

STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION

IN THE MATTER OF:)
)
CHERYL PHILLIPS BREWER) ADMINISTRATIVE ORDER
) NO. SC 2010- 0049
RESPONDENT)

ORDER TO SHOW CAUSE

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) has been 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 current 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. In the written complaint, the first investor alleged that during a telephone conversation on September 8, 2008, **BREWER** recommended the purchase of a *RiverSource RAVA Select 4 Annuity* ("the *RiverSource* annuity"). The first investor alleged that **BREWER** told him that the *RiverSource* annuity guaranteed a minimum annual return of six percent (6%) and that **BREWER** failed to explain the annuity's withdrawal fees, surrender penalties, internal expenses or the impact of the internal expenses on the six percent (6%) guaranteed annual return.

4. In the written complaint, the first investor further alleged that two days after the September 8, 2008 telephone conversation, the first investor received "a few signature pages in the mail, not full applications, just signature pages indicating where I [the investor] should sign and date". The first investor signed the pages, which were the last pages of a purchase agreement for the *RiverSource* annuity. The first investor mailed the signed pages back to **BREWER**. The statement of the first investor's account reflects the purchase of the *RiverSource* annuity for \$150,000.00.

5. In the written complaint, the first investor further alleged that two months after the purchase of the annuity, the first investor received a telephone call from Ameriprise's Regional Principal, William Lance Hocutt. During that telephone conversation, Mr. Hocutt informed the first investor that the annuity **BREWER** sold him did not have a guaranteed annual return. After receiving this information from Mr. Hocutt, the first investor mailed Ameriprise a letter dated November 25, 2008 telling Ameriprise that he purchased the *RiverSource* annuity in reliance upon **BREWER**'s representation that the *RiverSource* annuity had a guaranteed annual return and that he would not have purchased the *RiverSource* annuity if he had known that there was no guaranteed annual return. The first investor asked Ameriprise to return the purchase price of the annuity to his account.

6. Ameriprise informed the Commission that Mr. Hocutt then conducted an

internal audit of **BREWER'S** business activities which identified the following deficiencies in **BREWER's** books and records: **BREWER** effected unauthorized transactions in the accounts of ten clients, resulting in an acceleration of the payment of **BREWER's** fees for financial plans; **BREWER** maintained pre-signed and incomplete transactional based forms in client files; **BREWER** received an interest in a vacation rental club in the value of Six Thousand Three Hundred Dollars (\$6,300.00) from a client¹; and **BREWER** maintained original insurance applications and medical records in a client file in violation of Ameriprise's "prohibited content rule". Ameriprise has provided copies of these account records to the Commission.

7. 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 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.

8. On September 8, 2009, Ameriprise settled the June 22, 2009 complaint of the second investors after finding that **BREWER** failed to provide the second investors with material information needed to make an informed decision. 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.

9. 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

¹ FINRA Rule 3320 provides: "No member or person associated with a member shall, directly or indirectly, give or permit to be given anything of value, including gratuities, in excess of one hundred dollars per individual per year to any person, principal, proprietor, employee, agent or representative of another person where such payment or gratuity is in relation to the business of the employer of the recipient of the payment or gratuity. Any gift of any kind is considered a gratuity."

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.

10. On October 22 and 23, 2009, the Commission staff conducted an examination of the books and records of **BREWER'S** office under the authority of Section 8-6-3(i), Code of Alabama 1975. The Commission staff identified the following deficiencies: a suitability violation in recommending the purchase of an annuity to the first investor, who stated that he did not need income from his investment account; effecting trades in at least ten client accounts without written authority to do so; exercising discretionary power in at least ten client accounts without obtaining written authority from clients, and failing to provide adequate information on her Form U-4 to describe the nature of her outside business activities, including her fiduciary activities and /or her other business activities as a member of Advisory Partners, LLC.

11. On October 28, 2009, Ameriprise issued a Letter of Reprimand and Notice of Fine disciplining **BREWER** for violating Ameriprise Financial Policies concerning use of discretionary power (effecting unauthorized trades in the clients' accounts in order to accelerate the partial payments of her fees for the financial plans), disclosure on product services and transactions (failing to provide all material information to the client so that the client could make an informed decision), use of pre-signed forms and applications (obtaining and retaining pre-signed and incomplete forms), inclusion of prohibited content (maintaining original insurance applications and medical records), and receiving gifts from retail clients, client representatives and prospects (accepting the interest in the vacation rental club from a client). **BREWER** was fined \$1,250.00 and required to repay \$4,123.42, the amount of the commissions **BREWER** received from the sale of the *RiverSource* annuity.

CONCLUSIONS OF LAW

12. Commission Rule 830-X-3-.03(2) provides that "If the information contained in any application for registration, or in any amendment thereto, becomes

inaccurate for any reason, the investment adviser shall within 30 days file an Amendment on Form ADV correcting such information...” By failing to include sufficient information on her amended Form ADV to disclose the nature of her outside business activities, including her fiduciary activities and/or her activities as a member of Advisory Partners, LLC, **BREWER** violated Commission Rule 830-X-3-.03(2).

13. Section 8-6-3(j)(2), 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 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.” **BREWER’S** violation of Commission Rule 830-X-3-.03(2), as referenced in paragraph 12 above, is 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)(2), Code of Alabama 1975.

14. Commission Rule 830-X-3-.21(1)(q) 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 ...engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices.” By telling the first investor that the *RiverSource* annuity had a guaranteed annual return of six percent (6%), when in fact there was no guaranteed annual return, **BREWER** engaged in an unethical practice in violation of Commission Rule 830-X-3-.21(1)(q).

15. 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 deducting fees from the second investors' account to pay for services she did not provide them, i.e., a financial plan, **BREWER** engaged in an unethical practice in violation of Commission Rule 830-X-3-.21(1)(h).

16. Commission Rule 830-X-3-.21(1)(d) provides that "...an investment adviser shall not engage in unethical practices, including...exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client..." By placing orders to sell securities without authorization in at least ten client accounts without obtaining written discretionary authority from the clients, **BREWER** engaged in an unethical practice in violation of Commission Rule 830-X-3-.21(1)(d).

17. 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** violation of Commission Rule 830-X-3-.21(1)(q), as referenced in paragraph 14 above, is 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. Further, **BREWER'S** violation of Commission Rule 830-X-3-.21(1)(h), as referenced in paragraph 15 above, is 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. Further, **BREWER'S** violation of Commission Rule 830-X-3-.21(1)(d), as referenced in paragraph 16 above, is 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.

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

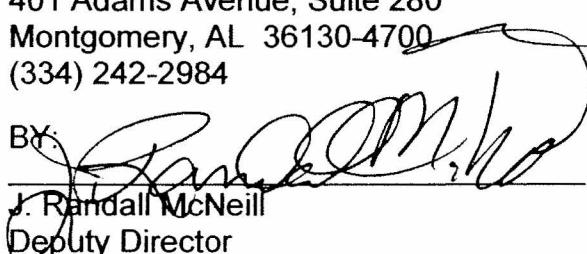
This Order does not prevent the Commission from seeking such other civil or criminal remedies that may be available to it under the Alabama Securities Act.

ACCORDINGLY, IT IS HEREBY ORDERED that **RESPONDENT, CHERYL PHILLIPS BREWER, SHOW CAUSE** to the Commission, within 28 days of receipt of this Order, why her registration as a broker dealer agent and investment adviser representative should not be suspended or revoked and that **RESPONDENT** be barred from participation in the securities industry in the State of Alabama.

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/or a permanent Order to Bar **RESPONDENT** from participation in any securities related industry in the state of Alabama.

Entered at Montgomery, AL, this 26th day of August, 2010.

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BY: 
J. Randall McNeill
Deputy Director

