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BEFORE THE ARKANSAS SECURITIES COMMISSIONER

CASE NO. S-13-0112

ORDER NO. S-13-0112-14-OR02

ARKANSAS SECURITIES DEP'

IN THE MATTER OF:

SALVATORE GIOE

RESPONDENT

CONSENT ORDER

This Consent Order (“Order”) is entered pursuant to the Arkansas Securities Act (“Act”), codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509, the Rules of the Arkansas Securities Commissioner promulgated pursuant to the Act (“Rules”), and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann. §§ 25-15-201 through 25-15-219, in accordance with an agreement between the Staff of the Arkansas Securities Department (“Staff”) and the Respondent, Salvatore Gioe (“Gioe”).

Gioe admits the jurisdiction of the Act and the Arkansas Securities Commissioner (“Commissioner”), waives his right to a formal hearing and appeal, consents to the entry of this Order without admitting or denying the Findings of Fact and Conclusions of Law made herein, and agrees to abide by its terms in settlement of any possible violations committed by Gioe concerning the matters detailed herein.

FINDINGS OF FACT

1. Gioe, CRD No. 4390976, is a New York resident registered with the Arkansas Securities Department (“Department”) as a broker-dealer agent with PHX Financial, Inc. (“PHX”), CRD No. 144403. PHX was formerly known as Blackwall Capital Markets, Inc. (“Blackwall”), and, at all relevant times herein, Gioe was employed as an agent with Blackwall.

2. On or about August 7, 2013, Gioe contacted an Arkansas Resident (“AR1”) on a cold call recommending the purchase of stock in Uni-Pixel, Inc. (“Uni-Pixel”). Gioe was not aware at the time of the call that AR1 was employed as a Senior Securities Examiner with the Department and that he had contacted AR1 on an office phone during business hours.

3. At the time of the call, Uni-Pixel was trading at around \$15.65 per share. Gioe told AR1 that he had information showing that Uni-Pixel’s stock would soon experience a dramatic rise due to a series of events. Specifically, Gioe claimed that a similar company’s earnings, dismissal of a lawsuit, and a strong earnings report would increase Uni-Pixel’s stock value. When asked by AR1 if he thought the Uni-Pixel stock was a “sure thing,” Gioe responded “in my heart, I do.” The Department alleges that Gioe made forward-looking statements during the call such as “when the stock is at 25 (dollars per share), you will have made \$1,000.00.”

4. At the time of the cold call, Morningstar, Inc.’s analysts had labeled the Uni-Pixel stock as “distressed.” Nonetheless, Gioe failed to disclose to AR1 the risks associated with purchasing the stock. Although Gioe asked AR1 several suitability-related questions at the end of the call, the Department alleges that Gioe failed to conduct a proper suitability analysis with AR1 to determine if the stock was suitable for AR1 prior to making the purchase recommendation.

LEGAL AUTHORITY

5. Ark. Code Ann. § 23-42-308(a)(2)(G) provides in part that the Commissioner may by order deny, suspend, make conditional or probationary, or revoke any registration if he finds that an applicant has engaged in unethical practices in the securities business.

6. Rule 308.01(b) of the Rules prohibits a broker-dealer or agent from making unjustified or untruthful representations that securities sold will subsequently become listed or

traded, or making representations that a market will be established or that the securities will be subject to an increase in value.

7. Rule 308.01(d) of the Rules requires that a registered agent, before recommending the purchase, sale, or exchange of any security, have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings, financial situation, and needs.

8. Ark. Code Ann. § 23-42-308(g) states that the Commissioner may for each violation of the Act fine a broker-dealer or agent in an amount not to exceed ten thousand dollars or an amount equal to the total amount of money received in connection with each separate violation.

CONCLUSIONS OF LAW

9. Gioe violated Rule 308.01(b) of the Rules when he represented to AR1 without reasonable justification that the Uni-Pixel stock would increase in value, as set forth in paragraphs 2 through 3 above.

10. Gioe violated Rule 308.01(d) of the Rules when he recommended the Uni-Pixel stock to AR1 without having reasonable grounds to believe that the recommendation was suitable for purchase by the prospective client, as set forth in paragraphs 2 through 4 above.

11. The violations committed by Gioe as detailed above constitute a violation of Ark. Code Ann. § 23-42-308(a)(2)(G). These violations justify the imposition of a fine pursuant to Ark. Code Ann. § 23-42-308(g).

UNDERTAKINGS

Accordingly, without admitting any willful or intentional violations of the Act or Rules, Gioe's desire is to settle this matter with the Department. In settlement of this matter, Gioe

agrees to pay a \$15,000.00 fine to the Department. Gioe shall pay the fine by making an initial payment of \$10,000.00 within ten days of the entry of this Order, followed by twelve equal monthly payments of \$416.67. Gioe further agrees that his registration in Arkansas as a broker-dealer agent with PHX shall be suspended for a period of thirty days from the date of this Order.

OPINION

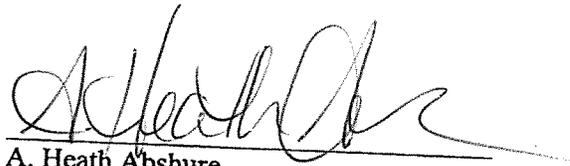
This Order is in the public interest. The facts as set forth in paragraphs one through four support the violations of the Act and Rules as set forth in paragraphs nine through eleven.

ORDER

IT IS THEREFORE ORDERED that in accordance with Gioe's undertaking that Gioe shall pay a fine to the Department in the amount of \$15,000.00, and his registration in Arkansas as a broker-dealer agent with PHX shall be suspended for a period of thirty days from the date of this Order. Gioe shall pay the fine by making an initial payment of \$10,000.00 within ten days of the entry of this Order, followed by twelve equal monthly payments of \$416.67. The first monthly payment shall be due on December 1, 2014, and each subsequent monthly payment shall be due on the first day of each month thereafter until the total fine amount is paid in full. Each payment shall be made payable to the Arkansas Securities Department and delivered by hand or mail to 201 East Markham Street, Suite 300, Little Rock, Arkansas 72201.

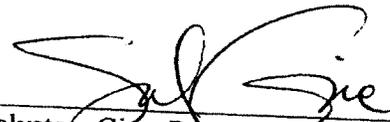
Any failure by Gioe to adhere to the payment provisions of this Order shall result in additional disciplinary action, including a one-year suspension of Gioe's broker-dealer agent registration with the Department. Gioe may not, by way of defense to any such action, contest the findings in this Order or assert any defense to liability or remedy, including, but not being limited to, any statute of limitations defense.

WITNESS MY HAND AND SEAL this the 3rd day of ~~October~~ ^{November}, 2014.



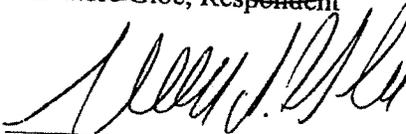
A. Heath Abshire
Arkansas Securities Commissioner

Approved as to Content and Form:



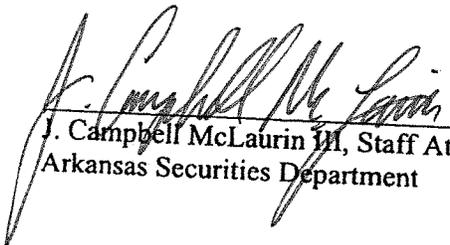
Salvatore Gioe, Respondent

10/31/2014
Date



Michael P. Gilmore, Attorney for Respondent

11/3/2014
Date



J. Campbell McLaurin III, Staff Attorney
Arkansas Securities Department

11/03/2014
Date