

STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION

In the Matter of:

Case No. S-19-0040

NICHOLAS R. RADKE, JR.,

Respondent.

FINAL ORDER TO CEASE AND
DESIST AND FINAL ORDER
REVOKING LICENSE, DENYING
USE OF EXEMPTIONS, AND
ASSESSING CIVIL PENALTIES,
ENTERED BY CONSENT

The Director of the Department of Consumer and Business Services for the State of Oregon (the “Director”), investigated the business activities of Nicholas R. Radke, Jr. (“Radke”) and determined that he violated certain provisions of the Oregon Securities Law, Oregon Revised Statutes (“ORS”) chapter 59 and Oregon Administrative Rules (“OAR”) chapter 441, and the Insurance Code, ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 743B, 744, 746, 748, and 750 and OAR chapter 836.

Radke wishes to settle this matter with the Director.

Now, therefore, as evidenced by the signature(s) subscribed below, Radke, without admitting or denying the Findings of Fact and Conclusions of Law contained herein, hereby CONSENTS to entry of this Order.

FINDINGS OF FACT

The Director FINDS that:

Respondent

1. Radke was an Oregon resident insurance producer who was first licensed in the state in May 1990. His National Producer Number is 130707. On October 3, 2019, the Director, through the Oregon Division of Financial Regulation (the “Division”), initiated this action by issuing an Order to Cease and Desist; Proposed Orders Revoking License,

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350 Winter Street NE, Suite 410
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1 Denying Use of Exemptions, and Assessing Civil Penalties; and Notice of a Right to
2 Hearing. On March 31, 2020, while this action was pending, Radke’s resident insurance
3 producer license expired.

4 2. Radke was also formerly licensed in Oregon as a securities broker-dealer
5 salesperson. His Central Registration Depository (“CRD”) Number is 2610246. From 1995
6 to 2018, he worked for various broker-dealer firms.

7 3. In July 1995, Radke became registered with the Financial Industry Regulatory
8 Authority (“FINRA”) through a FINRA member firm and remained registered until
9 October 2018.

10 *Offer and Sale of Annuities to CA*

11 4. From around 2008 to 2016, one of Radke’s clients was CA, an elderly Oregon
12 resident who suffered from serious, chronic illnesses. They became friends. CA trusted
13 Radke, especially in financial matters, and Radke provided CA and CA’s family members
14 with financial advice.

15 5. From April 2011 to May 2018, Radke was employed as a securities broker-
16 dealer salesperson by American Independent Securities Group, LLC (“AISG”), CRD
17 No. 135288.

18 6. In March 2009, Radke sold CA a variable annuity from Pacific Life (“Pacific
19 Life Annuity”). In March 2015, CA replaced the Pacific Life Annuity with an indexed
20 annuity from Forethought Life Insurance Company (“Forethought Life Annuity 1”).

21 7. In or around April 2012, Radke sold CA a variable annuity issued by Jackson
22 National Life Insurance Company (“Jackson National Annuity”). In December 2015, CA
23 replaced the Jackson National Annuity with a fixed indexed annuity issued by Forethought
24 Life Insurance Company (“Forethought Life Annuity 2”).

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1 *Loan and T-Shirt Business*

2 8. In January 2017, Radke borrowed \$10,000 from CA. He claims that he repaid
3 this loan, but no independent evidence supports his claim.

4 9. On April 11, 2017, CA issued Radke a check for \$12,500 pursuant to the terms
5 of a loan agreement executed on April 14, 2017 (“April 2017 Agreement”). The money
6 was an investment in Radke’s proposed t-shirt printing business (“T-Shirt Business”), and
7 CA wrote on the memo line of the check: “Investment USA T-shirts.”

8 10. Radke had ultimate authority over the statements in the April 2017 Agreement,
9 which did not disclose the material risks associated with the investment, including Radke’s
10 experience in running such a business and the conflicts of interests inherent in the
11 agreement.

12 11. Under the terms of the April 2017 Agreement, Radke was supposed to return
13 the principal amount plus 14% interest or \$5,000 by August 1, 2017.

14 12. The T-Shirt Business never became operational, and there is no evidence that
15 Radke repaid CA as set out in their agreement.

16 *California Property*

17 13. On July 17, 2017, Radke borrowed \$250,000 from CA at a 5% annual interest
18 rate to purchase a manufactured/mobile home in California (“California Property”). They
19 both signed a document entitled, SECURED PROMISSORY NOTE (“Promissory Note”),
20 wherein Radke promised to repay CA in monthly installments of \$1,250 for 360 months.
21 Underneath the title were the words, “FULLY AMORTIZED.” The terms of the
22 Promissory Note, however, require monthly payments greater than \$1,250 to be fully paid
23 off at the end of 360 months. With only \$1,250 in monthly payments, Radke would be
24 paying less than the total sum that should be due to CA or MA at the end of the loan term.

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1 14. On July 17, 2017, CA and Radke also signed a security agreement (“Security
2 Agreement”) granting CA an interest in the California Property to secure repayment of the
3 \$250,000 loan.

4 15. The Security Agreement stated that the California Property “is and will at all
5 times remain free and clear of all liens, security interests, unpaid charges, taxes, pledges,
6 and encumbrances, other than the rights of the Lender created by this Security
7 Agreement[.]”

8 16. The Security Agreement further stated that CA’s security interest in the
9 California Property “is first and senior to any and all other security interests in, or pledges
10 of, the [California] Property[.]”

11 17. Per the Security Agreement, Radke “will execute and deliver to the Lender any
12 financing statement or other documents, and pay the cost of filing the same in all public
13 offices, and will do such acts and things as the Lender may at any time reasonably request
14 or as may be necessary or appropriate to establish and maintain a perfected security interest
15 in the [California] Property as security for the Indebtedness[.]”

16 18. Exhibit A to the Security Agreement stated that the monthly payment of \$1,250
17 will be paid to CA’s son, MA, in the event of CA’s death.

18 19. Radke had ultimate authority over the statements in the Promissory Note and
19 Security Agreement, and neither document disclosed the conflicts of interest inherent in
20 the transaction and the material risks associated with the transaction.

21 20. On July 19, 2017, CA made a partial withdrawal of \$109,000 from Forethought
22 Annuity 1 and a partial withdrawal of \$175,000 from Forethought Annuity 2 to fund the
23 \$250,000 loan to Radke. On that same day, CA issued Radke a check for \$250,000. Radke
24 did not negotiate the check until July 28, 2017, when there were enough funds in CA’s
25 credit union account to cover it.

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1 21. Radke did not perfect the security interest on the \$250,000 loan, and repayment
2 of the loan was not secured by the California Property, as Radke had represented to CA.

3 22. On July 28, 2017, CA passed away from illness at the age of 77.

4 23. In August 2017, Radke purchased the California property using the \$250,000
5 he had borrowed from CA.

6 24. In September 2017, Radke borrowed \$120,000 from a hard money lender,
7 Henry A. Thomas, Trustee of the H.A. Thomas Trust (the "Trust"), through Evoque
8 Lending. Radke used the California Property as collateral for the \$120,000 loan, even
9 though he had already promised the California Property as collateral for the \$250,000 loan
10 from CA. Thus, while Radke and his wife were the California Property's registered owners,
11 the Trust became the legal owner and sole lienholder, which was a violation of the terms
12 of the Security Agreement.

13 25. In October and November 2017, Radke issued at least two cashier's checks to
14 MA for \$1,250. MA refused to accept the payments, and Radke stopped sending them.

15 26. In October 2020, Radke sold the California property to a third party.

16 *Control of CA's Credit Union Accounts*

17 27. Before his death, CA issued a written statement dated July 17, 2017, authorizing
18 Radke to (a) pay CA's bills and expenses using CA's credit union accounts during CA's
19 lifetime and after death and (b) pay "reasonable expenses" incurred by MA in the
20 maintenance of CA's properties until the properties were sold. Both Radke and CA signed
21 the statement.

22 28. On August 9, 2017, after CA had passed away, Radke issued a \$5,000 check
23 from his personal bank account payable to Modern Insurance. At that time, he had
24 insufficient funds in his personal bank account to cover the \$5,000 check. The next day,
25 Radke issued a bank-generated check to himself for \$5,000.09 from CA's credit union
26 account to cover the check he had issued to Modern Insurance.

1 *FINRA Bar*

2 29. In June 2018, Radke began working for MML Investors Services, LLC, CRD
3 No. 10409, as a broker-dealer salesperson. He voluntarily resigned in October 2018, and
4 his registration with FINRA was terminated.

5 30. In October 2018, FINRA requested documents and information from Radke in
6 connection with its investigation into allegations that Radke, among other things,
7 participated in a private securities transaction without prior approval from his member firm.
8 Radke failed to provide the requested documents and information. As a result, in December
9 2018, FINRA barred Radke in all capacities from associating with any FINRA member.
10 Radke, without admitting or denying FINRA's findings in the matter, consented to the
11 sanction and entry of findings.

12 **CONCLUSIONS OF LAW**

13 The Director CONCLUDES that:

14 31. The April 2017 Agreement is a "note" as that term is used to define a "security"
15 under ORS 59.015(19).

16 32. The Promissory Note is a "note" as that term is used to define a "security" under
17 ORS 59.015(19).

18 33. Forethought Annuity 1 and Forethought Annuity 2 are "life insurance" as that
19 term is defined in ORS 731.170.

20 34. By making partial withdrawals from his Forethought annuities to fund the
21 \$250,000 loan to Radke, CA partially surrendered life insurance policies.

22 35. As a person who held a position of trust and authority in his relationship with
23 CA, Radke had a duty to disclose to CA the material risks and conflicts of interest
24 associated with his securities transactions with CA.

25 36. By failing to disclose to CA the material risks and conflicts of interest
26 associated with investing in the T-Shirt Business, Radke committed the following conduct





1 while licensed as an insurance producer and broker-dealer salesperson:
2 A. Made untrue statements of material fact or omitted to state material facts in
3 connection with the sale of a security or the conduct of a securities business, in violation
4 of ORS 59.135(2); and
5 B. Engaged in dishonest practices in the conduct of business in this state or
6 elsewhere, in violation of ORS 744.074(1)(h).
7 37. By omitting or misrepresenting material information regarding the \$250,000
8 loan, as described in paragraphs 13 to 21 and 23 to 26 of this Order, Radke committed the
9 following conduct while licensed as an insurance producer and broker-dealer salesperson:
10 A. Obtained money or property by making untrue statements of material fact or
11 omitting to state material facts in connection with inducing an insured under an issued life
12 insurance policy to surrender the policy, in violation of ORS 746.075(1)(b) and (2)(f); and
13 B. Made untrue statements of material fact or omitted to state material facts in
14 connection with the sale of a security or the conduct of securities business, in violation of
15 ORS 59.135(2).
16 38. By issuing a bank-generated check to himself from CA's credit union account
17 after CA's death, as described in paragraph 28 of this Order, Radke committed the
18 following conduct while licensed as an insurance producer and broker-dealer salesperson:
19 A. Engaged in dishonest practices in the conduct of business in this state or
20 elsewhere, in violation of ORS 744.074(1)(h); and
21 B. Engaged in dishonest practices or conduct in a business or profession, in
22 violation of ORS 59.205(2).
23 39. ORS 744.074(1)(b) authorizes the Director to revoke Radke's resident
24 insurance producer license for violating insurance laws, specifically, ORS 746.075(1)(b)
25 and (2)(f).
26 //



1 40. ORS 744.074(1)(h) authorizes the Director to revoke Radke’s resident
2 insurance producer license for engaging in dishonest practices in the conduct of business
3 in this state or elsewhere.

4 41. ORS 744.994(1)(c) and (2) authorizes the Director to initiate or proceed with
5 disciplinary proceedings against Radke even after his resident insurance producer license
6 has expired.

7 42. ORS 731.252(1) authorizes the Director to order Radke to cease and desist from
8 violating ORS 744.074(1)(h) and ORS 746.075(1)(b) and (2)(f) because the Director has
9 reason to believe that Radke violated these statutes.

10 43. ORS 59.245(4) authorizes the Director to order Radke to cease and desist from
11 violating ORS 59.135(2) and ORS 59.205(2) because the Director has reason to believe
12 that Radke violate these statutes.

13 44. ORS 59.045(2) authorizes the Director to deny Radke the use of any exemptions
14 set forth in ORS 59.025 and ORS 59.035 because the Director has reason to believe that
15 Radke violated ORS 59.135(2) and ORS 59.205(2).

16 45. ORS 59.995(1) authorizes the Director to assess civil penalties against Radke
17 of up to \$20,000 per violation of the Oregon Securities Law.

18 **ORDERS**

19 Now therefore, the Director issues the following:

20 *Order to Cease and Desist*

21 46. As authorized by ORS 731.252(1) and ORS 59.245(4), the Director hereby
22 ORDERS Radke to CEASE AND DESIST from violating ORS 744.074(1)(h), ORS
23 746.075(1)(b) and (2)(f), ORS 59.135(2), and ORS 59.205(2).

24 *Order Revoking License*

25 47. As authorized by ORS 744.074(1)(b) and (h), the Director REVOKES Radke’s
26 Oregon resident insurance producer license.

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1 *Order Denying Use of Exemptions*

2 48. As authorized by ORS 59.045(2), the Director DENIES Radke the use of
3 securities and transaction exemptions that would otherwise be available to him under ORS
4 59.025 and ORS 59.035.

5 *Order Assessing Civil Penalty*

6 49. As authorized by ORS 59.995(1), the Director ORDERS Radke to pay \$60,000
7 in CIVIL PENALTIES, allocated as follows:

8 A. \$40,000 for violating ORS 59.135(2) and

9 B. \$20,000 for violating ORS 59.205(2).

10 50. The Director SUSPENDS the collection of the \$60,000 in CIVIL PENALTIES
11 assessed above, provided that, in the three years following the effective date of this Order,
12 Radke does not violate the Oregon Securities Law, the Insurance Code, or the terms of this
13 Order. If Radke fails to satisfy this condition, the \$60,000 in civil penalties will become
14 immediately due and owing. Otherwise, the Director will waive the suspended portion of
15 the civil penalties three years after the effective date of this Order.

16 51. This Order is a "Final Order" under ORS 183.310(6)(b). Subject to that
17 provision, entry of this Order does not limit other remedies available to the Director under
18 Oregon law to enforce this Order or to take action for violations of this Order or of the
19 Oregon Securities Law or the Insurance Code that are not covered by this Order.

20
21 SO ORDERED this 11th day of May, 2021.

22 ANDREW R. STOLFI, Director
23 Department of Consumer and Business Services

24
25 /s/ Dorothy Bean
26 Dorothy Bean, Chief of Enforcement
Division of Financial Regulation

CONSENT TO ENTRY OF ORDER

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I, Nicholas R. Radke, Jr., state that I have read the foregoing Order and that I know and fully understand the contents hereof, without admitting or denying the Findings of Fact or Conclusions of Law. I have been advised of the right to a hearing and of the right to be represented by counsel in this matter. I voluntarily consent to the entry of this Order without any force or duress, expressly waiving any right to a hearing in this matter, as well as any rights to administrative or judicial review of this Order. I understand that the Director reserves the right to take further action against me to enforce this Order or to take appropriate action upon discovery that I have committed other violations of the Oregon Securities Law and the Insurance Code. I will fully comply with the terms and conditions stated herein.

I understand that this Order is a public document.

/s/ Nicholas R. Radke, Jr.
Signature

State of _____

County of _____

Signed or attested before me on the ____ day of _____, 2021.

Notary Public

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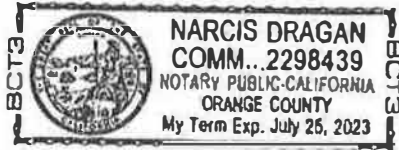


A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of ORANGE _____s

Subscribed and sworn to (or affirmed) before me on this 10th
day of MAY, 20 21, by NICHOLAS
R. RADKE, JR.

proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



(Seal)

Signature /s/ Narcis Dragans _____s