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BEFORE THE ARKANSAS SECURITIES COMMISSIONER

CASE NO. S-12-0102

ORDER NO. S-12-0102-12-OR01

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ARKANSAS SECURITIES DEPT.

IN THE MATTER OF:

BRETT IAN FRIEDBERG

RESPONDENT

CONSENT ORDER

This Consent Order (“Order”) is entered pursuant to the Arkansas Securities Act (“Act”), codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509, the Rules of the Arkansas Securities Commissioner promulgated pursuant to the Act (“Rules”), and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann. §§ 25-15-201 through 25-15-219, in accordance with an agreement between the Staff of the Arkansas Securities Department (“Staff”) and the Respondent, Brett Ian Friedberg (“Friedberg”).

It is expressly understood and agreed that this Order is a compromise of disputed claims and entered into for the sole purpose of resolving the issues between the parties and avoiding costly litigation. Friedberg admits the jurisdiction of the Act and the Arkansas Securities Commissioner (“Commissioner”), waives his right to a formal hearing and appeal, consents to the entry of this Order without admitting or denying the findings of fact or conclusions of law made herein, and agrees to abide by its terms in settlement of any possible violations committed by Friedberg concerning the matters detailed herein.

FINDINGS OF FACT

1. Brett Ian Friedberg, CRD No. 5012184, is a New York resident registered with the Arkansas Securities Department (“Department”) as a broker-dealer agent with HFP Capital Markets LLC (“HFP”), CRD No. 44351.

2. On or about May 9, 2012, Friedberg contacted an Arkansas resident (“AR1”) on a cold call recommending the purchase of certain corporate bonds issued by Exide Technologies, Inc. (“Exide”). At the time of the call, the Exide bonds carried an average credit rating of “B” from the major credit rating agencies. Friedberg pitched the Exide bonds as a short-term investment with a six-year maturity date trading at eighty-eight cents on the dollar and paying an 8.625% coupon. However, Friedberg said the payment of interest was not the main reason for recommending the bonds. The main reason was that he was hearing that Johnson Controls, Inc. (“Johnson Controls”), an A+ credit-rated company, was planning a takeover of Exide. According to Friedberg, a takeover of Exide by Johnson Controls would elevate the Exide bonds to A+ status and lead to them trading at a 1.10 value. Therefore, AR1 would not only receive 10% annual interest on the initial bond purchase but also would stand to make a substantial profit selling the bonds after the takeover by Johnson Controls.

3. During his conversation with AR1, Friedberg failed to disclose the risks associated with purchasing a “B” rated bond. Further, while Friedberg did ask AR1 a few income-related questions at the end of the conversation, Friedberg failed to conduct a proper suitability analysis with AR1 prior to recommending the bonds for purchase.

4. After the initial phone conversation, Friedberg sent AR1 an investment packet containing an account application form. Friedberg had prepopulated the investor information on the account application and merely submitted it to AR1 for signature. While AR1 had provided certain income information to Friedberg during their conversation, the income information prepopulated by Friedberg was inflated in comparison to the figures provided by AR1. AR1 provided Friedberg with an annual income of \$50,000.00, a total investment amount of \$75,000.00, and an estimated net worth of \$25,000.00. The account form listed AR1 as having

an annual income of over \$50,000.00, a liquid net worth of over \$100,000.00, and a total net worth of over \$500,000.00. The application further listed AR1's investment objective as "speculation" and risk tolerance as "high" without Friedberg ever having discussed these matters with his prospective client.

LEGAL AUTHORITY

5. Ark. Code Ann. § 23-42-308(a)(2)(G) provides in part that the Commissioner may by order deny, suspend, make conditional or probationary, or revoke any registration if he finds that an applicant has engaged in unethical practices in the securities business.

6. Rule 308.01 of the Rules sets out specific unfair, misleading, or unethical conduct that shall be considered as grounds for denial, suspension, or revocation of an agent registration. Rule 308.01(b) of the Rules prohibits a broker-dealer or agent from making unjustified or untruthful representations that securities sold will subsequently become listed or traded, or making representations that a market will be established or that the securities will be subject to an increase in value.

7. Rule 308.01(d) of the Rules requires that a registered agent, before recommending the purchase, sale, or exchange of any security, 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 his other security holdings, financial situation, and needs.

8. Rule 308.01(y) of the Rules prohibits a broker-dealer or agent from engaging in unfair, misleading, or unethical practices and allows the Commissioner to suspend or revoke a registration when necessary or appropriate in the public interest.

9. Ark. Code Ann. § 23-42-308(g) states that the Commissioner may for each violation of the Act fine a broker-dealer or agent in an amount not to exceed ten thousand dollars

or an amount equal to the total amount of money received in connection with each separate violation.

CONCLUSIONS OF LAW

10. Friedberg violated Rule 308.01(b) of the Rules when he represented to AR1 without reasonable justification that Exide would be acquired by Johnson Controls causing an elevation in the Exide bond rating and an increase in the value of the security, as set forth in paragraphs 2 through 3 above.

11. Friedberg violated Rule 308.01(d) of the Rules when he recommended the Exide bonds to AR1 without having reasonable grounds to believe that the recommendation was suitable for purchase by the prospective client, as set forth in paragraphs 2 through 4 above.

12. Friedberg violated Rule 308.01(y) of the Rules when he prepopulated an account form with inaccurate financial information and objectives then submitted it to AR1 for signature, as set forth in paragraph 4 above.

13. The violations committed by Friedberg as detailed above constitute a violation of Ark. Code Ann. § 23-42-308(a)(2)(G). These violations justify the imposition of a fine in conjunction with Ark. Code Ann. § 23-42-308(g).

UNDERTAKINGS

In settlement of this matter, but without admitting or denying the findings of fact set forth herein, Friedberg agrees to pay a \$5,000.00 fine to the Department within ten days of the entry of this Order. Additionally, Friedberg agrees to not apply for registration with the Department in any capacity for a period of three years from the entry date of this Order. After the expiration of the three-year period, any registrations of Friedberg shall be conditioned upon his employing firm conducting heightened supervision of his activities for a period of at least one year. A plan

for heightened supervision shall be submitted for the Commissioner's approval along with any new registration application for Friedberg.

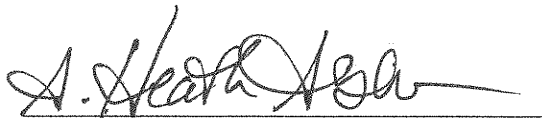
OPINION

This Order is in the public interest. The facts as set forth in paragraphs one through four support the violations of the Act and Rules as set forth in paragraphs ten through thirteen.

ORDER

IT IS THEREFORE ORDERED that in accordance with Friedberg's undertaking the Department shall hereby deem Friedberg's registration as a broker-dealer agent revoked in accordance with Ark. Code Ann. § 308(a)(2)(G) and the Department shall not accept or grant any application from Friedberg for registration pursuant to the Act for a period of three years from the entry date of this Order. After the expiration of the three-year period, any registrations of Friedberg shall be conditioned upon his employing firm conducting heightened supervision of his activities for a period of at least one year. A plan for heightened supervision shall be submitted for the Commissioner's approval along with any new registration application for Friedberg. Friedberg shall pay a fine to the Department in the amount of \$5,000.00 within ten days of the entry date of this Order. The payment shall be made by check payable to the Arkansas Securities Department, 201 East Markham Street, Suite 300, Little Rock, Arkansas 72201.

WITNESS MY HAND AND SEAL this the 5th day of February, 2013.

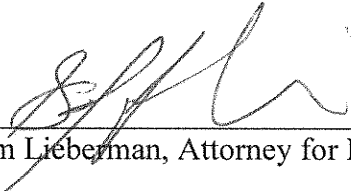


A. Heath Abshure
Arkansas Securities Commissioner

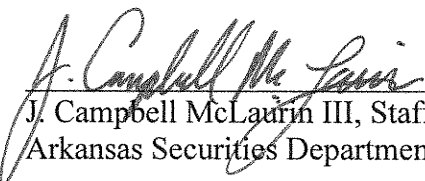
Approved as to Content and Form:


Brett Ian Friedberg, Respondent

1/29/13
Date


Sam Lieberman, Attorney for Respondent

1/30/13
Date


J. Campbell McLaurin III, Staff Attorney
Arkansas Securities Department

2/5/13
Date