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ARKANSAS SECURITIES DEPT.

IN THE MATTER OF
TERRY MITCHELL,
d/b/a ADVANTAGE FINANCIAL SERVICES

Case No. S-07-028
No S-07-028-08-CO02

AMENDED AND SUBSTITUTED CONSENT ORDER

This amended and substituted consent order replaces the consent order entered on 20 March 2008. This order is entered pursuant to the Arkansas Securities Act, codified at Ark. Code Ann. §§ 23-42-101, *et seq.* (Repl. 2000), (Act), the Rules of the Arkansas Securities Commissioner promulgated under the Act (Rules) and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann. §§ 25-15-201, *et seq.* (Repl. 2002) in accordance with an agreement by and between the Staff of the Arkansas Securities Department (Staff) and TERRY MITCHELL (MITCHELL) in full settlement of all claims that could be brought against MITCHELL by the Staff on the basis of the facts set forth herein.

MITCHELL admits the jurisdiction of the Act and the Arkansas Securities Commissioner (Commissioner), waives his right to a formal hearing and, without admitting or denying the findings of fact made herein, consents to the entry of this order and agrees to abide by its terms.

FINDINGS OF FACT

1. TERRY MITCHELL (MITCHELL) was at all times mentioned herein a duly licensed independent insurance agent located in Greenbrier, Arkansas, doing business as Advantage Financial Services. He is not and never has been registered with the Arkansas Securities Department (Department) in accordance with the Act to deal in securities in any way, either

as a broker-dealer, an agent or an investment adviser.

2. MITCHELL sold \$72,000 of investment contracts to seven Arkansas investors.
 - a. AR1, a retired citizen couple, invested \$10,000 with MITCHELL in January, 2005. They were told that their January, 2005 investment would double in six months and double again in another six months. AR1 received one payment of \$1,000 from MITCHELL in March, 2006. AR1 first met MITCHELL at a free dinner seminar hosted by MITCHELL in November, 2000, when the husband was retiring. MITCHELL sold them an equity indexed annuity after that seminar.
 - b. AR2, a retired senior citizen, invested \$8,000 with MITCHELL in March, 2005. She was told that her \$8,00 investment in would double in six months. From her conversations with MITCHELL, AR2 was under the impression that returns on her investment were coming from something large that was being built in another country, probably someplace in Europe. She had known MITCHELL since about 2000, having previously met him at a free lunch seminar and purchased an equity indexed annuity from him.
 - c. AR3, a retired senior citizen, invested \$19,000 with MITCHELL in March, 2005. She was told that her investment would double in six months and double again in another six months. MITCHELL made payments to her in January, March and April, 2006 totaling \$5,000. She had purchased an annuity through MITCHELL before the March, 2005 investment.
 - d. AR4, a retired school teacher, invested \$10,000 with MITCHELL in July, 2005. MITCHELL told AR4 that her investment would double in six months. AR4 understood from her conversations with MITCHELL that her investment was in something called

PIPS, also known as Pure Investor. She had known MITCHELL for several years and had purchased several annuities from him. She had known MITCHELL for several years and had purchased several equity indexed annuities from him.

- e. AR5, a retired senior citizen in her 80s, invested \$5,000 with MITCHELL in July, 2005 and a second \$5,000 in December, 2005. She was told that she would make 10% on her investments every 90 days. From her conversations with MITCHELL concerning these investments, AR5 was under the impression that the money would be pooled and used to finance investment seminars to be hosted by younger insurance agents. It was a sure thing, MITCHELL told AR5, because he knew how to keep these younger agents from losing money because their commissions were paid through him. She had known MITCHELL for many years, having purchased long term disability insurance and an equity indexed annuity from him.
 - f. AR6, a retired widow in her 80s, invested \$5,000 with MITCHELL in October, 2005 and was promised a 100% return in six months. She invested \$10,000 more in November, 2005, and was promised a return of her principal, plus 15% per annum and a \$1,000 bonus. From her conversations with MITCHELL, AR6 thought she was investing in MITCHELL's company, which was actually a fictitious business name, Advantage Financial Services, and not a business entity at all. AR6 understood it to be a company with an "A" rating with AM Best Company that offered retirement and savings plans.
3. PIPS is an acronym for People in Profit Systems. It also used the name, Pure Investor. This enterprise was presented as a program based in Malaysia in which investments such as this would be pooled and loaned to poor farmers and poor people all over Southeast Asia. The

return was said to have been in the neighborhood of .5% to 2.0% per day, compounded, which would be approximately 182% to 730% per annum. In reality, PIPS was a huge Ponzi scheme operated by one Bryan Marsden, a British citizen well known for such schemes. Marsden and his Malaysian wife were charged in Malaysia with 41 counts of money laundering over this very scheme in 2006. At least six state securities regulatory agencies have issued cease and desist orders against this scheme: Texas - 6 April 2005; Alaska - 20 May 2005; Nebraska - 6 June 2005; Iowa - 10 November 2005; Connecticut - 19 January 2006; and Alabama - 1 February 2006.

4. The Staff's investigation showed that MITCHELL did not invest any of the money AR1, AR2, AR3, AR4, AR5 or AR6 invested with him in the way he told them he would invest the money, but instead converted the money to his own use.
5. The Staff's investigation also shows that MITCHELL contends that he invested all the funds invested with him by AR1, AR2, AR3, AR4, AR5 or AR6 into PIPS/Pure Investor, intending to give the investors the returns he promised them and pocketing the rest of the returns.
6. The investments made by AR1, AR2, AR3, AR4, AR5 or AR6 did not pay the returns MITCHELL promised the investors.
7. None of these investment contracts were registered with the Department.
8. No filings evidencing an exemption from registration pursuant to the Act were found in the Department's files.

APPLICABLE LAW

9. Ark. Code Ann. § 23-42-102(15)(A)(xi) (Supp. 2007) defines security as an investment

contract.

10. Ark. Code Ann. § 23-42-501 (Repl. 2000) provides that it is unlawful for any person to offer or sell any security in this state unless that security is registered, exempt pursuant to the Act or a covered security pursuant to federal law.
11. 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 a security to 1) make an untrue statement of a material fact or 2) omit to state a material fact necessary to make a statement not misleading under the circumstances under which the statement was made.

CONCLUSIONS OF LAW

12. The investors herein only invested money. All other activities that could result in making money were to be performed by MITCHELL, doing business as Advantage Financial Services, or PIPS, both of whom represented that the investors could depend on phenomenal returns. The investor would and could play only a passive role and not be involved in the day-to-day operations of the enterprise in which she had invested. The contracts evidencing the investments made by AR1, AR2, AR3, AR4, AR5 or AR6 were investment contracts issued by MITCHELL, doing business as Advantage Financial Services, which are securities as per Ark. Code Ann. § 23-42-102(15)(A)(xi) (Supp. 2007).
13. Because none of these investment contracts were registered with the Department, exempt from registration pursuant to the Act or a covered security under federal law, the sale of these securities was the sale of unregistered securities, a violation of Ark. Code Ann. § 23-42-501 (Repl. 2007).

14. MITCHELL's failure to inform AR1, AR2, AR3, AR4, AR5 or AR6 that he would not invest or use the money they each invested with him in the enterprises or in the ways in which he told them he would invest the money, but would instead convert the money to his own use, was the omissions of material fact and constituted securities fraud in violation of Ark. Code Ann. § 23-42-507(2) (Repl. 2000).

UNDERTAKING

In settlement of this matter, MITCHELL, without admitting or denying the findings of fact made above, agrees with the Staff to:

1) Make a rescission offer to the Arkansas investors discussed in ¶ 2 for the return of their investments, plus 6% interest paid from the date of the investment; and

2) Pay a \$10,000 fine.

The Staff acknowledges that MITCHELL paid the Arkansas investors identified herein as AR2, AR4, AR5 and AR6 back half of their principal amounts.

OPINION

This order is in the public interest. The facts set out in ¶¶ 1 -8 support the violations of the Act set out in ¶¶ 12-14.

ORDER

IT IS THEREFORE ORDERED that TERRY MITCHELL, on or before 16 June 2008, 1) pay each of the Arkansas investors discussed in ¶ 2 their principal investments, plus 6% interest on the entire investment from the date of each investment until the date paid, and 2) pay a \$10,000 fine.

WITNESS MY HAND AND SEAL this 13th day of May, 2008.



A. Heath Abshure
ARKANSAS SECURITIES COMMISSIONER

APPROVAL OF FORM AND
CONSENT TO ENTRY OF
CONSENT ORDER



Terry Mitchell

APPROVAL OF FORM BY STAFF



Theodore Holder
ASSISTANT COMMISSIONER

Attorney for Staff