

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

CASE NO. S-12-0021

IN THE MATTER OF:

DAVID S. ECKESS

ORDER NO. S-12-0021-12-OR02

CONSENT ORDER

This Consent Order is entered pursuant to the Arkansas Securities Act (“Act”), Ark. Code Ann. §§ 23-42-101 through 23-42-509, the Rules of the Arkansas Securities Commissioner, and the Arkansas Administrative Procedures Act, 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 David S. Eckess (“Eckess”), CRD # 1391486, in full and final settlement of all claims that could be brought against Eckess by the Staff on the basis of the facts set forth herein.

Eckess admits the jurisdiction of the Act and the Arkansas Securities Commissioner (“Commissioner”), waives his right to a formal hearing and without admitting or denying the findings of fact made herein, consents to the entry of this order and agrees to abide by its terms.

FINDINGS OF FACT

1. A Form U5 filed on December 21, 2011, by Morgan Stanley Smith Barney (“Morgan Stanley”), CRD # 149777, Eckess’ previous employing broker-dealer and investment adviser, referenced “management[’s] loss of confidence due to concerns regarding Eckess’ handling of annuity modifications for a client” in terminating his employment.
2. An investigation by the Staff revealed that on or about November 4, 2011, Eckess assisted a ninety-two-year-old client, for whom Eckess had served as an agent for approximately twenty years, in completing two “Beneficiary Designation” forms used to change the beneficiary(ies) for certain annuities owned by the client. The two annuities had been purchased from Eckess approximately six years earlier. Specifically, Eckess assisted the client in changing

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the existing beneficiary for the two annuities, from the client's revocable trust to Eckess, so that Eckess was the only named beneficiary of both annuities. Eckess is not an immediate family member of the client and did not request or receive approval from Morgan Stanley before becoming the annuity beneficiary of the client. On or about November 23, 2011, the client completed new Beneficiary Designation forms changing the beneficiary of the two annuities from Eckess to her son.

3. Following an internal review of the matter, Morgan Stanley terminated Eckess' registration and employment on December 21, 2011.

4. Eckess filed applications for registration with the Department in January 2012 to become a registered agent and representative with a new firm. He has remained unregistered in Arkansas for the five-month period while Staff investigated the events that led to his termination from Morgan Stanley and the parties worked through the resolution of these matters. Eckess has cooperated fully with the Staff throughout this period of time.

CONCLUSIONS OF LAW

5. Ark. Code Ann. § 23-42-308(a)(2)(G) provides in part that the Commissioner may by order make conditional any registration if he finds that an applicant has engaged in unethical practices in the securities business. The actions by Eckess that resulted in his being named the beneficiary of annuities owned by one of his clients, along with his failure to inform his employing broker-dealer and investment adviser of the matter, were unethical practices in the securities business.

6. Ark. Code Ann. § 23-42-308(g) grants authority to the Commissioner to levy fines for violations of the Act after a registrant is given notice and an opportunity for a hearing.

7. Ark. Code Ann. § 23-42-308(h) provides for an informal disposition of allegations which might give rise to a proceeding by settlement or consent.

ORDER

It is ordered that Eckess shall pay a fine in the amount of ten thousand dollars (\$10,000) to the Arkansas Securities Department. The payment of said fine shall be received by the Department upon entry of this order.

It is also ordered that, for a period of one year, any registrations of Eckess in Arkansas as an agent or representative shall be conditioned upon his employing firm providing heightened supervision of his activities. A plan for heightened supervision shall be submitted for the Commissioner's approval along with any registration application for Eckess.

IT IS SO ORDERED.



A. HEATH ABSHURE
Arkansas Securities Commissioner

May 10, 2012

DATE

I hereby agree to the entry of this Consent Order, and consent to all terms, conditions, and orders contained therein, and waive any right to an appeal from this order.



David S. Eckess

5-10-2012

DATE

On behalf of Staff:



David H. Smith
Chief Counsel
Arkansas Securities Department

5-10-12

DATE