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ARKANSAS SECURITIES DEPT.

**BEFORE THE ARKANSAS SECURITIES COMMISSIONER
CASE NO. S-16-0061
ORDER NO. S-16-0061-17-OR01**

**IN THE MATTER OF:
ADAM CURRY SMITH**

RESPONDENT

CONSENT ORDER

This Consent Order is entered pursuant to the Arkansas Securities Act, codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509 (“Act”), the Rules of the Arkansas Securities Commissioner (“Rules”) promulgated under the Act, and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann. §§ 25-15-201 through 25-15-219, in accordance with an agreement by and between the Staff of the Arkansas Securities Department (“Staff”) and Adam Curry Smith (“Smith”) in full and final settlement of all claims that could be brought against Smith by the Staff on the basis of the facts set forth herein.

Smith admits the jurisdiction of the Act and the Arkansas Securities Commissioner (“Commissioner”), waives his right to a formal hearing and appeal, and admits the findings of fact made herein, consents to the entry of this order and agrees to abide by its terms in settlement of any possible violations committed by Smith concerning the matters detailed in this order.

FINDINGS OF FACT

1. On June 21, 2016, Adam Curry Smith (“Smith”), CRD no. 4542903, submitted an application for registration as a representative of an investment adviser with Cabana Asset Management (“Cabana”), CRD no. 151418, to the Arkansas Securities Department (“Department”).

2. On May 5, 2016, Smith's former employer Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), CRD no. 7691, terminated Smith's employment for conduct inconsistent with Merrill Lynch's standards related to accepting gifts from a client and failure to be forthcoming in discussions with the Merrill Lynch. Between October 21, 2010 and December 18, 2013, Smith and his wife received a total of \$105,000 in monetary gifts for the benefit of their children from an Arkansas client ("AR1"). AR1 gave these monetary gifts to be used for the future education expenses of Smith's natural and step children. AR1 gave these gifts from an account outside of Merrill Lynch. Accepting the monetary gifts from AR1 was not in AR1's financial best interest.

3. At the time said monetary gifts were given by AR1, Smith, who was AR1's Merrill Lynch agent, did not tell or get permission from any supervisor at Merrill Lynch. Section 6.3(III) of the Bank of America/Merrill Lynch Compliance Policy states that accepting gifts in excess of the firm's policy is strictly prohibited. Also, in section III.B. of said compliance policy, employees are strictly prohibited from accepting monetary gifts in any amount from a client, like AR1. When supervisors at Merrill Lynch asked Smith about the monetary gifts for the benefit of Smith's children, Smith was not completely forthcoming about the total amount or his involvement in accepting the monetary gifts from AR1. Smith violated Merrill Lynch's compliance policy by accepting the monetary gifts from AR1.

4. When the Staff began its investigation of these gifts, the Staff asked certain questions of Smith. Smith provided incomplete answers to the Staff as to the complete time frame and amount of the monetary gifts given by AR1 for the benefit of Smith's natural and step children.

APPLICABLE LAW

5. Ark. Code Ann. § 23-42-308(a)(2)(G) states that the Commissioner may by order suspend or revoke any registration, if he finds that the registrant has engaged in dishonest or unethical practices in the securities business. Dishonest or unethical practices in the securities business include a registrant's violation of an employing firm's compliance policy.

6. Rule 308.01(p) states that it is grounds to suspend or revoke an agent's registration for borrowing a customer's funds.

7. Rule 308.02(f) states that it is grounds to suspend or revoke a representative's registration for borrowing money or anything of value from a client unless the client is a broker-dealer, an affiliate investment adviser, or a financial institution engaged in the business of loaning funds.

8. Rule 308.01(y) states that the unfair, misleading or unethical practices set forth above are not exclusive of other activities, which shall be considered grounds for revocation and the Commissioner may revoke a registration when necessary or appropriate in the public interest.

9. Rule 308.02(y) states that investment advisers have a duty to act primarily for the benefit of their clients. All investment advisers and representatives shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Further, it is grounds to suspend or revoke a representative's registration for other fraudulent, deceptive, dishonest or unethical practices. The activities set forth above are not inclusive. Any other activities employing any device, scheme or artifice to defraud or engaging in any act, practice or course of business that operates or would operate as a fraud or deceit shall constitute grounds for revocation under Section 23-42-38 of the Act.

CONCLUSIONS OF LAW

10. Smith violated Ark. Code Ann. § 23-42-308(a)(2)(G) and Rule 308.01(y), when Smith, who was AR1's Merrill Lynch agent, accepted monetary gifts from AR1 as detailed in paragraph two.

11. Smith violated Ark. Code Ann. § 23-42-308(a)(2)(G) and Rule 308.02(y) of the Rules, by violating his fiduciary duty, when Smith, who was AR1's Merrill Lynch agent, accepted monetary gifts from AR1 as detailed in paragraph two.

12. Smith violated Ark. Code Ann. § 23-42-308(a)(2)(G) and Rule 308.01(y), when Smith, who was AR1's Merrill Lynch agent, violated his employer's compliance policy by accepting monetary gifts from AR1 as detailed in paragraphs two and three.

13. Smith violated Ark. Code Ann. § 23-42-308(a)(2)(G) and Rule 308.02(y) of the Rules, when Smith, who was AR1's Merrill Lynch agent, violated his employer's compliance policy by accepting monetary gifts from AR1 as detailed in paragraphs two and three.

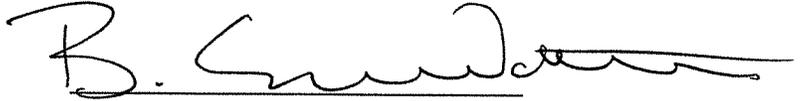
14. The registrations of Smith should be suspended by the Commissioner pursuant to Ark. Code Ann. § 23-42-308(a)(2)(G), Rule 308.01(y), and Rule 308.02(y).

ORDER

The Commissioner orders the following:

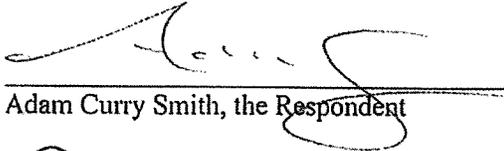
1. Smith's registration as an agent and representative shall be suspended from June 21, 2016 until June 21, 2017.
2. Smith shall pay a fine to the Department in the amount of \$20,000 within 10 days of the entry of this order.
3. Smith shall not accept any gifts in any form from any client.

IT IS SO ORDERED, on this 15th day of March, 2017.

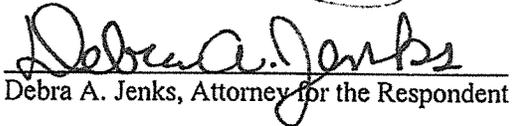


B. Edmond Waters
Arkansas Securities Commissioner

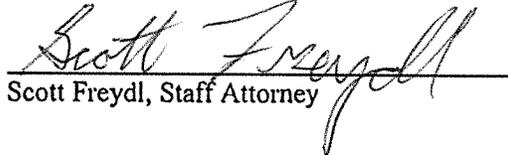
Approved as to content and form:


Adam Curry Smith, the Respondent

3/13/17
Date


Debra A. Jenks, Attorney for the Respondent

03/15/17
Date


Scott Freydl, Staff Attorney

3/15/17
Date