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ARKANSAS SECURITIES DEPT.

BEFORE THE ARKANSAS SECURITIES COMMISSIONER
Case No. S-11-0244
Order No. S-11-0244-14-OR02

IN THE MATTER OF
MICHAEL HAZEN MARTIN

CONSENT ORDER

This consent order is entered pursuant to the Arkansas Securities Act, codified at Ark. Code Ann. §§ 23-42-101, *et seq.* (Repl. 2000), (Act), the Rules of the Arkansas Securities Commissioner promulgated under the Act (Rules) and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann. §§ 25-15-201, *et seq.* (Repl. 2002) in accordance with an agreement by and between the Staff of the Arkansas Securities Department (Staff) and Michael Hazen Martin, in full settlement of all claims relating to the facts set forth herein that could be brought against Martin by the Staff.

Martin 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 or Staff allegations made herein, consents to the entry of this order and agrees to abide by its terms.

FINDINGS OF FACT

1. Michael Hazen Martin, CRD No. 1691117, is a resident of Hot Springs, Arkansas. He was at all times referred to herein registered as an investment adviser representative (IAR) for Brookstone Capital Management LLC (Brookstone), CRD No. 141413, an investment adviser registered with the United States Securities and Exchange Commission (SEC). Martin voluntarily withdrew his registration and terminated his employment relationship with

Brookstone on December 17, 2013. Martin is also registered as a resident producer insurance agent with the Arkansas Insurance Department, AID No. 13467.

2. Mike Martin Financial Services, Inc. (MMFS) is an Arkansas for profit domestic corporation formed on September 26, 2002. Its offices are located at 321 Section Line Road, Suite C, Hot Springs, Arkansas 71913, and 40 Plaza Way, Suite 440, Mountain Home, Arkansas 72653. According to the records of the Arkansas Secretary of State, Martin is the registered agent and president of MMFS. Although he was an IAR of Brookstone, Martin did business at and through MMFS.

3. Martin did business by conducting seminars at which attendees are given free lunches or dinners. He sent invitations to persons in the mail and targets persons of retirement age, i.e., seniors and retirees. Martin has hosted these seminars in Arkansas locales with large populations of retirees, specifically in Mountain Home, Little Rock and Hot Springs. Martin used these seminars to recommend that attendees liquidate securities and replace them with equity indexed annuities (EIAs), insurance products marketed and sold as investments, for a fee, which was the commission for selling the EIAs. At all times referred to herein, Martin was in the business of advising others as to the advisability of investing in or selling securities for a fee, regardless of whether he had an investment advisory contract with anyone to do so, and thus acted as an investment adviser in accordance with the definition of investment adviser found at Ark. Code Ann. § 23-42-102(8).

4. Martin sent an invitation to a free dinner seminar to an employee of the Arkansas Securities Department (ASD1)who attended the seminar at a Little Rock restaurant on March 29, 2011, (Seminar) and recorded Martin's presentation. The invitation contained several

representations, including the following:

a. " How this disastrous economy will threaten retirement income by causing stock market devastation and skyrocketing taxation."

b. "Provide higher guaranteed income in the wake of future tax hikes AND rescue your 401k, 403b or IRA from losses and inevitable higher taxation."

c. "Take advantage of the market's horsepower by earning a guaranteed 12%. (Guaranteed first year rate. Policy form #14161Z-99 North American Company for Life and Health Insurance. Includes bonus added to a fixed rate and only guaranteed for one year. Surrender charges apply.)"

d. "Come learn the devastating effects our current debt crisis will have on your retirement portfollio's [sic] and the future of 'entitlement programs'."

5. According to Martin at the Seminar, he had been hosting seminars since 2003 and had talked to 10,000 to 15,000 people.

6. Martin did not address any of the representations made on the invitation sent to ASD1set out in ¶ 4, *above*, at the Seminar.

7. Martin stated at the Seminar that his membership in the National Association of Insurance and Financial Advisors (NAIFA) was proof that he was a professional financial adviser: "If you're a financial advisor in this country and you're a pro at what you do, generally you're going to belong to the NAIFA . . ." A brief perusal of the NAIFA's website shows that it is an organization of insurance professionals. In its "about" section, NAFIA's website explains its origin and purpose:"

Founded in 1890 as The National Association of Life Underwriters (NALU),

> NAIFA is one of the nation's oldest and largest associations representing the interests of insurance professionals . . . in the United States. NAIFA members assist consumers by focusing their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments.

8. Martin stated that he was registered with the United States Securities and Exchange Commission and the Arkansas Securities Department as an investment adviser representative.

9. Martin stated several times during the Seminar that he was more knowledgeable than most people about matters that related to investing money. Early in the Seminar, Martin stated, "I think you'll learn some things today. I'm very good at what I do." Later in the Seminar, after he had been making an argument for some time that conventional investment strategies no longer work, Martin stated, "I'm very knowledgeable about all this stuff."

   In making these statements, Martin stated that he had knowledge and abilities that his audience did not have. There was no factual basis offered for these statements, and no factual basis for them exists. Martin has no special background in experience or education that would support his assertion that he knows more about the matters he discussed than those in his audience.

10. The point of the Seminar and all of Martin's seminars was to make the case for EIAs, insurance products tied to an equity stock index such as the Standard and Poor's 500 (S&P 500) and sold as investments. Martin argues that EIAs are the best or the only rational investment anyone can make. Underlying this argument are two core assumptions, to wit, 1) that the securities industry cannot be trusted and 2) the securities industry is obsolete because the world has changed so significantly that the investing strategies offered by the securities industry as well as other well used investing strategies not involving securities are obsolete.

a. Martin stated that the way stock brokers make money is to "constantly sell stocks and bonds and mutual funds and constantly turn them over . . . because every time they sell they make money." Further, Martin stated of brokers, "They're going to recommend that you buy stocks, bonds and mutual funds regardless of how the economy is because that's how they make a living." Martin told the attendees at the Seminar that stock brokers make money only by excessively trading their accounts, thereby generating commissions for themselves, and by making recommendations to buy or sell securities only to generate commissions, both violations of the Rules, specifically Rules 308.01(e) (excessive trading) and 308.01(d) (unsuitable recommendations), Rules of the Arkansas Securities Commissioner. There was no factual basis offered for these statements and there is no basis in fact for these blanket indictments of the securities industry.

b. Expounding on his assertion that the securities industry is obsolete, Martin opined that "most brokers today are dealing with people or . . . advising them exactly the same way they advised them a decade or so ago . . . before our world changed." and "recommending the same thing they did 15 years ago when our world was very very different." As examples of obsolence, Martin discussed the strategies of 1) diversification, 2) buying and holding and 3) asset allocation. Martin explained that they did not work by showing how one could lose money by buying when the security in question was at a high point and selling it or holding it until it reached a historic low point. Most of his examples incorporated the 2008 recession, but did not follow securities past the low point of that recession, which was around March 2009, even though the Seminar was held two years later, in March 2011. There was no factual basis for the statement that the securities industry is obsolete, and Martin's explanation of how the securities strategies he named were obsolete was misleading.

c. Martin buttressed his opinions about investment strategies by holding forth about the state of the world. He stated that he was "very strongly convinced that we're going to continue to have a lot of volatility in the years ahead." "[W]e're living a new normal," Martin said. To support this assertion, Martin offered the audience at the Seminar his analysis of six topics that are either investment strategies not involving securities, or matters that can impact the economy or the net worth of individuals. Prefacing his analysis with the statement, "I'm very knowledgeable about all this stuff," Martin told his audience that the 1) real estate appreciation would not continue or was no longer reliable, 2) unemployment would remain high, 3) all pensions were underfunded and would not perform as intended, 4) municipal bonds would no longer be a good investment, 5) wars would become a constant part of life for the foreseeable future and 6) the stock market would remain very volatile, experiencing two drops in value of 30% to 60% in the next decade. There was no factual basis offered for these statements. Martin has no special background in experience or education that would support his assertion that he knows more about these matters than those in his audience.

11. Having set a rather somber tone, Martin asserted that the purchase of EIAs are the only viable investment strategy left. Martin introduced what he was selling with this statement of the strategy: "you need to be in a position where that the market when it . . . rebounds you play along with a rebound but when the market drops you don't play along with that drop." Martin said this strategy is called indexing, and although he mentioned another product to achieve

this goal, he discussed and actually offered for sale only one, the EIA. He explained how they work as follows: "Anytime the market goes up you get a percentage of that gain. Not all of it but part of it. Anytime the market goes down you don't drop. You don't lose any money."

12. Martin acknowledged that EIAs had some bad press, saying that "4 out of 5 articles you read are negative" concerning EIAs, but dismissed them as having been written by stock brokers, who Martin said write such articles because they are losing business to people like Martin.
13. Martin bragged that he moved "between 75 and 100" customers from brokerage accounts to EIAs per year.
14. Martin stated that he felt so strongly about EIAs that he had invested all his savings in EIAs: "Almost every dime I've got and will have . . . until I retire it'll keep going into these annuities. Almost every penny of it will. My savings." Martin said early in the Seminar that he had approximately 1,000 clients who had "a little above $75 million" invested with him (T. 1) and was a member of the Million Dollar Roundtable and a member of the Top of the Table, which he explained meant he was within the top 1% of financial advisers in the country and did "more business than 99 out of 100 of them." (T. 4)

In making these statements Martin in effect told the attendees at the Seminar that he made a lot of money selling EIAs and put a lot of money in EIAs, which he would keep there until he needed it in retirement. Actually, Martin had invested relatively little money in EIAs. Before the Seminar, he had invested approximately $11,000 of his own money in two EIAs with two life insurance companies in 2008 and 2009 but had surrendered those EIAs, incurring surrender charges, in the first half of 2010. After the seminar, he invested another $6,000 in another EIA with a third company.

15. Martin did not disclose a great deal about EIAs to his audience at the Seminar. The following items not mentioned by Martin would be material to a reasonable investor.

a. Surrender Charges. These charges are a percentage of the principal amount invested and apply to withdrawals over a period of time, as long as from five to twenty years. Martin mentioned these charges obliquely in the Seminar in a discussion of liquidity when he stated that one could withdraw 10% a year "without penalty." These charges start out as high as 20% and decrease on a yearly basis until the surrender period lapses. Martin did not discuss these charges at all during the Seminar.

b. Bonus. Some EIAs have no bonus feature, and some have bonuses of up to 10%. Touting the 10% bonus, Martin explained that "If you put $100,000 with me, as soon as we open the account, we've got $110,000.00."

This statement is unqualified and covers all EIAs that have a 10% bonus feature. It is incorrect because the bonuses of some EIAs with 10% bonuses that Martin sells do not completely vest until as long as fourteen years after the EIA is purchased.

c. Contract Value and Cash Surrender Value. When Martin discussed how much his clients had made in recent years on their EIAs, he discussed only contract value and not cash surrender value. Contract value is a notional value only, which is used to calculate other values. Contract value is the amount invested (the insurance premium) plus any vested bonus, plus interest credited, less any withdrawals. The cash surrender value is what the EIA is worth in cash at any point in time, and it takes into account the surrender charges. These two values can vary a great deal, depending on the size of the surrender charges and the point in time when a withdrawal is made or an EIA is cashed in.

d. Minimum Guaranteed Interest Rate and Guaranteed Minimum Value. EIAs offer a minimum guaranteed interest rate (MGIR) on a portion of the money invested. If the equity index used were to lose money for the life of the EIA, the investor would make this amount, which would yield the guaranteed minimum value (GMV). The MGIR is usually less than 2% per annum over the life of the EIA and produces a yield less than a United States Treasury Bond (T-Bond) with a maturity date of ten to twenty years.

e. Indexing Methods. Martin told his audience that the return on investment in the EIAs he was offering would be based on various equity securities indexes, but he did not tell them how the return would be calculated. There are three methods used.

   i. *Point-to-Point*. This measures the change in the index from one point to the next, typically annually from the date the EIA was purchased (the anniversary date) to the same date each year. The value of the index at the end of the period usually becomes the beginning value for the next period.

   ii. *Averaging Method*. This method takes the average value of the index over a specific period, usually a year from the anniversary date, calculating the average on a daily or monthly basis, the monthly basis being more common.

   iii. *Sum of Months*. This method measures the sum of the monthly percentage changes in the index. There is usually a cap on the percentage change added in any one month.

The indexing method is significant because the method chosen could make a large difference in the return on investment. The annual point-to-point method uses only the beginning and ending values of the index in question, whereas the other two methods use the sequence of monthly index values. Assuming a constantly increasing index, the monthly averaging method will result in a return to the investor that is approximately 50% less than the point-to-point method would calculate.

f. Limits on Return on Investment. Martin told his audience that they would receive none of the dividends in an equity index and would receive only part of the increase in the value of the index, but would participate in no downturns in the index which could result in a negative value. He did not tell his audience exactly how they would participate only in part of the index's increase in value. There are at least three accounting methods limiting the amount of the increase in an equity index to be credited to the investor. Some EIAs apply several of these limits on participation. The three methods are as follows:

i. *Cap Rate*. A cap rate is a limit on the amount an investor can earn. For example, if the cap rate is 3%, the investor will be credited a maximum of 3%, regardless of how high the value of the index became.

ii. *Participation Rate*. This is a limit on the portion of the increase in value of the index the investor will be credited. For example, if the participation rate is 80%, and the index rose 5%, the investor would be credited only 4%.

iii. *Spread or Margin*. With this method a percentage known as spread or margin is subtracted from the increase in the index's value to arrive at the percentage rate the investor will be credited. For example, if the spread or margin is 2.25% , and the increase in the index is 8.0%, the investor will be credited 5.75%.

g. Limits on Return on Investment Can Change Yearly. One fact not mentioned at all by Martin is that the insurance companies that issue EIAs can change these limits on the return on investment on a yearly basis at their option in order to control their expenses.

h. <u>Look Back Period</u>. This is a period in which the purchaser of an EIA can decide that 1he or she does not want to buy the EIA and rescind the contract. The entire premium is then refunded. These periods vary from ten to thirty days from date of delivery. Martin did not mention the look back period at the Seminar or during the individual meetings he had with each of the investors after the seminar they each attended.

16. Martin represented EIAs as the perfect product, especially for seniors and retirees. He described it as "a savings vehicle with a life insurance company." Martin stated repeatedly that one cannot lose money with an EIA. Martin said his clients made anywhere from 3% to 10% per annum. 2010 was his clients' best year, Martin said, many of them making 15% to 20% in that year.

The returns quoted were on the contract value, often including a bonus of as much as 10%, and not the cash surrender value of the EIAs. The only realistic value of an EIA must take into account the surrender fee applied if the EIA is liquidated. When surrender fees are taken into account, returns of 10% and above are not realistic.

17. Martin stated later that it was reasonable to expect to make "somewhere in the 5-8% range." To support this assertion, Martin quoted the Wharton School of Business, which he said published an article in 2009 that showed that EIAs made an average of 8.6% per annum the first 14 years of their existence, from 1995 through 2009.

Actually, the Wharton School of Business made no statement concerning EIAs. A professor at Wharton, David Babbel, made these statements. The returns he quoted were returns on the contract value of EIAs and not on cash surrender values. Some of Babbel's work on EIAs was funded by insurance companies that issue and sell EIAs. Martin did not give his audience at the Seminar this information.

18. Martin discussed liquidity of EIAs using the example of a $100,000 investment. He said that the investor would have "access to 10% of it [the principal] every year without any penalty." Assuming that this EIA also had a 10% bonus, Martin posed the need of the investor to withdraw half of the investment, $50,000, a month after he invested it. Martin said there would be no problem: "They'll [the insurance company] send you $50,000 and we'll still have $51,000 in your account. . . . [I]t won't cost you a penny of your principal."

    This statement is not true of any EIA Martin sells because it ignores the surrender fee that would impact this withdrawal a month after purchase. The only exception would be if this withdrawal took place within a look back period of thirty days. Even then, the statement is incorrect because if the purchaser decided to rescind, the entire purchase price of $100,000 would be refunded, and the purchaser would not have 50% of the original purchase price ($50,000), plus any part of the 10% bonus based on the original investment.

19. The Staff has identified a group of investors in EIAs Martin sold them (Investors). They all attended one of Martin's seminars in Mountain Home, Little Rock or Hot Springs. They all met with him individually after the seminar, usually at his office, and they all purchased EIAs with money they obtained by liquidating securities, acting upon his advice at the seminar to do so. The average age of the Investors was 67.7 years. All expressed a desire not to lose any money in the stock market. They purchased EIAs having surrender periods from nine to sixteen years, the average surrender period being 11.7 years.

20. Before the Seminar, Martin had no financial information concerning the people he invited. At

the seminar, Martin did not obtain financial information about the attendees, which would include investment goals and risk tolerances. The only information Martin gathered from the attendees at the Seminar was contained on forms scheduling appointments with. This form contained the contact information for each attendee, a date for the appointment and a section listing and ranking numerically each attendee's "concerns," which were limited as follows:

a. "Losing my money"

b. "Outliving my money"

c. "Inattentive brokers and excessive fees"

d. "Other ______"

There was no other information gathered from attendees at the Seminar concerning their financial circumstances, investment objectives or risk tolerances before Martin's individual meeting with them. When the Investors purchased an EIA from Martin, there was a suitability form completed that was issued by the insurance company that issued the EIA. This form was focused primarily on whether a prospective investor could afford to purchase an EIA and not on whether the EIA was a suitable investment. Although a few of the Investors gave Martin some financial information about themselves, most did not, and there is no indication that Martin used what information he received in making his recommendation to replace securities with an EIA. In most cases, Martin had an EIA ready for recommendation to buy when the Investor arrived for the individual meeting scheduled at the seminar the Investor had attended.

21. When most of the Investors met with Martin after the seminar they each attended, he would recommend the purchase of a particular EIA. The Investor would usually be given a single

sheet of paper containing what was purported to be the important features of the EIA recommended. If another investment was mentioned, it was mentioned only in passing, and it was only another EIA. Martin never recommended anything but EIAs. He would help the Investors liquidate their securities and sometimes have his staff assist in liquidating the securities.

22. In the individual meetings they had with Martin, most of the Investors expressed an aversion to market risk and an intention not to withdraw money from the EIA during the surrender period. Martin did not explore whether any of the Investors really needed market risk protection for a time horizon of nine to sixteen years, during which no withdrawals were planned. Had he looked at what was possible for the Investors in the way of securities, he could have found better alternatives than EIAs.

    a. A combination of mutual funds consisting of 80% equities in the form of low cost index funds such as a Vanguard S & P 500 index fund and 20% United States Treasury Bills (T Bills) would greatly outperform a typical EIA over that period of time.

    b. A combination of mutual funds consisting of 20% equities in the form of low cost index funds such as a Vanguard S & P 500 index fund and 80% United States T Bills would also outperform a typical EIA over that period of time.

    c. Historically, intermediate (5 year maturity) T-Bonds have averaged yields of 4.5% and long term (10 year maturity) T-Bonds have averaged 5.16%. These returns have become lower in recent years due to the action of the Federal Reserve known as "quantitative easing" and "operation twist," which consists of the purchase of great amounts of government securities in an effort to keep interest rates low. However, the Federal

Reserve could end this action at any time.

Martin did not discuss these facts at the Seminar or with the Investors in their meetings with him after the seminars they attended.

23. Martin failed to update his Form U-4 on the Investment Adviser Registration Depository (IARD)[1] with several important matters. Since Martin has been registered as an IAR with Brookstone on January 18, 2007, he filed his Form U-4 twice, on October 13, 2009, and October 25, 2011. He has not reported the following matters on his Form U-4.

    a. Foreclosures. Question14k of the Form U-4 asks whether within the last ten years "have you made a compromise with creditors." Martin answered no to this question on the U-4 filed in October 2011. In fact, Martin made at lease two compromises with creditors that resulted in foreclosures and sales of homes Martin had purchased at the addresses listed below.

        i. *46 Doral Court, Mountain Home, Arkansas*. Martin purchased this property on or about August 6, 2008, for approximately $300,000 with a loan from Liberty Bank of Arkansas. On or about October 4, 2010, the property was foreclosed, and a mortgagee warranty deed was granted to Liberty Bank of Arkansas, which sold the property to another party on or about November 2, 2010.

        ii. *4 Spring Valley, Little Rock, Arkansas*. Martin purchased this property for

[1]The Investment Adviser Registration Depository is the electronic registration system set up and run by the Financial Industry Regulatory Agency (FINRA) in accordance with parameters set by its sponsors, the United States Securities and Exchange Commission (SEC) and the North American Securities Administrators Association (NASAA). It facilitates investment adviser registration, regulatory review, the public disclosure information of investment adviser firms and representatives and more.

approximately $1.5 million on or about February 10, 2006. On or about January 12, 2010, the property was foreclosed, and a mortgagee warranty deed was granted to HSBC Bank, which sold the property to another party on or about March 9, 2010.

b. Bankruptcy Filing. Question 14k of the U-4 form asks if the IAR filed a bankruptcy petition. Martin answered no to this question in his U-4 filed in October 2011. This answer was incorrect because Martin and his wife in fact filed a bankruptcy petition on April 30, 2010, pursuant to Chapter 13 of the Bankruptcy Code. The case was later converted to a Chapter 7 bankruptcy. On March 10, 2011, the trustee in bankruptcy filed a complaint opposing discharge on the basis of improper transfers of funds from MMFS to the Martins' personal accounts in the six months prior to filing the bankruptcy totaling $144,000. These transfers, the trustee alleged, should have been documented as income to the Martins. Subsequently, the bankruptcy was dismissed voluntarily, the Martins agreeing with the trustee in bankruptcy that there was cause to dismiss, and the Martins were barred from re-filing a bankruptcy under any chapter of the Bankruptcy Code for two years.

c. Tax Liens. Question 14M asks if the filer has "any unsatisfied judgments or liens against you?" Martin answered no. This answer was incorrect because he has several federal tax liens filed against him, altogether totaling $303,251.76 in unpaid individual federal income taxes, as listed below.

i. Federal tax lien for 2006 and 2007 individual income tax totaling $15,996.10; filed April 5, 2010.

ii. Federal tax lien for 2008 individual income tax totaling $211,166.53; filed June 21, 2010.

iii. Federal tax lien for 2009 individual income tax totaling $594.71; filed June 28, 2010.

iv. Federal tax lien for 2010 individual income tax totaling $75,494.42; filed October 24, 2011.

CONCLUSIONS OF LAW

24. The Commissioner has jurisdiction over this matter pursuant to Ark. Code Ann. § 23-42-308.

25. In the invitation to ASD1, set out in ¶ 4, *above*, Martin made statements that he would provide analyses or explanation concerning several matters. Because Martin did not mention any of these matters during the Seminar, the distribution of his invitation was a violation of Rule 308.02(m)(4), Rules of the Arkansas Securities Commissioner, which provides that it is a fraudulent, deceptive, dishonest or unethical practice for an investment adviser to distribute an advertisement that states that any analysis or other service will be provided without charge unless such analysis or service is in fact provided free of charge.

26. ¶¶ 3 - 21 describe a typical seminar that Martin uses to sell EIAs. The upshot of the seminar was that the only viable investment for anyone was the EIA and that securities were sold by incompetent and dishonest brokers. Martin's statement that he moved "between 75 and 100" customers from brokerage accounts to accounts holding EIAs (¶ 13) was an indirect but effective recommendation to liquidate securities and invest the proceeds in EIAs with Martin and was made for compensation, which was the commission he made for the sale of the EIA that would replace the securities sold. Martin therefore was acting as an IA rep in regard to

the Investors as defined by Ark. Code Ann. § 23-42-102(9), even though none of them signed investment advisory contracts with Brookstone.

27. As shown in ¶¶ 3 - 21, which describe a typical Martin seminar, Martin made the blanket recommendation to sell securities and invest the proceeds in EIAs knowing nothing about the individual financial circumstances, investment objectives or risk tolerances of any of the members of the audience. Although Martin represented himself to be very knowledgeable about everything he said and stressed his role as an investment adviser, it is clear that Martin's objective was not to act as an investment adviser, but only to sell EIAs.
    a. In conducting these seminars purporting to act as an investment adviser but actually marketing EIAs only, Martin engaged in an act, practice or course of business which operates or would operate as a fraud or deceit upon the attendees at these seminars, a violation of Ark. Code Ann. § 23-42-307(a)(2).
    b. In making these recommendations to liquidate securities and use the proceeds to purchase EIAs, Martin had no reasonable grounds to believe that they were suitable for the attendees at the Seminar and therefore violated Rule 308.02(a), Rules of the Arkansas Securities Commissioner, the first of a list of prohibited practices under the heading, "Fraudulent, Deceptive, Dishonest or Unethical Practices of Investment Advisers."
    c. In engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon the attendees at these seminars and in purporting to act as an investment adviser but actually marketing EIAs only, Martin violated the fiduciary duty with which he was charged as an investment adviser.
28. In the Seminar Martin's assertion that investments in securities cannot be a good or valid

investment partly because those who sold securities were not to be trusted because they only recommended trading in securities to generate commissions without regard to the suitability of the recommendations was made with no support of any kind. Although the securities industry has individuals in it that engage in such practices, there was no factual basis stated showing that all or most members of the security fit this description, and none exists. This indictment of the securities industry and all who are employed in it was therefore a misstatement of material fact, a violation of Ark. Code Ann. § 23-42-307(a)(3).

29. In the Seminar Martin made a broad indictment of three common strategies for investing– diversification, buying and holding and asset allocation–, arguing that they can no longer work in today's world. ¶ 10, *above*. In making his argument that these strategies do not work, Martin used hypothetical situations using a beginning investment date which was a high point in securities markets and ends the analysis on a low. Had Martin revealed to the audience at the Seminar that they could have made a great deal of money by buying at the low point and holding until a high point, it would have been obvious that no conclusion can be drawn from following stocks from one point to another. His failure to discuss more than the two dates he used in each hypothetical situation was the omission of material facts which were necessary in order to make the statement made, i.e., investments in securities cannot be a good or valid investment in current times, not misleading, a violation of Ark. Code Ann. § 23-42-307(a)(3).

30. As support for his indictment of securities and the securities industry in general, Martin described the world as having changed so radically that investment strategies that had worked in the past would no longer work. Specifically, he told his audience that 1) real estate would no longer be a good investment, 2) high unemployment would become permanent, 3) all

pensions would become unreliable and underfunded because they are all invested in securities, 4) municipal bonds would no longer be good investments because tax revenues and real estate values would be down, 5) constant wars would become permanent in the foreseeable future and 6) the stock market would become very volatile, including two 30% to 60% drops in value within the next decade. ¶ 10.c, *above*. Martin prefaced these remarks with the statement that he is very knowledgeable about these matters, but in fact he has no special knowledge of these matters by virtue of experience or education, and his failure to inform the audience at the Seminar of this lack of expertise or education was the omission of material facts which were necessary in order to make the statements made not misleading, a violation of Ark. Code Ann. § 23-42-307(a)(3).

31. Against the backdrop of his description of a bleak world in which traditional investment strategies no longer worked, Martin recommended EIAs to the audience at the Seminar, explaining them simply as products allowing one to participate in part of the increase in the stock market, but in none of the losses. ¶ 11. Martin stated that he felt so strongly about EIAs that he invested all his savings in EIAs, himself, and would keep that money there until he retired. When considered with other statements Martin made that he had made a great deal of money, it was clear that Martin stated that he had a great deal of his own money in EIAs and would keep it there for a long time. In reality, Martin had invested a very small amount of money in EIAs when he made those statements and had held the investments for only a short time. ¶ 14.Thus, Martin's statements that he invested all his savings in EIAs until retirement was a material misstatement of fact, a violation of Ark. Code Ann. § 23-42-307(a)(3).

32. In recommending EIAs over all other possible investments to the audience at the Seminar,

without explaining the features of EIAs, the most significant of which are 1) surrender charges and periods, 2) contract value versus cash surrender value and 3) 10% bonuses, set out in more detail in ¶ 15, *above*, Martin oversimplified EIAs and omitted material facts, the omission of which made the recommendations of EIAs over all other investments and the statements of returns misleading, a violation of Ark. Code Ann. § 23-42-307(a)(3).

33. Martin's statements at the Seminar set out in ¶¶ 16 and 17 concerning the returns that could be expected on EIAs were returns on contract values and not cash surrender values, which are real time values which take into account surrender fees and other fees that diminish principal when withdrawals are made during the surrender period. The fact that the returns cited were returns on contract values was a material fact, the omission of which made the statements of returns misleading, a violation of Ark. Code Ann. § 23-42-307(a)(3).

34. Martin's statements at the Seminar set out in ¶ 18 that when one purchases an EIA with him that has a 10% bonus, one has that bonus immediately was incorrect inasmuch as the 10% bonus included in some EIAs he sold did not vest for a long period of time, as long as fourteen years. These facts not divulged to the audience were material facts, the omission of which made the statement that one has an immediate 10% addition of principal upon the purchase of an EIA with Martin misleading, and a violation of Ark. Code Ann. § 23-42-307(a)(3).

35. As set out in ¶ 18, *above*, Martin explained at the Seminar that one could withdraw 50% of one's investment in an EIA with a 10% bonus a month after investment and retain the other 50% in the EIA plus at least part of the 10% bonus. This statement was false because it totally ignores surrender charges. A withdrawal of 50% in any EIA Martin sold would not

have resulted in that outcome. This statement was therefore a misstatement of material fact and a violation of Ark. Code Ann. § 23-42-307(a)(3).

36. Martin's statement at the Seminar set out in ¶ 17 that Wharton School of Business had shown in an article published in 2009 that EIAs made an average of 8.6% per annum was false in that a professor at Wharton made that statement in an article published in 2009 and not Wharton School of Business. Thus, this was an untrue statement of a material fact made in violation of Ark. Code Ann. § 23-42-307(a)(3).

37. In regard to Martin's statement at the Seminar set out in ¶ 17 that Wharton School of Business had shown that EIAs made an average of 8.6% per annum, Martin's failure to inform the audience at the Seminar that 1) these returns were based on contract values and not cash surrender values and 2) some of the work done by the Wharton professor who actually quoted these returns had been funded by insurance companies who issued and sold EIAs was the omission of material facts which were necessary in order to make the statement made, i.e., the average return on investment of 8.6% per annum, not misleading, a violation of Ark. Code Ann. § 23-42-307(a)(3).

38. Martin did not learn enough about the Investors to make a recommendation of any investment, yet for the majority of investors coming his office for their first consultation with him after the seminar they had attended he had an EIA ready for recommendation to accompany the recommendation to liquidate securities already made at the Seminar before they arrived. He made these recommendations for a fee, which was his commission for selling the EIA.

   a. In making these recommendations, Martin engaged in an act, practice or course of business which operates or would operate as a fraud or deceit upon each investor, a violation of Ark. Code Ann. § 23-42-307(2).

b. In making these recommendations to liquidate securities and use the proceeds to purchase EIAs, Martin had no reasonable grounds to believe that they were suitable for the Investors and therefore violated Rule 308.02(a), Rules of the Arkansas Securities Commissioner, the first of a list of prohibited practices under the heading, "Fraudulent, Deceptive, Dishonest or Unethical Practices of Investment Advisers."

c. In engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon the Investors and in purporting to act as an investment adviser but actually marketing EIAs only, Martin violated the fiduciary duty with which he was charged as an investment adviser.

39. As noted in ¶¶ 21 and 22, *above*, Martin did not discuss any alternatives with any of the Investors but an EIA, perhaps discussing or mentioning more than one EIA. He specifically failed to inform the Investors or the audience at the Seminar of returns that reasonably could be expected over the long period of time contemplated for holding an EIA (10 to 15 years)from combinations of various low cost mutual funds or from securities issued by the United States Treasury, T-Bills and T-Bonds. These facts not divulged to the audience at the Seminar and to the Investors at their individual meetings was the omission of material facts, the omission of which made the recommendation of the purchase of an EIA from Martin misleading, and a violation of Ark. Code Ann. § 23-42-307(3).

40. Martin's failure to update his Form U-4, as detailed in ¶ 23, *above*, to reflect two foreclosures, a bankruptcy filing and four federal tax liens, comprised seven violations of

Rule 302.02(c)(3), Rules of the Arkansas Securities Commissioner.

OPINION

41. This order is in the public interest. The facts set out in ¶¶ 1 - 23 Support the violations of the Act and Rules set out in ¶¶ 24 - 40.

ORDER

IT IS THEREFORE ORDERED that:

1. Martin's registration as an IA representative with Brookstone is suspended as of the last day it was effective for a period of one year in accordance with Ark. Code Ann. § 23-42-308(a)(2)(B) and § 23-42-308(e)(3).
2. Before Martin's registration with any investment adviser is accepted or becomes effective after the one-year period of suspension set out above has run, Martin must have taken and obtained scores of at least 70% correct answers on all examinations required by Rule 302.02(f)(1), Rules of the Arkansas Securities Commissioner, and of any other examination then required by law.
3. Martin shall not apply for registration in any other capacity under the Act, specifically as a broker-dealer or agent of a broker-dealer, during the one-year suspension period set out above. Should Martin apply for registration as a broker-dealer or broker-dealer agent after that period of suspension, no application for registration will be accepted until Martin has taken and obtained scores of at least 70% correct answers on all examinations required by Rule 302.01(c), Rules of the Arkansas Securities Commissioner, and of any other examination then required by law.
4. After the one-year period of suspension set out above, Martin will only be allowed to register

as an agent of a registered broker-dealer or a representative of a registered investment adviser which is:

a. Approved by the Staff and
b. Has agreed to on-site, heightened supervision of Martin for a period of one year, pursuant to a plan of heightened supervision approved by the Staff.

5. Martin is fined $50,000 in accordance with Ark. Code Ann. § 23-42-308(g), which authorizes fines of up to $10,000 per violation involving individuals under sixty-five years of age and fines of up to $20,000 per violation involving individuals sixty-five years of age or older. The fine is payable as follows:

a. $25,000 shall be paid on the date of this order
b. Payments on a monthly basis, the first beginning thirty days after the date of this order, specifically on May 28, 2014, and thereafter for the next nine months, until paid completely in January 2015, such payments being in the following amounts:
   i. $2,777.78
   ii. $2,777.78
   iii. $2,777.78
   iv. $2,777.78
   v. $2,777.78
   vi. $2,777.78
   vii. $2,777.78
   viii. $2,777.77
   ix. $2,777.77.

6. Any failure by Martin to adhere to this Consent Order, including making timely payments of the fine as set forth immediately above, shall be considered a violation of this Consent Order authorizing the Commissioner to apply to the Pulaski County Circuit Court to enforce compliance with this Consent Order pursuant to Ark. Code Ann. § 23-42-209(a)(3)(B).

WITNESS MY HAND AND SEAL this 29th day of April, 2014.

A Heath Abshure
ARKANSAS SECURITIES COMMISSIONER

CONSENT TO ENTRY OF ORDER

Michael Hazen Martin hereby acknowledges that he has been served with a copy of this Order, has read it, is aware of his right to a hearing and has waived that right. He acknowledges that he is consenting to the entry of this order voluntarily after consulting with counsel and that no threats or improper inducements of any kind have been made by any member of the Staff to induce him to consent to the entry of this order.

Michael Hazen Martin
Respondent

Signed this 25th day of April, 2014.

Allan W. Horne, Esq.
Attorney for the Respondent

Signed this 28 day of April, 2014.

Theodore Holder, Esq.
Attorney for the Staff

Signed this 28th day of April, 2014.