



**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 failed to timely report customer complaints and settlements on his Form U-4.

### **Complaint from Client 1**

- 21. On July 2, 2002, Respondent, while employed with Continental, received a complaint from Client 1 that alleged Respondent made unsuitable recommendations in the sale of securities. Client 1 alleged compensatory damages of \$850,000.
- 22. On April 4, 2003, Respondent and Continental settled the complaint with Client 1 and agreed to pay Client 1 \$250,000.
- 23. On March 4, 2004, more than 20 months after receiving this complaint and more than 6 months after settling the complaint, Respondent filed an amendment to his Form U-4 and disclosed the complaint by Client 1 and the settlement of this complaint.
- 24. 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."
- 25. Respondent had a duty to timely amend his Form U-4 when the change occurred.
- 26. By not reporting this complaint for more than 20 months after receiving the complaint and more than 6 months after settling the complaint, Respondent failed to timely amend his Form U-4.

### **Complaint from Client 2**

- 27. On July 11, 2002, Respondent, while employed with Continental, received a complaint from Client 2 that alleged Respondent violated sales practice regulations in the sale of securities. Client 2 alleged compensatory damages of \$377,000.
- 28. On February 24, 2003, Respondent and Continental settled the complaint with Client 2 and agreed to pay Client 2 \$130,000.
- 29. On March 4, 2004, more than 19 months after receiving this complaint and more than a year after settling the complaint, Respondent filed an amendment to his Form U-4 and disclosed the complaint by Client 2 and the settlement of this complaint.

30. 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."
31. Respondent had a duty to timely amend his Form U-4 when the change occurred.
32. By not reporting this complaint for more than 19 months after receiving the complaint and more than a year after settling the complaint, Respondent failed to timely amend his Form U-4.

### **Complaint from Client 3**

33. On July 2, 2003, Respondent, while employed with Continental, received a complaint from Client 3 that alleged Respondent violated sales practice regulations in the sale of securities. Client 3 alleged compensatory damages of \$400,000.
34. On March 30, 2004, more than 8 months after receiving this complaint, Respondent filed an amendment to his Form U-4 and disclosed the complaint by Client 3.
35. 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."
36. Respondent had a duty to timely amend his Form U-4 when the change occurred.
37. By not reporting this complaint for more than 8 months after receiving the complaint, Respondent failed to timely amend his Form U-4.

### **JURISDICTIONAL BASIS**

38. Respondents 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.
39. Respondents 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 Respondents 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 censured;
2. Respondent is prohibited from applying for registration as a securities agent in the State of Missouri for a period of 8 years;
3. Respondent is ordered to pay a civil penalty of \$15,000 made payable to the State of Missouri, and the Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri;
4. Respondent will pay \$1,100 to Secretary of State as the costs of this investigation; and
5. Respondent will pay his own costs and attorneys fees with respect to this matter.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 4TH DAY OF JANUARY, 2005.

MATT BLUNT  
SECRETARY OF STATE

(Signed/Sealed)  
DOUGLAS M. OMMEN  
COMMISSIONER OF SECURITIES

(Consented to by:)  
Mary S. Hosmer  
Assistant Commissioner for Enforcement

Timothy Higgins, Respondent

Ruth Ann Niosi, Counsel for Respondent