

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

Case No. S-18-0085

Order No. S-18-0085-21-OR03

IN THE MATTER OF
JOHN C. HAMILTON

CONSENT ORDER

This consent 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 John C. Hamilton in full settlement of all claims contained in a complaint filed by the Staff on May 29, 2020, and any other claims that could have been brought against Hamilton by the Staff in the factual situation set out below.

Hamilton 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 for the purpose of settling this matter and avoiding costly litigation and agrees to abide by its terms.

FINDINGS OF FACT

1. John C. Hamilton, CRD No. 5506278, is an Arkansas resident. He is also licensed with the Arkansas Insurance Department as a resident producer insurance agent, License/NPN No. 7475151. During the calendar years of 2015 and 2016, Hamilton worked at the Little Rock

ARKANSAS SECURITIES DEPARTMENT

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office of Iron Horse Financial (Iron Horse), an insurance agency of Guardian Life Insurance Company of America (Guardian) located in Baton Rouge, Louisiana. Iron Horse was also a branch office of Park Avenue Securities, LLC, (Park Avenue) an investment adviser and broker-dealer wholly owned by Guardian. Hamilton was registered as a broker-dealer agent of Park Avenue from January 23, 2015 until June 25, 2019 and was appointed as an agent of Guardian.

2. Hamilton was the regional vice president and managing director of the Little Rock office of Iron Horse, which made him the equivalent of the branch manager for both the insurance agency and the Park Avenue branch office.
3. Most of the business done at this office was insurance.
4. Andrew Steven Lee, an Arkansas resident, licensed in Arkansas as a resident producer insurance agent, License/NPN No. 17254210, was employed as an insurance agent at Iron Horse during the time of the relevant events set out herein. Lee was not registered in any capacity pursuant to the Act. Hamilton was his supervisor.
5. Before the relevant events of this order occurred, Lee had sold his grandmother a Guardian life insurance policy as an investment. AR1, who was 72 years old at the time, was an old friend and contemporary of Lee's grandmother and was interested in something similar. She began talking to Lee about something similar beginning sometime in 2015. As AR1 understood it, the investment involved the use of the life insurance policy by the heirs of Lee's grandmother in a way that would give them a tax free income. This would be accomplished, AR1 thought, by taking loans from the insurance policy and not repaying them.

6. Even though she came in asking for what Lee's grandmother had purchased, Lee and Hamilton discussed AR1's objectives and learned that she wanted to be able to direct where her money would go upon her death, and she was averse to taxes and risk. Specifically, AR1 wanted to put money back for her only child, a daughter, and her two grandchildren. She wanted to make sure any money she invested would not lose value and there would be little to no taxes involved. Hamilton was involved in almost every conversation Lee had with AR1.
7. AR1 had two accounts at a broker-dealer/investment adviser that had been managed by her husband who had died several years before. One account was an individual retirement account (IRA), often referred to as a qualified account, and the second account was non-qualified. The IRA had about \$300,000 of securities in it, and the other account had about \$200,000 of securities in it. Hamilton and Lee viewed records of these accounts online after AR1 obtained a username and password to her account.
8. Eventually, Hamilton and Lee worked out a \$500,000 investment in a Guardian life insurance policy. Hamilton oversaw Lee's activities in putting this plan together. Hamilton's activities in the drafting of the plan were essential, and Lee would not have been able to put it together without Hamilton's assistance.
9. Upon Lee and Hamilton's recommendation and advice, AR1 in June 2016 called the investment adviser representative (IAR) who worked with her on her two securities accounts from a speaker phone at the Iron Horse office with Hamilton and Lee present to obtain the \$500,000 to fund this investment. AR1 told IAR to withdraw \$300,000 from the IRA and \$200,000 from the other account to purchase an annuity. IAR told her that she must be buying two annuities, one qualified and one non-qualified, because you cannot mix the two

types. AR1 hesitated for a moment, but at the urging of Lee, she insisted on withdrawing the requested amounts from each of the two accounts. Hamilton, being present in the hearing of this confirmation and being Lee's supervisor, tacitly approved Lee's direction to AR1 to take a \$300,000 withdrawal from her IRA and adopted it as his own.

10. AR1 obtained the money and purchased a Guardian life insurance policy on the life of her 49-year-old son-in-law. (Guardian declined AR1 as the insured for health reasons.) Immediately after the June 2016 telephone call but before the \$500,000 requested was received, AR1 asked Lee and Hamilton about her tax liability in this transaction and was told that it would be about \$1,000. In April 2017 AR1 found out from her tax accountant that the \$300,000 withdrawal from her IRA resulted in a tax bill of about \$120,000.
11. This life insurance policy on the life of her then 49-year old son-in-law had a death benefit worth over \$2 million, and the yearly premium was approximately \$63,000. Although AR1 prepaid some six years in premiums, and Hamilton and Lee advised AR1 that she would not need to pay premiums after that time period, that was not a certainty and was dependent on factors beyond AR1's control.
12. Both Lee and Hamilton were paid commissions on the sale of the life insurance policy to AR1.

CONCLUSIONS OF LAW

13. The Commissioner has jurisdiction over this matter pursuant to Ark. Code Ann. § 23-42-308.
14. Ark. Code Ann. § 23-42-102(8) defines investment adviser as a person who engages in the business of advising others, directly or indirectly, as to the value of securities or the

advisability of investing in, purchasing or selling securities, for compensation. This is true regardless of whether the person being given the advice has a contract with the investment adviser or investment adviser representative and whether the person giving the advice is registered under the Act as an investment adviser or investment adviser representative or not. When Hamilton advised AR1 to liquidate securities to purchase a life insurance policy as an investment, he acted as an investment adviser without being registered as such in violation of Ark. Code Ann. § 23-42-301(c).

15. When Lee and Hamilton told AR1 that her tax liability for the liquidation of securities in her IRA for use in purchasing a Guardian life insurance policy on her son-in-law would be about \$1,000, they made a material misstatement of fact in the course of giving investment advice for compensation, which was a violation of Ark. Code Ann. § 23-42-307(a)(3).
16. In recommending that AR1 liquidate securities and replace them with the life insurance policy with the intention of using the life insurance policy not as insurance on her son-in-law's life but as an investment vehicle, Hamilton and Lee recommended the sale of securities without reasonable grounds for believing that the recommendation was suitable for AR1 and appropriate to reach the goals she had in mind. This was a violation of Rule 308.02(a), Rules of the Arkansas Securities Commissioner. The violation of this rule is grounds for revocation or suspension pursuant to Ark. Code Ann. § 23-42-308(a)(2)(G).

UNDERTAKING

In settlement of this matter, but without admitting or denying the findings of fact made above, Hamilton agrees with the Staff to not reapply for registration pursuant to the Act in any

capacity and specifically as a investment adviser or representative of an investment adviser for five years from the date of this order.

OPINION

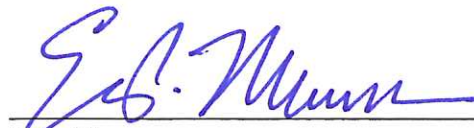
This order is in the public interest. The facts set out in ¶¶ 1 - 12 support the violations of the Act and Rules set out in ¶¶ 14 - 16

ORDER

IT IS THEREFORE ORDERED that:

1. Hamilton's registration with Park Avenue is hereby revoked as of the last date on which his registration was effective in Arkansas in accordance with Ark. Code Ann. § 23-42-308(a)(2)(B) and § 23-42-308(e)(3).
2. In accordance with Hamilton's undertaking, no application for registration for any capacity pursuant to the Act— including but not limited to broker-dealer, agent of a broker-dealer, investment adviser and representative of an investment adviser— will be accepted or granted within five years from the date of this order.

WITNESS MY HAND AND SEAL this 4th day of May, 2021.

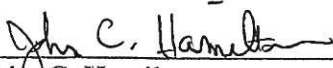


Eric Munson
ARKANSAS SECURITIES COMMISSIONER

CONSENT TO ENTRY OF ORDER

John C. Hamilton hereby acknowledges that he has been served with a copy of this Order, has read it, is aware of his right to a hearing and has waived that right. He acknowledges that he is consenting to the entry of this order, including the undertaking that is a part of this order, voluntarily after consulting with counsel and that no threats, offers, promises or inducements of any kind have been made by any member of the Staff to induce him to consent to the entry of this order.

This consent order represents a compromise of disputed claims and is the result of negotiations between the Staff and Hamilton. While Hamilton contended throughout the negotiations that the \$1,000 figure he and Lee placed on AR1's anticipated tax liability came from AR1's former investment adviser representative, Hamilton agrees now to that finding even though he still denies that it is accurate only to compromise and settle disputed claims, avoid the uncertainties of litigation and its attendant costs and to buy peace. No provision contained herein is meant or shall be construed as an admission of liability by Hamilton.


John C. Hamilton

Signed this 29th day of April, 2021.

APPROVED AS TO FORM AND CONTENT

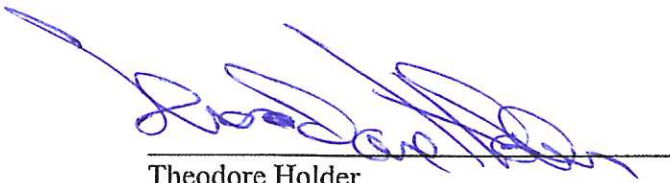
David B
Vandergriff

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Date: 2021.05.03 09:35:39 -05'00'

Signed this 3rd day of May, 2021

David B. Vandergriff
Attorney for John C. Hamilton

APPROVED AS TO FORM AND CONTENT



Signed this 3rd day of April, 2021.

Theodore Holder
Attorney for the Staff