

**BEFORE THE ARKANSAS SECURITIES COMMISSIONER  
CASE NO S-09-002  
ORDER NO. S-09-002-10-C003**

RECEIVED  
10 MAY 20 PM 1:37  
ARKANSAS SECURITIES DEPT.

---

**IN THE MATTER OF:  
JOHN R. TURBEVILLE**

---

**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 John R. Turbeville (“Turbeville”) in full and final settlement of all claims that could be brought against Turbeville by the Staff on the basis of the facts set forth herein.

It is expressly understood and agreed that this Consent Order is a compromise of disputed claims and is entered into for the sole purpose of resolving the issues between the parties and avoiding costly litigation. Turbeville admits the jurisdiction of the Act and the Arkansas Securities Commissioner (“Commissioner”), waives his right to a formal hearing and appeal, without admitting or denying the findings of facts or conclusions of law made herein, consents to the entry of this order, and agrees to abide by its terms in settlement of any violations committed by Turbeville concerning the matters detailed in this order.

## FINDINGS OF FACT

1. Since February 5, 2010, Turbeville, Central Registration Depository (“CRD”) number 833999, has been registered by the Arkansas Securities Department (“Department”) as a representative of the investment adviser, Concert Wealth Management, Inc. (“Concert”).

2. From August 5, 2005, through January 26, 2010, Turbeville, was a registered agent of a broker-dealer and a registered representative of the investment adviser employed at the Little Rock branch office of Merrill Lynch Pierce, Fenner & Smith, Incorporated (“Merrill Lynch”). However, Turbeville’s actual employment with Merrill Lynch ended on or about January 4, 2010.

3. On March 28, 2008, Turbeville sold a Transamerica Extra 2008 variable annuity to Arkansas pension fund one (“APF1”) a local Arkansas police and fire pension relief fund. Turbeville sold shares of numerous mutual funds held by APF1 in a fee based account in order to generate the money necessary to purchase the variable annuity in a non fee based account owned by APF1. Turbeville sold these mutual funds held by APF1 in a fee based account for a realized loss of \$37,280.02. The purchase of the variable annuity by APF1 represented an investment of over 50% of APF1’s total account value. In addition, as with the mutual funds sold by Turbeville, the principal amount of the variable annuity held by APF1 continued to experience market losses during 2008. The purchase of this variable annuity benefitted Turbeville by generating a substantial commission, which was unavailable in the fee based account owned by APF1. Although Turbeville included a double enhanced death benefit on one of the members of the board of APF1 in said variable annuity, this death benefit did not in fact provided any benefit to APF1. Turbeville’s recommendation to the board of APF1 that APF1 sell securities and purchase the variable annuity benefitted Turbeville more than the client, APF1. Turbeville sold

this variable annuity with a nine year lock-up period to APF1 in spite of the fact that Turbeville knew APF1 needed between \$7,000.00 and \$8,000.00 in cash each month in order to pay the retirement benefits to the members of APF1. The sale of this variable annuity to APF1, along with another violation committed by Turbeville as detailed in ¶¶ 4-5 has created a liquidity problem for APF1.

4. During 2007 and 2008, Turbeville agreed to prepare the 2007 annual PRB report for the board of APF1. PRB Rule #3 requires that, “[f]inancial reports, including personnel data, shall be filed with the [PRB] no later than March 31 of each year for the previous calendar year. The Executive Director may extend this date in writing, but in no case, will this date be extended beyond May 15.” The failure to timely file an annual report with the PRB can result in the loss of turn back money for a local police and fire pension fund. This turn back money is money given by the State of Arkansas to the local police and fire pension relief funds. The local police and fire pension relief funds use the turn back money for the benefit of each fund’s membership. The preparation and filing of this annual PRB report is the responsibility of each fund’s board and/or the city clerk.

5. Normally, an investment adviser, like Turbeville, only provides information to the board and/or the city clerk that is necessary for the board or an accountant hired by the board to prepare the annual PRB report. However, Turbeville agreed to prepare and file the 2007 annual PRB report for APF1’s board. In fact, Turbeville did not complete and file APF1’s 2007 annual PRB report by the March 31, 2008, deadline. In addition, APF1’s 2007 annual report was not completed and filed with the PRB by any extension date given by the PRB. Finally, in September 2008 the PRB notified members of the board of APF1 that APF1 would not receive any state turn back money in 2008, because the aforementioned 2007 annual PRB report had not

been properly filed with the PRB. Turbeville's actions concerning APF1's 2007 annual PRB report contributed to APF1 losing approximately \$160,000.00 in state turn back money. The loss of this turn back money has exacerbated APF1's liquidity problem created when Turbeville sold existing securities held by APF1 to purchase the variable annuity as described in ¶ 3. Further, Turbeville failed to act primarily for the benefit of his client, APF1, when Turbeville agreed and then failed to complete the 2007 annual PRB report for APF1.

6. During the fall of 2008, Turbeville contacted members of Arkansas pension fund two (APF2) to arrange a meeting for September 10, 2008. At APF2's members meeting set up by Turbeville, Turbeville agreed to prepare election ballots to elect a board to manage the affairs of APF2. On or about September 30, 2008, Turbeville prepared the election ballots, drafted an instruction letter, and sent the ballots and letters to members of APF2. In addition, Turbeville collected and counted the ballots. On or about October 8, 2008, Turbeville prepared and sent a runoff ballot and a second letter to members of APF2, because the first election had failed to elect all five members of the board as required by law. Turbeville collected and tallied the ballots from this runoff election. At APF2's meeting held on October 21, 2008, Turbeville appeared and reported the results of both elections to the membership of APF2. On October 27, 2008, the board of APF2, which was elected by the ballots prepared and counted by Turbeville, hired Turbeville to provide investment advisory services to APF2. The election of a local police and fire pension board is not traditionally within the duties of an investment adviser, like Turbeville. In addition, Turbeville was involved with electing a governing board, which ultimately hired Turbeville as the investment adviser for the pension fund governed by that same board.

7. Turbeville was employed by Merrill Lynch at the time of the events detailed in ¶¶ 3-6.

8. On January 25, 2010, Turbeville began his employment with Concert under an Arkansas corporation, Sage Wealth Management. On January 28, 2010, Concert submitted an application to the Department through the CRD system to register Turbeville as an Arkansas representative of Concert. Due to the initial failure of Concert and/or Turbeville to properly answer two disclosure questions on Turbeville's application, Turbeville's application to be a registered representative of Concert in Arkansas was not approved by the Department until February 5, 2010.

9. On January 28, 2010, due to a clerical error, Concert and Turbeville sent solicitation letters dated January 25, 2010, along with attached account application and transfer documents to 42 prospective Arkansas clients. The solicitation letters signed by Turbeville were sent to prospective Arkansas investment advisory clients, during a time when Turbeville was not properly registered by the Department to do business as a representative of an investment adviser in Arkansas.

10. On February 3, 2010, Turbeville made a solicitation or marketing presentation to the board of Arkansas pension fund three ("APF3"). A board meeting of APF3 had been called in order for the board to consider solicitation or marketing presentations made by representatives of various investment advisers. Although prior to the meeting Turbeville's previous attorney had been warned by a member of the Staff that Turbeville was not registered and could not make any sales or marketing presentation, Turbeville attended the board meeting with his associate at Concert, Carrie Carr (Carr). Turbeville and Carr were the last candidates to make a presentation to the board. In addition, the board of APF3 went into executive session and allowed Turbeville and Carr to make a solicitation or marketing presentation without any member of the public being present. The board of APF3 did not offer the same option of a non-public presentation to

any other representative of an investment adviser, who made a solicitation or marketing presentation to the board of APF3 on February 3, 2010. At the beginning of his presentation to the board of APF3, Turbeville stated that he knew he was not, at the time of the board meeting, properly registered by the Department to solicit or act as a representative of an investment adviser. In addition, Turbeville stated that Ms. Carr would do the solicitation or marketing presentation. However, it was Turbeville and not Ms. Carr, who actually made the majority of the solicitation or marketing presentation.

11. Turbeville first discussed in detail the past and future advisory fees he would charge to APF3. Turbeville offered to reduce his future advisory fees for a commensurate reduction in services. In addition, Turbeville assured the board of APF3 that he had never lost a client over fees. Turbeville discussed in detail the past performance of APF3's investment portfolio, while under Turbeville's direction, as well as the possible future performance or results of APF3's investments. Turbeville discussed in detail the cost savings for APF3 resulting from a change in the manner which the pension checks were processed and/or issued by APF3. Turbeville commented on the presentations of the other representatives of investment advisers. In particular, Turbeville discussed how some of the other candidates lacked the experience of Turbeville, as evidenced by the candidate's offer of investment products Turbeville described as inappropriate and not allowed for APF3 to purchase or hold. At the end of the board meeting, the board of APF3 voted to hire Turbeville, and the company for which Turbeville works, to be the investment adviser for APF3. The presentation made by Turbeville to the board of the APF3 constituted a solicitation of a prospective investment advisory client by Turbeville, during a time when Turbeville was not properly registered by the Department to do business as a representative of an investment adviser.

12. On February 4, 2010, Turbeville made a solicitation or marketing presentation to the board of Arkansas Pension Fund four (“APF4”). Although both Turbeville and Carr attended the meeting, it was Turbeville who did most of the talking or presentation to the board of APF4. Turbeville discussed transfer costs, annual fees, SIPC covered funds, and direct deposit options for checks. The presentation made by Turbeville to the board of APF4 constituted a solicitation of a prospective investment advisory client by Turbeville, during a time when Turbeville was not properly registered by the Department to do business as a representative of an investment adviser.

#### APPLICABLE LAW

13. Ark. Code Ann. § 23-42-301(c) states that it is unlawful for any person to transact business in this state as an investment adviser or representative without first being registered under this chapter.

14. Ark. Code Ann. §23-42-307 states it is unlawful for any investment adviser or representative: (1) To employ any device, scheme, or artifice to defraud the other person; (2) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person; or (3) 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 the light of the circumstances under which they are made, not misleading.

15. Rule 308.02 states that an investment adviser has the duty to act primarily for the benefit of its clients. Each investment adviser and representative shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business.

16. Rule 308.02(A) states that recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of

any security without reasonable grounds to believe that the recommendation is suitable for the client shall be considered grounds for suspension or revocation of an investment adviser's or representative's registration.

17. Ark. Code Ann. §23-42-308(a)(2)(B) provides that the Commissioner may by order suspend or revoke any registration if he finds that the registrant has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act.

18. Until July 31, 2009, Ark. Code Ann. §23-42-308(g) provided that upon notice and opportunity for hearing, the commissioner may fine any broker-dealer, agent, investment adviser, or representative up to a maximum of five thousand dollars (\$5,000) for each separate violation of this chapter.

19. Since July 31, 2009, Ark. Code Ann. §23-42-308(g) provides that the Securities Commissioner may fine any investment adviser up to a maximum of ten thousand dollars (\$10,000) for each separate violation of this chapter.

20. Ark. Code Ann. §23-42-308(h) provides that nothing in this section shall prohibit or restrict the informal disposition of a proceeding or allegation which might give rise to a proceeding by stipulation, settlement, consent, or default, in lieu of a formal or informal hearing on the allegations or in lieu of the sanctions authorized by this section.

#### CONCLUSIONS OF LAW

21. Turbeville violated Ark. Code Ann. § 23-42-301(c) 42 times by sending solicitation letters to 42 Arkansas residents, during a time period when Turbeville was not registered by the

Department to engage in any investment advisory activities as a representative of Concert as detailed in ¶ 9.

22. Turbeville violated Ark. Code Ann. § 23-42-301(c) twice by making sales or marketing presentations to APF3 and APF4, during a time when Turbeville was not registered by the Department to engage in any investment advisory activities as a representative of Concert as detailed in ¶¶ 10-12.

23. In violation of Ark. Code Ann. §23-42-307(3) Turbeville advised APF1 to sell certain securities to purchase a variable annuity as detailed in ¶ 3. This investment advice was unsuitable, because it created a liquidity problem for APF1 and benefited Turbeville in the form of a substantial commission payment without substantially benefiting his clients, APF1.

24. In violation of Rule 308.02, Turbeville failed to observe the high standards of commercial honor and just and equitable principles of trade when Turbeville advised APF1 to sell certain securities to purchase a variable annuity as detailed in ¶ 3. This investment advice was unsuitable, because it created a liquidity problem for APF1 and benefited Turbeville in the form of a substantial commission payment without substantially benefiting his client, APF1.

25. Turbeville failed to observe the high standards of commercial honor and just and equitable principles of trade defined in Rule 308.02, when Turbeville agreed to perform duties that traditionally do not fall within the activities of a registered representative of an investment adviser as detailed in ¶¶ 4-6. Specifically, Turbeville agreed and then failed to prepare the annual 2007 PRB report for APF1. Also, Turbeville agreed to and participated in the election of the governing board for APF2.

26. Pursuant to Ark. Code Ann. §23-42-308(g) Turbeville's violations of the Act and Rules as set out in ¶¶ 3-12 warrant the entry of a fine of up to a maximum of five thousand

dollars (\$5,000.00) or ten thousand dollars (\$10,000.00) for each separate violation of this chapter committed by Turbeville depending on the date of the violation.

27. Pursuant to Ark. Code Ann. §23-42-308(a)(2)(B) Turbeville's violations of the Act and Rules as set out in ¶¶ 3-12 warrant the suspension of Turbeville's registration.

28. Pursuant to Ark. Code Ann. §23-42-308(h) the entry of a Consent Order in settlement of the above listed violations is appropriate.

### UNDERTAKINGS

In settlement of this matter, but without admitting or denying the findings of fact or conclusions of law made above, Turbeville and the Staff agree to the following: Turbeville shall have his registration in Arkansas as a representative of Concert suspended for a period of twenty-one (21) days, beginning the day Turbeville pays his fine to the Department within 30 days of the entry of this Consent Order; and Turbeville shall pay a fine in the amount of \$28,000.00 to the Department within 30 days of the entry of this Consent Order.

### OPINION

This order is in the public interest. The facts as set out in ¶¶ 3-12 support the violations of the Act and Rules as set out in ¶¶ 21-28.

### ORDER

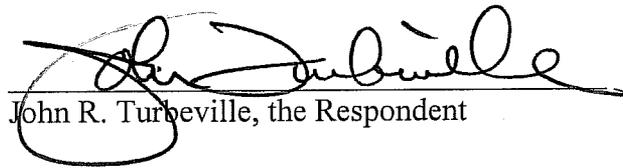
This Order concludes this investigation by the Arkansas Securities Department and any other action that the Arkansas Securities Department could commence under applicable Arkansas law on behalf of State of Arkansas as it relates to Turbeville and the matters detailed herein.

IT IS THEREFORE ORDERED that Turbeville shall have his registration in Arkansas as a representative of Concert suspended for period of twenty-one (21) days, beginning the day that Turbeville pays his fine to the Department within 30 days of the entry of this Consent Order; and Turbeville shall pay a fine in the amount of \$28,000.00 to the Department within 30 days of the entry of this Consent Order.

  
A. Heath Abshure  
Arkansas Securities Commissioner

May 20, 2010  
Date

Approved as to content and form:

  
John R. Turbeville, the Respondent

May 20, 2010  
Date

  
D. Nicole Lovell, Attorney for the Respondent  
Williams & Anderson, PLC

May 20, 2010  
Date

Approved as to content and form:

  
Scott S. Freydl, Staff Attorney  
Arkansas Securities Department

May 20, 2010  
Date