

STATE OF ARKANSAS
SECURITIES DEPARTMENT

IN THE MATTER OF
MICHAEL KENT ZEDLITZ

No S-04-098-05-CD01

CEASE AND DESIST ORDER

The Staff of the Arkansas Securities Department (the Staff) has received information and has in its possession certain evidence which indicates that MICHAEL KENT ZEDLITZ has violated provisions of the Arkansas Securities Act (the Act), codified at Ark. Code Ann. §§ 23-42-101, *et seq.* (Repl. 2000).

FINDINGS OF FACT

1. MICHAEL KENT ZEDLITZ is and was at all times referred to herein a resident of Garfield, Benton County, Arkansas.
2. In April of 2003, ZEDLITZ owned Z's Grill, a restaurant in Garfield. On or about 10 April 2003, AR1, an Arkansas resident met ZEDLITZ in Z's Grill. ZEDLITZ touted his abilities as a day trader in securities. He told AR1 that he had recently retired from Wal-Mart in his early 40's after starting when he was 19. He said he rose up through the ranks to be close to Sam Walton, eventually attaining the position in which he would turn around fledgling or under-producing stores. ZEDLITZ said he decided to quit working for Wal-Mart when he discovered that he could make more money sitting in his home office trading stocks for 2 to 3 hours in the morning than he made with Wal-Mart working 10 to 12 hours a day. ZEDLITZ told AR1 that he had made an annualized 6,000% profit in his own self-directed Individual Retirement Account (IRA) and would normally make \$2,000 or more per day trading in the

stock market. ZEDLITZ said he was making a great deal of money and had a virtual “money machine” at his fingertips.

3. ZEDLITZ said he was so successful because he had developed his own stock trading computer program or software. AR1 went to ZEDLITZ’s nearby home several times in the next several weeks. There, ZEDLITZ had a room set up with what appeared to AR1 to be several television or computer monitors and various computers and such. Although ZEDLITZ purported to explain this system to AR1 and demonstrate it, AR1 never totally understood it. ZEDLITZ told AR1 that he placed certain settings in the software that would tell him when to buy and when to sell. He was virtually guaranteed to avoid significant losses by the use of his software, ZEDLITZ asserted. ZEDLITZ told AR1 that he was “very good” with computers, so good that he had designed the website for Wal-Mart when he worked for Wal-Mart.
4. ZEDLITZ said that he was then trading through Scottrade, a broker-dealer that provided for day trading stocks by individuals on their computers at home. According to ZEDLITZ, Scottrade was very impressed with ZEDLITZ because he was so successful, Scottrade considered him something of a stock trading guru, and its people were watching him to see what he did.
5. ZEDLITZ told AR1 that he was not licensed to trade in securities because if he were, he would be saddled with SEC regulations and it would slow down his trading. For example, ZEDLITZ said, if he wanted to sell out of a position, he would have to wait until the next day to do so if he were licensed.
6. AR1 conducted a ministry locally in northwest Arkansas of a church headquartered in

Arizona. This church had members throughout the country who conducted ministries on their own or usually with their spouses. AR1 was attempting in his ministry to renovate a building close to ZEDLITZ's home in Garfield and convert it into a retreat center.

7. ZEDLITZ told AR1 that he was a deeply religious man. Each morning before he started day trading, ZEDLITZ said he would kneel before his computer, put his hands on his computer and pray to God for wisdom, guidance, clarity and alertness to know when to buy and when to sell.
8. After the foregoing representations were made, ZEDLITZ offered to day trade in stocks for AR1 for 50% of the trading profits. ZEDLITZ wanted AR1 to agree to leave the funds with him for a full 12 months and make no withdrawals during that time except for emergencies. After that period, AR1 was told he could withdraw the whole amount, withdraw only the profits or leave the entire amount to be daytraded for another 12 months. ZEDLITZ refused to have any kind of written contract because he did not want to guarantee any returns in writing. ZEDLITZ told AR1 that he would put half of AR1's money in a reserve and not trade it. Although, ZEDLITZ said he did not like to deal with small accounts he accepted \$3,700 from AR1 on behalf of his ministry on 30 April 2003.
9. AR1 told other members of his church who were conducting other ministries in the area and beyond about ZEDLITZ, and many of them invested with ZEDLITZ, also. Although all but one of them met personally with ZEDLITZ before investing, ZEDLITZ asked that all the money from the other ministries go through AR1 and that he only deal with AR1. From 30 April 2003 until 19 May 2004, \$345,800 was invested with ZEDLITZ from 11 ministries (inclusive of AR1's ministry). When these individuals met with ZEDLITZ, they were all

given substantially the same sales pitch. Although AR1 did not remember being told a return he could expect, he remembers ZEDLITZ telling others they could expect a 300% to 400% return per year. All earnings on investments made by the church ministries would be tax exempt, ZEDLITZ said.

10. ZEDLITZ told AR1 that he would give him rough quarterly reports on how his funds were doing. AR1 never received a written statement from ZEDLITZ about his ministry's account, but was orally given the following returns on his ministry's funds:

- a. From inception (5 May 2003) to 30 June 2003 - 41.9%
- b. From 1 July 2003 to 30 September 2003 - 30%
- c. From 1 October 2003 to 31 December 2003 - 15%

11. ZEDLITZ also acquired investors who were not affiliated with AR1's ministry or related ministries. Some of these found their way to ZEDLITZ through an acquaintanceship with AR1, but others did not. AR2 was an acquaintance of AR1's who was introduced to ZEDLITZ in early August, 2003 at ZEDLITZ's home. At this meeting AR2 and his wife were given a sales pitch similar to that given AR1. ZEDLITZ described himself as a swing trader, as opposed to a day trader. As a swing trader, ZEDLITZ said, he would buy and sell a stock once in a day, whereas a day trader would buy and sell the same stock many times in one day. ZEDLITZ told AR2 that he averaged a return of 25-30% per month. ZEDLITZ said investing with him was a safe bet because the "proprietary" computer software he had developed guarded against losses. ZEDLITZ told AR2 that he traded through Scottrade, for which he was a "poster boy" and a consultant. ZEDLITZ would take 50% of the profits as his fee. As he told AR1 earlier, ZEDLITZ said he would put 50% of money invested in a

reserve, which he said would be placed in a separate bank account and not used. The 25-30% return would be based on the entire amount invested, but realized by trading only 50% of the entire amount invested. The 25-30% return was also net of ZEDLITZ's fee. ZEDLITZ said that he could make up any losses quickly and could double or triple AR2's money within a year. ZEDLITZ required his investors to leave the money invested with him for one full year. At the end of that year, AR2 would have the options of liquidating the entire account, taking out only the profits or leaving it all in to be traded for another year. As with AR1, ZEDLITZ said he did not want a written contract with AR2. ZEDLITZ said he was a "good hearted Christian doing good," the son of a minister, and he did not feel comfortable with a written contract. ZEDLITZ's representation of himself as a "good hearted Christian" and the son of a minister was what "sealed the deal" and convinced AR2 and his wife to invest with ZEDLITZ . On or about 12 August 2003, AR2 and his wife invested \$25,000 with ZEDLITZ.

12. Including the investment of AR2, 9 non-ministry investors invested \$144,206.41 from 5 June 2003 to 3 April 2004. These individuals were all given substantially the same sales pitch by ZEDLITZ as was given to AR2 and AR1.
13. ZEDLITZ in fact had accounts open with broker-dealers that could be traded online from his home. He opened a Scottrade account shortly before speaking with AR1 on or about 1 April 2003. He opened two E*Trade accounts on or about 15 January 2003 and 18 October 2003, and he opened an Ameritrade account on or about 18 November 2003. Contrary to ZEDLITZ's representations to his investors, his trading in these accounts was not profitable. ZEDLITZ deposited \$137,706.41 into the Scottrade account and lost \$99,588.86. He

deposited \$25,000 into two E*Trade accounts and lost \$15,297.07. Finally, he deposited \$122,000.12 into the Ameritrade account and lost \$76,225.83. As of 31 December 2004, these accounts had a combined balance of around \$5,000.

14. All in all, ZEDLITZ took in \$490,006.41 in investor funds. He gave AR1 back \$17,500 in emergency withdrawals. Of the remainder, he transferred \$284,706.53 to the trading accounts with Scottrade, Ameritrade and E*Trade. His total trading losses amounted to \$191,111.76. He kept and converted to his personal use a total of \$274,071.98 or 56% of the total amount invested (by keeping \$187,799.88 of investor funds in his own bank account and by withdrawing \$86,272.10 from the trading accounts).
15. A search of the registration records kept by the National Association of Securities Dealers and the Arkansas Securities Department show no registration for ZEDLITZ in any capacity in the securities industry.
16. Although ZEDLITZ in fact worked for Wal-Mart beginning in 1983, his job description never included turning around fledgling and under-producing stores, and he did not design Wal-Mart's web site. Although he might have met Sam Walton at various Wal-Mart functions, he was never close to him.
17. ZEDLITZ had a Scottrade account, but he was not a consultant to Scottrade, and Scottrade did not consider him talented in trading securities, had not retained him as a consultant and was not looking at his trading practices in order to discover the secret of his "success."

CONCLUSIONS OF LAW

18. Ark. Code Ann. § 23-42-102(15)(A)(ii) (Supp. 2003) in pertinent part defines a security as stock.

19. Ark. Code Ann. § 23-42-102(2) (Supp. 2003) defines broker-dealer as any person engaged in the business of effecting transactions in securities for the account of others.
20. Ark. Code Ann. § 23-42-102(1)(A) (Supp. 2003) defines agent as any individual who represents a broker-dealer in effecting or attempting to effect purchases and sales of securities.
21. Ark. Code Ann. § 23-42-301 (Repl. 2000) provides that it is unlawful for any person to transact business as a broker-dealer or agent of a broker-dealer who is not registered pursuant to the Act as a broker-dealer or agent of a broker-dealer.
22. Ark. Code Ann. § 23-42-507(1) (Repl. 2000) provides that it is unlawful for any person in connection with the offer or sale of any security to employ any device, scheme or artifice to defraud.
23. Ark. Code Ann. § 23-42-507(2) (Repl. 2000) provides that it is unlawful for any person in connection with the offer or sale of any security to make any untrue statement or omit to state a material fact necessary in order to make the statements made not misleading in light of the circumstances under which they are made.

OPINION

24. By accepting money from individuals and effecting buys and sells of stock on their behalf, ZEDLITZ was engaged in effecting transactions in securities for the account of others without being registered as a broker-dealer or an agent of a broker-dealer in violation of Ark. Code Ann. § 23-42-301 (Repl. 2000)
25. ZEDLITZ's statements to investors that he would put 50% of their investments in a reserve account that would not be traded, when in actuality ZEDLITZ was converting this money to

his own use was an untrue statement of material fact made in connection with the sale of a security in violation of Ark. Code Ann. § 23-42-507(2) (Supp. 2000).

26. ZEDLITZ's statements to investors that he used computer software he designed that made it virtually impossible for him to sustain significant losses, when in fact his trading lost most of what he invested, was an untrue statement of material fact made in connection with the sale of a security in violation of Ark. Code Ann. § 23-42-507(2) (Supp. 2000).

27. ZEDLITZ's representations that he could make an average of 25% to 30% a month and could double or triple one's money in stock trading over the course of a year were not based on any proven ability or learned method and were therefore untrue statements of material fact made in connection with the sale of a security in violation of Ark. Code Ann. § 23-42-507(2) (Supp. 2000).

28. ZEDLITZ's statements of successful employment with Wal-Mart, including his alleged close relationship to Sam Walton, the founder of Wal-Mart, and his purported design of Wal-Mart's web site, which were false in all respects except for his actual employment with Wal-Mart, were untrue statements of material fact made in connection with the sale of a security in violation of Ark. Code Ann. § 23-42-507(2) (Supp. 2000).

29. ZEDLITZ's statements that he was a consultant to Scottrade, considered a stock trading "guru" by Scottrade and acted as a consultant to Scottrade in the field of trading stock were all false and were therefore untrue statements of material fact made in connection with the sale of a security in violation of Ark. Code Ann. § 23-42-507(2) (Supp. 2000).

30. Inasmuch as ZEDLITZ's ostensible profession of being deeply religious and a good Christian, as set out in ¶¶ 7 and 11, caused investors to trust him and invest money with him

even without a written contract, his ostensible religious dedication was a device or artifice used to defraud in violation of Ark. Code Ann. § 23-42-507(1) (Repl. 2000).

ORDER

IT IS THEREFORE ORDERED that MICHAEL KENT ZEDLITZ **CEASE AND DESIST** from any further actions in the state of Arkansas in connection with the offer or sale of the securities described above and any other securities until such time as the securities are properly registered or shown to be exempt from registration pursuant to the Arkansas Securities Act and he is properly registered or shown to be exempt from registration pursuant to the Arkansas Securities Act.

WITNESS MY HAND AND SEAL this 20th day of June, 2005.

A handwritten signature in black ink that reads "Michael B. Johnson". The signature is written in a cursive style with a large, stylized initial "M".

Michael B. Johnson
ARKANSAS SECURITIES COMMISSIONER