# BEFORE THE ARKANSAS SECURITIES COMMISSIONER CASE NO. S-11-0253 ORDER NO. S-11-0253-12-OR02

ARKANSAS SECURITIES DEP

IN THE MATTER OF:

**BRADEN S. HILL (CRD# 2796421)** 

RESPONDENT

#### **CONSENT ORDER**

This Consent Order is entered pursuant to the Arkansas Securities Act, codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509 ("Act"), the Rules of the Arkansas Securities Commissioner ("Rules") promulgated under the Act, and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann. §§ 25-15-201 through 25-15-219, in accordance with an agreement by and between the Staff of the Arkansas Securities Department ("Staff") and Braden Scott Hill ("Hill"), in full and final settlement of all claims that could be brought against Hill by the Staff on the basis of the facts set forth herein.

Hill 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, agrees to abide by its terms in the settlement of any possible violations committed by Hill concerning the matters detailed in this order.

#### RESPONDENT

- 1. Hill (CRD# 2796421) is a resident of Rogers, Benton County, Arkansas.
- 2. Hill originally became registered as a broker-dealer agent in Arkansas on October 9, 1996. Hill originally became registered as an investment adviser representative in Arkansas on August 25, 2006.

- 3. Hill was registered as a broker-dealer agent in Arkansas with Summit Brokerage Services, Inc. (CRD# 34643) ("Summit Brokerage") from January 29, 2008, until March 12, 2012, and as an investment adviser representative in Arkansas with Summit Financial Group, Inc. (CRD# 109485) (with Summit Brokerage, collectively "Summit"), from February 6, 2008, until March 12, 2012. Hill was an independent contractor of Summit through his company Pinnacle Hills Financial Services, LLC ("Pinnacle"), and ran his branch office at 4201 West New Hope Road, Suite 102, Rogers, Arkansas 72758, under the Pinnacle name.
- 4. Hill was discharged by Summit on February 21, 2012. As stated in a Central Registration Depository Form U5 Amendment, the Uniform Termination Notice for Securities Industry Registration ("Form U5"), filed by Summit Brokerage on March 21, 2012, Hill was discharged for "failing to follow firm policy regarding submission of marketing materials for review prior to use. After initially denying the allegations and producing 'evidence' to support his position, [Hill] admitted that the violations had occurred and that he had fabricated the 'evidence.'"
- 5. Prior to Hill's affiliation with Summit, he was registered as a broker-dealer agent in Arkansas with Crews & Associates, Inc. (CRD# 8052) ("Crews"), from February 4, 2002, until September 25, 2007; and as an investment adviser representative from August 3, 2006, until September 25, 2007. When Hill terminated his employment with Crews in order to apply for registration with another firm, Crews discovered certain discrepancies in deposits made in the branch office where Hill had worked. As stated in a Form U5 filed by Crews on October 15, 2007, Crews conducted an internal review regarding Hill's involvement with the deposit discrepancies and discovered the following:

A. Unauthorized transaction in a customer account[;] B. Commingling of personal monies with three (3) separate customer accounts on five (5) separate occasions[;]

- C. Fail[ing] to notify Crews of a customer complaint[;] D. Personally guaranteeing at least two separate customer accounts against loss; E. Violation of Crews employment agreement when [Hill] took Crews customer account information[;] F. Violation of Crews policies and procedures regarding items A. through D. above, as well as the violation of Crews procedures providing for the confidentiality of Crews customer account information.
- 6. Based upon an investigation of the circumstances surrounding Hill's departure from and internal review by Crews, the Staff issued a Letter of Caution against Hill on or about November 19, 2007. Documents and information gathered by the Staff supported a finding that Hill had guaranteed clients against losses, failed to report customer complaints to Crews, and circumvented the supervision procedures of Crews, in violation of Rules 308.01(B) and (V) of the Rules then in effect. According to account records, between on or about March 2007 and September 2007, Hill had deposited checks into the bank accounts of three separate clients to compensate the three clients for losses in their accounts, without notifying Crews. The Letter of Caution placed Hill under extraordinary and heightened supervision for a period of one year beginning on January 29, 2008, which was the date Hill became registered as a broker-dealer agent in Arkansas with Summit Brokerage. Additionally, the Letter of Caution indicated that further violations of the Act or the Rules would result in formal proceedings to deny, suspend, or revoke Hill's agent registration or exact a fine or other action.
- 7. The Financial Industry Regulatory Authority ("FINRA"), formerly known as the National Association of Securities Dealers ("NASD"), is the federal self-regulatory organization for securities firms in the United States. On August 8, 2008, FINRA accepted a Letter of Acceptance, Waiver, and Consent ("AWC") submitted by Hill in FINRA Case No. 2007010706601 regarding the allegations by Crews detailed above in paragraph 5. Without admitting or denying the findings, Hill consented to the FINRA sanctions of a ten-day suspension and a fine of \$5,000.00 for violations of NASD Conduct Rule 2110 (Standards of

Commercial Honor and Principles of Trade) then in effect and since superseded by FINRA Conduct Rule 2010. Hill's FINRA suspension was in effect from September 2, 2008, through September 15, 2008, while registered as a broker-dealer agent in Arkansas with Summit Brokerage.

#### FINDINGS OF FACT

#### Misleading Advertising, Failure to Furnish Documents, & Other Unfair, Misleading and Unethical Practices

- 8. On or about October 14, 2010, the Arkansas Securities Department ("Department") received copies of a direct mail advertising piece distributed by Hill that was not in compliance with the Act and Rules. Specifically, the advertising piece, which included Hill's name, Pinnacle business website, and Pinnacle business telephone numbers, did not contain the required disclosure of Hill's affiliation with Summit Brokerage and included deceptive or misleading language. A copy of the advertising piece is attached hereto as **Exhibit 1**.
- 9. On Thursday, November 4, 2010, the Staff sent a letter requesting information from Summit Brokerage concerning Hill's distribution of advertising and sales material that was in violation of the Act and Rules.
- 10. On November 29, 2010, the Department received a response letter from Summit Brokerage, which included an enclosed response to the Department written by Hill, attached hereto as **Exhibit 2**, answering questions posed by the Staff and which stated, in pertinent part, as follows:

Sometime after the first of September [2010] I was contacted by phone by a direct mail marketing firm about using direct mail to grow my practice . . . . I told them that I was interested in learning more about their service . . . . I was told that it would take 4 to 6 weeks to produce a draft . . . [and] I made known that I had to have approval of [Summit Brokerage's] compliance department before anything could be sent out. I was surprised when [Summit Brokerage's] compliance director contacted me about the mailings. This is when I learned that the mailings

had been sent out without [Summit Brokerage's] compliance department's approval or for that matter even my approval. I did not authorize any mailings to be sent.

Also enclosed with the Summit Brokerage letter was a letter of apology to Hill and provided by Hill, attached hereto as **Exhibit 3**, dated November 15, 2010, and signed by Paul A. Thomas ("Thomas") as the president of a company named Direct Marketing. Hill claimed that Direct Marketing was the direct mail marketing firm that had initiated contact with him and sent the advertising and sales material in question. The letter of apology stated, in pertinent part, as follows:

I want to take this opportunity to sincerely apologize for inadvertently releasing the project I was working on for you to be mailed without approval. I also want to apologize for any inconvenience that this may have caused you or your firm. I take full responsibility for the error.

- 11. The Staff was unable to confirm the existence of Direct Marketing. Research by the Staff of the address provided on the letter from Thomas showed that 7906 E. Euclid Avenue, Spokane Valley, Washington 99212, appeared to be a residential duplex and that the current occupant was not named Paul A. Thomas. The address had not been affiliated with a business named Direct Marketing. Additionally, the telephone number provided in Thomas's letter of apology, 800-889-9000, did not contact Direct Marketing, but instead reached a recording that directed callers to dial another telephone number, which was an adult entertainment telephone line. Furthermore, an additional business was named on one of Hill's distributed advertisements, AmazingMail.com, Inc. ("AmazingMail"), for which Hill did not provide any information in his response to the Department.
- 12. On December 30, 2010, the Staff sent a letter requesting additional information from Summit Brokerage and Hill, detailing the Staff's research into Direct Marketing and the

Staff's inability to confirm the existence of the business, and specifically requesting information regarding Hill's transactions, if any, with the business AmazingMail.

13. On January 13, 2011, the Department received a response letter from Summit Brokerage and Hill. Specifically, this letter included copies of all advertising and sales material that had been approved by Summit Brokerage for use by Hill prior to the Staff's investigation and an enclosed response to the Department written by Hill, attached hereto as **Exhibit 4**, answering questions posed by the Staff and which stated, in pertinent part, as follows:

[I] told [Direct Marketing] in a phone conversation that I would need approval of all material that would be sent by [Summit Brokerage's] compliance department.... At the time I believed [Direct Marketing] understood my need to have all pieces approved. Furthermore, [with regard to AmazingMail,] this was an "all inclusive" package and I do not know who [Direct Marketing's] other vendors and suppliers are.

... All communication was completed by the phone. [Direct Marketing] contacted me for an initial interview which they recorded. There were also a few follow up calls which were initiated by [Direct Marketing] to clarify some terminology. I did not receive a proof of any piece that was produced by [Direct Marketing] for approval, either by email or other communication vehicle. The first time that I saw any of the material was when it was sent to me by [Summit Brokerage's] compliance department. I did not at any point attempt to contact [Direct Marketing] by phone except to alert them to the problem that has arisen.

... [T]he information that has been submitted I believe shows a consistent history of always having material that is to be sent to clients, prospects, and the general public reviewed and approved by [Summit Brokerage's] compliance department before it is disseminated. The document(s) in question were neither reviewed [n]or approved by [Summit Brokerage's] compliance department or by [me].

14. Due to the inconsistency of the information provided to the Department by Hill in response to the Staff's requests, the Staff continued its investigation into the circumstances surrounding Hill's distribution of violative advertising and sales material. The Staff's investigation found that any and all statements made to the Staff by Hill regarding the distribution of the violative advertising and sales material discussed herein were false.

Furthermore, the Staff's investigation showed that the letter of apology from Direct Marketing provided to the Staff by Hill was fabricated by Hill. The business Direct Marketing, as referenced herein, does not and did not exist and was invented by Hill for the purpose of responding to the Department's inquiries regarding Hill's distribution of the violative advertising and sales material. Hill made no attempt to cooperate with the Staff during its investigation.

- 15. In order to distribute the advertising and sales material discussed herein, Hill spent \$800.10 to obtain a list of 2,831 individuals from U.S. Data Corporation, which Hill used to target investment prospects. This list included the names, addresses, telephone numbers, and birthdays for 401K holders in Washington and Benton Counties, Arkansas, born in 1948, 1949, and 1950.
- 16. Hill opened accounts with, and was in email and telephone communication with, two direct mail marketing companies, American Retail Supply ("ARS") and AmazingMail, as early as January 12, 2010. From on or about April 6, 2010, through November 15, 2010, Hill used his accounts at ARS and AmazingMail to draft, purchase, and distribute multiple pieces of unapproved and deceptive or misleading advertising and sales material to Arkansas residents through the U.S. Postal Service. Hill's credit card statements and invoices from ARS and AmazingMail for the time period discussed herein show that Hill spent approximately \$13,500.00 to distribute the exact advertisements of which Hill had denied prior knowledge when responding to requests by the Staff. Hill used his official Summit Brokerage email address and personal email addresses to communicate with ARS and AmazingMail. Emails between Hill and employees of AmazingMail show that Hill requested to quickly shut down his AmazingMail account on November 15, 2010, less than two weeks after the Staff's initial request for information from Summit Brokerage and Hill on November 4, 2010.

- 17. NASD Conduct Rule 2210 (Communications with the Public) outlines certain requirements for and standards applicable to all communications with the public by brokerdealers and broker-dealer agents, which includes advertising and sales material. In violation of NASD Conduct Rule 2210(b)(1)(A), Hill distributed the advertising and sales material discussed herein without the required prior approval of a registered principal of Summit Brokerage. Hill violated NASD Conduct Rule 2210(d)(2)(C)(i) when he distributed the advertising and sales material discussed herein without prominently disclosing the name of Summit Brokerage, the broker-dealer with which Hill was affiliated. Likewise, Hill violated NASD Conduct Rule 2210(d)(2)(A)(i)-(iii) by distributing the advertising and sales material discussed herein containing a testimonial statement about the investment advice or performance of Hill that did not prominently disclose the fact that the testimonial might not have been representative of the experience of Hill's other clients, the fact that the testimonial was no guarantee of future performance or success, and if more than a nominal sum had been paid for the testimonial, the fact that it was a paid testimonial statement. Hill's distribution of unapproved advertising as described herein was also not in conformity with the compliance manual for broker-dealer agents of Summit Brokerage. As a result, Hill distributed deceptive or misleading advertising or sales material, in violation of the Act and Rules.
- 18. Furthermore, Hill was not cooperative at any point during the Staff's investigation of his distribution of violative advertising and sales material and did not provide the documents and information repeatedly requested by the Staff, despite Hill's possession of the requested documents and information. Additionally, Hill provided intentionally false and misleading information to the Staff and fabricated a document provided to the Staff, which ultimately

frustrated the investigatory process and exhibited Hill's lack of respect for the rules and regulations of regulated industries, in general.

#### **Unsuitable Recommendations to Customer**

- 19. In August 2006, while a broker-dealer agent of Crews, Hill acquired a new client, AR1. At the time, AR1 was banking with First Security Bank and requested to meet with an investment professional. Hill, then registered as a broker-dealer agent in Arkansas with Crews, was recommended. AR1 was 69-years-old with a deceased spouse and had recently relocated to northwest Arkansas from another state to be closer to their children. AR1 was retired and living alone on a limited income, which mostly consisted of Social Security benefit payments, limited savings, and a small amount of monthly income from sales of land.
- 20. On August 16, 2006, AR1 had their first meeting with Hill. During the meeting, AR1 completed a Crews new account form to establish an account. With regard to account objectives, AR1 indicated on the new account form that their risk exposure was low and that their account investment objective was the receipt of income. AR1's desire for low-risk, income-producing investments was also discussed with Hill. Some of the additional forms had already been filled out for AR1 and concerned one investment, AmREIT Monthly Income and Growth Fund III, Ltd. ("AmREIT"). AR1 did not understand all of the AmREIT forms and had limited time to ask questions of Hill during the meeting.
- 21. The duplicate, carbonless client copy of AR1's new account form shows that the areas specifying AR1's investment experience, annual income, and individual net worth were not completed by AR1 on August 16, 2006. However, the original top copy of the new account form maintained in Crews' records, while identical to the client copy in all other respects regarding AR1's personal and financial information, shows that those areas had been completed and

indicates that AR1 had thirty years of investment experience, an annual income of between \$40,000.00 and \$50,000.00, and an individual net worth of over \$1,000,000.00.

- 22. When AR1 completed the new account form on August 16, 2006, AR1 did not have thirty years of investment experience. AR1 and AR1's spouse had previously purchased "I Savings Bonds" at their bank, but that was the extent of AR1's investment experience. Additionally, AR1 did not have the annual income or individual net worth that would qualify AR1 as an "accredited investor" under the federal securities laws in effect at the time set forth herein. AR1's annual income was approximately \$9,408.00, and AR1's individual net worth was approximately \$394,000.00. Hill did not explain the accredited investor standard to AR1.
- AR1 informed Hill that they had \$200,000.00 set aside in savings to use for investments. However, AR1 never intended for Hill to invest the entire \$200,000.00 without explaining or discussing any investments with AR1 prior to making them. Despite the characteristics of AR1 and AR1's request for low-risk investments that would provide a consistent income, Hill invested all of AR1's \$200,000.00 without explaining or discussing the investments with AR1 prior to making them. On August 17, 2006, Hill invested \$100,000.00 in AmREIT, a private real estate investment trust specifically reserved for sale to accredited investors, and on August 18, 2006, Hill invested \$100,000.00 in a Federal Home Loan Mortgage Corporation ("Freddie Mac") Collateralized Mortgage Obligation ("CMO") security. AR1 first became aware that Hill had invested in AmREIT and the Freddie Mac CMO after AR1 started receiving monthly statements for both investments in September 2006. Hill made commissions of \$7,250.00 from his sale of AmREIT and \$2,562.50 from his sale of the CMO to AR1, totaling \$9,812.50.

- 24. A REIT is a corporation, trust, association, or other legal entity which is engaged primarily in investing in equity interests in real estate or in loans secured by real estate or both. A CMO is a complex bond structure backed by mortgage pass-through securities and mortgage loans. REITs and CMOs are considered to be highly complex, risky, and illiquid investments and are generally reserved for sale to investors who are considered accredited or sophisticated.
- 25. Hill did not explain to AR1 what REIT and CMO investments were, disclose the illiquidity of such investments, tell AR1 that they were high-risk investments, or provide offering or disclosure materials for the investments. AR1 never fully understood the characteristics of REITs or CMOs. AR1 did not receive disclosure or offering materials for the investment in AmREIT until AR1 received the offering document with their first AmREIT statement in September 2006. AR1 never received disclosure or offering materials for the Freddie Mac CMO. AR1 had no other investments in their portfolio at Crews or elsewhere, a fact of which Hill was aware.
- 26. Per AR1's request due to unforeseen personal expenses and a need for liquidity, Hill sold AR1's units of the Freddie Mac CMO between January 2007 and May 2007. AR1 received a total of approximately \$97,677.00 for the sales of the Freddie Mac CMO, which constituted a loss of approximately \$2,323.00 for AR1 in less than a year.
- 27. AR1 began receiving monthly distributions from their four units of AmREIT on or about September 15, 2006. The first distribution on September 15, 2006, was for \$302.42. From on or about October 15, 2006, through December 15, 2008, AR1 received a monthly distribution of \$625.00. From on or about January 15, 2009, through July 15, 2009, the AmREIT monthly distribution decreased to \$250.00. AR1 received no regular monthly distributions from AmREIT after July 15, 2009. Subsequently, AR1 requested letters from AmREIT dated

November 18, 2009; November 15, 2010; and April 7, 2011, for AR1 to use when applying for food stamps, stating that no redemptions were being allowed due to the illiquidity of the fund. In addition to the regular monthly distributions from AmREIT, AR1 received a distribution of \$947.60 on or about March 27, 2011, through the sale of an AmREIT property. In total, AR1 received \$19,875.02 from their \$100,000.00 investment in AmREIT over an approximately five-year period.

- 28. The AmREIT distributions did not provide AR1 with the consistent income AR1 had requested before the investment was made by Hill. After investing with Hill, AR1 did not have much money on which to live, filed for food stamps and other assistance programs, and struggled to pay their bills. AR1 and AR1's children subsequently reviewed the information on the AmREIT investment and, after researching the accredited investor requirement, realized that AR1 had never met that requirement and that it had never been explained to AR1.
- Pursuant to a Form U5 filed on May 7, 2012, Crews received a written complaint from AR1 on March 8, 2012, alleging unsuitable recommendations and sales of AmREIT by Hill, then Crews' former broker-dealer agent. On April 4, 2012, Crews settled with AR1 by purchasing AR1's four units of AmREIT for \$80,124.98. This amount represented the difference between the \$100,000.00 Hill originally invested in AmREIT for AR1 and the distributions totaling \$19,875.02 that AR1 had received from AmREIT since Hill invested in the product on August 16, 2006. Hill was not involved in the settlement and paid no portion of the settlement amount to AR1.
- 30. Pursuant to NASD Conduct Rule 2310 (Recommendations to Customers Suitability) then in effect and since superseded by FINRA Rule 2111, in recommending to a customer the purchase, sale, or exchange of any security, a broker-dealer agent shall have

reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to their other security holdings and as to their financial situation and needs. Prior to the execution of a transaction recommended to a non-institutional customer, other than transactions with customers where investments are limited to money market mutual funds, a member shall make reasonable efforts to obtain information concerning the customer's financial status, the customer's tax status, the customer's investment objectives, and such other information used or considered to be reasonable by such broker-dealer agent in making recommendations to the customer.

31. Hill invested in high-risk and illiquid investments for AR1, which were inconsistent with AR1's stated investment objectives, financial status, and needs. Hill had no reasonable grounds to believe that AR1 was either an accredited investor or a sophisticated investor capable of evaluating the merits and risks of investing in either AmREIT or the Freddie Mac CMO. AmREIT was reserved for accredited investors only. AR1 was an elderly investor with a limited income who requested low-risk investments that would provide an income. At no time did AR1 request speculative or high-risk investments. Additionally, AR1 had no other investments at Crews, and Hill made no effort to appropriately diversify AR1's portfolio. Therefore, Hill's recommendations and sales of AmREIT and the Freddie Mac CMO were patently unsuitable for AR1, in violation of NASD Conduct Rule 2310 and the Act and Rules.

#### Related Suspension and Fine by FINRA

32. On October 19, 2012, FINRA accepted an AWC submitted by Hill in FINRA Case No. 2012031737801 regarding the distribution of misleading sales literature and the falsification of a document and information to Summit Brokerage after the original inquiry from the Department, as first discovered by the Department during the investigation discussed herein.

FINRA did not consult the Department during its investigation and negotiation of the AWC with Hill. Additionally, FINRA found that Hill had settled a customer complaint without notifying Summit Brokerage, violative conduct of which the Department was not previously aware. As a result, FINRA found that Hill had violated NASD Conduct Rule 2210 (Communications with the Public) and FINRA Conduct Rule 2010 (Standards of Commercial Honor and Principles of Trade). Without admitting or denying the findings, Hill consented to the FINRA sanctions of a two-year suspension and a fine of \$15,000.00. Hill's FINRA suspension is in effect from November 5, 2012, through November 4, 2014.

#### APPLICABLE LAW

- 33. The Commissioner may by order deny, suspend, make conditional or probationary, or revoke any registration if he finds that the order is in the public interest and the registrant has willfully violated or willfully failed to comply with any provision of the Act or any rule or order under the Act; is the subject of an order entered within the past five years by any securities or commodities self-regulatory organization; or the registrant has engaged in dishonest or unethical practices in the securities business. Ark. Code Ann. § 23-42-308(a)(1), (a)(2)(B), (F)(i)(d), and (G).
- 34. Each broker-dealer and agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. The following conduct shall be considered grounds for denial, suspension, or revocation of a broker-dealer or agent registration, in addition to such other unethical practices within the meaning of Ark. Code Ann. §§ 23-42-308 and 23-42-507:
  - a. Recommending to a customer the purchase, sale, or exchange of any security when a broker-dealer or agent does not have reasonable grounds for believing

that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to their other security holdings and as to their financial situation and needs, or encouraging a customer to invest beyond their immediate financial resources. Rule 308.01(D) of the Rules.

- b. Using any advertising or sales material in such a fashion as to be deceptive or misleading. Rule 308.01(Q) of the Rules.
- c. Unreasonably failing to promptly deliver or provide documents or information in possession of or under control of the registrant to the Commissioner after receipt of a written request from the Commissioner. Rule 308.01(V) of the Rules.
- d. The unfair, misleading, or unethical practices set forth under Rule 308.01 of the Rules are not exclusive of other activities, such as forgery, embezzlement, non-disclosure or misstatement of material facts, manipulations, and various deceptions, which shall be considered grounds for suspension or revocation and the Commissioner may suspend or revoke a registration when necessary or appropriate in the public interest. Rule 308.01(X) of the Rules.
- 35. It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly 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. Ark. Code Ann. § 23-42-507(2).
- 36. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Commissioner may nevertheless institute a revocation or suspension proceeding under Ark. Code Ann. § 23-42-308(a)(2)(B) within one year after the withdrawal became

effective and may enter a revocation or suspension order as of the last date on which registration was effective. Ark. Code Ann. § 23-42-308(e)(3).

- 37. Nothing in Ark. Code Ann. § 23-42-308 shall prohibit or restrict the informal disposition of a proceeding or allegations which might give rise to a proceeding by settlement or consent. Ark. Code Ann. § 23-42-308(h).
- 38. The Commissioner may apply to the Pulaski County Circuit Court to temporarily or permanently enjoin an act or practice that violates the Act and to enforce compliance with the Act or any rule or order under the Act without issuing an order under Ark. Code Ann. § 23-42-209(a)(1) or (a)(2). Ark. Code Ann. § 23-42-209(a)(3)(B).

#### **CONCLUSIONS OF LAW**

- 39. Hill violated Ark. Code Ann. § 23-42-308(a)(2)(B) and (G) and Rule 308.01(Q) of the Rules when Hill willfully violated the Rules by using advertising or sales material in such a fashion as to be deceptive or misleading, including Hill's lack of compliance with relevant FINRA rules governing advertising and sales material, as detailed in paragraphs 8 through 18.
- 40. Hill violated Ark. Code Ann. § 23-42-308(a)(2)(B) and (G) and Rule 308.01(V) of the Rules when Hill willfully violated the Rules by unreasonably failing to promptly deliver or provide documents or information in Hill's possession or under Hill's control to the Staff after the receipt of written requests from the Staff, as detailed in paragraphs 8 through 18.
- 41. Hill violated Ark. Code Ann. § 23-42-308(a)(2)(B) and (G) and Rule 308.01(X) of the Rules when Hill willfully violated the Rules by providing intentionally false and misleading information to the Staff, as detailed in paragraphs 8 through 18.
- 42. Hill violated Ark. Code Ann. § 23-42-308(a)(2)(G) and Rule 308.01(D) of the Rules when Hill recommended and sold risky and illiquid securities to AR1 without reasonable

grounds for believing that the sales were suitable for AR1, as detailed in paragraphs 19 through 31.

- 43. Hill violated Ark. Code Ann. § 23-42-507(2) by omitting to state material facts regarding the securities Hill recommended and sold to AR1 that were necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, as detailed in paragraphs 19 through 31.
- 44. On or about October 19, 2012, Hill consented to the FINRA sanctions of a two-year suspension and fine of \$15,000.00 and, as a result, is the subject of an order entered within the past five years by a securities self-regulatory organization, in violation of Ark. Code Ann. § 23-42-308(a)(2)(F)(i)(d), as detailed in paragraph 32.
- 45. Pursuant to Ark. Code Ann. § 23-42-308(a)(2)(B) and (e)(3), Hill's registration in Arkansas as a broker-dealer agent and an investment adviser representative should be revoked as of March 12, 2012, the last date on which Hill's registration was effective.

#### **OPINION**

This Order is in the public interest. The facts set out in paragraphs 8 through 32 support the violations of the Act and Rules set out in paragraphs 39 through 45.

#### **ORDER**

By agreement and with the consent of the Staff and Hill, IT IS HEREBY ORDERED:

- 1. Hill shall cease and desist from further violations of the Act and Rules;
- 2. Hill's registration as a broker-dealer agent and an investment adviser representative in Arkansas shall be REVOKED as of March 12, 2012, the last date on which Hill's registration was effective in Arkansas; and

3. Taking into consideration Hill's current financial status, in lieu of a monetary fine payable to the Department, Hill shall pay \$2,323.00 to AR1 to compensate AR1 for the loss incurred from the unsuitable Freddie Mac CMO investment, pursuant to the

following terms:

a. Within ten days of the entry of this order, Hill shall make an initial

payment to AR1 of \$300.00 by money order or cashier's check, and shall include

with this payment a letter indicating his commitment to pay \$2,323.00 to AR1

pursuant to this order;

b. Hill shall pay the remaining \$2023.00 to AR1 by money order(s)

or cashier's check(s) within nine months, or 270 days, from the entry of this

order, in satisfaction of the loss incurred by AR1; and

c. Copies of any and all payments to AR1 should be sent to the

Department to evidence payment. Any failure by Hill to make the payments to

AR1 when due shall be considered a violation of this order authorizing the

Commissioner to apply to the Pulaski County Circuit Court to enforce compliance

with this order, pursuant to Ark. Code Ann. § 23-42-209(a)(3)(B).

WITNESS MY HAND AND SEAL on this 12th day of December, 2012.

A. Heath Abshure

Arkansas Securities Commissioner

I hereby agree to the entry of this Consent Order, and consent to all terms, conditions, and orders contained therein, and waive any right to an appeal from this order.

| Braden S. Hill (CRD# 2796421)                 |   |
|---|---|
| 12 - 5 - 1Z<br>Date                           |   |
| APPROVED AS TO FORM:                          | APPROVED AS TO FORM AND CONTENT:                              |
| Richard C. Downing Counsel for Braden S. Hill | Amber E. Crouch Staff Attorney Arkansas Securities Department |
| <u>5-/b-/2</u><br>Date                        | December 12, 2012<br>Date                                     |

# Give me 4 minutes and I will show you why and how you can convert your 401k plan to your own self-directed IRA NOW, even if you are still working.

Dear

I know you're wondering, "Why in the world is the financial advisor on KNWA News, Braden Hill sending me a bank bag??"

I'll get to that in just a moment, but first a quick story:

Imagine you're 60 or older. You've seen a decline in your 401k balance during the last 2 years. You've been able to recoup some of the losses the over the last year, but you're still down from where you were at the end of 2007.

You also want to retire in a few years, but the question in your mind has changed from "When I retire" to "If I can retire". You know that you need some growth in your portfolio, but you don't want to take a chance of not being prepared for the next bear market. You also don't want to sit on the sidelines and miss the next bull market either.



Braden Hill is the Financial Advisor of KNWA (NBC) News. You can meet with Braden and get his personal advice about your retirement at absolutely no cost

#### Does that sound familiar?

Does that sound like someone you know...? Perhaps, YOU?

That story has played out in my office dozens of times the past 18 months.

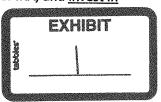
So why in the world did you get a bank bag in the mail?

I think the bank bag is a perfect illustration of how you can literally fill your own personal bank bag full of money when you use a little known IRS provision in your 401k plan to get your money out of your company's 401k and into a rollover IRA WITHOUT TAXES OR PENALITIES BEFORE YOU RETIRE!!!

Hear me out. Most financial professionals will tell you that you cannot transfer your 401k into a Self Directed IRA (Individual Retirement Account) until you retire or leave your current employer.

## \*\*\*NOTHING COULD BE FURTHER FROM THE TRUTH\*\*\*

You don't have to be stuck with investments in your 401k plan that you are not happy with or you don't understand. You can transfer your 401k into your own rollover IRA, and invest in





anything you want RIGHT NOW! (Normal IRS guidelines apply) You don't have to wait until you retire or switch jobs. Here's why you should consider doing this:

- You'll Have Freedom—in your own IRA, YOU control the investment choices, not the plan provider (like Fidelity, T. Rowe Price, Merrill Lynch, Principal, etc.). You can get investments that cost less than what you are in now, if you want. (If you think that there are not fees associated with your 401k plan you have been misled. There is an administration fee and internal expenses on the funds that you own inside the plan.)
- Possible Tax Savings—you may be able to take advantage of the current tax laws and rates that are set to expire at the end of 2010.
- You'll Reduce Stress—You will have peace of mind for you and your family. Knowing what your retirement income could be before you retire will hopefully give you financial peace of mind. Also, if you find out that you are a little behind you have time to make some changes in order to get to where you want to be before you retire.

# THERE IS A BETTER WAY

Let me take a minute and introduce myself. My name is Braden Hill and I am the President of Pinnacle Hills Financial Services, LLC. We are an independent firm dedicated to helping our clients build and protect wealth. As an independent firm, our loyalty belongs exclusively to our clients.

So what makes us different? We reallocate (i.e. rebuild) our portfolios as needed, rotating our clients assets out

of weakening themes and into strengthening themes in direct response to changes in the market.

Since I have completed my 401k transfer from Wal-Mart with Braden, I have peace of mind knowing what my retirement income will be before I do decide to retire. I also like knowing that my family is protected in case something happens to me.

Greg Thomas—Fayetteville, AR

- We do not predict how the market will behave. Rather, we perform our daily analysis of the market to rank available investment choices on a risk/reward basis.
- We do not attempt to time the market. Instead, we indentify themes currently at work, confirm these trends, and only then rotate our client's assets.
- And most importantly, we do not believe in rebalancing to a pre-set allocation model based on the calendar. Rather, assets are repositioned to client's best advantage, regardless of style or asset class, based on current market conditions.

Let me give you an example. Do you think the Razorbacks head football coach would replace his starting Heisman candidate quarterback at the end of the 3<sup>rd</sup> quarter with a freshman walk on quarterback just because it is the end of the quarter? Of course he wouldn't do that, unless he wanted to see how fast he would lose his job. However, that is exactly what individual investors and even some advisors do every time they rebalance their portfolio based on the calendar. It makes no sense. Why would anyone want to sell an asset that is performing well and buy one

that is not performing well based simply on the calendar? There are also a lot of other long held beliefs (myths and clichés) about investing that we will refute.

So why would I give you this analysis? Simple—because whether you admit it or not you need it.

### Hold Your Horses...I'm not done yet. I have a gift for you!!!

Call and schedule your appointment before October 31, 2010 and you will receive a \$50 gift card to your favorite restaurant **OR** a \$50 gas card since I am going to make you come to my office.

The bottom line is this: I want to help the people of Northwest Arkansas retire with confidence and I want to educate them to make better decisions with their investment dollars. I don't want you to worry about if you are going to outlive your money. I want you to enjoy your retirement years doing the things that you have always dreamed and worked hard for.

## I promise to show you how you may be able to get the money out of your 401k and into an IRA now, with no IRS penalties or taxes.

#### Let's recap what you get:

- Easy to read report detailing your income for retirement (\$500.00 value)
- Knowledge of when is the best time for you to start receiving your Social Security benefits. (\$250.00 value)
- Solid proof of our investment track record. (You'll be impressed)
- Plus a \$50 to your choice of: restaurant or gas card. Offer expires October 31, 2010.

Here's the deal, if you feel that our review wasn't worth your time we'll shake hands and part ways with no hard feelings on either side and you can enjoy dinner or a tank of gas on me. Fair enough?

Sincerely,

Braden Hill

Braden Hill

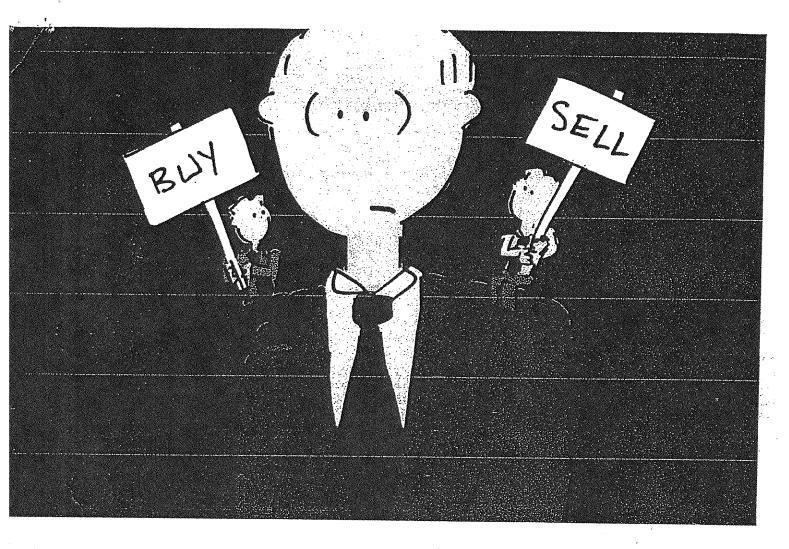
www.PinnacleHillsFinancialServices.com

Located inside Pinnacle Bank Building

479-631-9700 or 1-866-631-9733

P.S. There is just one thing you need to bring with you to your Pre-Retirement Rollover Analysis meeting and that's your latest 401k statement. That's it.

 $\textbf{P.P.S. Go to my website} \ \underline{www.PinnacleHillsFinancialServices.com} \ \textbf{for tons of free information.}$ 



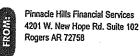
## OFFER EXPIRES OCTOBER 31, 2010

Ii, it's Braden Hill again. You need to hurry and take advantage of this fantastic offer. Here's what you get:

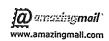
- 1) \$50 gift card to your favorite restaurant OR \$50 gas card.
- ?) Easy to read report detailing your expected retirement income.
- 3) Solid proof of investment track record (You'll be impressed)
- ) Knowing when to start taking your Social Security Benefits.

Call 631-9700 or 1-866-631-9733 to schedule your appointment and claim your FREE gift card. I'll help you inswer the question you may be asking yourself "What do I invest in today?"









Auto
U.S. Postage Paid
AsscingMail

#### Response:

Sometime after the first of September I was contacted by phone by a direct mail marketing firm about using direct mail to grow my practice. They claimed to have an innovative methodology that was able to produce responses above the average direct mail standards. I told them that I was interested in learning more about their service. A time was set up for them to interview me about me and my practice. After the initial interview was completed they contacted me a couple of more times to clarify some things. I was told that it would take 4 to 6 weeks to produce a draft. It was during one these follow up calls that I made known that I had to have approval of my compliance department before anything could be sent out. I was surprised when my compliance director contacted me about the mailings. This is when I learned that the mailings had been sent out without my compliance department's approval or for that matter even my approval. I did not authorize any mailings to be sent. To this date I have not had anyone contact me about the offer mentioned in the letter. I believe that I am very careful to make sure that all correspondence is approved before it is sent to anyone. However, I am also aware that ultimately the responsibility falls to me to protect and control what information is sent out to the public.

EXHIBIT

2

DIRECT MARKETING

November 15, 2010

Mr. Braden Hill 4201 W. New Hope Rd. Suite 102 Rogers, AR 72758

Dear Mr. Hill:

I want to take this opportunity to sincerely apologize for inadvertently releasing the project I was working on for you to be mailed without approval. I also want to apologize for any inconvenience that this may have caused you or your firm. I take full responsibility for the error.

Thank you for giving me the opportunity to help grow your business. I look forward to working with you in the future.

Sincerely,

Paul A. Thomas

President

EXHIBIT

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#### Answers to questions:

- 1) I did not sign a contract and there were no documents that were executed by me. I did not sign a contract with them as I told them in a phone conversation that I would need approval of all material that would be sent by my compliance department before I would sign anything. At the time I believed they understood my need to have all pieces approved. Furthermore, this was an "all inclusive" package and I do not know who their other vendors and suppliers are.
- 2) All communication was completed by the phone. They contacted me for an initial interview which they recorded. There were also a few follow up calls which were initiated by them to clarify some terminology. I did not receive a proof of any piece that was produced by them for approval, either by email or other communication vehicle. The first time that I saw any of the material was when it was sent to me by my compliance department. I did not at any point attempt to contact them by phone except to alert them to the problem that has arisen.

#### Additional information:

With the information that has been submitted I believe shows a consistent history of always having material that is to be sent to clients, prospects, and the general public reviewed and approved by my compliance department before it is disseminated. The document(s) in question were neither reviewed or approved by my compliance department or by myself.

