

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Timothy B. Dickey, Investment Company
and Variable Contracts Products Principal
and Representative, General Securities
Representative, and Corporate Securities
Representative
[CRD No. 2541369],

Respondent.

Disciplinary Proceeding
No. C05050017

Hearing Officer _____

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Timothy B. Dickey entered the securities industry in September 1994 as an Investment Company and Variable Contracts Products Representative of FFP Securities Inc. While employed with FFP Securities, Inc., Dickey also became licensed as a General Securities Representative, as an Investment Company Variable Contract Principal, and as a Direct Participation Programs Representative. Timothy B. Dickey, during all periods mentioned herein, was associated with member firm FFP Securities, Inc., and was registered with NASD under Article V of the By-Laws as an Investment Company and Variable Contracts Products Representative. Dickey's license as a Direct Participation Programs Representative expired on February 3, 1995.
2. On March 5, 2003, FFP Securities, Inc. terminated Dickey for failure to follow firm policies and for failure to respond to information requests from the firm. On March 10,

2003, FFP Securities, Inc. filed a Uniform Termination Notice for Securities Industry Registration (Form U-5). Subsequently, on January 6, 2004, the firm amended the Form U-5 to disclose customer complaints of FS and KG. The filing of the amended Uniform Termination Notice for Securities Industry Registration (Form U-5) extends the jurisdiction of NASD to January 5, 2006.

FIRST CAUSE OF COMPLAINT

NASD Conduct Rules 2110 and 2310, Unsuitable Recommendations of Variable Contracts and Other Investments, Against Respondent Dickey

Unsuitable Recommendations to Customer FS

3. During the time period from on or about April 1997 to on or about May 2001, Timothy B. Dickey recommended an investment strategy to customer FS and effected that strategy without having a reasonable basis for believing that the strategy was suitable for the customer given the customer's financial needs and condition.
4. FS was a 62-year old customer who planned to retire from his dental practice in 1998 or 1999. (He completed the sale of his dental practice in 1999.) FS had investments totaling approximately \$1,020,000. FS also planned to invest proceeds from the sale of his dental practice.
5. FS had a moderate risk tolerance and a primary objective of earning \$10,000 per month in investment income net of taxes to support himself during retirement.
6. Timothy B. Dickey recommended an investment strategy that included the purchase of three variable annuities, two variable life policies with high annual premiums, a risky

limited partnership interest, investment in the technology stock Broadband Wireless International Corporation ("BBAN") and investment in the illiquid Warren Resources and Boston Capital Tax Credit Fund.

7. The specific investments recommended and effected by Dickey were:

March 20, 1997	Nationwide BOA Exclusive Variable Annuity	\$304, 702.60
March 20, 1997	Pacific Life Select Variable Annuity	\$225, 500.00
March 20, 1997	Jefferson Pilot/Chubb Ensemble II Variable Life Policy	\$950,000 face amount; \$75,000 annual premium
April 17, 1997	Credit d'Impots Secondary Market Tax Credits	\$43,000
June 3, 1997	Manulife North America Venture Variable Annuity	\$247,315.77
October 16, 1997	Warren Resources Limited Partnership	\$100,000
November 27, 1998	Jefferson Pilot/Chubb Ensemble II Variable Life Policy	\$880,000 face amount; \$60,000 annual premium
November 27, 1998	Jefferson Pilot/Chubb Ensemble II Variable Life Policy	\$1,250,000 face value; \$71,084 annual premium
March 2000	Restricted shares of BBAN	\$50,000

8. Dickey's strategy required FS to withdraw \$10,000 per month from the variable annuity investment to fund the \$10,000 per month in retirement income needed by FS.

Because the funds invested in the variable annuity were allocated to equity

subaccounts, the performance of the annuity fluctuated with the market. Depending upon market conditions, the funds withdrawn by FS could be entirely investment income, entirely principal, or a mixture of investment income and principal.

9. Dickey's strategy also required FS to withdraw funds annually from the variable annuity investments to pay the annual premiums on the variable life policies. As of November 1998, FS was required to pay \$206,084 in annual premiums on the variable life policies.
10. Each of the variable annuities recommended by Dickey had surrender fees for withdrawals over 10%, resulting in limited liquidity.
11. Dickey also recommended that FS invest \$50,000 in Broadband Wireless International Corporation ("BBAN"). The shares recommended by Dickey were restricted shares owned by an insider. Like the investment in the variable products, FS's investment in BBAN was not designed to produce income, and as restricted stock, was illiquid.
12. At the time Dickey recommended investment by FS in BBAN, the company had few assets and little revenue as reflected in the company's February 22, 2000 filing with the Securities and Exchange Commission. The capital required to finance past operations and future investments was acquired through issuance of stock.
13. The restricted shares purchased by FS were shares owned by the president of BBAN, Ivan Webb. As documented in SEC Litigation Release No. 16651, Webb was later charged by the Securities and Exchange Commission with orchestrating a "pump and dump" scheme through the sale of restricted shares to the public after issuing

misleading press releases, making misleading SEC filings, and posting misleading information on internet investment sites.

14. Dickey also recommended investment by FS in the limited partnership Warren Resources. Like the recommendation to invest in variable products and restricted shares of technology stock, the recommendation to invest in the limited partnership Warren Resources was unlikely to provide FS with retirement income or liquidity. Warren Resources was developing new methods to extract oil from oil wells. The investment could not be easily traded and was risky.
15. Furthermore, despite FS's net worth in excess of \$1 million, the limited liquidity of the investments resulted in FS having no financial means to pay the annual premiums of \$206,000 on the variable life policies. Even assuming an 8% return in all the investments, by the third year of ownership, FS would be unable to make his withdrawals of \$120,000 and pay the annual premiums of \$206,000 without incurring significant surrender charges.
16. Given the limited liquidity, the failure of the investments to satisfy the customer's goal of investment income, and the financial inability of the customer to meet the financial commitments imposed by Dickey's recommendation, Dickey had no reasonable basis for recommending to FS the investment strategy set forth in paragraph 7.

Unsuitable Recommendations to Customer KG

17. On or around November 23, 1999, Timothy B. Dickey recommended an investment

strategy to customer KG and effected that strategy without having a reasonable basis for belief that the strategy was suitable for the customer given the customer's financial needs and condition.

18. KG was a 65-year old customer who had retired due to disability resulting from a brain tumor. KG had investments totaling approximately \$930,000 and a \$1 million whole life policy with an approximate cash value of \$225,000. KG was receiving monthly annuity payments of \$2,400 per month and long-term disability payments that would cease in 2001.

19. KG had investment objectives of earning investment income to supplement the \$2,400 per month he received from his annuity. He also needed liquidity due to his medical conditions.

20. Timothy B. Dickey recommended an investment strategy that included the purchase of a variable annuity, two variable life policies with high annual premiums, a risky limited partnership, investment in the technology stock of BBAN, and investment in the illiquid Warren Resources and Boston Capital Tax Credit Fund.

21. The specific investments recommended and effected by Dickey were:

November 23, 1999	Lincoln Benefit Life Variable Universal Life Consultant policy	\$1,873,934 face amount; \$135,000 annual premium
November 23, 1999	Lincoln Benefit Life Variable Universal Life Consultant policy	\$782,049 face amount; \$25,000 annual premium
November 23, 1999	Warren Resources convertible bonds	\$100,000

November 23, 1999	Boston Capital Tax Credit Fund	\$75,000
February 2, 2000	Pacific Life Pacific One Variable Annuity	\$528,829
March 2000	Restricted Shares of BBAN	\$44,629

22. Dickey's strategy required KG to withdraw any needed retirement income from the variable annuity investment. Because the funds invested in the variable annuity were allocated to equity subaccounts, the performance of the variable annuity fluctuated with the market. Depending on market conditions, the funds withdrawn by KG could be entirely investment income, entirely principal, or a mixture of investment income and principal.
23. Dickey also recommended investment by KG in two variable life policies. These recommendations were unsuitable because KG already had adequate life insurance in the form of a \$1 million whole life policy, the policies were illiquid, the policies were not designed to produce income, and due to KG's medical condition, the premiums were extremely high, reducing the value of the policies substantially. The variable annuity was not designed to produce immediate investment income.
24. Additionally, KG could not financially benefit by withdrawing or borrowing from the variable life policies to provide retirement funds. Due to the high cost of insurance resulting from KG's disability, the cash value of the policies were substantially less than premiums paid. By September 2002, the account statements of KG show that he had

paid approximately \$320,000 in insurance premiums, but the cash value of the variable life policies was only \$86,000.

25. Dickey's strategy also required KG to withdraw funds annually from the variable annuity investment to pay the annual premiums on the variable life policies. As of November 1999, KG was required to pay \$160,000 in annual premiums on the variable life policies.
26. The variable annuity recommended by Dickey had surrender fees for withdrawals over 10%, resulting in limited liquidity.
27. As set forth in paragraphs 11-13, KG's investment in BBAN was not designed to produce income, and as a restricted stock, was illiquid.
28. Likewise, as set forth in paragraph 14, investment in the limited partnership Warren Resources was unlikely to provide KG with retirement income or liquidity.
29. Given the objective of KG for investment income to fund his retirement and the need for liquidity due to his illness, the strategy recommended and implemented by Dickey was unsuitable. None of the investments were designed to produce investment income. The only investment with any liquidity was the variable annuity and this was limited to 10%.
30. Furthermore, the limited liquidity of the investments resulted in KG having no financial means to pay the annual premiums of \$160,000 in the variable life policies. By September 2002, KG was forced to let the variable life policies lapse.
31. Such acts, practices, and conduct constitute separate and distinct violations of NASD

Conduct Rules 2110 and 2310 by Respondent Dickey.

SECOND CAUSE OF COMPLAINT

NASD Conduct Rules 2110 and 3040(a) and (b), Participation in Private Securities Transactions, Against Respondent Dickey

32. In or around March 2000, Timothy B. Dickey participated in the sale of \$94,629.00 of restricted shares of BBAN stock to customers FS and KG without first providing written notice and obtaining approval from his employer member firm.
33. The sale of the BBAN stock was outside the regular course and scope of Dickey's employment with his employer member firm.
34. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 3040 by Respondent Dickey.

THIRD CAUSE OF COMPLAINT

NASD Conduct Rules 2110 and Procedural Rule 8210, Failure to Respond to Request for Information, Against Respondent Dickey

35. By letters dated June 18, 2004, June 28, 2004, and July 6, 2004, the NASD staff requested that Dickey provide certain information to the staff concerning the activities described in the First and Second Causes of Complaint. These requests for information were sent pursuant to, and in accordance with, the provisions of

Procedural Rule 8210, all as more fully detailed in Exhibit "A" attached hereto.

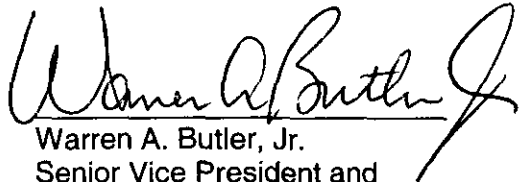
36. Respondent Dickey failed to respond to the above requests.
37. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and Procedural Rule 8210 by Respondent Dickey.

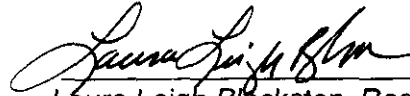
PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. An order imposing sanctions upon the Respondent in accordance with NASD Rule 8310;
- C. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- D. An order imposing any other fitting sanction.

April 28, 2005
Date


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