

State of Missouri
Office of Secretary of State

Case No. AP-07-47

IN THE MATTER OF:

JANET ELLINGSON,

Respondent.

Serve:

Janet Ellingson
LiveOffice/Advisor Square
Ste.300, 2780 Skypark Drive
Torrance, CA 90505

CONSENT ORDER

SUMMARY OF ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division (“Division”) alleges that Janet Ellingson (“Respondent”) withheld records, documents, electronic or physical evidence with the intent to impede, obstruct, avoid, evade, or influence an official investigation or administration of any other proceeding in violation of Section 409.108, RSMo. (Cum. Supp. 2006).
2. Respondent and the Division desire to settle the allegations and the matters raised by the Securities Division relating to Respondent’s alleged activities.

CONSENT TO JURISDICTION

3. Respondent and the Division stipulate and agree that the Commissioner has jurisdiction over Respondent and these matters pursuant to the Missouri Securities Act, Chapter 409, *et seq.*
4. Respondent and the Division stipulate and agree that the Commissioner has authority to enter this Consent Order pursuant to Section 409.6-604(h), RSMo. (Cum. Supp. 2006), which provides:

The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act.

WAIVER AND EXCEPTION

5. Respondent waives her right to a hearing with respect to this matter.
6. Respondent waives any right that she may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. 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.
7. Respondent stipulates and agrees with the Division that, should the facts contained herein prove to be false or incomplete, the Division reserves the right to pursue any and all legal or administrative remedies at its disposal.

CONSENT TO COMMISSIONER’S ORDER

8. Respondent and the Division stipulate and agree 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.
9. Respondent neither admits nor denies the allegations made by the Division but consents to the Commissioner’s Findings of Fact and Conclusions of Law as set forth below solely for the purposes of this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.
10. Respondent agrees not to take any action or to make or permit to be made any public statement creating the impression that this Order is without a factual basis.
11. Respondent agrees that Respondent is not the prevailing party in this action since the parties have reached a good faith settlement.

COMMISSIONER’S FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. Respondent is an Account Manager for LiveOffice/AdvisorSquare (“LiveOffice”) a California limited liability company. Respondent has a last known business address of 2780 Skypark Drive, Suite 300, Torrance, California 90505.
13. LiveOffice designs, hosts and maintains websites specifically for financial services professionals.
14. Steven Wolfe (“Wolfe”) is the Vice-President of Client Services for LiveOffice. Wolfe, in his capacity as Vice-President, is Respondent’s supervisor.
15. As used herein, the term “Respondent” refers to Ellingson.

B. Investigation by the Securities Division

16. On February 7, 2007, the Missouri Commissioner of Securities issued a Cease and Desist *In the Matter of Michael Glenn Grimes and Financial Solutions & Associates, Inc.*, Order, No. AP-07-04, (Missouri Securities Division 2007).
17. On or around February 20, 2007, Michael Glenn Grimes (“Grimes”) and Financial Solutions, Inc. (“FSI”) requested a hearing on this February 7, 2007 Cease & Desist Order (the “Grimes Matter”). This hearing was set for May 3, 2007.
18. The petition in the Grimes Matter alleged, among other things, that Grimes and FSI held themselves out on their website as providing investment advice.
19. The website used by Grimes and/or FSI was located at www.finsolinc.net. This website was designed and maintained by LiveOffice, who employed Respondent to manage clients’ websites after the websites were built. Respondent managed and currently manages the website www.finsolinc.net, used by Grimes and/or FSI.
20. In preparation for the hearing in the Grimes Matter, the Division deposed Grimes on April 24, 2007, regarding, among other things, the website at www.finsolinc.net. As part of his testimony, Grimes stated that Grimes and FSI’s website, www.finsolinc.net, was a “cookie cutter website” and that FSI’s name “had to be populated in any part of that cookie cutter website depicting that we bought the website” (See pages 21-22 of Grimes Deposition – Exhibit 1). In addition, discovery documents provided in the Grimes Matter indicated a connection between Grimes and FSI’s website and LiveOffice, and listed Respondent as an Account Manager (See Exhibit 2).
21. On April 27, 2007, both parties in the Grimes Matter requested a continuance of the May 3, 2007, hearing, and the hearing was continued to June 28, 2007.
22. On May 10, 2007, the Division sent Grimes and FSI a witness list in the Grimes Matter that listed, among others, employees at LiveOffice.
23. On or around May 11, 2007, as part of the preparation for the hearing on the pending order in the Grimes Matter, the Division investigator contacted Respondent and requested that Respondent provide, among other things, the following information concerning Grimes and FSI’s website, www.finsolinc.net:
 - a. the information Grimes provided to establish the website;
 - b. the information on the website that could or could not be altered by Grimes; and
 - c. the alterations to the original website that had been made by either Grimes or LiveOffice and the dates of any such alterations.

Respondent stated to the investigator with the Division that Respondent could provide the requested information and would contact the Division in the next few days.

24. On or about May 23, 2007, the Division investigator received Respondent’s response by email (See Exhibit 3). Respondent’s response did not provide, among other things, the following:
 - a. the information provided by Grimes to establish the website;
 - b. the information on the website that could or could not be altered by Grimes; and
 - c. the alterations to the original website that had been made by either Grimes or LiveOffice and the dates any such alterations were made.

The Division investigator was unaware at this time that Respondent and Grimes had spoken on May 11, 2007, and had exchanged several emails regarding the Division’s request, as more fully described in paragraphs below.

25. The Division investigator sent a second request for information to Respondent by email on May 29, 2007. The investigator requested, among other things, information concerning what Grimes provided to LiveOffice to establish Grimes and FSI’s website, the procedures to change/amend the website, what changes/amendments were made to the original website, and telephone conversations and/or one-on-one meetings held with Grimes concerning the website (See Exhibit 4).

26. From June 5, 2007, through June 11, 2007, the Division investigator attempted to call Respondent regarding this requested information. Although the Division investigator called Respondent approximately five (5) times, these calls were not returned. The Division investigator was not aware at that time that Respondent was communicating with Grimes regarding the investigator's calls and was not aware, as more fully described in the paragraphs below, that Grimes was advising Respondent not to return these calls until Grimes talked to his attorney.
27. On June 13, 2007, the Division and Grimes and FSI agreed to a continuance of the June 28, 2007, hearing date to July 23, 2007.
28. On June 18, 2007, the Division received a response to the second information request from Wolfe (See Exhibit 5). Wolfe's response did not provide, among other things, the following requested information:
 - a. The procedures that Grimes went through to establish the website;
 - b. The information provided by Grimes to LiveOffice to establish the original website;
 - c. The procedures to change/amend the website, and the changes, if any, that were made to the original website by either Grimes or LiveOffice on Grimes's instructions;
 - d. The dates of any alterations made to the website;
 - e. The number of meetings/telephone calls between LiveOffice and Grimes and the dates of any such meetings/telephone calls;
 - f. The date of LiveOffice's most recent contact with Grimes and the purpose of that contact; and
 - g. A description of any ongoing service LiveOffice was providing to Grimes.
- Wolfe's response, however, did state that Wolfe "spoke to Mr. Grimes on Friday June 15, 2007 and [Grimes] did not give me authorization to respond to the list of questions you put together and sent to LiveOffice regarding his site."
29. On June 25, 2007, the Division sent a third request to Wolfe and Respondent requesting information concerning Grimes's website (See Exhibit 6). Matt Smith, President of LiveOffice, responded to the third request on July 6, 2007; however, Smith's response did not provide, among other things, the following:
 - a. a complete and accurate copy of Grimes's original website;
 - b. a listing of the template/copyright protected information Grimes used;
 - c. copies of all notes, emails, or other documents pertaining to meetings and/or calls with Grimes; and
 - d. a complete and accurate listing of telephone calls between Grimes and Respondent.
30. On July 13, 2007, depositions of Wolfe and Respondent were scheduled to be taken via telephone. The attorney for LiveOffice called and stated that additional information was discovered relative to the Division's request to LiveOffice and that these records and documents would be supplied to the Division. The depositions scheduled to be taken that day were continued to July 31, 2007.
31. On July 13, 2007, the Division attorney requested a continuance of the July 23, 2007, hearing date in the Grimes and FSI matter, and the hearing was continued to September 25, 2007. In addition, the depositions were rescheduled to review this additional information.
32. In letters dated July 17, 2007, and July 19, 2007, an updated response to the Division's third request and additional information were provided to the Division by an attorney for LiveOffice. Included in the additional information were documents to set up the web site, records of telephone conversations and copies of emails between Respondent and Grimes. Said emails were dated May 21, 2007, through June 11, 2007, and referenced Respondent's initial response to the Division's request for information concerning Grimes's website (See Exhibit 7).
33. In preparation for the September, 2007, hearing in the Grimes Matter, the Division deposed Wolfe, Respondent, and Dennis Fox of LiveOffice on July 31, 2007. These depositions, in part, were efforts to elicit additional information concerning:
 - a. the formation of the website www.finsolinc.net used by Grimes and/or FSI;
 - b. any alterations made by Grimes to this website;
 - c. what parts of the website, if any, could or could not be altered; and
 - d. what conversations were held between Wolfe, Respondent, and/or Grimes concerning the Division's multiple requests for information to LiveOffice.

34. During his deposition held July 31, 2007 (See Wolfe deposition pages 25 through 29 – Exhibit 8), Wolfe stated, among other things, that he had spoken to Grimes on June 15, 2007, concerning the Division’s second request for information. Wolfe stated that he called Grimes to inform him that there were questions the Division was asking to have answered, and to ask Grimes what Grimes wanted Wolfe to do. Wolfe stated, on page 27 of his deposition, that Grimes told Wolfe not to respond to the Division’s request. Wolfe further stated, on page 28 of his deposition, that Grimes stated, “Do not answer the questions. I think they’re [the Division’s] bluffing. I’m going to call their bluff.” Wolfe stated that he did not provide the requested information to the Division at that time (page 28).
35. During her deposition held July 31, 2007 (see Respondent deposition pages 30 and 71 - Exhibit 9), Respondent was asked about telephone conversations with Grimes and Respondent stated, among other things, that:
- “...I let him know that [the division investigator] had called me. I asked if it was okay to send the letter. He said, ‘Yes, Go ahead and give her what she needs.’ So I sent the letter.” (p. 30)
36. During her deposition, when asked if Grimes ever told Respondent not to answer a request by the division, Respondent stated, “...Not that I recall. No. He just told me that he wanted to speak to his attorney. He didn’t tell me not to do anything.” (p. 71)
37. On July 31, 2007, subsequent to the depositions of Wolfe, Respondent, and Fox, the Division also received from the attorney for LiveOffice a CD containing audio files of two telephone calls between Respondent and Grimes (See transcript of the first telephone call – Exhibit 10), which indicated that, on May 11, 2007 (subsequent to the initial request for website information by the investigator with the Division), Respondent made a telephone call to Grimes, which was recorded by Advisor Square.^[1] In this May 11, 2007 telephone call Respondent told Grimes of the Division’s request. During this call Respondent indicated her willingness to protect Grimes and to supply information that Grimes approved by stating among other things that:
- “...you’re our client Mike [Grimes], and you are who we want to protect...”
 - “...how about this, I will draw up the email [to the Division] on Monday and I will send it to you first and you can okay it, you can look at it, we’ll talk about it, if you want me to make any changes, then I will send it to that woman...”
 - “...Mike [Grimes], you and I will work on that email...I’ll send it to you, you look at it and we’ll go back and forth until you, your’re happy with what I have and then I’ll send it to [the Division’s investigator]...”
38. During this May 11, 2007 call, Grimes told Respondent to withhold records and information from the Division by telling Respondent, among other things:
- “...I wouldn’t do anything...”
 - “...so don’t send them anything...”
 - “...Just send them the minimal amount of information...”
 - “...You just give her the minimal amount of stuff...”
 - “...Less is more...”
39. During this May 11, 2007, call Grimes and Respondent discussed how to shape Respondent’s information to fit with information that Grimes supplied to the Division in the Grime Matter by, among other things, telling Respondent to:
- “...just give her minimal amount of stuff: he hired us, and just couch it in such a way that the owner of the site, when he hired us has to be populated through out the site...not necessarily does he provide those services...”
 - “Yeah and just bolster my case...”
40. During this May 11, 2007, call Grimes and Respondent discussed how Grimes was going to create information to supply to the Division, by stating among other things, the following:
- Grimes:* “...And so there’s no record of what I had there [at LiveOffice], I can make up anything I want. They don’t have a record of it.”
- Respondent:* “Right, there’s really no one to prove you’re wrong, yeah.”
- Grimes:* “Yeah, there’s nobody to prove me wrong, and all I’m going to do is pull my son in here and say put this, this and this, ‘cause that’s what we had up there. And we had Dave Ware’s bios and stuff... we will have to find them, put them up there, copy it, and them take ‘em all off again.”
- Respondent:* “Jeesh.”

Grimes: "I'll guarantee you, what I'll submit to them is gonna bolster my case. 'Cause they don't have a copy of it, I didn't keep a copy of it, I'm gonna have to recreate it."

Respondent: "Right."

41. An order is in the public interest and consistent with the purposes intended by this act. See Section 409.6-605(b) RSMo (Cum. Supp. 2006).
42. The Commissioner, after consideration of the stipulations set forth above and on the consent of the Respondent and the Division, finds the following Order to be in the public interest and necessary for the protection of public investors and consistent with the provisions of Chapter 409, RSMo, *et seq.*

ORDER

NOW, THEREFORE, it is hereby Ordered that:

1. Respondent will immediately advise her supervisor of any contact from any state or federal investigator or regulator. Respondent will also provide her supervisor with any materials that she is to send in response to any request for information from any state or federal investigator or regulator.
2. Respondent will complete, within 60 days of the execution of this order, in-house training regarding her duties and responsibilities with respect to communicating with federal or state investigators or regulators. Respondent will send to the Division, within seventy-five (75) days of the effective date of this Order, a copy of topics covered in this training and a certificate of completion of this training on LiveOffice letterhead.
3. Respondent shall pay to the Missouri Investor Education and Protection Fund the amount of seven thousand dollars (\$7,000.00). This amount shall be sent to the Division and shall be made payable to the Missouri Secretary of State's Investor Education and Protection Fund and shall be due and payable within thirty (30) days from the date of this Consent Order. The Division will forward these funds to the Investor Education and Protection Fund.
4. Respondent will reimburse the Division for the costs of the investigation in the amount of five hundred dollars (\$500.00). This amount shall be sent to the Division and shall be made payable to the Missouri Secretary of State's Investor Education and Protection Fund and shall be due and payable within thirty (30) days from the date of this Consent Order. The Division will forward these funds to the Investor Education and Protection Fund.
5. Respondent will be responsible for her own costs and attorney fees.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 21ST DAY OF SEPTEMBER, 2007.

ROBIN CARNAHAN
SECRETARY OF STATE

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

Consented to by:

Mary Hosmer
Assistant Commissioner of Securities
Missouri Securities Division

Janet Ellingson

Approved as to Form:

Joni Ostler Attorney for Respondent

[1] The Division was unaware of this recorded telephone call until the attorney for LiveOffice asked questions concerning the contents of this recorded call during Respondent's deposition on July 31, 2007. The CD containing the audio files of the conversations was received by the Division subsequent to the deposition of Respondent.

