BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation of The Desist and Refrain Order Against:	)	Case No. 38300
RONALD EDWARD REISWIG, JANET SUE REISWIG, WILLIAM MARTIN FENDRICK, and FIDELITY INSURED DEPOSITS,	)	OAH No. L2003070022
Respondents.	)	

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the California Corporations Commissioner as his Decision in the above-entitled matter.

This Decision shall become effective on December 12, 2003

IT IS SO ORDERED December 12, 2003

DEMETRIOS A. BOUTRIS
California Corporations Commissioner

By _____
KEITH YAMANAKA
Acting Chief Deputy and Chief Operating Officer

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Respondents.	)	

PROPOSED DECISION

This matter came on regularly for hearing before Frank Britt, Administrative Law Judge, Office of Administrative Hearings, on July 17, 2003, at Los Angeles, California.

Karen L. Patterson, Senior Corporations Counsel, represented the Commissioner of the California Department of Corporations ("Department").

Respondents Ronald Edward Reiswig, Janet Sue Reiswig and Fidelity Insured Deposits, by its President, Ronald Edward Reiswig, were present and represented by John H. Baker, Attorney at Law.

There was no appearance by or on behalf of William Martin Fendrick.

Respondents moved to Disqualify Complainant's counsel, Karen Patterson, from representing the Department. The motion was argued and denied on the record. Respondents also moved to preclude evidence that may have been obtained from Ms. Patterson's telephone conversation with Greg Cohen, identified as respondents' agent. That motion was also denied.

Oral and documentary evidence was received and the parties were given the opportunity to submit closing briefs. Closing briefs were timely received and marked respectively as complainant's Exhibit "25" and respondents' Exhibit "I". Complainant's reply brief was timely mailed on August 6, 2003. However, due to an error in the address the reply brief (Exhibit "26") was not received at the Office of Administrative Hearings until August 18, 2003, at which time the matter was deemed

submitted.[1] The Administrative Law Judge now makes the following findings and Decision:

FACTUAL FINDINGS

I

1. Ronald Edward Reiswig ("Reiswig" or "Ronald Reiswig") is licensed by the Department of Insurance as a life agent (License No. 0809297), business address: 2310 Calle Almirante, San Clemente, California 92672.

2. Janet Sue Reiswig ("Ms. Reiswig") is licensed by the Department of Insurance as a life agent (License No. 0B87461), business address: 2310 Calle Almirante, San Clemente, California 92672.

3. Fidelity Insured Deposits ("Fidelity") is a California corporation. Ronald Reiswig is the sole owner and its president and registered agent. The corporation's mailing address is 1851 East First Street 9th Floor, Santa Ana, California 92705. The corporate office address is 2310 Calle Almirante, San Clemente, California 92672.

4. FEP, Inc. ("FEP"), dba Family Estate Insurance Services, is licensed by the California Department of Insurance to sell insurance. Ronald Reiswig is the principal officer, sole owner and the individual behind the corporate licensee. Its primary business is in selling annuities.

II

1. Fidelity engages in no activities other than advertising Certificates of Deposit ("CDs") and paying the advertised CD bonuses which are actually funded by FEP. Fidelity paid out approximately 150 bonus checks per month in 2002 with amounts averaging about $150 each. Currently the bonus-check payouts are about 100 per month. Fidelity claims to have no source of revenue.

2. As a devise to attract potential purchasers of annuities, Fidelity places advertisements in newspapers throughout Southern California purporting to offer FDIC-insured

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[1] Respondents' closing brief contained a Declaration of John H. Baker and two pre-marked exhibits identified as "G" and "H". Exhibit "G" is a copy of a letter dated February 3, 2003, from respondents' counsel to Karen L. Patterson, Department of Corporations. Exhibit "H" is a faxed message from respondents' counsel to Ms. Patterson, dated September 17, 2002. There was no objection to the admission of the two exhibits.

CDs with substantially higher yields than those available from actual FDIC-insured institutions.[2] Persons seeking the advertised CDs from Fidelity are directed to FDIC-insured institutions to obtain actual FDIC-insured CDs that yield lower amounts than the rates advertised in the ads. To make up the difference between the CD's yield and the one-year percentage yield as advertised, Fidelity pays the purchasers what it refers to in some of its ads as an inception bonus. The bonus payments are usually mailed to the purchasers within a week or 10 days of the transaction.

3. Respondents' have received complaints from FDIC-insured institutions concerning the advertised offer of CDs on behalf of institutions with whom they had no relationship.

III

On September 6, 2002, the above-captioned order to DESIST AND REFRAIN ("Order") was issued by the Commissioner charging violations of sections 25110, 25210, and 25401 of the Corporations Code. On September 9, 2002, respondents were duly served.

The factual allegations of the Order are as follows:

"During recent months advertisements have appeared regularly in the Los Angeles Times, including July 10, 2002 edition, offering "FDIC CD"s with yields of 4.25%. The name of the company appearing in the ad is Fidelity Insured Deposits. Since that rate is higher than rates commonly being offered on certificates of deposits by FDIC-insured institutions, a reader called for more information. He was referred to Janet Reiswig and Ronald Reiswig, whom he was told are the owners of Fidelity Insured Deposits.

"The reader arranged a meeting with a representative of Fidelity Insured Deposits named William Martin Fendrick, which took place in July 2002, at a temporary office located at 11400 West Olympic Boulevard, Suite 200, Los Angeles, California 90064. At the meeting, Fendrick wrote notes confirming that a $100,000 investment in the CDs offered in the ad would yield $4,250. Nevertheless, Fendrick urged the reader to consider purchasing term life insurance instead, stating that it was a better investment for tax reasons.

"When the reader said that he was only interested in the

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[2] Fidelity's use of its advertisement program is described in respondents' closing brief as "a loss leader to target potential buyers of annuities for FEP, Inc.."

CDs, not in life insurance, Fendrick told him for the first time, and contrary to his prior statement, that the 4.25% yield rate was only available on the first $10,000 invested. Fendrick indicated that Fidelity Insured Deposits would pay the difference between the yield offered on an FDIC-insured CD obtained from a commercial institution and 4,25%, but would only pay this difference upon the first $10,000 invested. In other words, if the commercial CD offered a yield of 3.25%, the Fidelity Insured Deposits would pay $100, the 1% difference between that yield and a 4.25% yield on the first $10,000 invested. For amounts invested above $10,000, Fendrick said, the investor would receive only the lower yield paid by the commercial FDIC-insured institution from whom the CD was acquired.

"When the reader told Fendrick that he wanted to complain to the company about the lack of any prior reference to the $10,000 limitation on the 4.25% yield rate, and omission of the limitation from the advertisement, Fendrick gave him the cell phone number of Ronald Reiswig. In response to the reader's call, Reiswig insisted that the advertisement clearly set forth the $10,000 limitation. In fact, the advertisement contains no reference to a $10,000 limitation.

"The Department of Corporations has not issued a permit or other form of qualification authorizing any person to offer and sell these securities in this state.

"Neither Fidelity Insured Deposits, Ronald Edward Reiswig, Janet Sue Reiswig, nor William Martin Fendrick has obtained a certificate from the Commissioner to act in the capacity of a broker-dealer."

IV

Complainant established by clear and convincing evidence that the factual allegations as set forth above are true. The evidence also established that respondents Ronald Reiswig, Ms. Reiswig and Fidelity have essentially continued to engage in the same type of conduct that is alleged in the Order of September 6, 2002. However, respondents have made recent changes in their advertisements, as evidenced by Exhibit "D", a June 15, 2003 advertisement and Exhibits "21", a July 16, 2003 advertisement. The latter advertisement appearing in the Los Angeles Times on the day before the hearing, contained the following:

"YIELD Earned With Your 12 Mo. FDIC INSURED CD & IRA ROLLOVER"

"Accurate 7/10/03. Not offer to sell securities. CD insured to $100,000 by FDIC-Issuing Bank Members FDIC. Min. Limit $10,000. Only 1 Per Family. Annual percentage yield reflects

earnings obtained with your CD+FID inception bonus. Early withdrawal penalties apply. Bank fees may reduce earnings. Fidelity Insured Deposits not member of Federal Deposit Insurance Corporation. Fixed Annuities Available to 7% (OC15049)."

V

1. On January 7, 2003, Respondents' counsel John Baker sent a letter to complainant's counsel in which he referred to several conversations where the parties had discussed issues concerning Fidelity's advertisements. The opening paragraph of the letter requested that the Order be lifted, or in the alternative ". . . we request a hearing pursuant to Section 25532(d) of the California Corporations Code." The final paragraph of the letter states: "If you will not lift the Desist and Refrain Order and will not work with me to resolve this matter quickly, please advise me of the hearing date on this matter."

2. Respondents' did not receive any response from the complainant to the January 7, 2003, letter.

VI

1. Complainant contends that respondents' position is without merit because respondents' counsel engaged in a series of discussions and correspondence in which he made statements about wanting a hearing if the matter could not be resolved to the respondents' satisfaction; and that no actual request for a hearing was made by respondents prior to June 27, 2003, which was timely complied with.

2. Complainant presented no evidence relating to the discussions that the parties had in connection with this matter. Indeed, respondents' letter to complainant dated June 27, 2003, pointed out complainant's lack of response, as follows:

> "As you know, I requested a hearing pursuant to Section 25532(d) of the Corporations Code in my letter of January, 7, 2003. In that letter, I requested that you voluntarily lift the Order. Alternatively, I request a hearing. I closed the letter by saying that 'If you will not lift the Desist and Refrain Order and will not work with me to resolve this matter quickly, please advise me of the hearing date on this matter.
>
> "You never responded to that letter, by mail, fax or telephone. On February 3, 2003, I sent you another letter by fax and by U.S. Mail. A copy of that letter is enclosed for your reference. In that letter, I clearly stated that,
>
> 'As I calculate it, Friday, January 31, 2003 is 15

business days after delivery of my request for a hearing.

'Accordingly, the Desist and Refrain Order has expired and is of no force or effect as to new copy substantially similar to the copy that I sent to you with my January 7, 2003, letter....

'If you disagree with our analysis, please notify me immediately. Otherwise, we will rely on our understanding that the Desist and Refrain Order has expired, as expressed in this letter.'

"Again, I never heard from you. In fact, the Los Angeles Times called you several times during the week of February 3, 2003, to ask you if the order was still in effect. You never called them back either."

VII

Complainant failed to respond to the hearing request for a period of more than a five-month. That failure, coupled with respondents' letters of February 3, 2003, June 3, 2003 and June 27, 2003, can not reasonably be construed as respondents' consent to commence the hearing beyond the 15-business days as mandated by the statute. The letters of June 3, 2003, and June 27, 2003 (Exhibits "6" and "2"), were made long after the Order was rescinded by operation of law. The hearing request of June 3, 2003, included the following language: "If the Department will not voluntarily remove it, then please advise me of a hearing date on this matter." The language contained in Exhibits "2" and "6" does not provide convincing evidence that respondents consented to commencing the hearing on the Order that had been rescinded several months earlier.

VIII

It is hereby found that the above-captioned Desist and Refrain Order was rescinded by operation of law, in that no hearing was commenced within 15-business days after the receipt of respondents' request for a hearing dated January 7, 2003.

* * * *

RULINGS ON EXHIBITS

Respondents' objected to the admission of complainant's Exhibits 10 through 22. The objections were taken under submission by the ALJ in order to review the documents. Having reviewed the documents the following rulings are hereby made:

1. Respondents' relevancy objections are sustained as to:

Exhibit 13 (Department of Corporations Investor Alert), Exhibit 14 (Attorney General February 19, 2003, Release: Living Trust Mills and Annuity Scams), and Exhibit 15 (California Insurance Commissioner July 16, 2003, Release/Notice: Living Trust Mills and Pretext Interviews)

2. Respondents' objections to Exhibits 10, 11, 12 and 18, are overruled and the exhibits are received in evidence as administrative hearsay.

3. Respondents' objections to Exhibits 16, 17, 19, 20, 21 and 22 are overruled and the exhibits are received in evidence.

* * * *

LEGAL CONCLUSIONS

Pursuant to the foregoing findings, the Administrative Law Judge makes the following conclusion of law:

1. California Corporations Code section 25532(d), provides as follows:

> "If, after an order has been made under subdivision (a), (b),or (c), a request for hearing is filed in writing within one year of the date of service of the order by the person to whom the order was directed, a hearing shall be held in accordance with provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all the powers granted under that chapter. Unless the hearing is commenced within 15 business days after the request is filed (or the person affected consents to a later date), the order is rescinded. "(Emphases added)

The cardinal rule of statutory construction is to ascertain the intent of the legislature so as to effectuate the purposes of the statute. (Lum v. Superior Court of Fresno County (1983) 190 Cal.App.3d 952). In ascertaining the legislative intent the statute must be interpreted to effectuate the purpose of the law and the effect must be given to the words according to their usual and ordinary import. (Merrill v. Department of Motor Vehicles (1969) 71 Cal.2d 907).

The clear language of Corporations Code section 25532(d) requires no interpretation to construe its meaning. It is axiomatic that in construing a statute, courts must first look to its language and attempt to give effect to its plain meaning. If the words are clear, courts may not add to or change them to accomplish a purpose not apparent on their face. People v. Ten

5500 etc. Traveler's Checks (1993) 16 Cal.App.4th 475).

The word "rescind" is defined in Webster's New Word Dictionary, Second College Edition, as "to revoke, repeal, or cancel (a law or order, etc.)".

2. On or about January 31, 2003, the Desist and Refrain Order issued against respondents was rescinded by operation of law pursuant to California Corporations Code section 25532(d). (Findings VII and VIII.)

3. Accordingly, the Desist and Refrain Order of September 6, 2002, was rescinded as mandated by the statute. Therefore, complainant has no jurisdiction, other than the inherent authority to terminate the matter and vacate the Order.

* * * *

ORDER

The above-captioned Desist and Refrain Order, dated September 6, 2002, is vacated.

DATED: August 29, 2003.

FRANK BRITT
Administrative Law Judge
Office of Administrative Hearings