

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
TWELFTH DIVISION

A. HEATH ABSHURE,
ARKANSAS SECURITIES COMMISSIONER

PLAINTIFF

vs.

No. 60CV-13-1701

THOMAS E. JAMES;
TJAMES INVESTMENT SERVICES

DEFENDANTS

CONSENT JUDGMENT

The Plaintiff, A. Heath Abshure, Arkansas Securities Commissioner ("Securities Commissioner") filed this action pursuant to the Arkansas Securities Act (the "Act"), codified at Ark. Code Ann. §§ 23-42-101 through 509. The Securities Commissioner and Defendants Thomas E. James ("James") and TJames Investments Services ("TJames Investments") (sometimes collectively referred to as "the parties") wish to resolve this action and have reached an agreement for a settlement in this matter. The parties assert that this Consent Judgment has been negotiated in good faith and that its terms constitute a fair and reasonable settlement of all contested issues between the parties. Based upon the facts and matters before this Court, and with the consent of the parties, it is hereby ORDERED, ADJUDGED, AND DECREED:

JURISDICTION AND VENUE

1. The Securities Commissioner brought this action pursuant to Ark. Code Ann. § 23-42-209, which permits the Securities Commissioner to bring an action in the Pulaski County Circuit Court seeking injunctive relief and relief ancillary to injunctive relief as may be appropriate in the public interest, including but not limited to obtaining an accounting, disgorgement, restitution, and the assessment of a fine, in any case where it appears to the

Securities Commissioner upon sufficient grounds that any person has engaged or is about to engage in any violation of the Act. The Securities Commissioner is the proper person to bring this action. James and TJames Investments are subject to the provisions of the Act and the jurisdiction of this Court through their business dealings in the state of Arkansas, as same are detailed below.

2. For purposes of this Consent Judgment, the parties waive all objections and defenses they may have to the jurisdiction or venue of the Circuit Court of Pulaski County, Arkansas, and shall not challenge the Court's jurisdiction in any subsequent action to enforce the terms of this Consent Judgment.

PARTIES BOUND

3. This Consent Judgment applies to and is binding upon the parties. Any change in ownership or status of a party, including, but not being limited to, any transfer of assets or personal property, shall in no way alter such parties' responsibilities under this Consent Judgment.

4. This Consent Judgment constitutes the entire agreement of the parties. The undersigned acknowledge that there are no communications or oral understandings contrary, different, or which in any way restrict this Consent Judgment and that any and all prior agreements or understandings within the subject matter of this Consent Judgment are, upon the effective date of the Consent Judgment, superseded, null, and void.

5. This Consent Judgment resolves and releases all civil claims, causes of action, or proceedings which were or could have been asserted by the Securities Commissioner against James and/or TJames Investments for those practices and transactions alleged within the original Complaint. Nothing within this Consent Judgment, however, precludes the Securities

Commissioner from instituting any cause of action against any party not a signatory to this Consent Judgment. Nor shall this release or in any way limit the authority of the Securities Commissioner to conduct such investigations as he deems advisable or to bring any enforcement action regarding alleged violations of law unrelated to the original Complaint or occurring after the date of this Consent Judgment. Also, the Securities Commissioner is empowered to seek enforcement of any and all sections of this Consent Judgment by appropriate action with this Court.

6. Nothing in this Consent Judgment shall be construed to deprive any person or entity not a signatory hereto of any private right of action of any kind whatsoever, nor shall this Consent Judgment be construed to create any private right of action for any person or entity not a signatory hereto.

7. Nothing herein shall be construed as the endorsement of, or acquiescence in, any course of conduct by James or TJames Investments, past, current, or future; and, James and TJames Investments shall make no representations to the contrary.

8. This Consent Judgment will be construed and enforced under the laws of the state of Arkansas.

FINDINGS OF FACT

James and TJames Investments have agreed to this settlement without admitting or denying the findings of fact or conclusions of law set forth in this section, to-wit:

9. James is an individual currently residing in Washington County, Arkansas. James is a former broker-dealer agent who was at one time employed by Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and was registered with the Arkansas Securities Department ("Department") in that capacity from May 11, 2006, to December 19, 2008.

However, James has not been registered with the Department as a broker-dealer agent or in any other capacity since he was terminated from Merrill Lynch and his registration with the Department subsequently lapsed on December 22, 2008.

10. TJames Investments is a non-incorporated entity located in the state of Arkansas with a mailing address of P.O. Box 11197, Fort Smith, Arkansas 72917. TJames Investments is a trade name through James has transacted investment business. TJames Investments has never been registered with the Department in any capacity.

11. Through TJames Investments, James began to solicit investment funds from residents of Fort Smith, Arkansas who he had known from being raised in the community. When soliciting the investment funds, James held himself out to be an accredited broker-dealer agent through LPL Financial, LLC ("LPL") with access to a privileged, high-yield United States Treasury Bond Fund. James represented that any investment in the United States Treasury Bond Fund bore minimal risk.

(a) From February 2012 to April 2013, James solicited and accepted funds from Arkansas Resident One ("AR1") for purposes of investment. James accepted a total of \$66,500.00 from AR1 by way of three separate transactions over that time period. As evidence of the investment, James provided AR1 with a financial statement showing that James was a licensed agent with LPL; that James held the titles of Certified Financial Planner ("CFP"), Certified Investment Management Analyst ("CIMA"), and Chartered Retirement Planning Counselor ("CRPC"); and that AR1's money was invested in a United States Treasury Bond Fund yielding 23.9% interest with a 180-day maturity date.

(b) On February 23, 2012, James solicited and accepted \$10,000.00 from Arkansas Resident Two ("AR2") for purposes of investment. As evidence of the investment,

James provided AR2 with a financial statement showing that James was a licensed agent with LPL; that James held the titles of CFP, CIMA, and CRPC; and that AR2's money was invested in a United States Treasury Bond Fund yielding 31.8% interest with a 180-day maturity date.

(c) On August 6, 2012, James solicited and accepted \$35,000.00 from Arkansas Resident Three ("AR3") for purposes of investment. As evidence of the investment, James provided AR3 with a financial statement showing that James was a licensed agent with LPL; that James held the titles of CFP, CIMA, and CRPC; and that AR3's money was invested in a United States Treasury Bond Fund yielding 27.6% interest with a 180-day maturity date.

12. In addition to the investors referenced above, James also solicited and accepted \$10,000.00 in investment funds from Arkansas Resident Four ("AR4") on February 7, 2013. AR4 was a school teacher James met while giving a financial advice seminar at a high school in Washington County, Arkansas. As evidence of the investment, James provided AR4 with a financial statement showing that James was a licensed agent with LPL; that James held the titles of CFP, CIMA, and CRPC; and that AR4's money was invested in a United States Treasury Bond Fund yielding 26.2% interest with a 270-day maturity date.

13. Contrary to the misrepresentations made to the aforementioned investors, James was never a registered broker-dealer agent with LPL and never held the titles of CFP, CIMA, or CFPC. James had not been a registered agent with any registered broker-dealer since his registration with Merrill Lynch lapsed on December 22, 2008.

14. Additionally, the high-yield United States Treasury Bond Fund to which James claimed he had access did not exist. Instead of investing the investor's money as represented, James converted the funds for personal use and expended the money on meals, entertainment, clothing, vacations, and other miscellaneous expenses.

15. Subsequent to the Securities Commissioner filing a Complaint for Ex Parte Temporary Restraining Order with this Court on April 18, 2013, James has made restitution payments to investors in a total amount of \$116,500.00, constituting payment in full to the within named investors for all funds invested through James. On May 7, 2013, James made full restitution to AR1 in the amount of \$66,500.00. On May 23, 2013, James made full restitution to AR2 in the amount of \$10,000.00. On May 23, 2013, James made full restitution to AR3 in the amount of \$35,000.00. On May 23, 2013, James made full restitution to AR4 in the amount of \$10,000.00.

16. Ark. Code Ann. § 23-42-501 provides that it is unlawful for any person to transfer or sell any security unless it is registered, exempt, or a covered security. The investments offered by James to investors were securities as defined by Ark. Code Ann. § 23-42-102(15)(A). The investments were not registered pursuant to the Act and did not qualify for any exemption from registration under the Act or any federal statute or rule. Therefore, James violated Ark. Code Ann. § 23-42-501 by offering and selling unregistered, non-exempt securities to investors in Arkansas.

17. Ark. Code Ann. § 23-42-301(a) prohibits any person from transacting business in Arkansas as a broker-dealer agent without first being registered to do so. James acted as an unregistered broker-dealer agent when he offered and sold investments as set forth above.

18. Ark. Code Ann. § 23-42-507 makes it unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, (1) to employ any device, scheme, or artifice to defraud; (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or (3) to engage in any act, practice,

or course of business which operates or would operate as a fraud or deceit upon any person. James violated Ark. Code Ann. § 23-42-507(1) by generating and providing investors with fictitious account statements which misrepresented his credentials and the nature of the investment. James violated Ark. Code Ann. § 23-42-507(2) when he made untrue statements to investors in connection with the offer of a security by representing that he was a registered agent with LPL; that he held the professional designations of CFP, CIMA, and CRPC; and that he had access to a high-yield United States Treasury Bond Fund which did not exist. James violated Ark. Code Ann. § 23-42-507(3) when he conducted a course of business which operated as a fraud upon investors by engaging in acts that ultimately converted investor funds for his unauthorized personal use.

RELIEF

19. James is hereby enjoined from offering or selling any security in the state of Arkansas unless and until the security is properly registered with the Department or is offered or sold pursuant to an exemption from registration under the Act, and unless and until James is properly registered under the Act or is acting pursuant to an exemption from registration under the Act.

20. James is hereby enjoined from engaging in any fraudulent activity in connection with the offer or sale of any security in the state of Arkansas.

21. James is hereby permanently barred from serving as an officer, director, or managing member of a company or limited liability company that offers or sells securities in the state of Arkansas.

IT IS SO ORDERED.

Alice S. Gray
ALICE S. GRAY, CIRCUIT COURT JUDGE

Date: 3-13-14

Judge *Alice S. Gray*
Date *3-13-14* Div *12th*

PREPARED AND PRESENTED BY:

J. Campbell McLaurin III
J. Campbell McLaurin III (No. 08-280)
Arkansas Securities Department
201 East Markham Street, Suite 300
Little Rock, Arkansas 72201
Telephone: (501) 324-8670
Facsimile: (501) 324-9268
Counsel for the Commissioner

Jury Trial

Bench Trial

Non-Trial

APPROVED BY:

Peter G. Kumpe
Peter G. Kumpe (No. 72-073)
Williams & Anderson PLC
111 Center Street, Suite 2200
Little Rock, Arkansas 72201
Telephone: (501) 396-8431
Facsimile: (501) 396-8531
Counsel for the Defendants