48-2-111(c):

21 After resigning from FTBI, Ms. Madden was in the possession of negotiable instruments, i.e., the Lichterman checks, to which she was not entitled to title nor possession. Ms. Madden should have taken additional steps to insure that said Lichterman checks were returned safely to FTBI. For purposes of this paragraph 21 only, Ms. Madden neither admits nor denies such conclusion.

Agreed Disposition

NOW, THEREFORE, IN VIEW OF THE FOREGOING, upon entry of this Consent Order by the Commissioner, the following disposition is hereby **AGREED TO** by the parties:

The Respondent, Elizabeth (Betsy) Kathryn Madden, agrees to make a One Thousand Dollars (\$1000.00) contribution to the State of Tennessee, Department of Commerce and Insurance, Securities Division investor education fund. Such payment shall be made within ten (10) days of the entry of this Consent Order, by certified check, to the order of the State of Tennessee, Department of Commerce and Insurance

2. The Respondent, Elizabeth (Betsy) Kathryn Madden, shall be placed on probation for a period of one year, commencing on the date of entry of this Consent Order, during which probationary period Ms. Madden shall be required to report all complaints her employer(s) receives respecting her actions during such probationary period. Such report shall be filed with the Enforcement Section of the Tennessee Securities Division, at Suite 680 of the Davy Crockett

Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243, within thirty (30) days after the receipt of each such complaint by Ms. Madden's employer. At the end of such probationary period, Ms. Madden shall be required to submit to the Enforcement Section of the Tennessee Securities Division a duly executed affidavit containing the names and addresses of all such complainants, or that her employer(s) has received no complaints respecting her actions during such probationary period.

3. The Respondent, Elizabeth (Betsy) Kathryn Madden, agrees to amend and make disclosure on her Form U-4 of the following:

a. the injunction entered by Chancellor D.J. Alissandralos of the Thirtieth Judicial District of the State of Tennessee regarding her dispute with First Tennessee Brokerage, Inc. respecting a non-compete agreement between she and First Tennessee Brokerage, Inc.; and

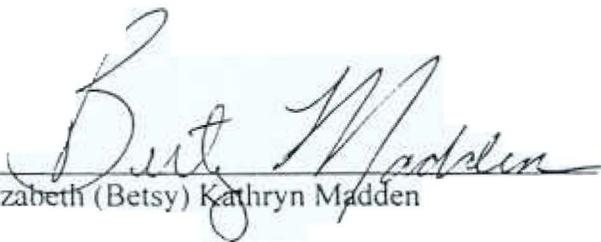
b. the existence of this proceeding and this Consent Order;

4. The entry of this Consent Order fully resolves and settles all issues between the parties with respect to the acts or omissions specifically addressed herein; *or in the complaint filed against Ms. Madden by the Tennessee Securities Division*

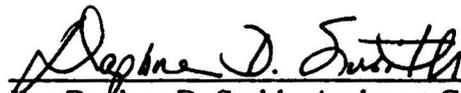
5. The Respondent, Elizabeth (Betsy) Kathryn Madden, as a result and by virtue of *the Tennessee Securities Division* her agreement to this Consent Order, agrees that she will comply with all securities laws of the State of Tennessee.

It is so ORDERED. ENTERED this 8th day of September, 1999.


Douglas M. Sizemore, Commissioner
State of Tennessee
Department of Commerce and Insurance


Elizabeth (Betsy) Kathryn Madden

TENNESSEE INSURANCE DIVISION:


By: Daphne D. Smith, Assistant Commissioner

APPROVED FOR ENTRY:

Shepherd D. Tate, Esq.
Michael A. Brady, Esq.
Tate, Lazarini & Beall, PLC
Attorneys and Counsellors
Morgan Keegan Tower, Suite 850
50 North Front Street
Memphis, Tennessee 38103
(901) 529-9900


G. Everett Sinor, Jr., Esq.
Attorney for Petitioner
Tennessee Securities Division
312 Eighth Avenue North
Tennessee Tower, Twenty-Fifth Floor
Nashville, Tennessee 37243
(615) 741-2199

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Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing Consent Order has been sent, via U.S. Mail, postage pre-paid, to the following persons: Shepherd D. Tate, Esq., and Michael A. Brady, Esq., Tate, Lazarini & Beall, PLC, Attorneys and Counselors, Morgan Keegan Tower, Suite 850, 50 North Front Street, Memphis, Tennessee 38103 on this 14th day of September, 1999.



Linda M. Porter