

STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION

IN THE MATTER OF:

S. HOWARD SMITH
BARBARA MINCEY.

RESPONDENTS

ADMINISTRATIVE ORDER
NO. CO-2004-0004

CONSENT ORDER

The Alabama Securities Commission ("Commission"), having the power 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, and having confirmed information of the offers for sale and/or sale of securities, into, within or from the State of Alabama, has determined as follows:

RESPONDENTS

1. S. HOWARD SMITH ("SMITH") is a registered securities agent associated with Great American Advisors, Inc. ("GAA") and has been continuously registered since 1974 in the State of Alabama. SMITH operates under an agency affiliation by the name of S. Howard Smith Agency ("SHSA") with a business address of 380 Mendel Parkway, Montgomery, Alabama 36117.

2. BARBARA MINCEY ("MINCEY") is a non-registered employee of the SHSA with a business address of 380 Mendel Parkway, Montgomery, Alabama 36117.

STATEMENT OF FACTS

3. On August 6, 2003, an audit was conducted of SHSA. The audit revealed that SMITH, a registered broker dealer agent of GAA, and MINCEY, an unregistered employee of SHSA, sold charitable gift annuities of AMERIFIRST totaling \$1,029,951.38 to eight Alabama residents during the period from December 2000 until January 2002 and charitable gift annuities of NATIONAL totaling \$720,000 to four Alabama residents during the period from March 2002 until September 2002. A check of the files of the Registration Division of the Commission revealed that none of the charitable gift annuities sold were registered nor were any filings made to perfect an exemption from registration.

4. On January 26, 2004 the Commission staff issued a Cease and Desist Order No. CD-2004-0004, directing SMITH, MINCEY and other respondents to immediately cease and desist from further offers or sales of any security into, within or from the State of Alabama.

5. An informal hearing was conducted in the offices of the Commission on March 16, 2004. SMITH and his attorney, Henry Hutchinson of Capell & Howard, P.C., attended and represented the interests of SMITH and MINCEY. At the conclusion of the hearing, SMITH and MINCEY agreed to waive any further administrative proceedings available to them and instead to resolve this matter by way of this Consent Order.

CONCLUSIONS OF LAW

6. Any annuity, not issued by an insurance company, is a security pursuant to §8-6-2(10), Code of Alabama 1975. The charitable gift annuities issued by AMERIFIRST and NATIONAL are, by definition, securities in the State of Alabama.

7. Pursuant to §8-6-4, Code of Alabama 1975, it is unlawful for any person to offer or sell any security in Alabama unless the security is registered under the Act, the security is exempt under §8-6-10 or the transaction in which the security is sold is exempt under §8-6-11. SMITH and MINCEY offered and sold securities, i.e., the charitable gift annuities of AMERIFIRST and NATIONAL, which were not registered and for which no exemption has been perfected.

8. Pursuant to §8-6-3(a), Code of Alabama 1975, it is unlawful to employ an agent to transact securities business in this state unless the agent is registered. MINCEY, an unregistered agent of SHSA, offered and sold securities, i.e., the charitable gift annuities of AMERIFIRST, to five Alabama residents.

WHEREAS, RESPONDENTS admit that securities transactions were effected in the State of Alabama prior to the registration of the securities or the perfection of any applicable exemption, and state that the information and assertions presented to the Commission during its investigation of this matter are true and correct; that RESPONDENTS understand that the Commission's reliance upon such information and assertions in its determination to accept this Order, and that should this information or these assertions prove to be incorrect or misrepresented, the Commission may seek such other administrative, civil, or criminal remedies that may be available to it under the provisions of the Act.

WHEREAS, RESPONDENTS have voluntarily waived all rights to a hearing upon entry of this Order, and have consented to the entry of this Order, and

WHEREAS, the Commission finds this Order necessary and appropriate in the public interest for the protection of investors, and consistent with the purposes fairly intended by the policy provisions of the Act, and

WHEREAS, the Commission and RESPONDENTS are desirous of settling this matter as hereafter set forth and agree to the entry of this Order.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. That RESPONDENTS SMITH and MINCEY shall, until such time as the securities are properly registered, or an appropriate exemption from registration has been perfected, refrain from effecting transactions in such securities into, within or from the State of Alabama.

2. That RESPONDENT SMITH shall not employ, or allow to act on his behalf in effecting transactions in securities in this state, any broker dealer or agent who is not appropriately registered or exempt from registration under the Act.

3. That RESPONDENT MINCEY shall not act as an agent or effect transactions in securities either in her own account or in the accounts of others until such time as she is properly registered as an agent in this state.

4. That RESPONDENT SMITH shall ensure that proper procedures are enacted to preclude any further non compliance with the Act.

5. That in accordance with §8-6-19(j)(1), Code of Alabama 1975, RESPONDENTS shall pay to the State of Alabama an administrative assessment in the total sum of Fifteen Thousand Dollars (\$15,000), said funds to be tendered in certified funds in equal quarterly installments over three years.

6. That in accordance with §8-6-19(k)(1), Code of Alabama 1975, RESPONDENTS SMITH and MINCEY shall pay to the Commission, as partial reimbursement for the Commission's cost for investigating this matter, the sum

of Fifteen Thousand Dollars (\$15,000) said funds to be tendered in certified funds in equal quarterly installments over three years.

7. That RESPONDENTS SMITH and MINCEY shall pay to the INVESTOR PROTECTION TRUST the sum of Fifteen Thousand Dollars (\$15,000), said funds to be tendered in certified funds in equal quarterly installments over three years.

8. That the combined quarterly installments equal Three Thousand Seven Hundred Fifty Dollars (\$3,750). The RESPONDENTS shall also pay six percent (6%) per annum on the Forty Five Thousand Dollar (\$45,000) assessments. If the Respondents pay the assessments within one year, interest will not be charged.

9. That RESPONDENTS SMITH and MINCEY are jointly and severally liable for any and all liabilities created by this agreement.

10. That the entry of this Order and subsequent completion of all conditions of this Order resolve the Cease and Desist Order, Administrative Order No. CD-2004-0004, issued January 26, 2004, only as it relates to RESPONDENTS S. HOWARD SMITH and BARBARA MINCEY.

AGREED AND CONSENTED to on dates indicated.

RESPONDENT:
S. HOWARD SMITH

By: 
Date: 5-25-05

RESPONDENT:
BARBARA MINCEY

By: Barbara Mincey
Date: _____

APPROVED AND AGREED this 31 day of May, 2005.

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

BY:

JOSEPH P. BORG
Director

