

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

Case No. S-18-0085

Order No. S-18-0085-21-OR04

IN THE MATTER OF
ANDREW S. LEE

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 Andrew S. Lee in full settlement of all claims that could have been brought against Lee by the Staff in the factual situation set out below.

Lee 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.

This order replaces the cease and desist order entered against Lee on June 4, 2020 bearing No. S-18-0085-20-OR02.

FINDINGS OF FACT

1. Lee, an Arkansas resident, is licensed in Arkansas as a resident producer insurance agent, License/NPN No. 17254210. Lee was not registered in any capacity pursuant to the Act.

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2. During the time of the relevant events set out herein, Lee was employed as an insurance agent at the Little Rock office of Iron Horse Financial (Iron Horse), which is an insurance agency of Guardian Life Insurance Company of America (Guardian) and a branch office of Park Avenue Securities, LLC, (Park Avenue), an investment adviser and broker-dealer wholly owned by Guardian. Iron Horse's main office is located in Baton Rouge, Louisiana
3. John C. Hamilton, an Arkansas resident licensed with the Arkansas Insurance Department as a resident producer insurance agent, License/NPN No. 7475151, and registered as a broker-dealer agent of Park Avenue, CRD No. 5506278, 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. Hamilton was Lee's supervisor at Iron Horse.
4. Before the relevant events of this order occurred, Lee had sold his grandmother a Guardian life insurance policy as an investment. AR1, an old friend and contemporary of Lee's grandmother who was 72 years old at the time, was interested in something similar and began talking to Lee about something similar beginning sometime in 2015. Hamilton was involved in almost every conversation Lee had with AR1.
5. 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. After talking to AR1, Lee and Hamilton discovered exactly what AR1 was seeking. 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.

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. Lee and Hamilton viewed records of these accounts online after AR1 obtained a username and password to her account. It was plain to see that one of the accounts was an IRA.
8. Eventually, Lee and Hamilton recommended a \$500,000 investment in a Guardian life insurance policy.
9. Upon Lee and Hamilton's recommendation and advice, AR1 in June 2016 called the investment adviser representative (IAR) who was assigned to her two securities accounts using a speaker phone at the Little Rock Iron Horse office with Lee and Hamilton present to obtain the \$500,000 to fund this investment. AR1 told IAR to withdraw \$300,000 from the IRA (although AR1 did not understand that it was an 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, insisted on withdrawing the requested amounts from each

of the two accounts.

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.) Minutes after the June 2016 telephone call and well 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. It took some time for the securities to be liquidated and checks delivered to AR1. The application for the life insurance policy was not completed for another week and the policy was not paid for and delivered until late August 2016. In April 2017 AR1 found out from her tax accountant that the \$300,000 withdrawal from her IRA– the qualified account– resulted in a tax bill of about \$120,000. Had AR1 known the tax liability involved in taking the \$300,000 out of her IRA would be around \$120,000, she would not have decided to purchase the policy.
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. The plan was to make what are called paid up additions which were prepaid premiums that were intended to grow by dividends that were anticipated from Guardian and would pay the remaining premiums. AR1's son-in-law, the insured, was also a part owner and could take out loans from the insurance policy. By not repaying these loans, according to the theory and the plan, AR1's daughter and son-in-law could have the use of the money AR1 had invested in the policy tax free. Although AR1 prepaid some six years in premiums, and Lee and Hamilton advised AR1 that she would not need to pay premiums after that time period, that was not a certainty and was dependent on whether the paid up additions would perform well enough to

pay future premiums, something well 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. § 23-42-209
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. By advising AR1 to liquidate securities and replace them with a life insurance policy on the life of her son-in-law, Lee acted as an investment adviser because he delivered advice to AR1 concerning the advisability of selling securities for compensation, which was the commission for the sale of the life insurance policy. Lee was not registered in accordance with the Act as an investment adviser or representative of an investment adviser. The giving of this advice for compensation without registration as an investment adviser or representative of an investment adviser was a violation of Ark. Code Ann. § 23-42-301(c).
15. When Lee advised AR1 to liquidate securities worth \$300,000 from her IRA in order to partially fund the purchase of a life insurance policy on the life of her son-in-law and minutes later told her that her tax liability for the liquidation of those securities would be about \$1,000, when AR1 still had plenty of time to reconsider the purchase of the life insurance policy, he 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).

UNDERTAKING

In settlement of this matter, but without admitting or denying the findings of fact made above, Lee agrees with the Staff not to apply 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 and 15

ORDER

IT IS THEREFORE ORDERED that, In accordance with Lee's undertaking, no application for registration for any position pursuant to the Act- including but not limited to broker-dealer, agent of a broker-dealer, investment adviser or representative of an investment adviser- will be accepted or granted for 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

Andrew S. Lee 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, 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 Lee. While Lee contended throughout the negotiations that the \$1,000 figure he and Hamilton placed on AR1's anticipated tax liability came from AR1's former investment adviser representative, Lee 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 Lee.



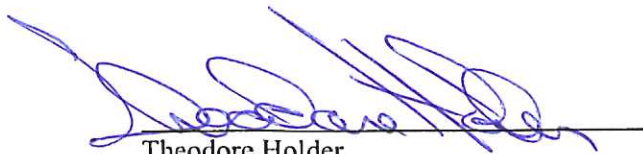
Andrew S. Lee Signed this 29th day of April, 2021.

APPROVED AS TO FORM AND CONTENT

David B Vandergriff
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David B. Vandergriff
Attorney for Andrew S. Lee Signed this 3rd day of May, 2021

APPROVED AS TO FORM AND CONTENT



Theodore Holder
Attorney for the Staff Signed this 3rd day of May, 2021.