

IN THE CIRCUIT COURT OF THE SECOND
JUDICIAL CIRCUIT IN AND FOR LEON
COUNTY, FLORIDA

STATE OF FLORIDA, ex rel.,
THE DEPARTMENT OF FINANCIAL
SERVICES OF THE STATE
OF FLORIDA,

CONFORMED
COPY

Relator,

vs.

Case No. 05-1103

THE MONEY TREE LENDING GROUP,
INC., a Florida Corporation,

Respondent.

**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**

THIS CAUSE was considered on the Receiver's Order to Show Cause as to why the Department of Financial Services (hereinafter "Department") should not be appointed as Receiver for purposes of Liquidation, Injunction and Notice of Automatic Stay. The Court, having reviewed the pleadings of record, having heard presentation of counsel, and otherwise being fully informed in the premises, finds that:

1. The Money Tree Lending Group, Inc., located in Port Charlotte, Florida, was formed in 1996. Respondent is licensed by the Office of Financial Regulation as a Correspondent Mortgage Lender. At the time of incorporation, Respondent's business was primarily mortgage lending.

2. In April 2004, Respondent started selling fixed rate annuities to private individuals.

3. On August 13, 2004, Port Charlotte, Florida, was struck by Hurricane Charley.

Respondent testified that all records were destroyed.

4. In March 2005, William Reilly, the Chief of the Bureau of Securities Regulation, Office of Financial Regulation, received a call concerning Respondent's sale of an annuity product. Pursuant to this call, Mr. Reilly checked Respondent's website.

5. Mr. Reilly then contacted Mr. Philip Sampiere, Respondent's President, concerning the sales of the fixed rate annuities. Mr. Sampiere informed Mr. Reilly that Respondent was licensed as a Correspondent Mortgage Lender and held no other licenses.

6. Section 624.03, Florida Statutes, provides that "insurer" includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance of annuity.

7. Section 624.10, Florida Statutes, defines what constitutes transacting insurance. "Transact" with respect to insurance includes any of the following, in addition to any other applicable provisions of this code: (1) Solicitation or inducement; (2) Preliminary negotiations; (3) Effectuation of a contract of insurance; and (4) Transaction of matters subsequent to effectuation of a contract of insurance and arising out of it.

8. Section 624.401(1), Florida Statutes, provides that 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.

9. The fixed rate annuities being sold by Respondent are insurance products and

Respondent is transacting in insurance by selling these annuities. Thus, Respondent is required to obtain a Certificate of Authority subjecting itself to supervision by the Office of Insurance Regulation.

10. On May 10, 2005, the Department filed a Motion for an Order to Seize the Property of The Money Tree Lending Group, Inc. This Court granted an Order to Seize Property.

11. Respondent's practices in the conduct of its business make any further transactions hazardous to its policyholders and Respondent shall be placed in Receivership for Purposes of Liquidation. Rehabilitation is not an option, as Respondent is an unauthorized entity and does not have a Certificate of Authority.

12. George McGee, from the Office of Financial Regulation, Bureau of Financial Regulation, testified that in the ten months since August 13, 2004, Respondent earned approximately \$60,000.00 in mortgage related income yet in this same time period monthly expenses exceeded \$30,000.00 per month.

13. James Walker, from the Office of Insurance Regulation, testified that Respondent had not filed its annuity contract with the Office of Insurance Regulation.

14. There is a comprehensive regulatory scheme in the regulation of insurance, which includes a review of an applicant's qualifications and background of owners, as well as a requirement of a reserve minimum of \$2,500,000.00 investor capital to start an insurance business. This reserve cannot fall below \$1,500,000.00 at any time while the company is transacting insurance. In addition, there are restrictions on investments, including a prohibition on loans to officers, directors or majority shareholders of an insurance company.

15. Respondent sold approximately \$5.7 million in fixed rate annuities. The full extent

of Respondent's current obligations under these annuity contracts were disputed, but such obligations could not be met without additional borrowing by Respondent.

16. Respondent used the annuitant's money for the following: a) to give the President, Philip Sampiere, a mortgage of \$347,000; b) to give Scott Warram, the Vice President's husband, a loan; c) to purchase Respondent's office building for approximately \$240,000; d) to purchase Respondent's Delaware corporation for approximately \$30,000; and e) to purchase two recreational vehicles for approximately \$40,000, where ownership was subsequently transferred to the principals of the company.

17. Respondent's failure to have a Certificate of Authority as required by Section 624.401, Florida Statutes, constitutes a hazardous practice within the meaning of Sections 631.051(3) and 631.061, Florida Statutes.

18. Because Respondent lacks the required Certificate of Authority it cannot be rehabilitated.

THEREFORE, IT IS ORDERED AND ADJUDGED as follows:

A. The Department of Financial Services of the State of Florida is appointed Receiver of Respondent for purposes of liquidation.

B. The Receiver is authorized and directed to:

1. Take immediate possession of all the property, assets, and estate, and all other property of every kind whatsoever and wherever located belonging to Respondent pursuant to Sections 631.111 and 631.141, Florida Statutes, including but not limited to: offices maintained by the Respondent, rights of action, books, papers, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages,

furniture, fixtures, office supplies and equipment, and all real property of Respondent, wherever situate, whether in the possession of Respondent or its officers, directors, trustees, employees, consultants, attorneys, agents or affiliates.

2. Liquidate the assets of Respondent, including but not limited to, funds held by Respondent's agents, subagents, producing agents, brokers, solicitors, service representatives or others under agency contracts or otherwise which are due and unpaid to Respondent, including premiums, unearned commissions, agents' balances, agents' reserve funds, and subrogation recoveries.

3. Employ and authorize the compensation of legal counsel, actuaries, accountants, clerks, consultants, and such assistants as it deems necessary, purchase or lease personal or real property as it deems necessary, and authorize the payment of the expenses of these proceedings and the necessary incidents thereof, as approved by the Court, to be paid out of the funds or assets of the Respondent in the possession of the Receiver or coming into its possession.

4. Reimburse such employees, from the funds of this receivership, for their actual necessary and reasonable expenses incurred while traveling on the business of this receivership.

5. Not defend or accept service of process on legal actions wherein the Respondent, the Receiver, or the insured is a party defendant, commenced either prior to or subsequent to this Order, without authorization of this Court; except, however, in actions where Respondent is a nominal party, as in certain foreclosure actions, and the action does not affect a claim against or adversely affect the assets of Respondent, the Receiver may file appropriate pleadings in its discretion.

6. Commence and maintain all legal actions necessary, for the proper administration of this receivership proceeding.
7. Collect all debts which are economically feasible to collect which are due and owing to Respondent.
8. Deposit funds and maintain bank accounts in accordance with Section 631.221, Florida Statutes.
9. Take possession of all Respondent's securities and certificates of deposit on deposit with the Chief Financial Officer, formerly known as the Treasurer of Florida, or any similar official of any other state, if any, and convert to cash as much as may be necessary, in its judgement, to pay the expenses of administration of this receivership.
10. Publish notice specifying the time and place fixed for the filing of claims with the Receiver once each week for three consecutive weeks in the Florida Administrative Weekly published by the Secretary of State, and at least once in the Florida Bar News and to publish notice by similar methods in states where Respondent may have issued fixed rate annuity contracts of insurance.
11. Negotiate and settle subrogation claims and Final Judgments up to and including the sum of Twenty Thousand Dollars (\$20,000.00) without further order of this Court.
12. Sell any salvage recovered having value of not more than Twenty Thousand Dollars (\$20,000.00) without further order of this Court.
13. Give notice of this proceeding to Respondent's agents pursuant to Section 631.341, Florida Statutes, and to its insureds, if any.

C. All officers, directors, trustees, administrators, agents and employees and all other

persons representing Respondent or currently employed or utilized by Respondent in connection with the conduct of its business shall be discharged forthwith.

D. Any officer, director, manager, trustee, administrator, attorney, agent, accountant, actuary, broker, employee, adjuster, independent contractor, or affiliate of Respondent and any other person who possesses or possessed any executive authority over, or who exercises or exercised any control over, any segment of Respondent's affairs or the affairs of its affiliates is required to fully cooperate with the Receiver, pursuant to Section 631.391, Florida Statutes, notwithstanding the provisions of the above paragraph.

E. Title of all property, real or personal, all contracts, rights of action and all books and records of Respondent, wherever located, are vested in the receiver pursuant to Sections 631.111 and 631.141, Florida Statutes.

F. All attorneys employed by Respondent as of the date of this Order, within 10 days notice of this Order, are required to report to the Receiver, the name, company claim number and status of each file they are handling on behalf of the Respondent. Said report shall also include an accounting of any funds received from or on behalf of the Respondent. All attorneys employed by Respondent shall be discharged as of the date of the Order unless their services are retained by the Receiver. All attorneys employed by Respondent are hereby advised that pursuant to Section 631.011(17), Florida Statutes, a claim based on mere possession does not create a secured claim and all attorneys employed by Respondent, pursuant to In Re the Receivership of Syndicate Two, Inc., 538 So.2d 945 (Fla. 1st DCA 1989), who are in possession of litigation files or other material, documents or records belonging to or relating to work performed by the attorney on behalf of Respondent are hereby required to deliver such litigation

files, material, documents or records intact and without purging to the Receiver, on request, notwithstanding any claim of a retaining lien which, if otherwise valid, should not be extinguished by the delivery of these documents.

G. All agents, brokers or other persons having sold policies of insurance and/or collected premiums on behalf of the Respondent are hereby required to account for and pay all premiums and commissions unearned due to cancellation of policies by this Order or in the normal course of business owed to the Respondent directly to the Receiver within 30 days of demand by the Receiver or appear before this Court to show cause, if any they may have, as to why they should not be required to account to the Receiver or be held in contempt of Court for violation of the provisions of this Order. No agent, broker, premium finance company or other person may use premium monies owed to the Respondent for refund of unearned premium or for any purpose other than payment to the Receiver.

H. Any premium finance company which has entered into a contract to finance a premium for a policy which has been issued by the Respondent is required to pay any premium owed to the Respondent directly to the Receiver.

I. Reinsurance premiums due to or payable by the Respondent shall be remitted to, or disbursed by, the Receiver. Reinsurance losses recoverable or payable by the Respondent shall be handled by the Receiver. All correspondence concerning reinsurance shall be between the Receiver and the reinsuring company or intermediary.

J. Upon request by the Receiver, any company providing telephonic services to the Respondent shall be required to provide a reference of calls from the number presently assigned to the Respondent to any such number designated by the Receiver or perform any other services

or changes necessary to the conduct of the receivership.

K. Any bank, savings and loan association, or other financial institution which has on deposit, in its possession, custody or control any funds, accounts and any other assets of the Respondent, shall immediately transfer title, custody and control of all such funds, accounts and other assets to the Receiver. The Receiver shall be authorized to change the name of such accounts and other assets, withdraw them from such bank, savings and loan association or other financial institution, or take any lesser action necessary for the proper conduct of this receivership. No bank, savings and loan association or other financial institution shall be permitted to exercise any form of set-off, alleged set-off, lien, any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court.

L. Any entity furnishing telephone, water, electric, sewage, garbage or trash removal services to the Respondent is required to maintain such service and transfer any such accounts to the Receiver as of the date of this Order, unless instructed to the contrary by the Receiver.

M. Any data processing service which has custody or control of any data processing information and records including but not limited to source documents, data processing cards, input tapes, all types of storage information, master tapes or any other recorded information relating to the Respondent shall transfer custody and control of such records to the Receiver. The Receiver is authorized to compensate any such entity for the actual use of hardware and software which the Receiver finds to be necessary to this proceeding. Compensation shall be based upon the monthly rate provided for in contracts or leases with Respondent which were in effect when this proceeding was instituted, or based upon such contract as may be negotiated by the Receiver,

for the actual time such equipment and software is used by the Receiver.

N. All claims shall be filed with the Receiver on or before 11:59 p.m. on the date which is exactly one year from the date of the Liquidation Order or be forever barred, and all such claims shall be filed on proof of claim forms prepared by the Receiver.

O. All insurance policies, bonds or similar contracts of coverage of the Respondent issued in Florida are hereby canceled.

P. Except for contracts of insurance, all executory contracts to which the Respondent was a party shall be canceled and stand canceled unless specifically adopted by the Receiver within thirty (30) days of the date of this Order. The rights of the parties to any such contracts are fixed as of the date of the Order and any cancellation under this provision shall not be treated as an anticipatory breach of such.

Q. All affiliated companies and associations are hereby directed to make their books and records available to the Receiver, to include all records located in any premises occupied by said affiliate, whether corporate records located in any premises occupied by said affiliate, whether corporate records or not, and to provide copies of any records requested by the Receiver whether or not such records are related to Respondent. The Receiver shall have title to any policy files and other records of, and relating to Respondent, whether such documents are kept in offices occupied by an affiliate company or any other person, corporation, or association. The Receiver is authorized to take possession of any such records, files, and documents and to remove them to any location in the Receiver's discretion. Any disputed records shall not be withheld from the Receiver's review, but shall be safeguarded and presented to this Court for review prior to copying by the Receiver.

CONTINUATION OF INVESTIGATION

1. The Receiver shall be authorized to conduct an investigation as authorized by Section 631.391, Florida Statutes, of Respondent and its affiliates, as defined above, to uncover and make fully available to the Court the state of Respondent's financial affairs. In furtherance of this investigation, Respondent and its parent corporations, its subsidiaries, and affiliates shall be required to make all books, documents, accounts, records, and affairs, which either belong to or pertain to the Respondent, available for full, free and unhindered inspection and examination by the Receiver during normal business hours (9:00 a.m. to 5:00 p.m.) Monday through Friday, from the date of this Order. The Respondent and the above specified entities are hereby required to cooperate with the Receiver to the fullest extent required by Section 631.391, Florida Statutes. Such cooperation shall include, but shall not be limited to, the taking of oral testimony under oath of Respondent's officers, directors, managers, trustees, agents, adjusters, employees, or independent contractors of Respondent, its affiliates and any other person who possesses any executive authority over, or who exercises any control over, any segment of the affairs of Respondent in both their official, representative and individual capacities and the production of all documents are calculated to disclose the state of Respondent's affairs.

2. Any officer, director, manager, trustee, administrator, attorney, agent, accountant, actuary, broker, employee, adjuster, independent contractor, or affiliate of Respondent and any other person who possesses or possessed any executive authority over, or who exercises or exercised any control over, any segment of the affairs of the Respondent or its affiliates shall be required to fully cooperate with the Receiver as required by Section 631.391, Florida Statutes, and as set out in the preceding paragraph. Upon receipt of a certified copy of this Order, any

R. The Receiver shall have complete control of all computer records of the Respondent. The Receiver shall have access to the computer records of all affiliates.

S. Any person, firm, corporation or other entity having notice of this Order that fails to abide by its terms shall be directed to appear before this Court to show good cause, if any they may have, as to why they should not be held in contempt of Court for violation of the provisions of this Order.

T. Pursuant to Sections 631.041(3) and (4), Florida Statutes, all persons, firms, corporations and associations within the jurisdiction of this Court or over whom this Court has jurisdiction, including, but not limited to, Respondent and its officers, directors, stockholders, members, subscribers, agents and employees, are hereby enjoined and restrained from the further transaction of the business of issuing purported annuity contracts, from doing, doing through omission, or permitting to be done any action which might waste or dispose of the books, records and assets of the Respondents; from in any means interfering with the Receiver or these proceedings; from the transfer of property and assets of Respondent without the consent of the Receiver; from the removal, concealment, or other disposition of Respondent's property, books, records, and accounts; from the commencement or prosecution of any actions against the Respondent or the Receiver together with its agents or employees, the service of process and subpoenas, or the obtaining of preferences, judgments, writs of attachment or garnishment or other liens; and from the making of any levy or execution against Respondent or any of its property or assets.

bank or financial institution shall immediately disclose to the Receiver the existence of any accounts of Respondent and any funds contained therein and any and all documents in its possession relating to Respondent for the Receiver's inspection and copying.

NOTICE OF AUTOMATIC STAY

1. Notice is hereby given that, pursuant to Section 631.041(1), Florida Statutes, the filing of the Department's initial petition herein operates as an Automatic Stay applicable to all persons and entities, other than the Receiver, which shall be permanent and survive the entry of this Order, and which prohibits:

i) The commencement or continuation of judicial, administrative or other action or proceeding against the insurer or against its assets or any part thereof;

ii) The enforcement of judgment against the insurer or an affiliate obtained either before or after the commencement of the delinquency proceeding:

a. Any act to obtain possession of property of the Respondent;

b. Any act to create, perfect or enforce a lien against property of the Respondent, except a secured claim as defined in Section 631.011(17), Florida Statutes;

c. Any action to collect, assess or recover a claim against the Respondent, except claims as provided for under Chapter 631;

d. The set-off or off-set of any debt owing to the insurer except offsets as provided in Section 631.281, Florida Statutes.

2. All Sheriffs and all law enforcement officials of the state shall cooperate with and assist the Receiver in the implementation of this Order.

3. This Court retains jurisdiction of this cause for the purpose of granting such other and further relief as from time to time shall be deemed appropriate.

DONE AND ORDERED in Chambers, Tallahassee, Leon County, Florida this 23 day of June 2005.



NIKKI ANN CLARK
CIRCUIT JUDGE

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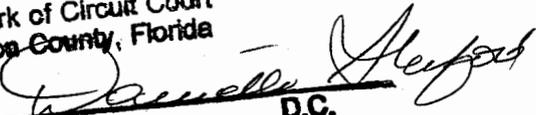
Lourdes M. Calzadilla, Senior Attorney
Florida Department of Financial Services
Division of Rehabilitation and Liquidation
POB 110
Tallahassee FL 32302-0110

J. Riley Davis, Esquire
Akerman Senterfitt
106 E. College Avenue, Suite 1200
Tallahassee FL 32301

A Certified Copy
Attest:

Bob Inzer

Clerk of Circuit Court
Leon County, Florida

By 

D.C.

