

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

Case No. S-18-0085

Order No. S-18-0085-20-OR02

IN THE MATTER OF
ANDREW S. LEE

CEASE AND DESIST ORDER

On June 4, 2020, the staff of the Arkansas Securities Department (Staff) filed its Request for a Cease and Desist Order stating that it has information and certain evidence that indicates Andrew S. Lee has violated provisions of the Arkansas Securities Act (Act) codified at Ark. Code Ann. §§ 23-42-101 – 509. The Arkansas Securities Commissioner (Commissioner) has reviewed the Request (Request), and based upon representations made therein, finds that:

FINDINGS OF FACT

1. The Request asserts the following representations of fact:
 - a. Andrew S. Lee, an Arkansas resident, is licensed in Arkansas as a resident producer insurance agent, License/NPN No. 17254210. Lee was not registered in any capacity pursuant to the Act.
 - b. During the time of the relevant events set out herein, Lee was employed as an insurance agent 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

RECEIVED
20 JUN -4 PM 12:45
ARKANSAS SECURITIES DEPT

- c. John C. Hamilton, an Arkansas resident licensed with the Arkansas Insurance Department as a resident producer insurance agent, License/NPN No. 7475151, and registered as an investment adviser representative of Park Avenue, CRD No. 5506278, 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. Hamilton was Lee's supervisor at Iron Horse. 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.
- d. 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.
- e. After talking to AR1, Lee and Hamilton 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.
- f. 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. Lee and Hamilton 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.

- g. Eventually, Lee and Hamilton worked out a \$500,000 investment in a Guardian life insurance policy. Hamilton oversaw Lee's activities in putting this plan together and his help in the drafting of the plan was essential.
- h. Upon Lee and Hamilton's recommendation and advice and using a speaker phone at the Little Rock Iron Horse office with Lee and Hamilton present, AR1 in June 2016 called the investment adviser representative (IAR) who was assigned to her two securities accounts 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.
- i. 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.) Minutes after the June 2016 telephone call and well 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– the qualified account– resulted in a tax bill of about \$120,000. Had AR1 known the tax liability involved in taking the \$300,000 out of her IRA would be around \$120,000, she would not have decided to purchase the policy.

- j. 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. 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 Lee and Hamilton 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.
- k. Both Lee and Hamilton were paid commissions on the sale of the life insurance policy to AR1.

CONCLUSIONS OF LAW

ACTING AS UNREGISTERED INVESTMENT ADVISER

ARK. CODE ANN. § 23-42-301(c)

2. Ark. Code Ann. § 23-42-102(8) defines investment adviser as a person who engages in the business of advising others, directly or indirectly, as to the value of securities or the advisability of investing in, purchasing or selling securities, for compensation. By advising AR1 to liquidate securities and replace them with a life insurance policy on the life of her son-in-law, Lee acted as an investment adviser 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. Lee was not registered in accordance with the Act as an investment adviser or representative of an investment adviser. The giving of this advice for compensation without registration as an investment adviser or representative of an investment adviser was a violation of Ark. Code Ann. § 23-42-301(c).

SECURITIES FRAUD

Ark. Code Ann. §§ 23-42-307(a)(3)

3. When Lee 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, he 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).

ORDER

IT IS THEREFORE ORDERED that Andrew S. Lee, CEASE AND DESIST from any further actions in the State of Arkansas that constitute:

- 1) the giving of investment advice for compensation, i.e., acting as an investment adviser or investment adviser representative, until such time as Lee is properly registered or shown to be exempt from registration pursuant to the Arkansas Securities Act, and
- 2) securities fraud.

Pursuant to Ark. Code Ann. § 23-42-209(a)(2)(C)(ii)(b), the Staff's request to fine Andrew S. Lee a total of \$50,000 for the violations set out in this order can be taken up only upon "notice and opportunity for a hearing." Accordingly, a hearing will be set at which the Staff will present its case and that request will be decided.

A hearing will be set by separate order. Any motion or notice that the respondent seeks to file should be addressed to the Commissioner and submitted to the following address:

Arkansas Securities Commissioner
One Commerce Way, Suite 402
Little Rock, Arkansas 72202

IT IS SO ORDERED.



Eric Munson
ARKANSAS SECURITIES COMMISSIONER

6-4-2020

Date