

STATE OF ARKANSAS
SECURITIES DEPARTMENT

IN THE MATTER OF

LEON ADELBERT SZAMOCKI,

No. 01-2-S

CEASE AND DESIST ORDER

The Staff of the Arkansas Securities Department (the Staff) has received information and has in its possession certain evidence which indicates that LEON ADELBERT SZAMOCKI has violated provisions of the Arkansas Securities Act (the Act), codified at Ark. Code Ann. §§ 23-42-101, *et seq.* (Repl. 1994), as well as various Rules of the Arkansas Securities Commissioner (the Rules).

FINDINGS OF FACT

1. Leon Adelbert Szamocki (Szamocki) is an individual with business addresses at P. O. Box 266, Cherokee Village, Arkansas, 72525, and P. O. Box 626, Prospect Heights, Illinois, 60070.
2. Pursuant to a consumer complaint, a member of the Staff called Szamocki on 17 March 2000 to ask about his business and his registration. In the course of this conversation Szamocki was asked about a newspaper advertisement he ran that made the following claims: 1) "DIRECT REDUCTION of Federal Income Tax up to \$5,000.00/(Plus a monthly check reflecting a 14% APR)", 2) "150% GUARANTEED 5 YEAR INSURED FIXED RETURN," 3) "11% 24 Month Income Program secured by debt free RE," 4) "7

- ½ % 5 year fully Insured Income Program” and 5) “Selected Annuity programs offering 7 ¼ % +.” Szamocki represented himself in this advertisement as “Lee Szamocki - RIA,” i.e., registered investment adviser, employed by Escorp Planning Associates.
3. On the same date Szamocki mailed a letter to this member of the Staff in response. In the letter Szamocki stated, “Illinois is where my registrations and various licensing reside.” The stationery on which this letter was typed bore the letterhead of “Escorp . . . Financial Services Group/Planning Associates/Registered Investment Advisors.” It showed two addresses: 1) P. O. Box 626, Prospect Heights, Illinois, 60070 and 2) Ozark Branch, P. O. Box 266, Cherokee Village, Arkansas, 72525.
 4. A second consumer complaint showed that Szamocki used a business card that represented him to be a registered representative of Legacy Financial Services, headquartered at 1179 North McDowell Boulevard, Petaluma, California., 94954. This card also listed Szamocki’s addresses as the same two addresses in Prospect Heights, Illinois and Cherokee Village, Arkansas set out on the letterhead of the letter discussed in ¶ 3, above.
 5. In both of these complaints the advertisement mentioned in ¶ 2, above, which ran in local newspapers in the Cherokee Village area, was mentioned.
 6. A search of all registration records in the United States shows that Szamocki had been registered from February, 1997 to 31 December 1997 with Legacy Financial Services, Inc., of the same address in Petaluma, California mentioned in ¶ 4, above, a registered broker-dealer offering investment adviser services as well, but was not registered with

Legacy Financial Services, Inc., at any time relevant herein.

7. A search of all registration records in the United States shows that Escorp Planning Associates, mentioned in ¶ 3, above, is not registered as an investment adviser or a broker-dealer with any regulatory agency in the United States.
8. A search of all registration records in the United States shows that Szamocki is not registered with any securities authority as an agent of any registered broker-dealer or investment adviser and is not registered individually as a broker-dealer or an investment adviser.
9. Enclosed with Szamocki's letter of 17 March 2000 to the Staff were brochures on two investments Szamocki was offering, to wit, Alpha Telcom, Inc. and National Equipment Providers, LLC, which Szamocki said was "the promotional material which discusses the information in my tax credit ad," the newspaper advertisement discussed in ¶ 2, above.
10. Alpha Telcom, Inc. (Alpha Telcom), located at 2751 Highland Avenue, Grants Pass, Oregon 97526, sells pay telephones and telephone service agreements (Agreements) whereby Alpha Telcom would locate the telephone, install it, collect all revenue from the telephone's operation, repair the telephone when necessary and repurchase the telephone at a later date, all for a monthly fee. Alpha Telcom asserts in this brochure that it has the expertise to perform these services, and it is clear that the sale of Agreements is the primary business of Alpha Telcom and not merely incidental to the sale of telephones. Several states have found these Agreements to be securities in the form of investment contracts that were sold without proper registration:

- A) The Pennsylvania Securities Commission issued a cease and desist order against Alpha Telcom on 2 February 1999.
 - B) The Wisconsin securities regulatory authority issued a cease and desist order against Alpha Telcom on 18 November 1999.
 - C) The Illinois securities regulatory authority entered a consent order of prohibition against Alpha Telcom on 18 January 2000.
10. The existence of these orders was not disclosed by either the brochure for Alpha Telcom, or Szamocki.
11. A search of the records of the Arkansas Securities Department (the Department) shows no registration or proof of exemption filed for Alpha Telcom Agreements.
12. National Equipment Providers, LLC (National), located at 1331 Gaerky Creek Road, Ashland, Oregon 97520 and at 1200 Washington Road, Suite 203, Washington, Pennsylvania 15301, sells automatic teller machines (ATM's) and service agreements (Agreements) whereby National would locate the ATM, install it, collect all revenue from its operation, repair it if necessary and provide signage and advertising, all for a monthly fee. According to the brochure, investors in National play only a passive role and are led to expect profits based on the efforts of others.
13. A search of the records of the Department shows no registration or proof of exemption filed for National Agreements.

CONCLUSIONS OF LAW

14. Ark. Code Ann. § 23-42-102(15)(A)(xi) (Supp. 1999) in pertinent part defines a security as an investment contract.
15. Ark. Code Ann. § 23-42-501 (Repl. 1994) provides that it is unlawful for any person to offer or sell any security which is not registered or which is not exempt from registration under the terms of the Act.
16. Ark. Code Ann. § 23-42-301(a) (Repl. 1994) prohibits as unlawful the transaction of business as a broker-dealer or agent by any person who is not registered with the Arkansas Securities Department as such.
17. Ark. Code Ann. § 23-42-301(c) (Supp. 1999) permits one to transact business as an investment adviser or representative of an investment adviser only if an individual is registered with the Arkansas Securities Department or the Securities and Exchange Commission. If the individual is registered with the Securities and Exchange Commission, he or she must file a notice with the Department showing registration with the Securities and Exchange Commission.
18. Ark. Code Ann. § 23-42-507(2) and (3) (Repl. 1994) provides that it is unlawful for any person in connection with the offer or sale of any security to make any untrue statement or omit to state a material fact necessary in order to make the statements made not misleading in light of the circumstances under which they are made or to engage in any act, practice or course of business which operates as a fraud or deceit upon any person.
19. Ark. Code Ann. § 23-42-110 (Repl. 1994) provides that it is unlawful for any person to

make any false or misleading statement in any document filed with the Arkansas Securities Commissioner or his designee, i.e., any member of the Staff.

OPINION

20. This matter has been properly brought before the Arkansas Securities Commissioner in accordance with Ark. Code Ann. §§ 23-42-201 and 209 (Repl. 1994).
21. The investors in Alpha Telcom and National would play only a passive role and not be involved in the day-to-day operations of the enterprises into which they would invest; investors need have no expertise or experience necessary to manage these investments; and, there being no limit on the number of investors, there will be too many investors for them to have any meaningful input into the management of their investments. Because the investors in both Alpha Telcom and National would be involved in a common enterprise with the expectation of profits to be produced only from the managerial efforts of others, these Agreements are investment contracts as defined at Ark. Code Ann. § 23-42-102(15)(A)(xi) (Supp. 1999).
22. Szamocki offered to sell investment contracts in the form of Agreements in Alpha Telcom and National without prior registration of those securities in violation of Ark. Code Ann. § 23-42-501 (Repl. 1994).
23. Szamocki offered to sell securities in the form of Agreements in Alpha Telcom and National without being registered with the Department as a broker-dealer, an agent of a broker-dealer or an agent of the issuer in violation of Ark. Code Ann. § 23-42-301(a)(Repl. 1994).

24. Szamocki held himself out to be and transacted business as a registered investment adviser when he was not registered as an investment adviser anywhere in violation of Ark. Code Ann. § 23-42-301(c) (Supp. 1999).
25. Szamocki represented himself as a registered investment adviser when he was not registered as such anywhere. This was the making of an untrue statement and the engaging in an act, practice or course of business which operated as a fraud or deceit in connection with the offer or sale of a security in violation of Ark. Code Ann. §§ 23-42-507(2) and (3) (Repl. 1994).
26. Szamocki's statements in his newspaper advertisement, discussed in ¶ 2, above, were not substantiated by the brochures about Alpha Telcom and National Szamocki sent to the Staff and were therefore untrue statements made in connection with the offer or sale of a security, which was a violation of Ark. Code Ann. § 23-42-507(2) (Repl. 1994).
27. Szamocki's failure to inform prospective investors of the three cease and desist orders against Alpha Telcom, as set out in ¶ 10, above, was the omission of a material fact in violation of Ark. Code Ann. § 23-42-507(2) (Repl. 1994).
28. Szamocki's statement in his letter to a member of the Staff dated 17 March 2000 that he was registered as an investment adviser in Illinois was a false and misleading statement made in a document filed with the Arkansas Securities Commissioner in violation of Ark. Code Ann. § 23-42-110 (Repl. 1994).

ORDER

IT IS THEREFORE ORDERED that LEON ADELBERT SZAMOCKI, **CEASE AND DESIST** from any further actions in the state of Arkansas in connection with the offer or sale of the securities described above and any other securities until such time as the securities are properly registered or shown to be exempt from registration pursuant to the Arkansas Securities Act and the said LEON ADELBERT SZAMOCKI is properly registered or shown to be exempt from registration pursuant to the Arkansas Securities Act, and, further, that the said LEON ADELBERT SZAMOCKI **CEASE AND DESIST** from acting as an investment adviser in the state of Arkansas until such time as he is properly registered as an investment adviser or shown to be registered with the United States Securities and Exchange Commission.

WITNESS BY HAND and SEAL this th10 day of January, 2001.



Mac Dodson
ARKANSAS SECURITIES COMMISSIONER