

**STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION**

IN THE MATTER OF:

CHERYL PHILLIPS BREWER

RESPONDENT

)
)
) **ADMINISTRATIVE ORDER**
) **NO. CO-2010-0049**
)

CONSENT ORDER

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. **CHERYL PHILLIPS BREWER ("BREWER")**, (Central Registration Depository "CRD" # 3145927) is shown as being continuously registered in Alabama as an Investment Advisor Representative since February 12, 1999, and as a broker dealer agent since January 8, 1999, with Ameriprise Financial Services, Inc. ("Ameriprise"), formerly known as American Express Financial Advisors, Inc., CRD # 6363, with a business address of 33 Inverness Center Parkway, Suite 300, Birmingham, Alabama, 35242.

STATEMENT OF FACTS

2. On August 13, 2009, the Commission received a written complaint from an Alabama resident ("the first investor") alleging that untrue statements were made by **BREWER** in recommending the purchase of an annuity to the first investor. In the written complaint, the first investor alleged that he purchased the annuity in reliance

upon the untrue statements made by **BREWER**.

3. Respondent had disputed the allegations that she did not provide the first investor a full and complete description of the features of the RiverSource annuity, including withdrawal fees, surrender penalties, and the impact of internal expenses on the six percent (6%) guaranteed income, which income is subject to satisfaction of certain conditions.

4. Ameriprise also informed the Commission that on June 22, 2009 Ameriprise received a complaint from Alabama residents ("the second investors") who reported to Ameriprise that \$750.00 had been withdrawn from their cash management account to pay for a financial plan they claim they never received from **BREWER**. The second investors also reported that their account was charged a surrender charge of \$955.17 after **BREWER** advised them to replace a variable life insurance policy with a universal life insurance policy without informing them of the surrender fees.

5. On September 8, 2009, Ameriprise settled the June 22, 2009 complaint of the second investors. Ameriprise refunded financial planning fees in the amount of \$900.00 and surrender charges associated with the change of the life insurance policies in the amount of \$955.17 to the second investors' account.

6. On October 2, 2009, Ameriprise settled the November 25, 2008 complaint of the first investor by entering into a settlement agreement in which Ameriprise denied liability for the sale of the *RiverSource* annuity by **BREWER** but agreed to return the full purchase price of the annuity to the first investor's account. Respondent acknowledges that Ameriprise elected to refund the full purchase price of the annuity, but notes that Ameriprise asserts that the annuity was a suitable investment for the first investor.

7. Ameriprise's audit of **BREWER**'s books and records caused it to conclude that **BREWER** had accelerated some partial 2009 financial planning payments from 2009 to December 2008. Ameriprise concluded that this was an improper use of discretion by **BREWER** in violation of Ameriprise policies. **BREWER** has acknowledged that it was a mistake in judgment to accelerate these payments.

8. On October 28, 2009, Ameriprise issued a Letter of Reprimand and Notice of Fine disciplining **BREWER** for violating Ameriprise Financial Policies. The letter referenced a \$1,250.00 fine.

9. **BREWER** has sold her book of business to another Ameriprise financial advisor, and she no longer works in the securities industry.

CONCLUSIONS OF LAW

10. Commission Rule 830-X-3-.21(1)(h) provides: "An investment adviser is a fiduciary and has a duty to act primarily for the benefit of its clients...an investment adviser shall not engage in unethical practices, including but not limited to...misrepresenting to any advisory client...the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding the...services or fees...not misleading." By withdrawing advisory fees in advance without authorization from some client accounts, **BREWER** engaged in an unethical practice in violation of Commission Rule 830-X-3-.21(1)(h).

11. Section 8-6-3(j)(7), Code of Alabama 1975, provides: "The Securities Commission may by order deny, suspend, or revoke any registration, or censor or bar any applicant or registrant...from employment with a dealer or investment adviser, 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...has engaged in dishonest or unethical practices in the securities business." **BREWER'S** violations of Commission Rule 830-X-3-.21(1)(h), as referenced in paragraph 10 above, are grounds to deny, suspend, or revoke **BREWER'S** registration, or censor or bar her from employment with a dealer or investment adviser under Section 8-6-3(j)(7), Code of Alabama 1975.

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

WHEREAS, **BREWER** states that the information and assertions presented to the Commission by **BREWER** during its investigation of this matter are true and correct; that **BREWER** understands the Commission relied upon such information and

assertions in its determination to accept this Agreement, and that should the information or 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, RESPONDENT elects to waive permanently any right to a hearing and appeal under Section 8-6-25, Code of Alabama 1975, with respect to this Consent Order; and

WHEREAS, the Commission and CHERYL PHILLIPS BREWER 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 RESPONDENT, **CHERYL PHILLIPS BREWER**, shall not apply for employment in any capacity within the securities industry in this State for a period of two (2) years from the date of this Order.

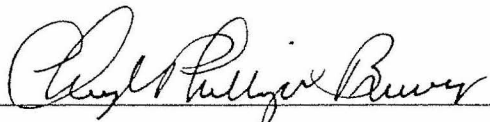
2. That the execution of this Order satisfies the enforcement action as it pertains to the actions described in SC-2010-049. However, this Order does not address any subsequent acts, statements or representations made by RESPONDENT nor findings yet to be uncovered.

3. That should RESPONDENT seek re-entry into the securities industry after the two (2) year period has elapsed, the requisite securities exams that would be pertinent based on her activities must be retaken with a passing score achieved for each.

4. Further, that RESPONDENT would be subject to the terms and conditions of heightened supervision as stipulated at that time by the Commission. This must include the willingness and ability of the employing firm to fulfill their role as supervising entity.

5. That should RESPONDENT seek re-entry into the securities industry after the two (2) year period has elapsed, the Commission staff shall take into consideration RESPONDENT'S full and complete disciplinary history as shown on CRD and as discovered through investigations conducted by the Commission staff as well as internal audits from RESPONDENT'S former employers.

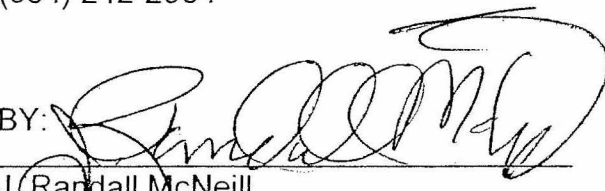
AGREED AND CONSENTED to on date indicated:


CHERYL PHILLIPS BREWER

7/29/2011
Date

Entered at Montgomery, AL, this 2nd day of August, 2011.

ALABAMA SECURITIES COMMISSION
401 Adams Avenue, Suite 280
Montgomery, AL 36130-4700
(334) 242-2984

BY: 
J. Randall McNeill
Deputy Director

