

STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION

IN THE MATTER OF:)
)
DONALD C MARTIN)
)
 RESPONDENT)

ADMINISTRATIVE ORDER
NO. OB-2008-0003

ORDER OF PERMANENT BAR

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

RESPONDENT

1. DONALD CLEYGETTE MARTIN ("RESPONDENT") was intermittently registered, in Alabama, as a securities Agent (CRD# 321125) or as an Investment Advisor Representative for various Alabama registered securities Dealers and Investment Advisors, between April 1988 and October 2005. The RESPONDENT was also periodically licensed as an Agent for various insurance companies. The RESPONDENT is currently not associated with any NASD member firm, and is not registered as an Insurance Agent. The RESPONDENT's last known residential address is 2211 Country Club Avenue, Apt 1203, Huntsville, Alabama 35816

STATEMENT OF FACTS

2. Beginning in 1991 and continuing throughout the fall of 2005, the RESPONDENT represented himself as an Alabama registered Securities Agent and/or Investment Advisor Representative to Alabama residents Richard E. and Betty J. Loeb ("the Loeb's"). Transacting business as a securities agent, the RESPONDENT offered and/or sold various investment products to the Loeb's. Transacting business as an Investment Adviser, the RESPONDENT made numerous recommendations for the

structuring of the Loeb's retirement and investment portfolio. The RESPONDENT directed the allocation and distribution of the Loeb's investment funds among products he offered and sold.

3. On November 6, 1991, based on recommendations from the RESPONDENT, the Loeb's purchased an Ameritas Variable Life Insurance Company ("AVLIC") Overture Annuity II, a variable annuity product. This product was purchased as a qualified IRA rollover in the amount of \$42,598.14. Over the next few years, the Loeb's made additional monthly contributions.

4. In June of 1996, AVLIC received, from the Alabama Insurance Department, a copy of a complaint filed against the RESPONDENT. AVLIC notified its internal business system not to accept any new applications from the RESPONDENT. AVLIC cancelled the RESPONDENT's insurance appointment when the RESPONDENT's insurance license was surrendered in August of 1996.

5. On July 27, 1998, the Commission issued Cease and Desist Order Number CD-98-0050 ("Order") to the RESPONDENT charging that he was transacting business as an Investment Advisor Representative without benefit of registration in that he failed to renew his registration in 1997. The Order also charged that the RESPONDENT filed an amended Form ADV (Uniform Application for Investment Advisor Registration) dated July of 1998 which was incomplete, false and/or misleading. That matter was resolved by the issuance of a Consent Order.

6. The RESPONDENT failed to register in any capacity with the Alabama Securities Commission or any NASD member firm in 1999.

7. On November 29, 1999, the RESPONDENT, posing as Mr. Loeb, sent AVLIC a request for an address change and partial withdrawal in the amount of \$65,000.00 from the Loeb's annuity account. The money was sent to the requested changed address, which was to the RESPONDENT's personal residential address at 101 Heritage Way SW, Huntsville, Alabama 35802-4501.

8. From April 5, 2000 to November 29, 2002, the RESPONDENT registered as an Agent of Securities America, Inc. ("Securities America") (CRD# 110518). The RESPONDENT held a concurrent registration from July 3, 2000 to November 29, 2002 as a registered Investment Advisor Representative of Securities America Advisors, Inc. ("Securities America Advisors") (CRD# 110518). The local business address for both Securities America Advisors and Securities America was 3809 Sullivan St, Suite #1, Madison, Alabama 35758.

9. As an Agent of Securities America, the RESPONDENT was required to open a brokerage account with the firm. RESPONDENT's account number was STL-358487.

10. On January 24, 2002, AVLIC received another request to change the address on the Loeb's annuity account. AVLIC changed the Loeb's account address to 104 Morland Pointe SW, Huntsville, Alabama 35758. This address was actually the RESPONDENT's business address at THE LEADER'S GROUP, INC. ("the Leader's Group") (CRD# 37157). Shortly thereafter, AVLIC received four successive requests for withdrawals from the Loeb's annuity account:

- a. The first request, for \$2,500.00, was received on March 8, 2002.
- b. The second request, for \$1,500.00, was received on July 8, 2002.
- c. The third request, for \$1,000.00, was received on August 5, 2002.
- d. The final request, for \$307.50, was received on September 4, 2002.

11. In July of 2002, the Loeb's completed a new account application for a Securities America non-brokerage account at RESPONDENT's direction. The Loeb's copy of their application lists their account number as STL-358487. Securities America provided information that the RESPONDENT never submitted the Loeb's new account application.

12. Between October 2003 and September 2004, the RESPONDENT continued to act as the Loeb's Financial and/or Investment Adviser. The RESPONDENT recommended that the Loeb's purchase approximately \$42,922.00 in various mutual funds. The RESPONDENT also solicited and received \$47,500.00 from the Loeb's for the purpose of purchasing Certificates of Deposits in their account.

13. The RESPONDENT did not invest the Loeb's funds. To conceal the theft of funds, the RESPONDENT provided monthly statements depicting fraudulent portfolio and account values to the Loeb's.

14. The RESPONDENT's next period of registration was from January 2, 2004 to October 12, 2005. The RESPONDENT was registered as a representative of THE LEADERS GROUP, INC. (CRD# 37157), with a business address of 104 Morland Pointe SW, Huntsville, Alabama 35758.

15. In March of 2005, the RESPONDENT failed to produce the proceeds on its due date from one of the Certificates of Deposit the RESPONDENT claimed to have purchased for the Loeb's. The RESPONDENT repeatedly sent the Loeb's e-mails explaining his failure to provide a full accountability of their investment portfolio.

16. In the fall of 2005, the RESPONDENT notified the Loeb's that he could not repay their funds and that he was going to retain an attorney to negotiate a repayment plan or restitution.

17. In a written statement to the Commission, the RESPONDENT admits that he personally received and used for his personal use and benefit, the funds disbursed from the Loeb's annuity account. The RESPONDENT admits that he submitted the above referenced address changes and withdrawal requests to AVLIC without the Loeb's knowledge or consent.

18. On March 23, 2006, the Loeb's filed a civil complaint in the Circuit Court of Madison County, Alabama and was awarded a default judgment against the

RESPONDENT in the amount of \$300,000.00.

19. On May 10, 2007, the RESPONDENT signed an Acceptance and Consent Order issued by the NASD, Order No. 2006005699201 to the RESPONDENT finding that he violated NASD Conduct Rules 2110 and 2330 by making unauthorized withdrawals from a variable annuity owned by a public customer and converting the funds for his own use and benefit without the knowledge or consent of the customer. On July 10, 2007, the NASD imposed a bar on the RESPONDENT prohibiting his association with any member of the NASD in any capacity.

CONCLUSIONS OF LAW

20. Pursuant to the provisions of Section 8-6-3(a), Code of Alabama 1975, the Alabama Securities Act, it is unlawful for any person to transact business in this state as a Dealer or Agent for securities unless he is registered under this article. The RESPONDENT violated this provision by transacting business in the State of Alabama as a Securities Agent without benefit of registration in 1997, 1998, 1999, 2003 and 2005.

21. Pursuant to the provisions of Section 8-6-3(b)(1), Code of Alabama 1975, of the Alabama Securities Act, it is unlawful for any person to transact business in this state as an Investment Advisor or as an Investment Advisor Representative unless he is so registered under this article. The RESPONDENT violated this provision by transacting business as an Investment Advisor Representative in the State of Alabama without benefit of registration in 1997, 1998, 1999, 2003 and 2005.

22. Pursuant to the provisions of Section 8-6-3(c), Code of Alabama 1975, of the Alabama Securities Act, the registration of an Investment Advisor Representative is not effective during any period when he is not employed by an Investment Advisor registered under this article. When an Investment Advisor Representative begins or terminates employment with an Investment Advisor, the Investment Advisor shall promptly notify the Commission. The RESPONDENT violated this provision by

transacting business as an Investment Advisor Representative without benefit of association with a registered Investment Advisor periodically between 1988 and 2005.

23. Pursuant to the provisions of Section 8-6-17(a) (1), Code of Alabama 1975, of the Alabama Securities Act, it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to employ any device, scheme, or artifice to defraud. The RESPONDENT violated this provision by transacting business with the Loeb's as if he was a registered Agent and Investment Advisor Representative, by providing false account statements and financial information, and by making false statements to them via e-mails concerning their investments.

24. Pursuant to the provisions of Section 8-6-17(c), Code of Alabama 1975, of the Alabama Securities Act, it is unlawful for any person, in the solicitation of advisory clients, to make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading. The RESPONDENT violated this provision by telling the Loeb's that he invested their funds when he actually converted the funds to his own personal use.

25. The RESPONDENT violated his fiduciary duty as an Investment Advisor Representative under Commission Rule 830-X-3-21 (1) (b) by engaging in dishonest or unethical practices by placing an order to purchase or sell a security for the account of a client without written authority to do so.

26. The RESPONDENT violated his fiduciary duty as an Investment Advisor Representative under Commission Rule 830-X-3-21 (1)(q) by engaging in dishonest or unethical practices in that he engaged in conduct constituting nondisclosure, incomplete disclosure, and deceptive practices.

WHEREAS, pursuant to the provisions of Section 8-6-3(j)(2), Code of Alabama 1975, of the Alabama Securities Commission may by order deny, suspend, or revoke any registration, or censor or bar any applicant or registrant or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant, from employment with a Dealer or Investment Advisor, or restrict or limit a registrant as to any function or activity of the business for which registration is required in this state if the Commission finds that the order is in the public interest and that the applicant or registrant or, in the case of a Dealer or Investment Advisor, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the Dealer or Investment Advisor, who has willfully violated or willfully failed to comply with any provisions of this article; and

WHEREAS, this Order is appropriate in the public interest for the protection of investors and consistent with the purposes of the Alabama Securities Act;

ACCORDINGLY, IT IS HEREBY ORDERED that the RESPONDENT be **BARRED** from registration in the state of Alabama and from transacting any business activities involving securities in the state of Alabama, and that he be prohibited from the offer or sale of any security into, within or from the state of Alabama.

Entered at Montgomery, Alabama this 24th day of January, 2008.



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BY:


JOSEPH P. BORG
Director