

BEFORE THE ARKANSAS SECURITIES COMMISSIONER
Case No. S-18-0085

IN THE MATTER OF
JOHN C. HAMILTON

COMPLAINT

The staff of the Arkansas Securities Department (Staff) hereby institutes formal administrative proceedings against John C. Hamilton, and in pursuance of that complaint states the following:

AUTHORITY

1. This complaint is filed and this proceeding instituted pursuant to the Arkansas Securities Act, Ark. Code Ann. §§ 23-42-101 through 509, (Act), the Rules of the Arkansas Securities Commissioner (Rules), and the Arkansas Administrative Procedures Act, Ark. Code Ann. §§ 25-15-201 through 219.

RESPONDENT

2. John C. Hamilton, CRD No. 5506278, is an Arkansas resident. He is licensed with the Arkansas Insurance Department as a resident producer insurance agent, Licence/NPN No. 7475151. During the calendar years of 2015 and 2016, Hamilton worked at the Little Rock office of Iron Horse Financial (Iron Horse), which is an insurance agency of Guardian Life Insurance Company of America (Guardian) and a branch office of Park Avenue Securities, LLC, (Park Avenue), an investment adviser and broker-dealer wholly owned by Guardian. Iron Horse's main office is located in Baton Rouge, Louisiana. Hamilton was appointed as an insurance producer agent of Guardian. From December 2014 until May 31, 2019 Hamilton

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was registered as an investment adviser representative of Park Avenue.

3. Hamilton was the regional vice president and managing director of the Little Rock office of Iron Horse, which made him the equivalent of the branch manager for both the insurance agency and the investment adviser.

FACTUAL ALLEGATIONS

4. Most of the business done at this office was insurance.
5. Andrew Steven Lee, an Arkansas resident, licensed in Arkansas as a resident producer insurance agent, Licence/NPN No. 17254210, was employed as an insurance agent at Iron Horse during the time of the relevant events set out herein. Lee was not registered in any capacity pursuant to the Act. Hamilton was his supervisor.
6. Before the relevant events of this order occurred, Lee had sold his grandmother a Guardian life insurance policy to use as an investment. The theory was for the insured or owner of the policy to take out loans from the policy and not pay them back, thus making money and paying no taxes on the income.
7. AR1, who was 72 years old at the time, was a long time friend and contemporary of Lee's grandmother and was interested in something similar. She began talking to Lee about this idea beginning sometime in 2015. Hamilton was involved in most every conversation Lee had with AR1.
8. After talking to AR1, Hamilton and Lee discovered exactly what AR1 was seeking. Even though she came in asking for what Lee's grandmother had purchased, Lee and Hamilton discussed AR1's objectives and learned that she wanted to be able to direct where her money

would go upon her death, and she was averse to taxes and risk. Specifically, AR1 wanted to put money back for her only child, a daughter, and her two grandchildren. She wanted to make sure any money she invested would not lose value and there would be little to no taxes involved.

9. AR1 had two accounts at a broker-dealer/investment adviser that had been managed by her husband who had died several years before. One account was an individual retirement account (IRA), often referred to as a qualified account, and the second account was non-qualified. The IRA had about \$300,000 of securities in it, and the other account had about \$200,000 of securities in it. Hamilton and Lee viewed records of these accounts online after AR1 obtained a username and password to her account. It was plain to see that one of the accounts was an IRA.
10. Eventually, Hamilton and Lee worked out a \$500,000 investment in a Guardian life insurance policy. Hamilton oversaw Lee's activities in putting this plan together. Hamilton's activities in the drafting of the plan were essential, and Lee would not have been able to put it together without Hamilton's assistance.
11. In June 2016 AR1 called the investment adviser representative (IAR) who was assigned to her two securities accounts on a speaker phone at the Little Rock Iron Horse office with Hamilton and Lee present to obtain the \$500,000 to fund this investment. AR1 told IAR to withdraw \$300,000 from the IRA (although AR1 did not understand that it was an IRA) and \$200,000 from the other account to purchase an annuity. IAR told her that she must be buying two annuities, one qualified and one non-qualified, because you cannot mix the two types. AR1 hesitated for a moment, but at the urging of Lee, insisted on withdrawing the

requested amounts from each of the two accounts. Hamilton, being present in the hearing of this confirmation and being Lee's supervisor, said nothing and thus tacitly approved Lee's direction to AR1 to take a \$300,000 withdrawal from her IRA and adopted it as his own.

12. AR1 obtained the money and purchased a Guardian life insurance policy on the life of her 49-year-old son-in-law. (Guardian declined AR1 as the insured for health reasons.) Immediately after the June 2016 telephone call but before the \$500,000 requested was received, AR1 asked Lee and Hamilton about her tax liability in this transaction and was told that it would be about \$1,000. It took some time for the securities to be liquidated and checks delivered to AR1. The application for the life insurance policy was not completed for another week and the policy was not paid for and delivered until late August 2016. In April 2017 AR1 found out from her tax accountant that the \$300,000 withdrawal from her IRA resulted in a tax bill of about \$120,000. Had AR1 known the exact tax liability involved in taking the \$300,000 out of her IRA, she would not have decided to purchase the policy.
13. This life insurance policy on the life of her then 49-year old son-in-law had a death benefit worth over \$2 million, and the yearly premium was approximately \$63,000. The plan was to make what are called paid up additions which were prepaid premiums that were intended to grow by dividends that were anticipated from Guardian and would pay the remaining premiums. The AR1's son-in-law, the insured, was also a part owner and could take out loans from the insurance policy. By not repaying these loans, according to the theory and the plan, AR1's daughter and son-in-law could have the use of the money AR1 had invested in the policy tax free. Although AR1 prepaid some six years in premiums, and Hamilton and Lee thought that she would not need to pay premiums after that time period, that was not a

certainty and was dependent on whether the paid up additions would perform well enough to pay future premiums, something well beyond AR1's control.

14. Both Lee and Hamilton were paid commissions on the sale of the life insurance policy to AR1. As the branch manager of Iron Horse's Little Rock office, Hamilton was paid a yearly bonus based on the amount of insurance products sold by the Little Rock office, and the sale of this insurance policy made that bonus larger, resulting in additional compensation to him.
15. Although Hamilton was registered as an investment adviser representative of Park Avenue and AR1 did not have an investment adviser contract with Park Avenue, Hamilton acted as an investment adviser, nevertheless, because he delivered advice to AR1 concerning the advisability of selling securities for compensation, which was the commission for the sale of the life insurance policy and any increase he might have earned in the form of a yearly bonus based on the total amount of insurance sold by the Little Rock office of Iron Horse.

WILLFUL VIOLATIONS OF THE ACT

16. When Lee and Hamilton advised AR1 to liquidate securities worth \$300,000 from her IRA in order to partially fund the purchase of a life insurance policy on the life of her son-in-law and minutes later told her that her tax liability for the liquidation of those securities would be about \$1,000, when AR1 still had plenty of time to reconsider the purchase of the life insurance policy, they made a material misstatement of fact in the course of giving investment advice for compensation, which was a violation of Ark. Code Ann. § 23-42-307(a)(3). The violation of this provision is grounds for revocation or suspension pursuant to Ark. Code Ann. § 23-42-308(a)(2)(B).

17. In recommending that AR1 liquidate securities and replace them with the life insurance policy on the life of her son-in-law with the intention of using the life insurance policy not as insurance on her son-in-law's life but as an investment vehicle, Hamilton and Lee recommended the sale of securities without reasonable grounds for believing that the recommendation would actually work for AR1 and would likely attain the goals she had in mind. This was a violation of Rule 308.02(a), Rules of the Arkansas Securities Commissioner. The violation of this rule is grounds for revocation or suspension pursuant to Ark. Code Ann. § 23-42-308(a)(2)(B) and (a)(2)(G).

WHEREFORE, the Staff respectfully prays that the Commissioner to assess the following penalties:

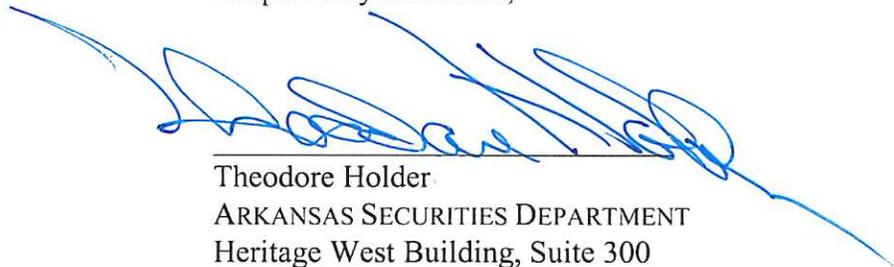
- 1) revoke Hamilton's registration with Park Avenue as of the last date on which his registration was effective in Arkansas in accordance with Ark. Code Ann. § 23-42-308(e)(3) for
 - a) the material misstatement of fact made to AR1 in his advice to AR1 to liquidate securities worth \$300,000 from her IRA in order to partially fund the purchase of a life insurance policy on the life of her son-in-law and the erroneous information that her tax liability for the liquidation of those securities would be about \$1,000, when AR1 still had plenty of time to reconsider the purchase of the life insurance policy;
 - b) the unsuitable recommendation that AR1 liquidate securities and replace them with the life insurance policy on the life of her son-in-law with the intention of using the life insurance policy not as insurance on her son-in-law's life but as an investment vehicle, a recommendation to sell securities without reasonable grounds for believing that the recommendation was suitable for AR1 and would likely attain the goals she

had in mind; and

- 2) fine Hamilton in an appropriate amount in accordance with Ark. Code Ann. § 23-42-308(g)(2)(A) up to \$20,000 for each separate violation of the Act where the victim is over 65 years of age.

The Staff further requests the Commissioner to set a date for a hearing and for all other just and proper relief as the Commissioner deems just and proper.

Respectfully submitted,



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Counsel for the Staff