

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

Case No. S-08-033

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ARKANSAS SECURITIES DEPT.

IN THE MATTER OF

Action No. S-08-033-08-AC02

Robert Kyle Stewart, CRD# 2102132

**AMENDED COMPLAINT**

Pursuant to the authority granted to the Commissioner of the Arkansas Securities Department by the Arkansas Securities Act, Ark. Code Ann. §§ 23-42-101 – 509, the Staff of the Arkansas Securities Department (“Staff”), by and through its attorneys David H. Smith, Chief Counsel, and Shannon Underwood, requests that the broker-dealer agent and investment adviser representative registrations of Robert Kyle Stewart (“Stewart”) (CRD# 2102132) be revoked and that Stewart be directed to cease and desist from offering or selling unregistered non-exempt securities for the reasons that follow:

**Administrative Authority**

1. This Amended Complaint is filed pursuant to the Arkansas Securities Act (“Act”), Ark. Code Ann. §§ 23-42-101 – 509, the Rules of the Arkansas Securities Commissioner (“Rules”), and the Arkansas Administrative Procedure Act, Ark. Code Ann. §§ 25-15-201 – 217. The Complaint filed on November 20, 2008, initiated a proceeding of these matters as contemplated in Rule 601.07(F) of the Rules.

**Respondent**

2. Stewart 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 FINRA on December 6, 2007.

### **Factual Allegations**

3. The Staff learned of Stewart's termination from AGE through a routine examination of the CRD filings and initiated an investigation.

4. 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.

5. 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.

6. The transaction provided that Stewart repay the loan through yearly payments of \$5,000. Stewart made three such payments.

7. 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.

8. 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.

9. 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.

10. 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 that 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.

11. Stewart represented to AR2 that CCK was a "farming or cattle ranching" venture.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. AGE settled complaints regarding Stewart's actions with AR1 and AR2 in the amount of \$264,734.29 and \$345,914.13, respectively.

18. AGE terminated Stewart's registrations on December 6, 2007, through a Form U-5 filed with FINRA.

19. 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.

### **Legal Allegations**

20. Pursuant to Ark. Code Ann. § 23-42-308(a)(1) and (a)(2)(B), the Commissioner may, after notice and opportunity for a hearing, issue an order revoking a registration if he finds that the order is in the public interest and that the registrant has willfully violated or willfully failed to comply with any provision of the of the Act or any rule or order under the Act.

21. Pursuant to Ark. Code Ann. § 23-42-308(a)(1) and (a)(2)(G), the Commissioner may, after notice and opportunity for a hearing, issue an order revoking a registration if he finds that the order is in the public interest and that the registrant has engaged in dishonest or unethical practices in the securities business.

22. Rule 308.01 requires that each broker-dealer and agent observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Further, Rule 308.01(P) makes the unauthorized use or borrowing of customers' funds or securities a conduct that shall be considered grounds for revocation of a broker-dealer or agent registration.

Rule 308.01(V) states that the unfair, misleading, or unethical practices set forth in Rule 308.01 are not exclusive of other activities, such as forgery, embezzlement, non-disclosure or misstatement of material facts, manipulations and various deceptions, which shall be considered grounds for revocation.

23. The conduct of Stewart as described herein includes unlawful, unethical, and dishonest conduct or practices in the securities business and therefore constitutes grounds to revoke Stewart's registrations as a broker-dealer agent.

24. By borrowing money or securities from a client, when the client is not a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds or securities, the conduct of Stewart constitutes fraudulent or deceptive practices and is grounds for revocation of his registration as an investment adviser representative. *See* Rule 308.02(F).

25. The conduct of Stewart as described herein includes fraudulent, deceptive, dishonest, or unethical practices and therefore constitutes grounds to revoke Stewart's registration as an investment adviser representative. *See* Rule 308.02(R).

26. 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. *See* Ark. Code Ann. § 23-42-507. The activities of Stewart described herein constitute violations of Ark. Code Ann. § 23-42-507.

27. 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. *See* Ark. Code Ann. § 23-42-501. Stewart's actions to offer and sell investments in CCK to AR2 were committed in violation of Ark. Code Ann. § 23-42-501.

28. Ark. Code Ann. § 23-42-209 provides in part that 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.

**Prayer for Relief**

**WHEREFORE**, the Staff requests that the Commissioner immediately order Robert Kyle Stewart to cease and desist from any further actions in the state of Arkansas in connection with the offer or sale of the securities described above and any other securities until such time as the securities are properly registered or shown to be exempt from registration pursuant to the Act and the persons offering them for sale are properly registered.

The Staff further requests that the Commissioner revoke the registrations of Robert Kyle Stewart as a broker-dealer agent and investment adviser representative, set a date for a hearing before the Commissioner, pursuant to Rule 601.07, to consider whether the registrations should be revoked, and grant such other and further relief as the Commissioner deems just and proper.

Respectfully submitted,



Shannon Underwood  
Staff Attorney

12/15/08

Date