

BEFORE THE ARKANSAS SECURITIES COMMISSIONER
CASE NO. S-12-0102

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ARKANSAS SECURITIES DEPT.

IN THE MATTER OF:
BRETT IAN FRIEDBERG

RESPONDENT

COMPLAINT

COMES NOW the Staff of the Arkansas Securities Department (“Staff”), by and through its attorney, J. Campbell McLaurin III, and for its Complaint states as follows:

AUTHORITY

This Complaint is filed pursuant to the Arkansas Securities Act (“Act”), codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509, the Rules of the Arkansas Securities Commissioner promulgated thereunder (“Rules”), and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann. §§ 25-15-201 through 25-25-219.

RESPONDENT

1. Brett Ian Friedberg (“Friedberg”), CRD No. 5012184, is a New York resident registered with the Arkansas Securities Department (“Department”) as a broker-dealer agent with HFP Capital Markets LLC (“HFP”), CRD No. 44351. Friedberg has been registered with the Department as a broker-dealer agent with HFP since March 30, 2009.

FACTUAL ALLEGATIONS

2. On or about May 9, 2012, Friedberg contacted an Arkansas resident (“AR1”) on a cold call recommending the purchase of certain corporate bonds issued by Exide Technologies, Inc. (“Exide”). At the time of the call, the Exide bonds carried an average credit rating of “B”

from the major credit rating agencies. Bonds with a “B” rating are labeled “highly speculative” and are colloquially referred to as “junk bonds” due to their non-investment grade status.

3. As a prelude to his recommendation, Friedberg told AR1 that he had made “a tremendous amount of money for clients buying bonds trading at deep discounts to par value.” He then pitched the recommended bonds as a short-term investment with a six-year maturity date trading at eighty-eight cents on the dollar and paying an 8.625% coupon. However, Friedberg said the payment of interest was not the main reason for recommending the bonds. The main reason was that he was “hearing” that Johnson Controls, Inc. (“Johnson Controls”), an A+ credit-rated company, was planning to “take out” Exide by using subsidiaries to acquire small pieces of the Exide stock. According to Friedberg, a takeover of Exide by Johnson Controls would elevate the Exide bonds to A+ status and lead to them trading at a 1.10 value. Therefore, AR1 would not only receive 10% annual interest on the initial bond purchase but would also stand to make a substantial profit by selling the bonds after the takeover by Johnson Controls.

4. During his conversation with AR1, Friedberg did not disclose the risks associated with purchasing a “B” rated bond, nor did he name his sources of information regarding an Exide takeover or make any qualifications regarding the certainty of such an event. Further, while Friedberg did ask AR1 a few income-related questions at the end of their conversation, Friedberg did not conduct a proper suitability analysis with AR1 prior to recommending the bonds for purchase.

5. After the initial phone conversation, Friedberg sent AR1 an investment packet containing an account application form. Friedberg had prepopulated the investor information on the account application and merely submitted it to AR1 for signature. While AR1 had provided certain income information to Friedberg during their conversation, the income information

prepopulated by Friedberg on the application was inflated in comparison to the figures provided by AR1. AR1 provided Friedberg with an annual income of \$50,000.00, a total investment amount of \$75,000.00, and an estimated net worth of \$25,000.00. The account form listed AR1 as having an annual income of over \$50,000.00, a liquid net worth of over \$100,000.00, and a total net worth of over \$500,000.00. The application further listed AR1's investment objective as "speculation" and risk tolerance as "high" without Friedberg ever having discussed these matters with his prospective client.

6. As of the filing of this Complaint, there has been no acquisition of Exide by Johnson Controls. To date, the Staff has been unable to uncover any credible evidence that an acquisition of Exide was ever planned by Johnson Controls or that any acquisition is being planned for any time in the near future.

WILLFUL VIOLATIONS OF THE ACT

7. Rule 308.01 of the Rules provides that each broker-dealer or agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Rule 308.01(b) of the Rules prohibits a broker-dealer or agent from making unjustified or untruthful representations that securities sold will subsequently become listed or traded, or making representations that a market will be established or that the securities will be subject to an increase in value. Friedberg violated Rule 308.01(b) of the Rules when he represented to AR1 that Exide would be acquired by Johnson Controls causing an elevation in the Exide bond rating and an increase in the value of the security, as set forth in paragraphs 2 through 6 above.

8. Ark. Code Ann. § 23-42-507(2) makes it unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to make any untrue

statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading. Friedberg violated Ark. Code Ann. § 23-42-507(2) when he represented without qualification that Exide would be taken over by Johnson Controls leading to an increase in the marketability and value of the Exide bonds, as set forth in paragraphs 2 through 6 above.

9. Rule 308.01(y) of the Rules prohibits a broker-dealer or agent from engaging in unfair, misleading, and unethical practices and allows the Commissioner to suspend or revoke a registration when necessary or appropriate in the public interest. Friedberg violated Rule 308.01(y) of the Rules when he prepopulated an account form with inaccurate financial information and objectives then submitted it to AR1 for signature, as set forth in paragraph 5 above.

10. Ark. Code Ann. § 23-42-308(g) states that the Commissioner may for each violation of the Act fine a broker-dealer or agent in an amount not to exceed ten thousand dollars or an amount equal to the total amount of money received in connection with each separate violation.

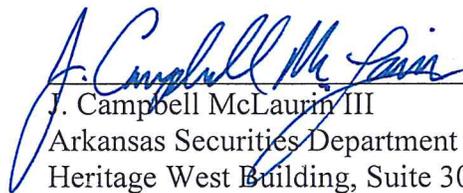
11. Ark. Code Ann. § 23-42-308(a)(2)(G) provides in part that the Commissioner may by order deny, suspend, make conditional or probationary, or revoke any registration if he finds that an applicant has engaged in unethical practices in the securities business.

REQUESTED RELIEF

WHEREFORE, the Staff respectfully prays that its Complaint be received and filed, that a date for a hearing on the merits be set, and that upon a final hearing the Commissioner will revoke Friedberg's registration in accordance with Ark. Code Ann. § 23-42-308(a)(2)(B) for his willful violations of the Act as set forth above. Additionally, the Staff requests the imposition of

a reasonable civil penalty pursuant to Ark. Code Ann. § 23-42-308(g) for Friedberg's making unjustified or untruthful representations in violation of Rule 308.01(b) of the Rules; committing securities fraud in violation of Ark. Code Ann. § 23-42-507(2); and engaging in unfair, misleading, and unethical practices in violation of Rule 308.01(y) of the Rules. The Staff further requests all other general relief the Commissioner may deem just and appropriate under the circumstances.

Respectfully Submitted,



J. Campbell McLaurin III
Arkansas Securities Department
Heritage West Building, Suite 300
201 East Markham Street
Little Rock, Arkansas 72201
Telephone: (501) 324-8670
Facsimile: (501) 324-9268
cmclaurin@securities.arkansas.gov
Counsel for the Staff