

BEFORE THE ARKANSAS SECURITIES COMMISSIONER
CASE NO S-14-0019
ORDER NO. S-14-0019-14-OR02

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ARKANSAS SECURITIES DEPT.

IN THE MATTER OF:
WILLIAM DAVID CRAIN

RESPONDENT

CONSENT ORDER

This Consent Order is entered pursuant to the Arkansas Securities Act, codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509 (“Act”), the Rules of the Arkansas Securities Commissioner (“Rules”) promulgated under the Act, and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann. §§ 25-15-201 through 25-15-219, in accordance with an agreement by and between the Staff of the Arkansas Securities Department (“Staff”) and William David Crain (“Crain”), in full and final settlement of all claims that could be brought against Crain by the Staff based upon the information the staff has at the time of entry of this order.

Crain admits the jurisdiction of the Act and the Arkansas Securities Commissioner (“Commissioner”), neither admits nor denies the findings of fact made herein, and solely for the purpose of entry of this order, waives his right to a formal hearing and appeal, consents to the entry of this order, and agrees to abide by its terms in settlement of any possible violations committed by Crain concerning the matters detailed in this order.

FINDINGS OF FACT

1. Crain, CRD number 4742606, was registered with the Arkansas Securities Department as an investment adviser representative of St. Bernard Financial Services, Inc. (“St. Bernard”) from February 18, 2010 until February 28, 2014.

2. On February 3, 2013, Crain's client, Arkansas Resident 1 ("AR1"), died. The beneficiary of AR1's IRA account was his wife, Arkansas Resident 2 ("AR2").

3. In March 2013, AR2 informed Crain of AR1's death. AR2 never signed a St. Bernard Investment Advisory Agreement. In addition, AR2 never signed any written document granting Crain the authority to exercise discretionary trading in the account.

4. From February 3, 2013, until December 26, 2013 when AR2 signed TD Ameritrade paperwork in order to transfer the account to AR2's name, Crain engaged in securities trading in this account. Further, Crain never contacted AR2 to get her authorization for any of the securities trades executed in this account.

5. On July 10, 2013, Crain bought shares of the inverse and leveraged ProShares Ultrashort Euro Exchange Traded Fund (ETF) that were held in AR2's account for four weeks. Also, twice on May 28, 2013, Crain bought shares of an inverse and leveraged Credit Suisse VelocityShares Silver Exchange Traded Note (ETN) that were held in AR2's account for anywhere from four to thirteen weeks. The ProShares Ultrashort Euro prospectus stated that this inverse and leveraged ETF was designed to achieve its objective in one trading day. In addition, the prospectus for the Credit Suisse ETN clearly stated that this inverse and leveraged ETN was intended to be a daily trading tool for sophisticated investors to manage daily trading risks. These types of trades were made in Crain's other customer accounts.

6. AR2 was not an experienced or speculative investor.

7. On May 28, 2013, Crain completed and submitted an updated St. Bernard client profile form for the securities account of AR1. This form listed AR1 as the account owner. In addition, this form listed AR1's investment objective and risk tolerance. This form was received and approved by Crain's supervisor at St. Bernard, Robert Keenan, on May 29, 2013.

8. On February 28, 2014, the Commissioner entered a Temporary Order of Suspension against Crain. This order was based on Crain's failure to cooperate with an on-site examination of Crain's branch office on February 27, 2014.

APPLICABLE LAW

9. Ark. Code Ann. § 23-42-306(d)(1) states that all the records referred to in subsection (a) of this section are subject, at any time or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commissioner, within or without this state, as the Commissioner deems necessary or appropriate in the public interest or for the protection of investors.

10. Ark. Code Ann. § 23-42-308(a)(2)(B) states that the Commissioner may by order suspend or revoke any registration if he finds that the registrant has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act.

11. Ark. Code Ann. § 23-42-308(a)(2)(G) states that the Commissioner may by order suspend or revoke any registration, if he finds the registrant has engaged in dishonest or unethical practices in the securities business.

12. Rule 308.02(a) states that it shall be considered grounds for suspension or revocation of an investment adviser representative registration to recommend to a client the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs.

13. Rule 308.02(b) states that it shall be considered grounds for suspension or revocation of an investment adviser representative registration to place an order to purchase or sell securities for the account of a client without authority to do so.

14. Rule 308.02(d) states that it shall be considered grounds for suspension or revocation of an investment adviser representative registration to exercise any discretionary authority in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client.

CONCLUSIONS OF LAW

15. In violation of Ark. Code Ann. § 23-42-306(d)(1), Crain failed to cooperate with an on-site examination of his branch office as detailed in paragraph 8.

16. In violation of Ark. Code Ann. § 23-42-308(a)(2)(B) and Rule 308.02(a), Crain purchased and held unsuitable securities in the account of AR2 as detailed in paragraphs 5 through 6.

17. In violation of Ark. Code Ann. § 23-42-308(a)(2)(B), Rule 308.02(b) and Rule 308.02(d), Crain engaged in unauthorized securities trading in the account of AR2 as detailed in paragraphs 3 and 4.

18. In violation of Ark. Code Ann. § 23-42-308(a)(2)(G), Crain knowingly submitted an updated St. Bernard client profile form that contained inaccurate and false information to his supervisor, Robert Keenan, as detailed in paragraph 7.

19. Pursuant to Ark. Code Ann. § 23-42-308(g), the Commissioner may impose an appropriate fine against Crain.

OPINION

This order is in the public interest. The facts as set out in paragraphs 2 through 8 support the violations of the Act and the Rules as set out in paragraphs 15 and 18.

ORDER

IT IS THEREFORE ORDERED that Crain shall have his registrations in Arkansas as a representative of an investment adviser and an agent of a broker-dealer suspended for a period of four months from the entry of this order. At the end of such period, Crain may reapply only after retaking the requisite exams. In addition, within 30 days of the entry of this Order, Crain shall pay a fine in the amount of \$5,000.00 to the Arkansas Securities Department, and repay advisory fees in the amount of \$1,400.00 and 2013 market losses in the amount of \$4,112.53 to AR2.

WITNESS MY HAND AND SEAL on this 11th day of August, 2014.


A. Heath Abshure
Arkansas Securities Commissioner

APPROVED AS TO CONTENT
AND FORM:


William David Crain
The Respondent

8-1-14
Date


Richard C. Downing
Attorney for the Respondent

8-4-14
Date


Scott Freydl
Staff Attorney, Arkansas Securities Department

8/6/14
Date