



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)	
)	
ROBERT J. HERBERT, CRD# 2758055)	Case No. AP-04-91
946 Hawkins)	
Lake Grove, New York 11755,)	
)	
Respondent.)	

CONSENT ORDER

WHEREAS, on November 23, 2004, the Missouri Securities Division filed a Petition For Administrative Relief, alleging cause for discipline or disqualification of Robert J. Herbert.

1. Respondent and the Securities Division desire to settle the allegations and the matters raised by the staff of the Securities Division relating to the alleged violations by Respondent.
2. Respondent and the Securities Division consent to the issuance of this Consent Order and hereby stipulate that this Consent Order is in the public interest.
3. Respondent stipulates and agrees to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
4. Respondent waives his right to a hearing with respect to this matter.
5. Respondent stipulates and agrees that Respondent waives any rights Respondent may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order and, further, Respondent specifically forever releases and holds harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner of Securities and their respective representatives and agents from any and all liability and claims arising out of, pertaining to or relating to this matter.
6. Respondent stipulates that he has never received a complaint from any Missouri resident.

7. Respondent stipulates and agrees that, should the facts contained herein prove to be false or incomplete, the Missouri Division of Securities preserves the right to pursue any and all legal or administrative remedies at its disposal. The Securities Division stipulates and agrees that it will not take further action against Respondent based on information currently in the possession of the Division.

STIPULATIONS OF FACT

8. Respondent and the Securities Division stipulate and agree to the following Stipulations of Fact:
9. Respondent has a residence address of 946 Hawkins, Lake Grove, New York 11755.
10. Respondent has been a registered agent in Missouri with GunnAllen Financial, Inc. ("GunnAllen") a Missouri-registered broker-dealer since February 3, 2003.
11. Respondent was an agent of Continental Broker-Dealer Corp. ("Continental") from April 25, 2002 to September 27, 2002. Respondent was registered through Continental in most states and with the National Association of Securities Dealers ("NASD"), however, Respondent was not registered in the State of Missouri while he was at Continental.
12. On September 27, 2002, Continental submitted a Uniform Termination Notice for Securities Industry Registration ("Form U-5") to the Central Registration Depository ("CRD") for agent number 2758055 and reported Respondent's voluntary termination from the firm.
13. On January 28, 2003, GunnAllen submitted a Uniform Application for Securities Industry Registration or Transfer ("Form U-4") to the CRD for agent number 2758055 seeking to register Respondent as an agent in Missouri.
14. On January 16, 2003, the Missouri Commissioner of Securities issued a Summary Order to Cease and Desist, Summary Order to Condition and Limit Broker-Dealer Registration, and order to show cause why civil penalties should not be imposed against Continental. On June 24, 2004, the Missouri Commissioner of Securities issued a Final Order ordering Continental to Cease and Desist violations of the act, permanently barring Continental from registration and ordering Continental to pay civil penalties.
15. Question 14 of the Form U-4 requests information about customer complaints. This question states:

(1) Have you ever been named as a respondent/defendant in an investment-related consumer-initiated arbitration or civil litigation which alleged that you were involved in one or more sales practice violations and which:

- (a) is still pending, or;
- (b) resulted in an arbitration award or civil judgment against you, regardless of amount, or;
- (c) was settled for an amount of \$10,000 or more?

(2) Have you ever been the subject of an investment-related, consumer-initiated complaint, not otherwise reported under question 14I(1) above, which alleged that you were involved in one or more sales practice violations, and which complaint was settled for an amount of \$10,000 or more?

(3) Within the past twenty four (24) months, have you been the subject of an investment-related, consumer-initiated written complaint, not otherwise reported under question 14I(1) or 14I(2) above, which:

- (a) alleged that you were involved in one or more sales practice violations and contained a claim for compensatory damages of \$5,000 or more (if no damage amount is alleged, the complaint must be reported unless the firm has made a good faith determination that the damages from the alleged conduct would be less than \$5,000), or;
- (b) alleged that you were involved in forgery, theft, misappropriation or conversion of funds or securities? (Emphasis in original)

16. Each of these questions should be answered "YES" or "NO". Any question with a "YES" response requires the filing of a Disclosure Reporting Page for each reportable event.
17. Pursuant to the instructions to Form U-4, an amendment to the application should be made as changes occur.
18. The Form U-4 page entitled, *Individual/ Applicant's Acknowledgment and Consent* states, in part, the following:

I agree to update this form by causing an amendment to be filed on a timely basis whenever changes occur to answers previously reported. Further, I represent that to the extent that any information previously submitted is not amended, the information provided in this form is currently accurate and complete.

19. The Form U-4 requires that prior to submission to the CRD System the applicant or applicant's agent must attest to the completeness and accuracy of the record.

20. A review of Respondent's record with the CRD System revealed that Respondent filed an application that failed to disclose customer complaints and that prior to filing the application, Respondent failed to timely report customer complaints on his Form U-4.
21. On August 19, 2002, Continental, received a complaint from Client 1 that alleged Respondent made misrepresentations in the sale of securities. Client 1 alleged compensatory damages of \$57,000.
22. On April 15, 2004, more than 20 months after Continental received this complaint and after Respondent's registration in Missouri was granted, Respondent filed an amendment to his Form U-4 and disclosed the complaint by Client 1.
23. By not reporting this complaint for more than 20 months after receiving the complaint, Respondent failed to timely amend his Form U-4, and submitted an application for registration in Missouri containing statements that were false and misleading in a material respect.
24. On July 23, 2003, Continental settled with Client 1 and agreed to pay Client 1 \$11,000.
25. On April 15, 2004, more than 20 months after Continental received this complaint and more than 8 months after Continental settled the complaint, Respondent filed an amendment to his Form U-4 and disclosed the settlement of the complaint by Client 1.
26. Respondent's Form U-4 contained the statement, "I represent that to the extent that any information previously submitted is not amended, the information provided in this form is currently accurate and complete."
27. Respondent had a duty to timely amend his Form U-4 when the change occurred.
28. By not reporting this complaint for more than 20 months after receiving the complaint and more than 8 months after settling the complaint, Respondent failed to timely amend his Form U-4.
29. On September 13, 2002, Continental received a complaint from Client 2 that alleged Respondent made misrepresentations in the sale of securities. Client 2 alleged compensatory damages of \$200,000.
30. On April 15, 2004, more than 19 months after Continental received the complaint, and after Respondent's registration in Missouri was granted, Respondent filed an amendment to his Form U-4 and disclosed the complaint by Client 2.

31. By not reporting this complaint for more than 19 months after receiving the complaint, Respondent failed to timely amend his Form U-4, and submitted an application for registration in Missouri containing statements that were false and misleading in a material respect.
32. On November 12, 2003, Continental settled with Client 2 and agreed to pay Client 2 \$10,000.
33. On April 15, 2004, more than 19 months after Continental received the complaint and more than 5 months after Continental settled the complaint, Respondent filed an amendment to his Form U-4 and disclosed the complaint by Client 2 and the settlement of this complaint.
34. Respondent's Form U-4 contained the statement, "I represent that to the extent that any information previously submitted is not amended, the information provided in this form is currently accurate and complete."
35. Respondent had a duty to timely amend his Form U-4 when the change occurred.
36. By not reporting this complaint for more than 19 months after Continental received the complaint and more than 5 months after Continental settled the complaint, Respondent failed to timely amend his Form U-4.

JURISDICTIONAL BASIS

37. Respondent and the Securities Division stipulate and agree that the Commissioner has jurisdiction over these matters pursuant to Chapter 409, et al. of the 2003 Securities Act.
38. Respondent and the Securities Division stipulate and agree that the Commissioner has authority to enter this Consent Order pursuant to Section 409.6-604(h), of the 2003 Act, which provides that the commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act.

ORDER

WHEREAS, the Commissioner, after consideration of the stipulations set forth above and on the consent of Respondent and the Securities Division, finds the following Order to be in the public interest, necessary for the protection of public investors and consistent with the provisions of Chapter 409, RSMo Cumulative Supp. 2003.

NOW, THEREFORE, it is hereby Ordered that:

1. Respondent is Ordered to Cease and Desist from violating, or materially aiding others in the violation of §409.5-505, RSMo Cumulative Supp. 2003, by making or causing to be made false or misleading statements in filings with the commissioner, specifically in connection with responses to questions in Form U-4 in the CRD System;
2. Respondent will immediately withdraw his registration in the state of Missouri;
3. Respondent is prohibited from applying for registration in the State of Missouri for a period of 5 years;
4. Respondent is ordered to pay \$780 to the Missouri Investor Education and Protection Fund for the costs of this investigation; and
5. Respondent will pay his own costs and attorney fees with respect to this matter.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 24th DAY OF February, 2005.



ROBIN CARNAHAN
SECRETARY OF STATE

DAVID B. COSGROVE
COMMISSIONER OF SECURITIES

Consented to by:
MISSOURI SECURITIES DIVISION

Mary S. Hosmer
Assistant Commissioner

Robert J. Herbert, Respondent

Approved as to form:

Harry J. Delagrammatikas, Counsel for Respondent