

State of Missouri
Office of Secretary of State

Case No. AP-07-04

IN THE MATTER OF:

MICHAEL G. GRIMES; *and*
FINANCIAL SOLUTIONS &
ASSOCIATES, INC.,

Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

The Commissioner, having reviewed and considered the pleadings and record on file in the above-styled proceeding, having heard the evidence presented by the Petitioner Enforcement Section and the Respondents at hearing, and having reviewed the post-hearing briefs submitted by the Petitioner and the Respondents, now finds and concludes that the Enforcement Section has prevailed on certain of its claims in its petition against Respondents, and has not prevailed on others, and further makes findings of fact and conclusions of law and enters a final order as follows:

- A. On January 25, 2007, the Enforcement Section of the Securities Division (“Petitioner”), through Mary Hosmer, Assistant Commissioner, submitted a Petition for Order to Cease and Desist and Order to Show Cause Why Civil Penalties and Costs Should Not be Imposed (the “Petition”).
- B. On February 7, 2007, the Commissioner issued an Order to Cease and Desist and to Show Cause Why Civil Penalties and Costs Should Not be Imposed (the “C&D Order”) which prohibited the Respondents named in the Petition from transacting business as an unregistered investment adviser or representative, and from engaging in certain acts, practices or courses of business. The C&D Order also stated that a determination on whether to grant the Enforcement Section’s request for an order assessing civil penalties and costs would be made after allowing the Respondents to request a hearing and show cause why such penalties and costs should not be assessed.
- C. Respondents Michael Grimes (“Grimes”) and Financial Solutions & Associates, Inc. (“FSI”), filed a request for hearing through their attorney, Steven Koslovsky, on February 20, 2007.
- D. Respondents Grimes and FSI filed an answer in this matter on March 19, 2007.
- E. The matter was set for hearing on May 15, 2007, but was continued on the joint motion of the Petitioner and the Respondents to June 28, 2007, and again with the consent of the Petitioner and Respondents to July 23, 2007, and finally with the consent of the Petitioner and Respondents to September 25, 2007.
- F. The hearing was commenced on September 25, 2007. The Petitioner called six witnesses: June Antolik, Gerald Walls, Judi Lahr, Ronald Harrod, Janet Ellingson and Michael Leara, Sr. The Petitioner also presented eighteen exhibits which were admitted into evidence by the Commissioner.
- G. The Respondents called one witness, Michael Grimes. The Respondents also presented fourteen exhibits which were admitted into evidence by the Commissioner.
- H. Now, having reviewed the exhibits and testimony presented in this case, the Commissioner makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Respondent Grimes is an insurance agent licensed in Missouri to sell life insurance, variable contracts, accident, and health insurance coverage. His business address is Suite 202, 12400 Olive Blvd., St. Louis, Missouri 63141.
2. Grimes is the president of FSI. FSI is a Missouri corporation that purports to be a “fee-only financial planning firm” and has an address of Suite 202, 12400 Olive Blvd., St. Louis, Missouri 63141. FSI is not an NASD [\[1\]](#) member firm.
3. From January 14, 2004, to November 2006, Grimes was formally engaged as a solicitor for Barrington Capital Management, Inc. (“Barrington”). Barrington has a business address of 470 Miller Road, Barrington, Illinois 60010.
4. Barrington is a federal covered investment adviser and has notice-filed as a federal covered investment adviser in the State of Missouri. Barrington is on the Central Registration Depository System (“CRD”) with number 105005. Barrington is not an NASD* member firm.
5. Triumph Marketing, LLC (“Triumph”) is a Colorado limited liability company and has a last known address of 4411 E. Kentucky Avenue, Glendale, Colorado 80246. Triumph is a financial marketing organization which received override

commissions for sales of equity-indexed annuities ("EIAs") by Grimes and/or FSI.

6. During the period January 1, 2004, to November 2006, Grimes and FSI received commissions from various insurance companies for sales of EIAs.
7. [Intentionally Omitted]
8. From August 1979, until February 13, 2004, Grimes was a registered representative and an investment adviser representative in the State of Missouri with various broker-dealers. Grimes was registered through the CRD with number 841925.
9. Prior to his employment as a solicitor for Barrington, Grimes entered into three (3) separate Consent Orders with the Missouri Securities Division. Grimes was not prohibited from acting as a solicitor in these orders.
10. On March 4, 2005, in the last of these three orders (*In the Matter of Michael Glenn Grimes*, Consent Order No. AP-05-01), the Enforcement Section of the Missouri Securities Division alleged that Grimes had offered investment advice in the State of Missouri without benefit of registration. In the Order issued by the Commissioner of Securities, Grimes was prohibited from, among other things, offering investment advice regarding the purchase or sale of securities in or from the State of Missouri. In this order, Grimes was prohibited from applying for registration as a securities agent or investment adviser representative in the State of Missouri for five (5) years from the date of the Order. Grimes was further ordered to pay \$27,500 to the Missouri Secretary of State's Investor Education Fund.
11. A check of the records maintained by the Missouri Commissioner of Securities confirmed that during all times relevant, Grimes was not registered as an investment adviser representative or a registered representative of a broker-dealer in the State of Missouri.
12. A check of the records maintained by the Missouri Commissioner of Securities confirmed that during all times relevant, FSI was not registered as an investment adviser or as a broker-dealer in the State of Missouri.
13. For the period March 31, 2005, through June 30, 2006, Respondents received compensation from Barrington of over \$150,000.
14. Respondent Grimes provided financial planning services to June Antolik and her now deceased husband, Edwin, beginning in 1996.
15. On October 25, 2006, Ms. Antolik met with Respondent Grimes, who at the time was working for Respondent FSI, and they discussed Ms. Antolik's assets and various investments, which included mutual funds, stocks, bonds and exchange-traded funds.
16. Respondent Grimes communicated to Ms. Antolik that he believed her current investments were too risky for her, and recommended that she liquidate the securities in her individual retirement account ("IRA") and invest the proceeds of such liquidation in an EIA.
17. Ms. Antolik accepted Respondent Grimes' recommendation, and Respondent Grimes assisted or helped Ms. Antolik in liquidating her securities investments then held by Charles Schwab.
18. Ms. Antolik liquidated her IRA holdings in Respondent Grimes' office on October 25, 2006, and Respondent Grimes helped her with the liquidation by being present during her speaker telephone conversation with a Charles Schwab representative, and by indicating to Ms. Antolik which assets and securities to liquidate "either by mouthing the words - he didn't speak out loud - or with hand motions, you know, to go ahead and sell it."
19. During the telephone conversation with the Charles Schwab representative on October 25, 2006, Ms. Antolik expressed concern with some of the commissions that would be paid in connection with the sale of some of the securities in her IRA.
20. When Ms. Antolik expressed or indicated her concern over the commissions to Respondent Grimes, he told her to proceed with selling the assets.
21. Respondent Grimes recommended that Ms. Antolik sell all of the stocks and all of the bonds in her IRA.
22. Ms. Antolik estimates that at her October 25, 2006, meeting in Respondent Grimes' office, they spent approximately thirty minutes discussing the liquidation of her IRA assets before calling Charles Schwab.
23. Respondents authored and caused to be distributed to prospective clients in the State of Missouri in 2006 a document which presented Respondent Grimes' philosophy and stated, among other things:
 - a. that Respondent Grimes' philosophy is "more money, less taxes;"
 - b. that Respondent Grimes' implemented the "more money" component of his philosophy with "High-Yielding Bank Preferred Stocks" and "Dimensional Funds;"

- c. that Respondent Grimes' implemented the "less taxes" component of his philosophy with "Tax Deferred Annuities;"
 - d. that Respondent Grimes provides his clients with "pre- and post-retirement financial planning services," and thus such "asset growth services" include:
 1. personal financial planning;
 2. investment allocation strategies;
 3. retirement plan distribution analysis; and
 - e. that Respondent Grimes would "provide as much education and information on the markets" as a client desired.
24. [Intentionally Omitted]
25. Respondents authored and caused to be distributed a flyer promoting an investment with a "guaranteed 13.5% return."
26. Respondents maintained, during a period which at least overlaps in part with the period of January 1, 2004, to November 2006, a website indicating, in part, the following:
- a. "Financial Solutions & Associates, Inc. is a fee-only financial planning firm . . . compensated solely by fees paid by their clients and [FSI does] not accept commissions or compensation from any other source. As Fee-Only planners, we believe there is a significant conflict of interest if an advisor stands to gain financially from the purchase of any investment or insurance product he or she recommends to the client"
 - b. "Fee-only investment management is the newest and most attractive way to pay for professional money management and is the type of arrangement recommended by many leading financial writers and experts"
 - c. "Financial Solutions & Associates, Inc. charges a reasonable, quarterly management fee based on the value of a client's account."
 - d. "The main difference between a Stockbroker and us is that they make a living by charging their clients commissions"
 - e. "Stockbrokers often charge 1% - 2% per trade on stocks, and as much as 6% on mutual funds. Stockbrokers may also have hidden charges such as 12b-1 fees or surrender fees on mutual funds, surrender fees and bloated internal expenses on annuities, and heavy markups on products like unit trusts or bonds."
 - f. "On the other hand, as a fee-only advisor, our compensation is a flat percentage of a client's account value. We do not earn any money from commissions, trailers, or markups. We earn money only if their account grows or if we gain new clients."
27. Respondent Grimes had responsibility for the content of the FSI website described in Paragraph 26, above, specifically including the "Fee-Only Planner" portion of that website.
28. The Securities Division's lead investigator in this matter worked 127.6 hours on this matter, and calculated 42 hours of attorney time on the same. 31.1 hours of the investigator's time (\$65/hour) were attributed to initial file review and investigation and 61.5 hours to order preparation and discovery. At a hearing on the Securities Division's Request for Costs, testimony was given that at least 7 hours of the investigator's time included in that investigator's affidavit (see Affidavit, attached as Exhibit A hereto) are attributable to a different investigator. 12 attorney hours (\$135/hour) were attributed to order preparation and discovery, 28 hours to hearing preparation and hearing time, and 2 hours to post-hearing activities. The Commissioner has direct notice of at least 14 hours of attorney time on the case via the hearing, the pre-hearing conference and status conferences on this matter. The Commissioner also has direct notice of \$4,000 in costs paid by the Respondent in Case AP-07-01, which involves issues directly related to the instant matter. The total costs identified in the Affidavit amount to \$13,964.
29. This Order is in the public interest and is consistent with the purposes intended by the Missouri Securities Act of 2003.

CONCLUSIONS OF LAW

30. Under the Missouri Securities Act of 2003 (the "Act"), the Commissioner of Securities must provide a hearing on an issued cease and desist order upon the request of a person or persons subject to the order. Section 409.6-604(b), RSMo. (Cum Supp. 2006).
31. Under the Act, the Commissioner may issue a final order after the requested hearing and after making findings of fact and conclusion of law. Section 409.6-604(c), RSMo. (Cum Supp. 2006).
32. Under the Act, the Commissioner may issue a final order imposing civil penalties and charging the cost of the investigation. Sections 409.6-604(d) and (e), RSMo. (Cum Supp. 2006).

33. In the Petition, Petitioner alleged several violations of law, including:
- a. transacting business as an unregistered investment adviser, a violation of Section 409.4-403(a), RSMo.;
 - b. transacting business as an unregistered investment adviser representative, a violation of Section 409.4-404(a), RSMo.;
 - c. employing an unregistered investment adviser representative, a violation of Section 409.4-403(d), RSMo.;
 - d. omitting to state a material fact in connection with the offer to purchase or sale of a security, a violation of Section 409.5-501, RSMo.;
 - e. making an untrue statement of material fact in connection with the offer to purchase or sale of a security, a violation of Section 409.5-501, RSMo.;
 - f. engaging in an act, practice, or course of business that operates a fraud or deceit upon a person in the course of offering investment advice, a violation of Section 409.5-502, RSMo.; and
 - g. willfully violating an order of the Commissioner, a violation of Section 409.5-508, RSMo.
34. Although the Commissioner issued the C&D Order that found violations of the above, as a hearing was requested by a person aggrieved by the order, the Petitioner has the burden of proving the violations at the hearing. MO 15 CSR 15-55.090(2).

Transacting Business in Missouri as an Unregistered Investment Adviser

35. Section 409.4-403(a), RSMo., provides that it is unlawful for a person to transact business in this state as an investment adviser unless that person is registered as an investment adviser or is exempt from registration.
36. The Petitioner has met its burden and established that at all times relevant, Respondent FSI was not registered as an investment adviser (see Paragraph 12, above), yet still transacted business in Missouri as an unregistered investment adviser when it, among other things:
- a. held itself out as an investment adviser and engaged in the business of advising June Antolik, through the efforts of its president, Respondent Grimes, as to advisability of investing in securities for compensation and as a part of a regular business. See Paragraphs 14-22, above;
 - b. held itself out as an investment adviser by causing to be distributed to prospective clients in Missouri a document discussing Respondent Grimes' philosophy involving preferred stocks and dimensional funds. See Paragraph 23, above; and
 - c. held itself out as an investment adviser by maintaining the website described in Paragraph 26, above.
37. Respondent FSI violated Section 409.4-403(a), RSMo., when it unlawfully transacted business in this State as an investment adviser and was not properly registered to do so.

Transacting Business in Missouri as an Unregistered Investment Adviser Representative

38. Section 409.4-404, RSMo., provides that it is unlawful for a person to transact business in this state as an investment adviser representative unless that person is registered as an investment adviser representative or is exempt from registration.
39. The Petitioner has met its burden and established that at all times relevant, Respondent Grimes was not registered as an investment adviser representative (see Paragraph 11, above), yet still transacted business in Missouri as an investment adviser representative when he, among other things:
- a. held himself out as an investment adviser representative and engaged in the business of advising June Antolik, on behalf of Respondent FSI, as to advisability of investing in securities for compensation and as a part of a regular business. See Paragraphs 14-22, above; and
 - b. held himself out as an investment adviser representative by causing to be distributed to prospective clients in Missouri a document discussing his philosophy involving preferred stocks and dimensional funds. See Paragraph 23, above.
40. Respondent Grimes violated Section 409.4-404(a), RSMo., when he unlawfully transacted business in this State as an investment adviser representative and was not registered to do so.

Employing an Unregistered Investment Adviser Representative

41. Section 409.4-403(d), RSMo., provides that it is unlawful for an investment adviser to employ or associate with an individual required to be registered under the Act unless that individual is registered as an investment adviser representative or is exempt from registration.
42. The Petitioner has met its burden and established that at all times relevant, Respondent Grimes was not registered as an

investment adviser representative (see Paragraph 11, above), yet still held himself out as an investment adviser representative via the mailer described in Paragraph 23, above, and engaged in the business of advising June Antolik as to advisability of investing in securities for compensation and as a part of a regular business conducted on behalf of FSI (see Paragraphs 14-22, above).

43. Respondent FSI violated Section 409.4-403(d), RSMo., when it unlawfully employed Respondent Grimes, who was required to be registered as an investment adviser representative but was not.

**Engaging or Employing a Practice or Course of Business
That Operates as a Fraud or Deceit Upon a Person**

44. Section 409.5-502(a), RSMo. (Cum. Supp. 2005), provides that it is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities, to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

45. The Petitioner has met its burden and established that:

a. Respondent Grimes was responsible for the content of Respondent FSI's website described at Paragraph 26, above, specifically including the "Fee-Only Planner" portion of that website. See Paragraph 27, above;

b. while Respondents maintained the website described at Paragraph 26, above, which stated, among other things, that:

1. "[t]he main difference between a Stockbroker and [FSI] is that they make a living by charging their clients commissions";

2. "[FSI] is . . . compensated solely by fees paid by their clients and [FSI does] not accept commissions or compensation from any other source"; and

3. "[FSI does] not earn any money from commissions, trailers, or markups;"

c. Respondents also did, during the period of January 1, 2004, to November 2006, receive commissions from various insurance companies for sales of EIAs. See Paragraph 6, above; and

d. Respondents also did, during the period of March 31, 2005, through June 30, 2006, receive compensation from Barrington of over \$150,000. See Paragraph 13, above.

46. Maintaining a publicly available website claiming to earn no commissions, nor any compensation from sources other than clients, while in fact earning commissions, and compensation from sources other than clients, is a course of business that would deceive another person, primarily potential clients and Missouri investors.

47. Respondents violated Section 409.5-502(a), RSMo., when they advised others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities, and engaged in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

Omission of Material Facts Necessary to Make Other Statements Not Misleading

48. Section 409.5-501, RSMo., provides, among other things, that it is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly, to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading.

49. The Petitioner has not met its burden with regard to this allegation.

Making Untrue Statements of a Material Fact in Connection with the Sale of a Security

50. Section 409.5-501, RSMo., provides, among other things, that it is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly, to make an untrue statement of a material fact.

51. The Petitioner has not met its burden with regard to this allegation.

Willful Violation of an Order of the Commissioner

52. Section 409.5-508, RSMo., provides for criminal penalties upon the willful violation of an order issued under the Missouri Securities Act of 2003, and states that upon conviction for such violation, a person may be fined up to one million dollars, or imprisoned up to ten years, or both.

53. Section 409.5-508, RSMo., also states that it is the attorney general or a proper prosecuting attorney who can institute criminal proceedings under the Missouri Securities Act of 2003, but does not provide such authority to the Enforcement Section or the Commissioner.

ORDER

NOW, THEREFORE, it is hereby ordered that:

- A. The Cease and Desist Order entered in Case Number AP-07-04 on February 7, 2007, is **FINAL** as to all Respondents, and is hereby modified consistent with the findings of fact and conclusions of law in this Final Order.
- B. Pursuant to Section 409.6-604(d), RSMo., Respondent FSI shall pay, within thirty (30) days from the date of service of this Order, the amount of one thousand five hundred dollars (\$1,500) to the State of Missouri as civil penalties for multiple violations of Section 409.4-403(a), RSMo. This amount shall be sent to the Secretary of State and 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. Respondents shall deliver this payment to the Securities Division, 600 W. Main Street, PO Box 1276, Jefferson City, Missouri 65102.
- C. Pursuant to Section 409.6-604(d), RSMo., Respondent Grimes shall pay, within thirty (30) days from the date of service of this Order, the amount of four thousand dollars (\$4,000) to the State of Missouri as civil penalties for multiple violations of Section 409.4-404(a), RSMo. This amount shall be sent to the Secretary of State and 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. Respondents shall deliver this payment to the Securities Division, 600 W. Main Street, PO Box 1276, Jefferson City, Missouri 65102.
- D. Pursuant to Section 409.6-604(d), RSMo., Respondents shall each pay, within thirty (30) days from the date of service of this Order, a separate sum of one thousand dollars (\$1,000) to the State of Missouri as civil penalties for violation of Section 409.5-502(a), RSMo. This amount shall be sent to the Secretary of State and 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. Respondents shall deliver this payment to the Securities Division, 600 W. Main Street, PO Box 1276, Jefferson City, Missouri 65102.
- E. Pursuant to Section 409.6-604(e), RSMo., Respondents FSI and Grimes shall pay, within thirty (30) days from the date of service of this Order, the amount of three thousand four hundred fifty four dollars (\$3,454) as reimbursement for the costs of the investigation and administration of this matter. Respondents shall be jointly and severally liable for this amount. This amount shall be sent to the Secretary of State and made payable to the Missouri Secretary of State's Investor Education and Protection Fund. Respondents shall deliver this payment to the Securities Division, 600 W. Main Street, PO Box 1276, Jefferson City, Missouri 65102.
- F. Pursuant to Section 409.6-604(f), RSMo., this matter shall be referred to the Missouri Attorney General's Office to collect the fines and costs described in this Final Order, as necessary.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 4TH DAY OF FEBRUARY, 2008.

ROBIN CARNAHAN
SECRETARY OF STATE

(Signed/Sealed)
MATTHEW D. KITZI
COMMISSIONER OF SECURITIES

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of February, 2008, a copy of the foregoing FINAL ORDER, filed in the above-styled case, was mailed by U.S. Mail to:

Steven W. Koslovsky
2458 Old Dorsett Road, Suite 230
St. Louis, Missouri 63043
Attorney for Respondents Michael
Glenn Grimes and Financial Solutions
& Associates, Inc.

and by hand-delivery to:

Mary S. Hosmer
Assistant Commissioner
Enforcement Section, Securities Division

John Hale, Specialist

[1]The NASD is now known as the Financial Industry Regulatory Authority (FINRA).