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ARKANSAS SECURITIES DEPT.

BEFORE THE ARKANSAS SECURITIES COMMISSIONER
Case No. S-18-0051
Order No. S-18-0051-19-OR02

IN THE MATTER OF
CHASTAIN FINANCIAL, LLC, CARLA CHASTAIN and
STEPHEN B. CHASTAIN

CEASE AND DESIST ORDER

On August 2, 2019, the staff of the Arkansas Securities Department (Staff) filed its Request for a Cease and Desist Order stating that it has information and certain evidence that indicates Chastain Financial, LLC (Chastain Financial), Carla Chastain (Carla) and Stephen B. Chastain (Stephen) have violated provisions of the Arkansas Securities Act (Act) codified at Ark. Code Ann. §§ 23-42-101 – 509. The Arkansas Securities Commissioner (Commissioner) has reviewed the Request (Request), and based upon representations made therein, finds that:

FINDINGS OF FACT

1. The Request asserts the following representations of fact:
   a. Chastain Financial is a limited liability company organized in Arkansas on June 7, 2005. Its address is 5305 West Village Parkway, Suite 10, Rogers, Arkansas 72758. It is licensed as an insurance producer by the Arkansas Insurance Department (AID), license number 100102794. It is not registered in any capacity with the Arkansas Securities Department (ASD).
   b. Carla is a resident of Rogers, Arkansas, and part owner of Chastain Financial. Although she identifies herself as the president of Chastain Financial, and she might well be the president at this time, Stephen has been identified as the president in the past. She is the

owner of one-half of Chastain Financial. Carla is licensed with the AID as an insurance producer, license number 833309.

c. Carla is not presently registered in any capacity with the ASD, but formerly was registered as both an investment adviser representative and an agent of a broker-dealer. She has a disciplinary history with the ASD, including the following orders.

i. *In the Matter of Tommy Lee Ruff, Carla Lea Chastain, First Financial Advisors, Inc., and First Financial Brokerage Services, Inc.*, 2005 WL 1255260 (Ark. Sec. Dept. No. S-03-039-05-CO01). On May 25, 2005, Carla agreed to and the Commissioner issued a consent order revoking her registration as an investment adviser representative and suspending her registration as an agent of a broker-dealer based on two findings that authorized these penalties. First was a finding that Carla had made unsuitable recommendations to clients, defined as making recommendations regarding the purchase or sale of securities without reasonable grounds for believing they were suitable for the client, given the clients' circumstances, risk tolerances and investment objectives. Second, the Commissioner found that Carla had induced excessive trading in clients' accounts, a practice commonly known as churning.

Of great importance to prospective clients are the facts of this case. Tommy Lee Ruff, the co-respondent, formed a broker-dealer and an investment adviser. Carla was registered and employed as an agent of the broker-dealer and a representative of the investment adviser. Carla and Ruff promised investors to "tailor portfolio/investment strategies to the needs of the individual client" and provide investors with "a custom-prepared financial plan." They stated their philosophy to be "growth of principal . . .

within the constraints of prudent risk-taking and according to the Client's stated objectives." Ignoring this philosophy, they placed all but a few of their clients in the same positions of owning extremely high risk mutual funds and then traded those excessively (a practice known as churning) which resulted in massive losses for their clients.

Carla's registration as an investment adviser representative was surrendered and revoked. Her registration as an agent of a broker-dealer was suspended for 180 days, and she would be allowed to obtain her registration again on several conditions, to wit: 1) that she pay a $100,000 fine in $20,000 installments, the first payment to be made within 10 days the date of the order and the remaining installments made on the same date for the next 4 years; 2) that she retake the Series 7 examination and achieve a score of at least 70% correct answers; and 3) that she obtain employment with a broker-dealer that would agree to heightened supervision as set out in the order for the first year of her employment. Should the payments not be made on time, her registration would remain suspended. Because Carla made only the first $20,000 payment, her registration as a broker-dealer agent remains suspended.

ii. *In the Matter of Chastain Financial, LLC and Carla L. Chastain*, 2016 WL 1166192 (Ark. Sec. Dept. No. S-16-0018-16-OR01). On March 16, 2016, the Commissioner issued an order against Chastain Financial and Carla. Two factual findings were the basis of the order. The first concerned the advertising on the Chastain Financial website that Chastain Financial was affiliated with a named broker-dealer and a named investment adviser when there was no affiliation with either firm. The second

concerned invitations mailed to potential attendees at a free dinner seminar. It was stated on the invitations that Carla had attained an "IRA Distribution Specialist designation with the Ed Slott Institute." Actually, there was no Ed Slott Institute, but there was Ed Slott and Company that provides education concerning IRAs (individual retirement accounts), but it did not offer any special or professional designations. The Commissioner found that Chastain Financial committed securities fraud by advertising itself as being affiliated with a broker-dealer and investment adviser with which it had no connection in violation of Ark. Code Ann. § 23-42-307(a)(3) and Ark. Code Ann. § 23-42-507(2). By holding herself out as a licensed agent of Chastain Financial, which was acting as an unregistered broker-dealer and investment adviser, Carla was found to have acted as an unregistered agent of a broker-dealer in violation of Ark. Code Ann. § 23-42-301(a) and as an unregistered investment adviser representative in violation of Ark. Code Ann. § 23-42-301(c). Finally, by representing in the free dinner seminar invitations that she had attained a special designation from the Ed Slott Institute,Carla was found to have committed securities fraud in violation of Ark. Code Ann. § 23-42-307(a)(3) and Ark. Code Ann. § 23-422-507(2). These findings were affirmed in a consent order issued on December 13, 2016. *See In the Matter of Chastain Financial, LLC and Carla L. Chastain*, 2016 WL 7340439 (Ark. Sec. Dept. No. S-16-0018-16-OR02).

d. Stephen is a resident of Rogers, Arkansas. He and Carla are married, and he is the owner of one-half of Chastain Financial. Stephen is licensed with the AID as an insurance producer, license number 15284819.

e. Carla is licensed only to sell insurance products, but represents herself to be a "financial professional," a term that is not part of the licensing or registration scheme of the Act or of Arkansas insurance law. Carla interacts with the public through face-to-face, private meetings, but obtains potential customers through a weekly, hour long radio show, "The Chastain Financial Hour," free lunch and dinner seminars, direct mail solicitations and an internet website. In all of these Carla calls herself a "financial professional," but never precisely defines what a "financial professional" is. Her descriptions of it are descriptions of an investment adviser or an investment adviser representative. Investment adviser is defined in the Act as "any person who, for compensation, engages in the business of advising others . . . at to the value of securities or as to the advisability of investing in, purchasing, or selling securities." Ark. Code Ann. § 23-42-102(9). The new definition of investment adviser adopted in Act 110 of 2019, taken from the 2002 Uniform Securities Act, which Arkansas has not adopted *in toto*, is illustrative of what an investment adviser actually does. It "includes a financial planner" or other person who as a part of a business that offers other "financially related services" and as a part of those services "holds itself out as providing investment advice to others for compensation and as part of a business." Investment adviser representative is defined as any "partner, officer, director of an investment adviser . . . or other individual employed by or associated with an investment adviser . . . who for compensation . . . [m]akes any recommendation or otherwise renders advice regarding securities." Ark. Code Ann. § 23-42-102(14)(A). Although there are some mentions of insurance on some radio shows produced and aired by Chastain Financial (to be discussed below) and in some written materials, they are stated at the end

of a statement or made in passing and are never prominent or central to her message. She touts her ability to address all financial issues relating to retirement without regard to the product she is limited to selling. As will be shown, the product Carla is limited to selling is insurance–what she sells is almost always an equity indexed annuity (EIA)–which supplies the compensation Carla is paid for her advice to liquidate securities and replace them with EIAs.[1]

THE CHASTAIN FINANCIAL HOUR - THE RADIO SHOW

f. At all times relevant herein, Carla hosted "The Chastain Financial Hour," a radio show that aired in northwestern Arkansas (the Radio Show) on two radio stations on Saturday mornings and one of those radio stations on Tuesday afternoons. In broadcasts aired in 2018, Carla discussed investments necessary for successful retirement. She represented herself as an expert qualified to give investment advice and Chastain Financial as her company.

g. The content of the Radio Show was purchased by Carla and/or Chastain Financial from a company that produces such programs as the Radio Show. Most of the spoken words are supplied in a script. Although every word spoken is not exactly what is printed, presumably because Carla is sure to speak in her own manner, she follows the scripts in substance in most respects but one. The scripts have Carla say she is not an investment adviser, refer to herself as an insurance professional and repeat this information multiple times in each program, but Carla omits any mention of herself as being limited only to insurance products and takes pains *not* to call herself an insurance professional. Instead,

[1]These insurance products are also referred to as fixed indexed annuities.

she refers to herself as a "financial professional" and makes statements that would lead a listener to believe that she can take care of all the financial issues one might face planning for retirement. Several aspects of the Radio Show would lead one to believe that Carla is an investment adviser or investment adviser representative of Chastain Financial.

h. Financial Experience and Professional Designations. In the introduction part of every Radio Show, an announcer introduces Carla as the "founder of Chastain Financial" with "more than 25 years of financial planning experience." The announcer mentions two professional designations, neither of which permit her to give advice concerning the advisability of selling or keeping securities or advice regarding securities for compensation, to wit:

   i. RICP - Retirement Income Certified Professional. Issued by the American College of Financial Services, the RICP requires three years of professional experience, three required courses comprised of the equivalent of nine semester credit hours and fifteen hours of continuing education every two years. Classes are taught at the MetLife Learning Center, located close to Philadelphia. Registration as an investment adviser or investment adviser representative is not required.

   ii. CFP - Certified Financial Planner. This designation is granted by the CFP Board, a non-profit organization founded in 1958. It grants the CFP to those holding a bachelor's degree upon the completion of a CFP Board approved education program, passing an examination, demonstration of financial planning experience and an agreement to follow the CFP Board's Code of Ethics and Rules of Conduct and Practice Standards. According to Rule 1.4, CFP Board Rules of Conduct, CFPs are

held to a fiduciary standard when engaged in financial planning.

Carla has held both of these designations through most of the time in question. Neither requires holders of the designation to be registered in any capacity with the Act and neither allows designees to act as investment advisers or investment adviser representatives.

i. Representation of Carla as Experienced, Knowledgeable and Professional. Every Radio Show reviewed featured a great number of characterizations of Carla as an experienced and knowledgeable financial professional. These statements left no doubt that Carla could help one with anything related to financial matters in retirement. As noted above, the introduction of each Radio Show began with a male voice announcing Carla as the founder of Chastain Financial and someone with "more than 25 years of financial planning experience." The host of each show is a male voice introduced by name but identified in the scripts as HOST. He repeats how experienced, professional and knowledgeable Carla is throughout the Radio Show, and Carla does the same thing. The following are a few examples from recordings of the shows.

   i. After stating that retirement is more complicated now and "not your daddy's retirement," subtly but clearly referring to herself, Carla says:

      it makes sense these days to hire a financial professional, someone who has an experienced perspective. A *financial professional* or agent, *adviser* can help you develop a strategy for growing and protecting your nest egg. And that's what's key, because your nest egg is what will ultimately give you the income you're going to rely on in retirement.[2] [Emphasis added.]

   ii. Shortly after that statement, Carla explains what she would do for a client as a

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[2]From Radio Show aired January 9, 2018, entitled "Signs You Need a Financial Pro."

"financial professional:"

> A *financial professional, we do a couple of things* for you. We're going to help you identify the things you *can't* control but you can plan around – things like inflation, rates of return, interest rates, changes in tax rates. . . . Then, they can steer you toward strategies that help address those uncertainties. They can also help identify those things you *can* control, then create strategies to help you to control those through the strategies. For instance, what do you do with your retirement nest egg in terms of using specific strategies or products to help you find a stable and reliable–and that's the key, reliable–source of monthly income.[3] [Emphasis added.]

iii. Carla says "A financial professional that's trained in retirement income solutions can analyze your financial situation and offer concrete suggestions for working toward reaching the goals you have in mind . . ." [4]

iv. When the host asks Carla if she ever has anyone come into her office who does not know or understand what assets are in their retirement "nest egg," Carla responds:

> if you don't know what makes up your retirement assets or you don't understand the strategy behind your nest egg, it's *time to call in a pro, someone that's experienced, a skilled financial professional*, someone that should be able to explain your current financial strategy, whether the assets that you have, you know, are they going to be enough to meet your needs in retirement, and how you can position those assets to last throughout your retirement. And they need to be able to explain it to you in plain English.[5] [Emphasis added.]

v. Referencing fear of the stock market, Carla says:

> . . . if the stock market's volatility sends you into a state of panic or worse, I suggest you talk to *a financial or investment professional*, one

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[3]Ibid.

[4]Ibid.

[5]Ibid.

> who can help you design a cohesive retirement strategy that both protects and allows your retirement assets to grow . . . so you can focus on your long-term goals and enjoy retirement instead of sweating about those short term market movements.[6] [Emphasis added.]

vi. In every Radio Show, two canned commercials were played repeatedly, one with a female voice and one with a male voice. These commercials also touted Carla as a professional with much knowledge and experience. In the female voiced commercial, it was said:

> Call Chastain Financial. They offer no obligation retirement income strategy sessions. Carla Chastain's team will dig into your unique situation and if possible design a custom strategy to help generate the supplemental retirement income you need.[7]

In the male voiced commercial, Carla is compared with other "financial professionals, as follows:

> When it comes to your health, it is clear you consult your doctor for advice, so why not consult a professional when it comes to money? Just like your doctor, the advice you get from a *financial adviser* can have a direct impact on your quality of life. Are you paying too much in fees with your current *financial professional*? What can happen to your nest egg if there's a market correction? If you're unsure about the answers to these questions, it may be time for a second opinion. *Carla Chastain is an independent adviser*. She doesn't have a boss on Wall Street. Carla and her team at Chastain Financial specialize in designing retirement strategies that can allow you to spend more time enjoying life and less time being concerned about your finances. Maybe it's time for a second opinion.[8] [Emphasis added.]

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[6]Ibid.

[7]Ibid.

[8]Ibid.

j. Individual Analyses of Clients' Financial Situations and Tailored Plans. Carla represented in several ways that she would examine each individual's circumstances and develop a plan or strategy for that individual's retirement tailored specifically to that individual's situation, needs and goals, something that investment advisers are known to do. In reality she was authorized to deal in insurance only and could give no advice concerning securities. She also had but one recommendation that she could make for all individuals, to wit, insurance products, usually EIAs.

i. In the female voice commercial, listeners are urged to:

> Call Chastain Financial. They offer no obligation *retirement income strategy sessions*. Carla Chastain's team will dig *into your unique situation* and if possible design a custom strategy to help generate the supplemental retirement income you need. Call Chastain Financial right now to schedule your retirement income strategy session.[9] [Emphasis added.]

In this commercial, the term, retirement income strategy session, is used to indicate individualized attention to prospective clients specific situations. Another term, retirement income road map, is used as much if not more in other Radio Shows.

ii. The Host helped Carla with these representations of individualized attention and said things that were not in the scripts Carla bought and provided to the Staff, but the Host undoubtedly followed Carla's direction in all he said. The following exchange illustrates this method:

> HOST: that's really what it always comes down to, it seems like, is sitting down with someone like yourself, Carla, and running through different scenarios, but, coming up with a plan that is best suited to your client's specific needs. And that sounds like it's

[9]Ibid.

something different almost every time.
CARLA: Every time. There's no cookie cutter . . . This *analysis* is *completely customized based on you and your circumstances*. Just like we said, there's no cookie cutter.[10] [Emphasis added.]

iii. Characterizing what she finds prospective clients have in the way of retirement savings and assets as a junk drawer of many different accounts and how she can help with that situation, Carla said:

> What you need is a well thought-out strategy for retirement, developed with the help of a professional who understands the big picture. It all has to work together. You can't have this junk drawer of accounts. You have no idea how they work together, and that's what we do everyday. We help build *customized retirement income strategies* for people just like you[11] [Emphasis added.]

iv. Illustrating how she says she acts as an investment adviser is the following explanation Carla provides of how she does her job:

> We start out with where are you now? You may be in good shape, but you don't know. So let's put it together and see where you are now. Do you have enough to last your lifetime? What is your guaranteed income? What is your risk profile? What fees are you paying? How does it all play together? And then maybe we need to tweak something, we'll set up [*sic*] here's another option for you to look at, here's a third option for you to look at.[12]

v. In response to the Host's question of whether an untrained person could balance accumulation of assets with protection on his or her own, Carla responded:

> . . . I probably would not recommend that. You know that old saying, you don't know what you don't know. . . . We have this whole big tool belt. We're able to pull the tools that fit each client. We're looking at building a

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[10]From Radio Show aired March 20, 2018, entitled "Nine Indispensable Income Sources for Retirement"

[11]Ibid.

[12]Ibid.

strategy.[13]

vi. Emphasizing her ability to look at all aspects of retirement finances, Carla advised:

> Certain professionals may only be trained or inclined to focus, you know, on certain narrow aspects of your financial life, you know, maybe they're just worried about accumulation, when *you really need a professional* who is *trained to look at all* those *factors* and make them work together in a strategy that *addresses all aspects of your financial life*.[14] [Emphasis added.]

vii. With Carla's only option being some type of insurance product, particularly an EIA, she could not give a client appropriate options. These examples of individualized attention fall directly within the definition of investment adviser, which is a person who, for compensation, engages in the business of advising others of the advisability of holding or selling securities, the compensation here being the commission for the sale of the EIA.

k. Assertions of Independence. Throughout the Radio Shows are assertions that Carla is independent and not beholden to any company or product. These representations are not limited to insurance companies or insurance products and easily leave the impression that she is an investment adviser representative of Chastain Financial with access to *all* products that could be used to fund retirement, including securities.

i. In the male voice commercial mentioned earlier, which is run at least once and usually more times each show, the voice says, "Carla Chastain is an independent adviser. She doesn't have a boss on Wall Street."[15]

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[13]From Radio Show aired February 27, 2018, entitled "Neutralizing the Silent Retirement Concern"

[14]*Supra*, note 2, Radio Show aired January 9, 2018.

[15]Ibid.

ii. Carla went into greater detail about this point as follows:

> It's critical that you get *independent guidance*. I just can't stress that enough, that we're *not tied to any one company*. Because of the amount of business that we do do, the top products that are available so that makes a difference also. But we're going to sit down with you and give you an *independent review* to show you all your retirement options.[16] [Emphasis added.]

l. Omissions from the Scripts. It is clear from the scripts provided to Carla by the company that produced them that they were departed from quite frequently by both Carla and the Host. This leads to the conclusion that they were intentionally changed in order to project a certain image, that of an investment adviser or investment adviser representative with no disciplinary history. What was omitted from the scripts is as illustrative as what was found in the recordings of the Radio Shows, themselves. The following omissions are revealing:

i. In discussing how to evaluate a financial professional, Carla omits the following:

> Insurance professionals are subject to oversight by regulators at the state level. In most cases, the relevant regulatory bodies keep records of complaints, transgressions, judgments, legal actions and the like.[17]

Carla was on probation from the Arkansas Insurance Department when this statement was omitted from the Radio Show and she is still on probation until September 2019. *See In the Matter of Carla Chastain, NPN 833309*, AID Order No. 2016-080.

ii. In response to the Host's question of what questions she would recommend asking a financial professional one is considering hiring, she omits this one: "Have you ever been disciplined, sanctioned or fined by any regulatory body?"[18] By omitting this

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[16]Ibid.

[17]Ibid.

[18]Ibid.

question, Carla avoids informing the public about the orders issued against her by the Commissioner set out in ¶4, *supra*, or the AID as set out immediately above. Leaving that question out also makes it less likely that any listener would look for orders against her.

iii. Carla pitches her "Retirement Income Roadmap" as a "complimentary detailed analysis of your retirement income picture," which would include "strategies designed to help ensure your money can last as long as you do."[19] The script read "*insurance* strategies designed to help ensure . . .[emphasis added]," which would have alerted a listener that Carla was limited to and only concerned with selling insurance products.

iv. In discussing sources of retirement income that could fluctuate, Carla discusses the stock market, including mutual funds. She says that such things "involve risk, including the possible loss of your principal," but she omits the following:

> I'm not registered to offer securities products, so be sure to discuss these items with your investment advisor concerning your own situation.[20]

v. The Host introduces Carla after a pause or commercial as "somebody who sees the effects of inflation . . . on a nest egg up close and personal. She's Carla Chastain, founder, president and CEO of Chastain Financial."[21] The script had the Host introducing her as "*insurance* professional Carla Chastain." [Emphasis added.]

vi. In describing the "Retirement Income Roadmap," Carla states "we're going to provide you with a retirement income strategy that's developed and based wholly on you and

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[19]*Supra*, note 10, Radio Show aired March 20, 2018.

[20]Ibid.

[21]*Supra*, note 12, Radio Show aired February 27, 2018.

your individual circumstances." [22] The script had an additional clause which Carla omitted: "and determines if insurance or annuity products would be a good complement to your income strategy."

m. Disclaimers. There were several points in the Radio Show in which it is announced that Chastain Financial and Carla dealt with insurance and annuity products, but none are sufficient to tell a prospective client that Chastain Financial and Carla are limited to those products and the insurance industry.

i. At the end of each of the commercials, both the male and female voiced commercials, the following statement is made as the last sentence, almost *sotto voce*:

> Chastain Financial is an *independent financial services firm* helping individuals create retirement strategies *using a variety of insurance products* to custom suit their needs and objectives. [Emphasis added.]

n. At the end of every show, the following, more lengthy disclaimer was read by a male announcer's voice, again in a dead pan tone, almost *sotto voce*:

> Chastain Financial is an *independent financial services firm* that helps people create retirement strategies using a variety of insurance products. Insurance and annuity product guarantees are backed by the financial strength and claims-paying ability of the issuing insurance company. We're not permitted to offer and no statement made during this show shall constitute tax, legal or *investment advice*. You should talk to a qualified professional before making any decisions about your personal situation. We're not affiliated with the U.S. government or any governmental agency. [Emphasis added.]

These disclaimers are not spoken by Carla, which is the voice most listeners would pay attention to, but by the voices speaking the repeated commercials and an announcer's voice heard throughout the Radio Show and in the disclaimer at the end of each Radio

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[22] Ibid.

Show. The ineffectiveness of these disclaimers becomes even clearer when the omitted statements set out above, especially the admission that Carla is not registered to sell securities, are considered. The statement in the end-of-show disclaimer that Chastain Financial and Carla are not permitted to offer "investment advice" is not clear because "investment advice" is not defined. After listening to an hour of advice about how to grow and care for one's "nest egg" and devise and implement retirement income strategies, one could be confused about what is meant by investment advice and might well conclude thast Carla was quite capable of and legally authorized to give investment advice.

FREE DINNER SEMINARS

o. At all times relevant herein, Carla, working as the president and CEO of Chastain Financial, hosted free dinner seminars at which Carla would represent herself to be an expert qualified to give investment advice and Chastain Financial as her company. At the top of the invitations topics such as the following were printed:

"**Asset Protection** - Are you prepared to protect your life savings from *market volatility*?

Lifetime Income Planning - How can you prevent outliving your money?

Estate & Legacy Planning - Will your estate pass on according to your wishes?

Are You With a Retirement Professional? - 4 ways to make sure your current advisor is giving you correct advice.

Security - Can you find **growth and security without risk** in today's *volatile market*?"

[Emphasis added.]

These are topics that would normally be dealt with by an investment adviser, especially those dealing with stock market volatility. Of these topics, only "Asset Protection" and

"Security" bring to mind an insurance agent or insurance because those topics refer to risk, which insurance guards against. Except for "Estate and Legacy Planning," which would normally be handled by a lawyer, the other topics are associated with investment advisers. This is especially true of the question posed, "Are You With a Retirement Professional? - 4 ways to make sure your current *advisor* is giving you correct advice." [Emphasis added.] It refers to an advisor and not an insurance agent. Implicit in this question is that Carla knows what a good investment adviser should be doing for his or her clients, which leads to the conclusion that Carla is an investment adviser, too.

p. As in the Radio Shows, Carla is presented as an investment adviser in all but name. In an invitation to a dinner seminar at a restaurant in Rogers, Carla is introduced as follows:

> About Your Host: Carla Chastain
>
> Carla Chastain is the owner and *primary financial advisor* of Chastain Financial, LLC. She has 26 years' experience in the *financial industry* and her mission is helping people achieve the retirement they Want and building lifelong relationships.
>
> * * *
>
> Carla has been published on Fox Business News and has her own radio show, Chastain Financial Radio Show, which airs on KURM 790AM at 4:00pm on Tuesdays and Saturdays at 7:00am and in addition, she is also on "Ask the Expert" on KNWA. [Emphasis added.]

q. At the bottom part of the invitations were printed the AID insurance license numbers of Chastain Financial and Carla. On some invitations Stephen's AID insurance license would also be printed. In extremely small type this disclaimer was made: "Although the seminar is providing information of value for consumers, the seminar is a solicitation for insurance products such as Medicare supplements, Long Term Care insurance, Life insurance, & Annuities." In some invitations this disclosure was also made in the same small print: "The presenter, speaker and sponsor of this information is authorized only to

sell insurance products." And in some invitations the following request was made of some persons who might attend: "If you are a financial advisor or if you are in the financial services industry, we ask that you kindly extend a professional courtesy and not attend."

r. As with the disclaimers in the Radio Shows, these are not sufficient. After reading that Carla and Chastain Financial can "protect your life savings from market volatility" and "find growth and security without risk in today's volatile market," one would conclude that Carla is an investment adviser or investment adviser representative.

s. At the dinner Carla delivers a short presentation. A good portion of it is devoted to the stock market. Using some historical detail about various downturns in the stock market and some statements that she delivers as basic truth about which there can be no disagreement, Carla argues that the stock market is no place to put one's retirement funds. She uses an anecdote about a purported client who lost a great deal of retirement funds because they were invested in the stock market and because the client was misled by her investment adviser. The alternative Carla offers is almost always an EIA.

CHASTAIN FINANCIAL WEBSITE

t. Chastain Financial has a website that promotes its business. This website presently seems focused on starting a "live chat" with visitors to the website, and does not have a great deal of content. In 2018, however, it had content that was quite similar to that discussed above in the Radio Show. On the 2018 website:

u. Carla is introduced as follows:

> Carla Chastain is a President and CEO at Chastain Financial, LLC. She has 26 years' experience in the insurance and annuity industry and holds a Bachelors degree in Finance from The University of Arkansas. She also holds a Certified Financial Planner certification.

v. Although Carla is represented as an expert in insurance and the annuity field, much of the website paints the picture of an investment adviser. Under the heading, "Financial Services," the following is stated:

> To develop a strategy for your future, it's important for your financial professional to see a complete, 360 degree view of your financial picture, including how your retirement assets are integrated and work with one another. We can work in concert with tax professionals or attorneys in our network to advise you on specific aspects of your financial strategy.

w. Later, under the heading, "Asset Protection," the following is stated, which is also what an investment adviser would be expected to say:

> Because the market can expose assets to risk, you may want your financial strategies to include some guaranteed* income products. For example, annuities, which are insurance products with guarantees, can provide a source of supplemental income throughout your retirement. [Asterisk in original but not explained.]

x. Disclaimer. Several disclaimers appear throughout the website. These two are typical:

> We are an independent financial services firm helping individuals create retirement strategies using a variety of insurance products to custom suit their needs and objectives. By contacting us, you may be offered insurance products for sale.
>
> * * *
>
> We are an independent financial services firm helping individuals create retirement strategies using a variety of insurance products to custom suit their needs and objectives. Your insurance professional is not permitted to offer, and no statement contained herein shall constitute, tax, legal or investment advice. You should consult with a legal or tax professional on any such matters.

Although these disclaimers are arguably better than those discussed in the section about the Radio Show, they are not sufficient. The term, investment advice, is not defined. When Carla states that she can perform a "360 degree view of your financial picture" and one is advised to consult a "legal or tax professional" about "investment advice," one might think investment advice is advice given only by a lawyer or a tax accountant and

not understand that it might be advice concerning the advisability of holding or selling securities from anyone, even Carla. Also, any disclaimer would not render investment advice actually given by Carla not investment advice.

ARKANSAS INVESTORS

y. AR1, an Arkansas resident, heard the Radio Show. He was nearing retirement and was interested in financial guidance. He called and made an appointment with Carla. When he first met with her, he showed her his retirement funds, which were comprised of two deferred compensation retirement plans popularly known as 401(k)s[23] with a former employer and his current employer. At the second meeting with Carla, she advised AR1 that an EIA would be a better investment for him than the securities he had in his retirement funds because the income from the EIA would not change with changes in the stock market. She said it would be better for him to have the "guaranteed" income the EIA would provide. Carla also referred to the income from an EIA as "safe money," as contrasted to investments in the stock market whose value is subject to change.

z. The liquidation of $100,000 from the 401(k) with his former employer and the transfer of those funds to the insurance company issuing the EIA was accomplished in March 2015 at AR1's third meeting with Carla by his signature on forms already filled out by Carla or her staff. A member of her staff called the company that handled the 401(k) for AR1's former employer for AR1 to verbally authorize the liquidation and transfer. This transaction substantially depleted AR1's 401(k) plan with his former employer.

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[23]The Financial Industry Regulatory Authority (FINRA) defines these plans in its glossary of terms as "an employer-sponsored retirement savings plan" that is "largely self-directed: You decide how much you would like to contribute, and which investments from among those offered by the plan you would like to invest in." 401(k)s are funded with the employee's pre-tax salary, and "earnings are tax deferred until you withdraw your money from your account."

aa. On the one-year anniversary of AR1's purchase of the $100,000 EIA discussed in the paragraph immediately above, Carla called AR1 and recommended that he move an additional $150,000 held in securities in a 401(k) with his present employer to a second EIA in order to stabilize his retirement income. The liquidation of $150,000 from the 401(k) with his then current employer and the transfer of those funds to the insurance company issuing the EIA was accomplished in much the same way the purchase of the first EIA was made. AR1 signed documents already filled out by Carla or her staff giving detailed instructions for the sale of the securities and the transfer of the funds and giving the company that handled this 401(k) plan verbal authorization on the telephone after a member of Carla's staff placed the telephone call.

bb. AR1's first EIA was issued by one insurance company and the second one by another. Only Stephen was authorized to transact business for the insurance company that issued the second EIA, but Carla presented and sold that EIA to AR1. Even though the forms completed to accomplish the sale of the second EIA reflected Stephen as the agent who made the sale, and Stephen received the commission for the sale, AR1 has never met Stephen.

cc. AR2, an Arkansas resident, had a retirement account invested in mutual funds with a broker-dealer agent/investment adviser representative. When that individual retired, she decided to find a replacement to handle her account. She was especially concerned about having enough income in case her husband predeceases her. AR2 was invited to a free dinner seminar hosted by the Chastains. From the presentation made at the seminar, she concluded that Carla was qualified to analyze her current securities holdings and advise her on the best actions to take.

dd. At the dinner AR2 was given the following written disclaimer:

> Disclosure: This is an Educational Presentation . . . The presentation concerns the main issues regarding retirement planning and how to avoid or eliminate numerous *financial* problems which concern many retirees. . . . *No specific investment advice is ever intended.* . . . The US Securities and Exchange Commission (SEC) requires that only registered representatives licensed with a broker dealer license can sell specific securities and provide investment advice. . . . The presenter, speaker and/or sponsor of this information [Carla] is a licensed, independent insurance agent. . . . (Although the seminar is providing information of value for consumers, the seminar is a solicitation for insurance products such as Medicare supplements, Long Term Care Insurance, Life Insurance and Annuities.) [Emphasis added.]

Although this says there was no investment advice intended at the free dinner seminar AR2 attended, if investment advice were delivered, anyway, either at the dinner or later at Carla's office, this disclaimer would not make it something other than investment advice.

ee. After the dinner seminar, AR2 scheduled a meeting with Carla. Before the meeting, AR2 was given a folder entitled "Consumer's Guide to Finding a Financial Professional & Gaining Peace of Mind & Confidence." Just inside the folder was Carla's card, which identified her as Carla Chastain CFP, President/Founder of Chastain Financial. To the side of the logo for Chastain Financial was the Carla's Arkansas Insurance Producer license number, but she was not identified as "Insurance Agent." On the first printed page inside the folder were several statements under the heading, "What's Inside the folder?" The first one of these was "the 6 critical questions every retiree in America should know about their financial professional before engaging them and what to do if they don't know the answers!" On the next page is a photograph of Carla with more introductory information about her. She is stated to have been "the 'providing successful retirement strategies' business for over 20 years–building a strong network of satisfied clients . . . who need help in the financial services industry." It is stated that Carla has become a

Certified Financial Planner and has earned the "Trained Expert IRA Advisor seal" with Ed Slott. Note that none of these statements refers to insurance, which is the only thing she is authorized to sell under law, but instead refers to financial matters.

ff. The folder was divided into six sections. The first section was entitled "A Message About Risk and Reward." Carla introduced herself again and stated:

> I've dedicated my professional life to helping retirees and pre-retirees navigate the rough waters of retirement by providing them solutions that guarantee a retirement paycheck they can never outlive.

After that statement are listed several strategies for retirement income distribution, which Carla states is different today than in the past, but she states that she is there to help. Carla touts several resources she can draw upon to help people with retirement:

> The organization my team helped me create has been educating clients for over 20 years. . . . As educators, we've learned the importance of keeping our proprietary concepts and plans simple, straightforward and easy to understand.

gg. Under the second section, entitled "Do You Have An Advisor Coordinator?," Carla introduced new concepts:

> At Chastain Financial, our financial professionals are trained in Holistic Financial Review approaches, allowing them to coordinate your "advisory team."

She explained that one needs a team because "no true professional would claim to be a 'jack of all trades' in today's complicated field of financial planning." Such a person would need to know "how retirement products and strategies interact," Carla advised. Chastain Financial had put together "an entire team of CPAs, attorneys and insurance agents." Carla said that she would supply her clients with "key questions to ask a prospective team member" to make sure the client felt "comfortable that each team member is a trustworthy fiduciary willing to work" with the rest of the team on the

client's behalf.

hh. The third section is entitled "Take This Quiz" and contains a set of 17 questions. Some ask for the client's opinion on such things as "the current rate of government spending" and the costs of long term care. Some questions seem designed to find out about a prospective client's assets, and some seem to be rhetorical questions to which most people would answer the same way, such as whether you would lose "more than 20% of the current household income" if one's spouse died tomorrow and whether one is concerned about one's family's well-being in the future. At the end of these questions Carla compares herself to a prospective client's current investment adviser and asks if she could supply a second opinion. Among the items she recommends checking on are whether the investment adviser has "disclosed all of the fees you are paying for your investments and his/her advice" and, if one has experienced losses, "what did your advisor do to protect your money in any economy?" Curiously, Carla ends this section with the question, "Is your advisor held to a 'Fiduciary' standard like the advisors at Chastain Financial?"

ii. AR2 met with Carla several times. AR2 never met the rest of the team or organization spoken of in the folder she was given, including the CPAs and attorneys said to be one the "team." AR2 was never told why the "advisors" at Chastain Financial were held to a fiduciary standard and never understood what the "Holistic Financial Review" touted in the folder was. AR2 only met with Carla. Carla reviewed AR2's mutual funds and overall finances and recommended that AR2 take $60,000 out of the $100,000 in her brokerage retirement account and purchase an EIA. This purchase was made in the spring of 2017. After that, AR2 discovered that Carla was not actually an investment adviser and was

only licensed to sell insurance products. She then retained an investment adviser registered with the ASD to handle her investments. Carla was supposed to have contacted AR2 on the anniversary date of the EIA's purchase date, but did not do so.

jj. AR3, an Arkansas resident, had a retirement account invested in securities from one employer and decided that she might want to move it when she changed jobs and worked for another employer. She was referred to Carla by a friend. AR3 and her husband met with Carla and discussed investing the retirement account using different risk exposures and providing for possible education funds for their two young children. Carla advised AR3 to move her retirement account funds from the mutual fund securities she held in the account with a broker-dealer to an EIA. In February 2017 Carla helped AR3 roll over the retirement fund into an EIA. Carla and her staff facilitated the transfer of the funds from the retirement account into the EIA by having AR3 sign forms already filled out by Carla or her staff giving detailed instructions for the sale of the securities and the transfer of the funds and giving the company that handled this 401(k) plan verbal authorization on the telephone after a member of Carla's staff placed the telephone call. Later, the friend who had referred AR3 to Carla told her she had found out that Carla was not registered or licensed as an investment adviser. AR3 was quite surprised because she was under the impression that Carla was an investment adviser. AR3 never heard Carla mention insurance and had no idea that she was licensed only to sell insurance products. AR3 did not know that an EIA was an insurance product.

kk. AR4, an Arkansas resident, thought that he might need to make some changes in the retirement account invested in securities he had with his employer. He heard Carla's radio show and thought she might have some good advice. She said on the radio show that she

could get investors a good return and guarantee against loss. He made an appointment with Carla. After looking at one of his retirement account statements, Carla advised him that several of the investments in the account, which were mutual funds containing securities, were not good investments. She advised him to invest half of the funds in the account in an EIA she would sell him. AR4 told her it was important that he have access to the money. She said that was no problem with the EIA she was recommending he purchase from her. Carla and her staff facilitated the sale and transfer of securities funds held at the brokerage account into the EIA by having AR4 sign forms already filled out by Carla or her staff giving detailed instructions for the sale of the securities and the transfer of the funds and giving the company that handled this 401(k) plan verbal authorization on the telephone after a member of Carla's staff placed the telephone call. After he purchased the EIA in January 2017, AR4 found out that the EIA he purchased had surrender fees for a ten year period, which significantly hampered access to his funds.

ll. Carla had little information about AR1, AR2, AR3 and AR4 upon which to base a recommendation to sell the securities they had and invest the proceeds in an EIA. She knew what they told her, which was vague. AR1 was looking for financial guidance as he neared retirement. AR2 wanted a new investment adviser because the one she had relied upon for years had retired. AR3 thought she might need to move her retirement account, which was connected with her employer, because she had changed jobs. AR4 had heard Carla's radio show and was interested in the return she promised with no risk. Carla did not find out the current state of their finances, such as net worth, calculated by listing assets and liabilities. These individuals filled out no forms showing their risk tolerances and investment goals. Most of what she knew about these individuals was contained in

the records of their securities holdings they each brought to their individual meetings with her.

EQUITY INDEXED ANNUITIES

mm. EIAs are insurance products tied to an equity stock index such as the Standard and Poor's 500 (S&P 500) and sold as investments. There are many salient features of these products, including the following:

nn. Surrender Charges. These charges are a percentage of the principal amount invested and apply to withdrawals over a period of time, as long as from five to twenty years. Usually, the percentage starts off at a higher rate and decreases each year until the end of the period. In the case of the EIAs sold here, the period of time was ten or twelve years and the percentages ranged from a high of 14% to a low of 0. Most EIAs allow a yearly withdrawal of some portion of the principal invested, which was the case with the EIAs in this case, but anything over that amount triggers the surrender charge applicable for that time period.

oo. Contract Value and Cash Surrender Value. Contract value is a notional value only, which is used to calculate other values. Contract value is the amount invested (the insurance premium) plus any vested bonus, plus interest credited, less any withdrawals. The cash surrender value is what the EIA is worth in cash at any point in time, and it takes into account the surrender charges. These two values can vary a great deal, depending on the size of the surrender charges and the point in time when a withdrawal is made or an EIA is cashed in. When Carla stated rates of return on the Radio Show, it is unclear to which value she referred.

pp. Limits on Return on Investment. There are at least three accounting methods limiting the

amount of the increase in an equity index to be credited to the investor. Some EIAs apply several of these limits on participation. The three methods are as follows:

i. *Cap Rate*. A cap rate is a limit on the amount an investor can earn. For example, if the cap rate is 3%, the investor will be credited a maximum of 3%, regardless of how high the value of the index became.

ii. *Participation Rate*. This is a limit on the portion of the increase in value of the index the investor will be credited. For example, if the participation rate is 80%, and the index rose 5%, the investor would be credited only 4%.

iii. *Spread or Margin*. With this method a percentage known as spread or margin is subtracted from the increase in the index's value to arrive at the percentage rate the investor will be credited. For example, if the spread or margin is 2.25% , and the increase in the index is 8.0%, the investor will be credited 5.75%.

qq. Limits on Return on Investment Can Change Yearly. Insurance companies that issue EIAs can change these limits on the return on investment on a yearly basis at their option in order to control their expenses.

rr. Look Back Period. This is a period in which the purchaser of an EIA can decide that he or she does not want to buy the EIA and rescind the contract. The entire premium is then refunded. These periods vary from ten to thirty days from date of delivery.

ss. Carla did not inform AR1, AR2, AR3 or AR4 of these features of EIAs. Although she mentioned the term, surrender charges, to several, she did not explain what they were, stating neither the amounts of the charges nor the periods over which they would be charged.

ADDITIONAL FACTS

tt. Carla never revealed any of her disciplinary history with the ASD set out in ¶4, above, not

in her radio shows, not in her free dinner seminars and not in individual meetings with the four Arkansas residents identified as AR1, AR2, AR3 and AR4.

uu. During all relevant times, both Carla and Stephen were equal co-owners of Chastain Financial. Each was in a position to influence the other and Chastain Financial to ensure compliance with the Act. Because they were equal co-owners, each held a veto power over what Chastain Financial could do.

CONCLUSIONS OF LAW

ACTING AS UNREGISTERED INVESTMENT ADVISER AND INVESTMENT ADVISER REPRESENTATIVE
ARK. CODE ANN. § 23-42-301(c)

2. When Carla, acting as an agent of Chastain Financial, recommended to AR1, AR2, AR3 and AR4 that they each liquidate securities and use the proceeds to purchase one or more EIAs, she made those recommendations for compensation, the commissions she and Stephen received for selling the EIAs. Chastain Financial also made this recommendation to the four investors because what Carla did as the agent of Chastain Financial was the action of Chastain Financial. Chastain Financial and Carla were therefore acting as an investment adviser and an investment adviser representative, respectively, as defined by Ark. Code Ann. §§ 23-42-102(9) and 23-42-102(14)(A). Because neither Chastain Financial nor Carla were registered in accordance with the Act as an investment adviser or an investment adviser representative, respectively, they acted in violation of Ark. Code Ann. § 23-42-301(c).

SECURITIES FRAUD
Ark. Code Ann. §§ 23-42-307(a)(2) and 23-42-507(3)

3. Carla, acting as an agent of Chastain Financial, acted as an investment adviser representative of Chastain Financial when she represented to listeners of the radio show, attendees at the free dinner seminars and AR1, AR2, AR3 and AR4 that she was qualified and legally

authorized to advise them as to the advisability of retaining or selling securities, but her only objective was to sell EIAs or occasionally other insurance products, which were the only things she was legally authorized to sell. This conduct implicitly stated that she was an investment adviser representative of Chastain Financial who could help members of the public with all of their issues concerning retirement and investments, not just the part of it that was comprised of insurance. This conduct was a type of securities fraud defined as an act, practice or course of business which operates or would operate as a fraud or deceit upon listeners of the radio show, attendees at the free dinner seminars, visitors of the Chastain Financial website and AR1, AR2, AR3 and AR4 and was a violation of Ark. Code Ann. § 23-42-307(a)(2) and Ark. Code Ann. § 23-42-507(3). Chastain Financial was equally guilty of this securities fraud because as its agent Carla's actions were its actions.

SECURITIES FRAUD
Ark. Code Ann. §§ 23-42-307(a)(3) and 23-42-507(2)

4. Carla's and Chastain Financial's failure to reveal Carla's disciplinary history was securities fraud in violation of Ark. Code Ann. § 23-42-307(a)(3) and Ark. Code Ann. § 23-42-507(2) because it was the omission of a material fact necessary to make the implicit and explicit statements of competence to give investment advice not misleading. This information was material because the disclosure of this information would have significantly altered the total mix of information available to the listeners of her radio show, visitors to the website, the attendees at her free dinner seminars and AR1, AR2, AR3 and AR4. This information would have been seen by a reasonable investor as significant or important in deciding whether to take her advice to sell their securities holdings and use the proceeds to purchase EIAs. The disclosure of this information would have been significant because it would have called into question the trustworthiness and competence of Carla and Chastain Financial. Specifically,

had a reasonable investor known of the 2005 ASD order, which found that Carla had engaged in telling all her clients she was crafting an individualized investment strategy for them when in reality she invested over 90% of her clients in the same extremely high risk investments and then excessively traded (churned) them, resulting in huge losses, it would have questioned Carla's assertions to prospective investors that she would perform an examination of each investor's financial situation and craft a retirement income plan specific to each of them. This is especially true in light of the fact that she was limited to insurance products and usually–virtually always–sold only EIAs.

STEPHEN B. CHASTAIN LIABILITY

5. Stephen is personally responsible for these violations for two reasons.

   a. As an equal co-owner of Chastain Financial owning one-half of the business, Stephen occupied a position of responsibility and authority to determine and oversee Chastain Financial's business conduct. More specifically, by owning half the business he had a veto power. Only by mutual agreement could Chastain Financial take any action. In that position he could have prevented Chastain Financial from acting as an unregistered investment adviser in violation of Ark. Code Ann. § 23-42-301(c) and in committing securities fraud in violation of Ark. Code Ann. §§ 23-42-307(a)(2), 23-42-307(a)(3), 23-42-507(2) and 23-42-507(3), but instead facilitated these violations by doing nothing. Stephen is therefore personally responsible for the violations of Ark. Code Ann. §§ 23-42-301(c), 23-42-307(a)(2), 23-42-307(a)(3), 23-42-507(2) and 23-42-507(3).

   b. In the case of AR1's second EIA purchase, only Stephen was authorized to transact business for the insurance company that issued the second EIA, but he allowed Carla to represent that insurance company and sell the EIA to AR1, thereby earning the

commission for the sale of the EIA for Stephen. Although the insurance company forms show Stephen as the agent selling the EIA, it also shows Chastain Financial as the insurance agency selling the EIA. Again, Stephen was in a position as the owner of half of Chastain Financial to prevent this sale of securities to purchase the second EIA with the proceeds, but instead facilitated it. Stephen is therefore personally responsible for the violations of Ark. Code Ann. §§ 23-42-307(a)(2), 23-42-307(a)(3), 23-42-507(2) and 23-42-507(3) in that instance.

ORDER

IT IS THEREFORE ORDERED that Chastain Financial, LLC, Carla Chastain and Stephen B. Chastain, as well as others whose identities are not yet known who are employed by or otherwise affiliated with Chastain Financial, LLC, Carla Chastain or Stephen B. Chastain who receive actual notice of the order,

CEASE AND DESIST from any further actions in the State of Arkansas that constitute:

1) the giving of investment advice for compensation, i.e., acting as an investment adviser or investment adviser representative, until such time as the persons and entities offering such investment advice for compensation are all properly registered or shown to be exempt from registration pursuant to the Arkansas Securities Act, and

2) securities fraud.

A hearing on this Order shall be held if requested by any Respondent in writing within thirty days of the date of the entry of this Order, or if otherwise ordered by the Arkansas Securities Commissioner. Such request should be addressed to the Commissioner and submitted to the following address:

Arkansas Securities Commissioner
201 East Markham, Suite 300
Little Rock, Arkansas 72201

If no hearing is requested and none is ordered by the Commissioner, this Order will remain in effect until it is modified or vacated by the Commissioner. Ark. Code Ann. §23-42-209(a)(2)(B).

IT IS SO ORDERED.

B. Edmond Waters
Arkansas Securities Commissioner

Aug 5th 2019
Date