

**STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION**

IN THE MATTER OF:)	
)	
TIMOTHY M. GAUTNEY)	ADMINISTRATIVE ORDER
)	NO. OR-2010-00 14
)	
<u>RESPONDENT</u>)	

ORDER TO REVOKE

The Alabama Securities Commission ("Commission"), having the authority to administer and provide for the enforcement of all provisions of Title 8, Chapter 6, Code of Alabama 1975, the Alabama Securities Act ("Act"), upon due consideration of the subject matter hereof, has determined as follows.

RESPONDENT

1. **TIMOTHY M. GAUTNEY** ("GAUTNEY") (CRD # 2552149) has been a registered Investment Advisor Representative in the state of Alabama since March 18, 2004. **GAUTNEY** is employed as an Investment Advisor Representative with AURA Asset Management, Inc with a principal business address of 181 West Valley Avenue, Suite 101, Birmingham, Alabama 35209. **GAUTNEY** is also President of AURA Holdings, Inc., which is the owner of AURA Asset Management, Inc. **GAUTNEY** was also the founder and direct owner (75%+ ownership) of AURA Financial Services, Inc and served as the onsite General Securities Principal, primary Options Principal, and was the Chief Operation Officer. AURA Financial Services, Inc's registration was terminated in Alabama on December 23, 2009.

STATEMENT OF FACTS

2. On April 8, 2004, two Indiana residents filed a customer complaint with the National Association of Securities Dealers ("NASD") against a representative under **GAUTNEY'S** supervision, NASD cased #04-01631. This case was settled on July 15, 2005 for \$300,000 without any admission of liability.

3. On May 26, 2005, NASD filed a complaint against **GAUTNEY** alleging that **GAUTNEY** failed to establish and maintain a system to supervise the activities of each

registered agent and associated person that is reasonably designed to achieve compliance with applicable laws, regulations and NASD rules. On December 20, 2005, **GAUTNEY**, without admitting or denying the allegations consented to the sanctions and entry of findings. **GAUTNEY** was fined \$15,000 jointly and severally and suspended from association with any NASD member in a principal capacity from January 17, 2006 through January 23, 2006.

4. On September 8, 2005, the Commission issued a Show Cause Order, SC-2005-0042, to **GAUTNEY**. The order was issued after a series of audits found that **GAUTNEY** and the other Respondents had failed to establish and enforce an adequate supervisory system. Furthermore, AURA Financial Services, Inc. failed to keep adequate books and records as required by state statute and rules as well as U.S. Securities and Exchange Commission ("SEC") and NASD rules. The Commission determined that **GAUTNEY** and the other Respondents failed to correct issues outlined in the initial order. On June 11, 2009, an Amended Show Cause Order, SC-2005-0042A, was issued to **GAUTNEY** and other Respondents. This order was finalized on December 21, 2009 because **GAUTNEY** failed to respond as required.

5. On January 22, 2007, several North Carolina residents filed complaints against **GAUTNEY** for failure to supervise outside business of two registered representatives. This case was a direct arbitration filing. The case was settled for \$160,000.

6. On December 21, 2007, the Financial Industry Regulatory Authority's ("FINRA") Department of Enforcement filed a complaint against **GAUTNEY** alleging a failure to reasonably supervise the sale of hedge fund investments. On October 16, 2008, without admitting or denying the allegations, **GAUTNEY** consented to the described sanctions and to the entry of findings. **GAUTNEY** was ordered to pay \$100,000 plus interest in restitution to public customers. **GAUTNEY** was also suspended from association with any FINRA member in any capacity from November 17, 2008 through December 30, 2008.

7. On October 8, 2009, the United States Securities and Exchange Commission (SEC) entered a final judgment by consent against AURA Financial Services, Inc permanently enjoining it from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Aura Financial Services, Inc., et al., Civil Action Number 09-21592-CIV, in the United States District Court for the Southern District of Florida.

8. The SEC's complaint alleged that, from October 2005 through at least April 2009, AURA Financial Services, Inc and six of its registered representatives used fraudulent sales practices to open and fund AURA Financial Services, Inc., brokerage accounts. The complaint alleged that AURA Financial Services, Inc and the registered representatives then "churned" these accounts by causing numerous trades to be executed which enriched AURA Financial Services, Inc., and the registered representatives, through brokerage commissions and, in some cases, mark-ups, therefore depleting the customers' balances through trading losses and excessive transaction costs. **GAUTNEY**, in his position as the onsite General Securities Principal, primary Options Principal, and the Chief Operation Officer of AURA Financial Services, Inc., failed to properly supervise the registered representatives to prevent the fraudulent sales practices used to open and fund AURA Financial Services, Inc brokerage accounts.

9. On December 21, 2009, the Commission issued an Order to Revoke, OR-2005-0042, to **GAUTNEY** and AURA Financial Services, Inc revoking the registration of **GAUTNEY** as a securities agent in Alabama and revoking the registration of AURA Financial Services, Inc. as a broker dealer in Alabama. The revocation of **GAUTNEY**, as an agent in Alabama, was based on his failure to supervise AURA Financial Services, Inc employees and his failure to prevent fraudulent sales practices used by representatives to open and fund brokerage accounts. **GAUTNEY** also failed to adequately respond to the Commission's order to show cause (as amended) and further affirmatively refused to accept a copy of the Order to Revoke and Notice of Right to Hearing, sent via U.S. certified mail, from the Commission. On February 4, 2010, the Order to Revoke was made final on **GAUTNEY** and AURA Financial Services, Inc due to their failure to accept delivery of the Order.

10. On February 17, 2010, FINRA Department of Enforcement issued a Complaint, Disciplinary Proceeding No. 2008011565203, against **GAUTNEY** and AURA Financial Services, Inc alleging that AURA Financial Services, Inc, through **GAUTNEY**, failed to ensure that the firm had reasonable supervisory procedures for purposes of detecting, investigating and preventing excessive trading; failed to supervise two registered representatives whose trading activity exhibited red flags indicative of excessive trading; and failed to pay over half of the restitution owed under an Order issued by FINRA, requiring payment of \$200,000 in restitution to three customers.

CONCLUSIONS OF LAW

11. Pursuant to Section 8-6-3(j)(7), Code of Alabama 1975, the Commission may by Order revoke any registration and bar any registrant in this State from employment with a dealer or investment advisor if the Commission finds that the registrant is the subject of an order, adjudication or determination entered within the past 10 years by a securities or commodities agency or a national securities exchange or association registered under the Securities Exchange Act of 1934, or an administrator of another state, or a court of competent jurisdiction that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisors Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or the federal mail and wire fraud statutes, or the securities, investment advisor or commodities law of any other state; but the commission may not enter any order under this subsection on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section.

12. **GAUTNEY** was the subject of such an order in the Commission's Order to Revoke, OR-2005-0042. Also, the facts in the SEC's final judgment on October 8, 2009 indicate that AURA and six of its registered representatives used fraudulent sales practices to open and fund AURA brokerage accounts. This finding constitutes a violation of 8-6-3(j)(7), Code of Alabama 1975, which is engaging in dishonest or unethical practices in the securities business. **GAUTNEY** was the onsite General Securities Principal, primary Options Principal, and the Chief Operation Officer for AURA Financial Services, Inc during this activity. Additionally, **GAUTNEY** is the subject of a Complaint, issued by FINRA on February 17, 2010, alleging that **GAUTNEY** failed to ensure that AURA Financial Services,

Inc had reasonable supervisory procedures for purposes of detecting, investigating and preventing excessive trading; failed to supervise two registered representatives whose trading activity exhibited red flags indicative of excessive trading; and failed to pay over half of the restitution owed under an Order issued by FINRA, requiring payment of \$200,000 in restitution to three customers.

13. Pursuant to Section 8-6-3(j)(10), Code of Alabama 1975, the Commission may by Order revoke any registration and bar any registrant in this State from employment with a dealer or investment advisor if the Commission finds that the registrant has failed reasonably to supervise his agents or employees if he is a dealer, or his investment advisor representatives or employees if he is an investment advisor to assure their compliance with this article. **GAUTNEY**, in his position with AURA Financial Services, Inc, a registered broker/dealer, failed to reasonably supervise his employees to prevent fraudulent sales practices that their representatives used to open and fund brokerage accounts.

14. Pursuant to Section 8-6-3(j)(2), Code of Alabama 1975, the Commission may by Order revoke any registration and bar any registrant in this State from employment with a dealer or investment advisor if the Commission finds that the registrant has willfully violated or willfully failed to comply with any provisions of this article, or a predecessor act, or any rule or order under this article or a predecessor act. **GAUTNEY** refused to accept correspondence, sent by U.S. certified mail, from the Commission.

This Order is appropriate in the public interest for the protection of investors and consistent with the purposes of the Act.

This Order does not prevent the Commission from seeking such other civil or criminal remedies that may be available to it under the Act.

Additionally, if the allegations set forth herein are found to be true, through either administrative adjudication, failure of the **RESPONDENT** to make a timely request for hearing, or default of the **RESPONDENT**, it is the intention of the Commission to impose sanctions upon the **RESPONDENT**. Such sanctions may include, inter alia, an

administrative assessment imposed on **RESPONDENT**, an additional administrative assessment for investigative costs arising from the investigation of the violation(s) described herein against **RESPONDENT**, and a permanent order to bar **RESPONDENT** from participation in any securities related industry in the state of Alabama.

ACCORDINGLY, IT IS HEREBY ORDERED that the registration of Respondent as an investment advisor representative is hereby revoked and is barred from future association in any capacity with a broker – dealer or investment advisor firm.

Entered at Montgomery, AL, this 5th day of March, 2010.



ALABAMA SECURITIES COMMISSION
770 Washington Avenue, Suite 570
Montgomery, AL 36130-4700
(334) 242-2984
BY:



JOSEPH P. BORG
Director