

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

CASE NO. S-16-0056

ORDER NO. S-16-0056-17-OR01

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ARKANSAS SECURITIES DEPT.

IN THE MATTER OF:

KIMBERLY DAWN SMITH
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 Kimberly Dawn Smith (“Smith”) in full and final settlement of all claims that could be brought against Smith by the Staff on the basis of the facts set forth herein.

Smith admits the jurisdiction of the Act and the Arkansas Securities Commissioner (“Commissioner”), waives her right to a formal hearing and appeal, and neither admits nor denies the findings of fact made herein, consents to the entry of this order and agrees to abide by its terms in settlement of any possible violations committed by Smith concerning the matters detailed in this order.

FINDINGS OF FACT

1. Smith, CRD no. 3112353, was registered in Arkansas with Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”), CRD no. 7691, as an agent of a broker-dealer between December 15, 2003 and September 5, 2014, and a representative of an investment adviser between October 6, 2009 and September 5, 2014.

2. Between September 4, 2014 and August 22, 2017, Smith was registered as an agent of a broker-dealer and a representative of an investment adviser in Arkansas with Stephens, Inc., CRD 3496. However, Smith’s employment with Stephens, Inc. terminated on August 2, 2017. Since August 22, 2017, Smith has not been registered in any capacity with any employer.

3. Between October 21, 2010 and December 18, 2013, an Arkansas client (“AR1”) made monetary gifts totaling \$105,000 to the children of Smith. AR1 stated that these gifts were to be used for the future education expenses of Smith’s three children. While Smith did not directly sell, offer, or provide investment advice regarding any securities to AR1, between August 2007 and April 2012 Smith was a member of the team at Merrill Lynch, which did sell securities and provide investment advice to AR1. Smith’s role on the team would have been to contact AR1 about various matters and to maintain AR1’s account file at Merrill Lynch. During said time period, Smith was compensated by Merrill Lynch for her work on the team that had AR1 as a client. AR1 gave these gifts from an account outside of Merrill Lynch.

4. At the time said monetary gifts were given by AR1, Smith did not tell or get permission from any supervisor at Merrill Lynch. When supervisors at Merrill Lynch discovered the monetary gifts received from AR1, Merrill Lynch opened an internal investigation. During Merrill Lynch’s internal investigation, representatives of Merrill Lynch contacted Smith in order to ask her questions about AR1’s monetary gifts. In her response to Merrill Lynch’s questions, Smith, who was no longer employed by Merrill Lynch, was not completely truthful about the total amount of the monetary gifts from AR1. Section 6.3(III), the Relationships with Clients section, of the Bank of America/Merrill Lynch Compliance Policy states that accepting gifts in excess of the firm’s policy is strictly prohibited. Also, in section III.B of the Anti-Bribery Anti-Corruption – Enterprise Standards section of said compliance policy, employees are strictly prohibited from accepting monetary gifts in any amount from a client. As stated above, Smith was a Merrill Lynch employee working on the team for the Merrill Lynch client, AR1, when AR1 made multiple monetary gifts to Smith’s children.

APPLICABLE LAW

5. Ark. Code Ann. § 23-42-308(a)(2)(B) states that the Commissioner may by order suspend or revoke any registration, if he finds that the registrant has violated or willfully failed to comply with any provision of this chapter or predecessor act or any rule or order under this chapter or a predecessor act.

6. Rule 308.01(y) states in part that the Commissioner may suspend or revoke a registration when a registrant has failed to observe high standards of commercial honor and just and equitable principles of trade and has engaged in unethical conduct other than the specific unethical conduct set out in Rules 308.01(a) through (x).

7. Ark. Code Ann. § 23-42-308(g) states that the commissioner may for each violation of this chapter fine any agent of a broker-dealer or any representative of an investment adviser not to exceed ten thousand dollars (\$10,000) or an amount equal to the total amount of money received in connection with each separate violation.

8. Ark. Code Ann. § 23-42-308(h) permits the informal disposition of allegations by consent in lieu of a formal hearing or sanctions authorized by the Act.

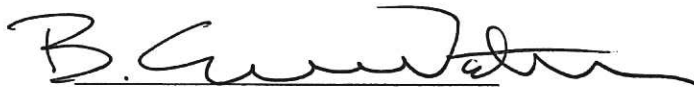
CONCLUSIONS OF LAW

9. Smith violated Ark. Code Ann. § 23-42-308(a)(2)(B) and Rule 308.01(y), when Smith violated her employer's compliance policy and accepted monetary gifts from AR1 as detailed in paragraphs three and four.

ORDER


IT IS THEREFORE ORDERED that the Smith's registrations as an agent of a broker-dealer and a representative of an investment adviser shall be suspended for a period of ninety (90) days, beginning August 2, 2017 and ending October 31, 2017. In addition, Smith shall pay a fine in the amount of \$5,000.00 to the Arkansas Securities Department upon entry of this order. In addition, Smith shall not accept any gifts in any form from any client.

On this 19th day of October, 2017.




B. Edmond Waters
Arkansas Securities Commissioner

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


Kimberly Dawn Smith, the Respondent

10/13/2017
Date

Approved as to content and form:


Richard C. Downing, Respondent's Attorney

10-17-17
Date

Scott Freydl

Scott Freydl, Staff Attorney

10/19/17

Date