

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

**CASE NO. S-15-0042-17
ORDER NO. S-15-0042-17-OR02**

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ARKANSAS SECURITIES DEPT.

IN THE MATTER OF

**LAMARCUS RHASHAUN COLEMAN;
AUGUSTUS CAPITAL MANAGEMENT, LLC; and
COLEMAN & CO, LLC**

RESPONDENTS

CEASE AND DESIST ORDER

On March 6, 2017, the Staff of the Arkansas Securities Department (“Staff”) filed its Request for Cease and Desist Order (“Request”). In its Request, the Staff states that it has certain information and evidence indicating that Lamarcus Rhashaun Coleman; Augustus Capital Management, LLC; and Coleman & Co, LLC have violated provisions of the Arkansas Securities Act (“Act”), codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509. The Arkansas Securities Commissioner (“Commissioner”) has reviewed the Request and based upon the representations made therein finds that:

FINDINGS OF FACT

The Request contains the following representations of fact:

1. Lamarcus Rhashaun Coleman (“Coleman”), CRD No. 5767689, is an individual resident of the state of Arkansas. Coleman was last registered with the Arkansas Securities Department (“Department”) as a broker-dealer agent and investment adviser representative with Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”), CRD No. 7691, from December 7, 2012, until May 29, 2013. Merill Lynch terminated Coleman’s employment in May 2013 citing conduct inconsistent with firm standards related to contacting customers. Since his termination from Merrill Lynch, Coleman has not been registered with the Department in any capacity pursuant to the Act.

2. Augustus Capital Management, LLC (“Augustus Capital”), CRD No. 158924, is a limited liability company organized and existing under the laws of the state of Arkansas. Augustus Capital is currently in a revoked status with the Arkansas Secretary of State’s office. At all relevant times herein, Augustus Capital had a principal place of business in Coleman’s former residence located at 1801 Reservoir Road, Little Rock, Arkansas 72227. Coleman is the sole owner and officer of Augustus Capital. Coleman envisioned Augustus Capital as a hedge fund for high net worth individuals; however, Augustus Capital never actually held any assets under management. Augustus Capital was registered with the Department as an investment adviser from December 12, 2011, until December 31, 2012. Since that time, Augustus Capital has not been registered with the Department in any capacity pursuant to the Act.

3. Coleman & Co, LLC (“Coleman & Co.”) is a limited liability company organized and existing under the laws of the state of Arkansas. Coleman & Co. is currently in a revoked status with the Arkansas Secretary of State’s office. At all relevant times herein, Coleman & Co. had a principal place of business in Coleman’s former residence located at 1801 Reservoir Road, Little Rock, Arkansas 72227. Coleman is the sole owner and officer of Coleman & Co. Coleman & Co. has never been registered with the Department in any capacity pursuant to the Act.

4. During a time the Respondents were not registered with the Department, Coleman, as the representative of Augustus Capital and Coleman & Co., accepted investment funds and/or invested funds on behalf of four different Arkansas residents, as further detailed below.

5. Arkansas Resident One (“AR1”) is a resident of Pine Bluff, Arkansas. AR1 invested a total of \$25,000.00 with Coleman and Coleman & Co. by way of two separate transactions.

(a). On or about March 20, 2015, AR1 entered into a Trading Authorization Agreement (“TAA”) with Coleman, which referred to AR1 as “Client” and named Coleman as an “Authorized Trader” to make trades on AR1’s behalf. The TAA was executed by AR1 as “Client” and Coleman as “Authorized Trader” on behalf of Coleman & Co. The TAA prescribed that Coleman would be compensated for his efforts by receiving 50% of the total profits earned. An Amendment to the TAA executed by Coleman and AR1 on May 25, 2015, confirmed an “initial contribution of \$10,000.00” by AR1. The Amendment also outlined the terms for a drawdown floor whereby Coleman would be liable to pay AR1 restitution in full for trade losses if a floor of \$1,000.00 was reached prior to December 31, 2015. The Amendment was executed by AR1 as “Account Holder” and Coleman as “Authorized Trader.”

(b). On or about March 27, 2015, AR1 and Coleman, acting on behalf of Coleman & Co., entered into a second TAA, which referred to AR1 as “Account Holder” and Coleman as “Authorized Trader.” The TAA confirmed a second “capital contribution” from AR1 of \$15,000.00. The TAA established that Coleman would be liable to AR1 for any losses exceeding the agreed upon drawdown floor of \$1,000.00.

(c). AR1 gave Coleman two separate checks to fund the total \$25,000.00 in capital contributions set forth in the two aforementioned TAAs. The first check was dated March 20, 2015, and made payable to “Trade Station” in the amount of \$10,000.00. The second check was dated March 26, 2015, and made payable to Coleman & Co. in the amount of \$15,000.00.

(d). Coleman assisted AR1 with setting up an account with TradeStation Securities, Inc. (“TradeStation”), an online brokerage firm. AR1 executed the paperwork with TradeStation necessary to allow Coleman to execute trades on his behalf. Coleman held the log-in information for the account and maintained exclusive control over all trades conducted in AR1’s

TradeStation account. On April 2, 2015, the \$10,000.00 check from AR1 made payable to TradeStation was credited to AR1's TradeStation account. Over the course of the next several months, Coleman executed a multitude of options and commodities trades and incurred substantial losses in AR1's account. After attempting to contact Coleman on numerous occasions for an update on the account status, AR1 contacted TradeStation directly and had Coleman removed as an authorized person on the account. Thereafter, on September 23, 2015, AR1 closed the account, which held a remaining balance of \$756.98. All of the trade losses in the account resulted from trades executed by Coleman.

(e). On March 28, 2015, Coleman deposited the \$15,000.00 check from AR1 into a business checking account held in the name of Coleman & Co. Shortly thereafter, on March 30, 2015, Coleman made a customer withdrawal from the Coleman & Co. business checking account in the amount of \$5,340.00. The source of funds for the withdrawal was AR1's capital contribution of \$15,000.00. After the customer withdrawal, Coleman used \$5,000.00 of AR1's capital contribution to partially repay a previous investor who had lost \$10,000.00 in an investment with Coleman. The previous investor had agreed on a payment of \$5,000.00 as full repayment for the losses. On March 31, 2015, Coleman sent \$9,700 of AR1's remaining capital contribution to a TradeStation account held in the name of Coleman & Co. Coleman used AR1's investment to execute a multitude of options and commodities trades in three different TradeStation accounts held in the name of Coleman & Co. By June 9, 2015, Coleman had traded down nearly all of AR1's remaining capital contribution, aside from \$952.32 which he transferred to his personal checking account and converted for his personal use.

(f). Coleman sent AR1 an account statement from Coleman & Co. dated June 8, 2015, which evidenced AR1's \$15,000.00 investment and stated that AR1 held a "sub account

equity value” of \$15,000.00 on that date. However, as noted above, Coleman had lost nearly all of AR1’s funds by the time he dated and sent the statement. The statement did not evidence any amounts paid to previous investors or any losses from trades made by Coleman with AR1’s funds.

6. Arkansas Resident Two (“AR2”) is a resident of Pine Bluff, Arkansas. AR2 invested \$5,000.00 with Coleman and Coleman & Co. by way of a Short Term Note Agreement (“Note”).

(a). On or about February 13, 2015, AR2 entered into a Note, which referred to Coleman & Co. as the promisor and AR2’s grandson as the payee. The Note confirmed AR2’s principal investment of \$5,000.00 with Coleman & Co., and Coleman & Co. promised to pay AR2 a return of 5% per annum (\$250.00/year) on the principal amount for a period of two years. Coleman executed the Note on behalf of Coleman & Co.

(b). AR2 gave Coleman two \$2,500.00 checks to fund the principal investment under the Note. Coleman deposited the two checks into the Coleman & Co. business checking account on February 13, 2015. On February 19, 2015, Coleman wired \$4,500.00 to the Coleman & Co. account with TradeStation. Coleman used AR1’s investment to execute a multitude of options and commodities trades in three different TradeStation accounts held in the name of Coleman & Co. By June 9, 2015, Coleman had lost all of AR2’s funds sent to TradeStation for investment. Coleman transferred the remaining \$500.00 of AR2’s investment to a personal checking account and converted the funds for his personal use.

7. Arkansas Resident Three (“AR3”) is a resident of Pine Bluff, Arkansas. AR3 invested \$4,000.00 with Coleman and Coleman & Co. by way of a TAA.

(a). On or about June 8, 2015, AR3 entered into a TAA which referred to AR3 as “Client” and named Coleman as an “Authorized Trader” to make trades on AR3’s behalf. The

TAA was executed by AR3 as “Client” and Coleman as “Authorized Trader” on behalf of Coleman & Co. The TAA stated that Coleman would be compensated for his efforts by receiving 50% of the total profits earned over any ninety-day period. The TAA outlined the terms for a drawdown floor whereby Coleman would only be paid if the client’s balance remained above a threshold amount over any ninety-day period.

(b). AR3 gave Coleman a cashier’s check in the amount of \$4,000.00 made payable to Coleman & Co. and dated June 8, 2015. Coleman deposited AR3’s cashier’s check into the Coleman & Co. business checking account on that same date. On June 10, 2015, Coleman sent \$3,970.00 to his personal checking account. On June 11, 2015, Coleman wired \$3,744.92 of AR3’s funds from his personal checking account to an overseas proprietary trading house, Futex Global (“Futex”). Within a year thereafter, Futex was forced into liquidation amidst fraud allegations after clients attempted to retrieve funds from the firm but were unable to do so. AR3’s funds sent by Coleman to Futex were lost following the firm’s liquidation. Coleman spent the remainder of AR3’s funds not sent to Futex on personal expenditures.

(c). Coleman sent AR3 an account statement from Coleman & Co. dated August 31, 2015, which evidenced AR3’s \$4,000.00 investment and stated that AR3 held a “sub account equity value” of \$4,750.00 on that date. The statement showed that Coleman had made “capital gains” of \$1,500.00 in AR3’s account. Coleman gave AR3 a check for \$775.00 which represented his half of the “capital gains” in the account at that time. Despite having knowledge that AR3’s funds were lost to Futex, Coleman sent AR3 a second account statement on October 4, 2016 for the time period covering the third quarter of 2016. This second account statement showed that AR3 had a “sub account equity value” of \$5,250.00 and had accrued a capital appreciation of \$250.00 for the third quarter of 2016 due to “multiple positions exclusive to equity index futures

taken over the period.” As noted above, AR3’s funds had been lost to Futex by this point in time. Instead of properly notifying AR3 of the status of his funds, Coleman created a fictional account statement which showed that AR3 was earning a profit on his investment.

8. Arkansas Resident Four (“AR4”) is a resident of Pine Bluff, Arkansas. Coleman advised AR4 to invest \$25,000.00 with him by rolling over an individual retirement account (“IRA”) held with TIAA-CREF into two different IRAs held in her name at TradeStation.

(a). AR4 was born in 1944 and was retired at the time she invested with Coleman. Coleman advised AR4 to rollover \$25,000.00 held in a TIAA-CREF IRA into an equities IRA at TradeStation. The account paperwork with TradeStation shows that AR4 had an annual income under \$40,000.00 per year and a liquid net worth between \$75,000.00 and \$100,000.00. Thus, the investment amount represented somewhere between 25% and 33% of AR4’s liquid net worth at the time of investment. On a Third Party Trading Authorization form with TradeStation dated May 29, 2013, Coleman named Augustus Capital as the authorized agent for the account and signed the form. Coleman described Augustus Capital as an operable hedge fund, even though Augustus Capital had not been registered with the Department since December 31, 2012.

(b). Coleman later advised AR4 to open a futures IRA with TradeStation and named Augustus Capital as the authorized trader on that account as well. In June 2013, Coleman, as the representative of Augustus Capital, began to trade equity options and futures with AR4’s investment funds. On August 21, 2013, Coleman also bought stock in Pandora Media, Inc., selling the stock the same day at a loss. AR4’s accounts began to suffer significant trade losses in a relatively short time period, and, as a result, AR4 requested the remainder of her funds from

Coleman. By October 11, 2013, the two IRAs at TradeStation in AR4's name were closed, and a total of \$22,630.55 was returned to AR4.

9. During the course of its investigation, the Staff issued Coleman an administrative subpoena requiring him to provide documents and testimony relative to this matter. On November 9, 2016, Coleman appeared at the Department and provided sworn witness testimony pursuant to the subpoena. During the interview, Coleman stated the following when describing the nature of the investor funds he received on behalf of Coleman & Co.:

I received funds from outside individuals which is noted as contributions, and the agreement was that those were either to receive interest on those funds or they would receive a percentage of the profits generated . . . As far as receiving funds directly into Coleman and Company all the funds received into Coleman and Company were utilized and considered investment into the firm's underlying business strategy.

10. As of the date of this Order, Coleman has not made restitution to any of the investors who lost funds due to their investments with him or his businesses.

APPLICABLE LAW

11. The Act was promulgated to protect investors and utilizes a broad and flexible definition of a security to determine which transactions fall under the Act's jurisdiction. *Carder v. Burrow*, 327 Ark. 545, 549 (1997). Whether the subject transactions constituted securities transactions under the Act depends not upon labels or titles, but upon consideration of all relevant facts. *See Grand Prairie Sav. and Loan Ass'n, Stuttgart v. Worthen Bank and Trust Co.*, 298 Ark. 542, 545 (1989) (quoting *Schultz v. Rector-Phillips-Morse, Inc.*, 261 Ark. 769, 777 (1977)).

12. Ark. Code Ann. § 23-42-102(17)(A)(i) includes notes under the Act's definition of a security.

13. Ark. Code Ann. § 23-42-102(17)(A)(xi) includes investment contracts under the Act's definition of a security.

14. A security in the form of an investment contract exists when a transaction is an investment in the risk capital of a venture with an expectation of benefits but with a lack of control on the part of the investor. *See Smith v. State*, 266 Ark. 861, 865 (Ark. App. 1979); *Carder*, 327 Ark. at 549; *see also Securities and Exchange Comm'n v. W.J. Howey Co.*, 328 U.S. 293, 298-99 (1946) (“[A]n investment contract . . . means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party”); *Grand Prairie Sav. and Loan Ass'n*, 298 Ark. at 545 (noting that the test used in *Smith* is substantially the same as the *Howey* test used in the federal courts).

15. In *Grand Prairie Sav. and Loan Ass'n*, 298 Ark. at 545, the Arkansas Supreme Court noted that the Arkansas test for a security is substantially the same test used in the federal courts and set forth in *Howey*. However, in *Schultz*, the Arkansas Supreme Court rejected an express adoption of the *Howey* test in favor of a more flexible case-by-case analysis. The Court held that the definition of a security under the Act should not be given narrow construction (as in *Howey*) but that “it is better to determine in each instance from a review of all the facts, whether an investment scheme or plan constitutes an investment contract . . . within the scope of the statute.” *Schultz*, 261 Ark. at 781.

16. Ark. Code Ann. § 23-42-102(10) defines issuer as any person who issues any security.

17. Ark. Code Ann. § 23-42-501 provides that it is unlawful for any person to offer or sell any security unless it is registered, exempt, or a covered security.

18. Ark. Code Ann. § 23-402-301(a) provides that it is unlawful for any person to transact business as an agent of an issuer of securities without first being registered as such pursuant to the Act.

19. Ark. Code Ann. § 23-402-301(c) prohibits any person from transacting business in Arkansas as an investment adviser or investment adviser representative without first being registered to do so.

20. Ark. Code Ann. § 23-42-507(2) makes it unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, 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.

CONCLUSIONS OF LAW

21. The subject TAAs and the note issued by Coleman & Co. and pitched to investors by Coleman constitute securities as defined by Ark. Code Ann. § 23-42-102(17)(A). The securities were advertised, offered, and negotiated on the premise that investors would receive economic benefits in the form of returns on their principal investment. The investors contributed to the risk capital of Coleman & Co. The money invested was always subject to the risk that the Respondents would not fulfill promises and the investors would not receive the returns advertised. The investors had no control over the “business strategy” employed by Coleman & Co. which was necessary to generate the returns on the investments. As Coleman stated in his interview with the Staff, “all the funds received into Coleman and Company were utilized and considered investment into the firm’s underlying business strategy.” The TAAs and the note were advertised, marketed, and sold as the types of investments that the Act is intended to govern. Therefore, the subject transactions are securities under Ark. Code Ann. § 23-42-102(17)(A).

22. None of the securities sold by Coleman and Coleman & Co. were registered with the Department, exempt from registration with the Department, or classified as a covered security

under federal law. Therefore, Coleman and Coleman & Co. violated Ark. Code Ann. § 23-42-501 when they sold the subject securities to AR1, AR2, and AR3.

23. Coleman & Co. is defined as an issuer by Ark. Code Ann. § 23-42-102(10). The facts set out above demonstrate that Coleman represented Coleman & Co. in effecting or attempting to effect the sale of investments in the company to investors. Therefore, Coleman acted as an unregistered agent of an issuer in violation of Ark. Code Ann. § 23-42-301(a).

24. Augustus Capital violated Ark. Code Ann. § 23-42-301(c) when it held itself out as a hedge fund, became the authorized agent on AR4's accounts with TradeStation, and allowed its representative to take custody of AR4's funds and perform stock trades on AR4's behalf. Coleman violated Ark. Code Ann. § 23-42-301(c) when he advised AR4 to rollover existing IRA funds into IRAs at TradeStation, then took custody of AR4's funds and performed stock trades in AR4's account.

25. Coleman and Coleman & Co. committed securities fraud in violation of Ark. Code Ann. § 23-42-507(2) by making false and misleading statements to investors and by omitting to state material facts necessary to make statements made, in light of the circumstances under which they were made, not misleading. Specifically, Coleman and Coleman & Co. omitted to inform AR1 that \$5,000.00 of the principal amount of his investment would be used to repay a previous investor who had lost funds through an investment with Coleman. Also, Coleman and Coleman & Co. omitted to inform AR1, AR2, and AR3 that portions of their investment funds would be converted to Coleman's personal use.

ORDER

26. Respondents Coleman and Coleman & Co. shall immediately cease and desist from further violations of Ark. Code Ann. § 23-42-501 by refraining from soliciting, offering, and/or

selling securities in the state of Arkansas unless and until the securities are properly registered pursuant to the Act, exempt from such registration, or are covered securities.

27. Respondent Coleman shall immediately cease and desist from further violations of Ark. Code Ann. § 23-42-301(a) by refraining from acting as an agent of the issuer until such time as he is properly registered or shown to be exempt from registration pursuant to the Act.

28. Respondents Coleman and Augustus Capital shall immediately cease and desist from further violations of Ark. Code Ann. § 23-42-301(c) by refraining from acting as an investment adviser or investment adviser representative until each is properly registered or shown to be exempt from registration pursuant to the Act.

29. Respondents Coleman and Coleman & Co. shall immediately cease and desist from further violations of Ark. Code Ann. § 23-42-507(2) by refraining from committing fraud or deceit in connection with the offer or sale of any securities in the state of Arkansas.

30. A hearing on this Cease and Desist Order shall be held if requested by any of the Respondents in writing within thirty days of the entry of this Order or if otherwise ordered by the Commissioner. Ark. Code Ann. § 23-42-209(a)(2)(A). Such request should be addressed to the Commissioner and submitted to the following address: Arkansas Securities Commissioner, 201 East Markham, Suite 300, Little Rock, Arkansas 72201.

31. If no hearing is requested and none is ordered by the Commissioner, this Cease and Desist Order will remain in effect until it is modified or vacated by the Commissioner. Ark. Code Ann. § 23-42-209(a)(2)(B).

Dated this 7th day of March, 2017.



B. Edmond Waters
Arkansas Securities Commissioner