

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

Case No. S-08-033

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ARKANSAS SECURITIES D

IN THE MATTER OF

Order No. S-08-033-⁰⁹~~08~~-OR01

ROBERT KYLE STEWART, CRD# 2102132

ORDER TO CEASE AND DESIST
AND
NOTICE OF HEARING

On November 20, 2008, the Staff of the Arkansas Securities Department (“Staff”) filed its Complaint alleging that Robert Kyle Stewart (“Stewart”) violated certain provisions of the Arkansas Securities Act (“Act”), Ark. Code Ann. §§ 23-42-101 – 509, and the Rules of the Arkansas Securities Commissioner (“Rules”). The Staff requested a hearing for the purpose of revoking Stewart’s registration as a broker-dealer agent and investment adviser representative. On December 15, 2008, the Staff filed an Amended Complaint alleging that Stewart’s conduct also violated Ark. Code Ann. §§ 23-42-501 and -507 and requested an Order to Cease and Desist be issued against Stewart based upon the alleged violations of the Act and Rules in addition to the revocation of registrations. The Arkansas Securities Commissioner (“Commissioner”) has reviewed the Amended Complaint, and based upon the representations made therein, finds:

FINDINGS OF FACT

1. The Amended Complaint asserts the following representations of fact:
 - A. Stewart (CRD #21021312) is an individual with a residential address located in Mountain Home, Arkansas. Stewart has been registered as a broker-dealer agent in Arkansas since July 5, 1999, and as an investment adviser representative since May 7, 2002. Stewart was employed with A. G. Edwards & Sons, Inc. (“AGE”)

(CRD# 4) beginning September 10, 1990. AGE terminated Stewart, citing a violation of firm policy and industry rules, and filed a Form U-5 with the Financial Industry Regulatory Authority (“FINRA”) on December 6, 2007.

- B. The Staff learned of Stewart’s termination from AGE through a routine examination of the Central Registration Depository (“CRD”) filings and initiated an investigation.
- C. The Staff’s investigation revealed that on or about November 9, 2007, AGE began an internal review of Stewart’s activities with his clients AR1 and AR2 based upon a telephone call AGE received from a private attorney who represented AR1 and AR2. At the time, AR1 was an 89-year-old widow and AR2 was 102 years old. The attorney indicated to AGE that Stewart was designated a second income beneficiary for AR1’s charitable trust but that AR1 did not understand how he could have been designated as such.
- D. The Staff obtained a promissory note apparently executed on June 23, 2003, purporting to loan \$283,734.29 to Stewart from AR1. The sum of \$283,734.29 was withdrawn from AR1’s AGE account on June 23, 2003.
- E. The transaction provided that Stewart repay the loan through yearly payments of \$5,000. Stewart made three such payments.
- F. In 2007, AR1 created a charitable remainder trust funded with approximately \$1.6 million that resulted from the sale of stock. AR1 understood that she would receive \$10,000 per month from the trust for the rest of her life. The remainder of the trust was to be donated to certain charities. In April 2007, AR1 designated

Stewart as the Donor Advisor allowing Stewart to determine which charities would be beneficiaries.

- G. In May 2007, Stewart submitted to the fund company a revised application that removed his name as Donor Advisor and named himself a 50% income beneficiary for his life, unbeknownst to AR1. As a result, AR1's monthly income was reduced from \$10,000 to \$5,000.
- H. Stewart received \$27,610.54 from AR1's trust before he was removed as an income beneficiary by AR1 with the assistance of AGE on or about November 13, 2007. At that time, AGE removed Stewart as AR1's broker of record.
- I. While investigating AR1's claim against Stewart, AGE discovered among Stewart's files an investment of \$200,000 from AR2. AR2 and Stewart entered into a contract dated December 7, 2005, in which AR2 agreed to invest \$200,000 into CCK Corp. ("CCK"), an entity for which Stewart served as president but that was not disclosed to AGE or the Arkansas Securities Department, in return for 10% of the net profit of CCK.
- J. Stewart represented to AR2 that CCK was a "farming or cattle ranching" venture.
- K. CCK owned a checking account. The checking account statements reveal that the funds in the CCK account were used to buy a 2006 GMC Yukon XL, to pay gambling debts, and to pay for home improvements. Checks written on the CCK account were signed by Stewart.
- L. AR2 subsequently made three more investments in CCK from her AGE account: \$53,000 on May 15, 2006; \$140,000 on June 27, 2006; and \$59,914.13 on December 29, 2006.

- M. Stewart did not notify AGE or seek approval for the funds he had borrowed from AR1. Stewart did not notify AGE that he had been named an income beneficiary of AR1's trust. Stewart did not request approval from AGE regarding his participation in CCK, nor did he disclose to AGE an outside business interest. AGE required its agents to make these types of disclosures and to acknowledge them in a Financial Consultant Questionnaire that AGE began using in 2004.
- N. On November 15, 1999, Stewart signed an acknowledgement that he was aware of and had read excerpts from the AGE Employee Manual and the Sales Practice Manual in regards to employees receiving gifts or gratuities from a client of AGE or a third party. Stewart also affirmed that he discussed these policies with his branch manager.
- O. In July 2005, February 2006, and June 2007, Stewart completed an AGE Financial Consultant Questionnaire in which he denied receiving any gifts or loans from clients over the past 12 months. Further, he denied being a joint owner of any customer account, or that he otherwise shared in any client account, within the last 12 months. He denied having any complaints during the past 12 months as well as performing any outside activities for which he was compensated.
- P. AGE settled complaints regarding Stewart's actions with AR1 and AR2 in the amount of \$264,734.29 and \$345,914.13, respectively.
- Q. AGE terminated Stewart's registrations on December 6, 2007, through a Form U-5 filed with FINRA.

R. A search by the Staff of records maintained by the Arkansas Securities Department did not disclose a registration or exemption filing for CCK securities to be sold in Arkansas.

CONCLUSIONS OF LAW

2. It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly: (1) to employ any device, scheme, or artifice to defraud; (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; or (3) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person. Ark. Code Ann. § 23-42-507. Through his material misrepresentations that CCK was a farming or cattle ranching venture, Stewart convinced AR2 to invest in CCK. There is no evidence that Stewart or CCK was engaged in any sort of farming or cattle venture. Further, Stewart converted funds invested by AR2 and deposited to the CCK checking account for his personal use. Stewart's actions constitute securities fraud in violation of Ark. Code Ann. § 23-42-507.

3. It is unlawful for any person to offer or sell any security in Arkansas unless it is registered with the Arkansas Securities Department, the security or transaction is exempted from registration under the Act, or the security is a covered security as defined by the Act. Ark. Code Ann. § 23-42-501. The investment contracts purchased by AR2 representing an interest in CCK were securities as defined by Ark. Code Ann. § 23-42-102(15)(A). These securities sold by Stewart to AR2 were neither registered with the Arkansas Securities Department nor exempt from registration. Accordingly, Stewart's actions constitute a violation of Ark. Code Ann. § 23-42-501.

4. Broker-dealer agents and investment adviser representatives are required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Rules 308.01 and 308.02. Rules 308.01 and 308.02 set forth prohibited activities which are grounds for the revocation of registration as well as other forms of relief such as an order to cease and desist. The prohibited activities include (1) improperly borrowing customer funds, and (2) other fraudulent, deceptive, dishonest, or unethical practices. Rules 308.01(P), 308.01(V), 308.02(F), and 308.02(R). Stewart improperly borrowed funds from AR1 in violation of Rules 308.01(P) and 308(F). By naming himself income beneficiary of AR1's charitable remainder trust, and by selling AR2 securities in violation of Ark. Code Ann. § 23-42-507 as alleged herein, Stewart violated Rules 308.01(V) and 308.02(R).

5. The Commissioner may, after notice and opportunity for a hearing, issue an order revoking a registration of a broker-dealer agent or investment adviser representative if the Commissioner finds that the order is in the public interest and that (1) the registrant has willfully violated the Act or Rules, or (2) the registrant has engaged in dishonest or unethical practices in the securities business. Ark. Code Ann. § 23-42-308(a)(1), (a)(2)(B), and (a)(2)(G).

6. Whenever it appears that a person has engaged or is about to engage in an act or practice constituting a violation of the Act or Rules, the Commissioner may summarily order the person to cease and desist from the act or practice. Ark. Code Ann. § 23-42-209. Based on the Findings of Fact and the Conclusions of Law contained herein, an order to cease and desist from the acts constituting violations of the Act and Rules is proper.

ORDER

7. Pursuant to Ark. Code Ann. § 23-42-308(f), a hearing on the Staff's request for revocation of Stewart's registration as a broker-dealer agent and investment adviser representative as set forth in the Amended Complaint shall be held on **February 18, 2009, at 9:00 a.m., central time**, at the Arkansas Securities Department, Fourth Floor Hearing Room, 201 East Markham Street, Little Rock, Arkansas. The hearing shall be governed by the Arkansas Administrative Procedures Act, Ark. Code Ann. §§ 25-15-201 – 217, and the Act. All requests or submissions in connection with the hearing, including any request to modify the date or time of the hearing; to participate telephonically other than by personal appearance; or to waive the right to a hearing, shall be submitted in writing to the Commissioner at the following address: Arkansas Securities Commissioner, 201 East Markham, Suite 300, Little Rock, Arkansas 72201. All parties shall have the opportunity to respond and present evidence and argument on all issues involved. All witness testimony taken at the hearing shall be under oath in the presence of a court reporter.

8. Stewart is hereby ordered to immediately CEASE AND DESIST from the acts or practices violating the Act and Rules as set forth above. Pursuant to Ark. Code Ann. § 23-42-209(2)(A), Stewart has the right to request a hearing on this order to cease and desist, or a hearing may be ordered by the Commissioner. Accordingly, any request to affirm, modify, or vacate this order to cease and desist shall be presented by Stewart at the hearing set forth in Paragraph 7 above.



A. Heath Abshure
Arkansas Securities Commissioner

January 7, 2008
Date