

STATE OF ARKANSAS
SECURITIES DEPARTMENT

IN THE MATTER OF

MICHAEL SCOTT AKIN

NO. 98-6-S

ORDER

On January 28, 1998, came on to be heard Complaints Numbered 95-53-S, 95-54-S, and 96-9-S by the staff of the Arkansas Securities Department (the "Department") which were filed on October 17, 1995, October 17, 1995, and December 30, 1997 respectively, against Michael Scott Akin ("Akin"), CRD # 1994539. This proceeding was instituted pursuant to the Arkansas Securities Act [Ark. Code Ann. § 23-42-101 *et seq.*] (the "Act"), the Rules of the Arkansas Securities Commissioner promulgated thereunder (the "Rules"), and the Arkansas Administrative Procedure Act [Ark. Code Ann. § 25-15-201 *et seq.*] to determine what action is appropriate in the public interest with respect to the registration of the agent named herein.

Appearing at the hearing on behalf of the Arkansas Securities Department was its attorney, David H. Smith. Although Akin received notice of the hearing of the three complaints, he did not attend and did not have a representative at the hearing. Exhibits 4, 5, 6 and 7 to the record of the hearing support a finding that Akin was provided notice of the filing of each complaint and the time and place for the hearing.

Upon consideration of the evidence presented at the hearing, the sworn statements by the three former customers of Akin, Hayward R. Wallace, Bennie D. Morriss, and Cecil Allen, the testimony of the Department witness, Phyllis Shelby, the statements of counsel and other matters of proof, and pursuant to the authority given by the Act, as the Securities Commissioner, I make the following Findings of Fact.

FINDINGS OF FACT

1. The hearing of this matter was held pursuant to the provisions of Act, Ark. Code Ann. § 23-42-308 and the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-213.
2. Jurisdiction over Akin and the subject matter of this proceeding is proper pursuant to Act, Ark. Code Ann. §§ 23-42-103 and 23-42-308.
3. Akin was duly served with notice of the hearing.
4. Akin was registered in Arkansas as an agent of A.G. Edwards & Sons, Inc. ("AG Edwards") from November 27, 1989, through August 25, 1995.
5. The staff of the Department conducted an examination of the accounts of AG Edwards customers, Hayward R. Wallace ("Wallace"), account number 433-016068-002, Bennie D. Morriss ("Morriss"), account number 433-0138-002, and Cecil Allen ("Allen"), account number 433-009193-002. The Department examinations of the three accounts resulted in the filing of Complaints, Nos. 95-53-S and 95-54-S on October 17, 1995, and No. 96-9-S on December 30, 1997.

I. UNAUTHORIZED TRANSACTIONS

Wallace

6. In the summer of 1993 Wallace was approached by Mr. Brad Van Pelt ("Van Pelt") about an investment opportunity. Upon the recommendation of Van Pelt, Wallace gave Van Pelt \$4,000 to open an account with a man at AG Edwards in Eureka Springs, Arkansas. On July 20, 1993, Akin opened the account for Wallace. He executed the purchase of a call option in the amount of \$2,204 on July 20, 1993, and a put option in the amount of \$1,324 on July 22, 1993. During the next fifty-four (54) days Akin executed eight additional transactions involving option contracts in the Account. The total amount involved in the transactions was \$14,403. The account was opened with \$4,000, but decreased to \$261 by September 24, 1993.
7. Akin caused the execution of ten (10) transactions which were unauthorized by the customer, Wallace. Akin executed every transaction in the Wallace account without communicating with Wallace in any way. Akin did not have written discretionary authority from the customer to execute transactions on his behalf.

Allen

8. Allen was contacted by Akin in 1990 about opening an account with AG Edwards. Allen is 68 years old, has made a living raising cattle on his 160 acre farm in Quitman, Arkansas, and does not read or write. Prior to meeting Akin, Allen's previous investment experience was limited to certificates of deposit at a bank. Akin persuaded Allen to open an account with AG Edwards by promising higher interest rates and more insurance for the investments than the bank was providing.
9. When Allen first gave Akin \$10,000 to invest, he stressed that the money had to be safe, because it was his life savings and major source of income for him and his wife. Allen told Akin to invest the money in the United States. Allen repeatedly instructed Akin to invest his money in the United States, while expressing investment objectives of safety of principal and income. Akin assured Allen that his money would be safe.
10. With Allen's initial check for \$10,000, on October 12, 1990, Akin purchased shares in Alliance Short Term Multi-Market Trust B ("ASTMMTB"). ASTMMTB is a fund with a portfolio of debt securities from foreign as well as United States securities markets. ASTMMTB maintains the majority of its assets in debt securities denominated in foreign currencies, with only about 25% of its net assets in U.S. Dollar-denominated securities.
11. On March 25, 1991, Allen gave Akin \$225,000 to invest with the same instructions, emphasizing safety and telling Akin the money was not to go outside the United States and must be guaranteed by the U.S. Government. Akin purchased shares in Alliance Short Term Multi-Market Trust A ("ASTMMA"), which consists of holdings similar to the ASTMMTB.
12. Eventually, everything Allen had in the bank went to Akin and AG Edwards. Allen gave Akin the money from his CDs as they matured. Akin continued to invest in ASTMMA and later into an Eaton Vance Fund and another Alliance fund, Alliance North American Government Income Trust B ("ANAGITB"). According to a prospectus, ANAGITB is a global bond fund with a portfolio of debt securities issued or guaranteed by the governments of the United States, Canada and Mexico. During the time Allen owned shares of ANAGITB the fund had as little as 30% of its holdings in United States debt securities.
13. Allen gave Akin a total of \$350,000 to invest. Akin put \$316,500 into the three Alliance funds with large portions of the portfolios consisting of debt securities from foreign countries.
14. AG Edwards terminated Akin's employment in August, 1995. Through conversations with W. Robert Taylor ("Taylor"), Akin's supervisor, and his newly appointed agent, Robert Jones, Allen learned that the principal of the investments in the Alliance funds was not safe. The two Alliance funds in which Akin had invested his money had decreased in value so that Allen was

holding unrealized losses to his principal approaching \$90,000. Allen was very surprised to learn from Taylor and Jones that his money was invested outside the United States in speculative securities.

15. On November 13 and 16, 1995, pursuant to suggestions by Jones, Allen's investments in the Alliance funds were sold and purchases of GNMA bonds were made.
16. The transactions which Akin executed in the Allen account did not comply with the specific instructions given by Allen that his money only be invested in the United States and that the money must be guaranteed by the United States Government. Purchases of the three Alliance funds, ASTMMTB, ASTMMTA and ANAGTB by Akin were not authorized by Allen.

Morriss

17. Morriss opened an account at AG Edwards with Akin on October 22, 1992, with a beginning deposit into the account of 4,000 shares of TCA Cable TV Inc. and 520 shares of Wal-Mart Stores Inc. for a total account value of \$106,655.00.
18. During the twenty-seven (27) month period from the time the account was opened through December 30, 1994, Akin executed numerous transactions in the account without discussing the purchases with Morriss. Akin did not have discretionary authority to conduct business in the account. Despite this lack of authority, Akin regularly effected transactions in the account without gaining prior authorization.

II. UNSUITABLE RECOMMENDATIONS TO CUSTOMER

Wallace

19. The transactions which Akin executed in the Wallace account were not suitable for the customer based on the security holdings, financial situation and needs of Wallace. Prior to investing with AG Edwards, Wallace had never invested with a brokerage firm. His only experience with investing was a bank savings account. Wallace had an annual income of about \$17,000 and liquid assets of about \$5,000 at the time the transactions occurred. Wallace borrowed the \$4,000 he gave to Van Pelt to open the AG Edwards account. In spite of all of these facts about the customer, Akin engaged in highly speculative activity involving transactions in option contracts which resulted in almost a total loss of the funds invested in the account within three months.

Allen

20. The transactions which Akin executed in the Allen account were not suitable for the customer based on the security holdings, financial situation and needs of Allen. Prior to investing with AG Edwards, Allen had never invested with a brokerage firm. His only experience with investing was a bank savings account and certificates of deposit at the bank. When Allen first spoke to Akin about investing with AG Edwards he stressed that his money could not be at risk and that his money must be invested in the United States. These were very important needs for Allen and he repeated them several times in conversations with Akin and later in conversations with Jones when he took over the account.
21. Allen gave Akin a total of \$350,000 to invest. Akin put \$316,500 into the three Alliance funds, ASTMMTB, ASTMMTA and ANAGITB, with large portions of the portfolios consisting of debt securities from foreign countries. During the time Allen owned shares of ANAGITB the fund was described by Alliance as an aggressive, speculative fund suitable for investors who understand the risk and are willing to accept volatility.

22. The funds Allen gave Akin to invest had to be invested in products that insured the safety of the principal. The funds represented Allen's life savings and major source of income for him and his wife. The transactions which Akin executed in the Allen account were not suitable for the customer based on the security holdings, financial situation and needs of Allen.

Morriss

23. At the initial meeting with Akin, Morriss explained to him that she was recently divorced, had minimal work skills, and was working as a secretary earning approximately \$20,000 a year. Morriss also told Akin that she held 4,000 shares of TCA Cable TV stock and 520 shares of Wal-Mart stock she had received in the settlement of her divorce, which represented the majority of her net worth. Morriss told Akin she would place the stock in an account with Akin at AG Edwards with the objective for growth to be used upon retirement.
24. At this meeting, Akin presented Morriss with several documents for her signature described by Akin as standard forms required to open an account with AG Edwards. Morriss signed these documents during the luncheon meeting. Contained in these documents was an obscure agreement in which Morriss inadvertently consented to place her account on margin. Akin never discussed placing Morriss' account on margin and never disclosed any risks associated with a margin account.
25. After opening the account, on November 16, 1992, Akin sold short 1,000 shares of Countrywide Credit Industries placing \$27,445.44 on margin in the account. On November 18, 1992, Akin sold short an additional 1,000 shares of Countrywide Credit Industries placing another \$28,684.82 on margin in the Account. The two initial trades by Akin in the Account resulted in 53% of the value of the Account placed on margin. This activity was not suitable in light of Morriss' stated investment objectives and financial resources.
26. Throughout the next two years, Akin continued to make recommendations and engaged in an investment strategy which was unsuitable in light of Morriss' investment objectives and financial resources.

III. Excessive Trading

Morriss

27. In Morriss' account, during the twenty-seven (27) month period through December 30, 1994, Akin induced and executed trading in the Morriss account which was excessive in size and frequency for the purpose of generating commissions.
28. The account maintained an average monthly equity balance of \$71,833, but Akin executed purchases totaling over \$845,230, resulting in a turnover rate of 11.77 times during the twenty-seven month period. During the period examined, Akin generated gross commissions totaling \$19,820 while Morriss' Account realized a loss of over \$55,000.

Wallace

29. Akin induced trading in the account of Wallace which was excessive in size and frequency in view of the financial resources and character of the account exclusively for the purpose of accumulating profits for Akin. During the first two months the Wallace account was open, Akin executed ten transactions totaling \$14,403, resulting in an annual turnover rate of 21.6 times. During the period examined, Akin generated gross commissions exceeding \$780 from the Wallace account.

IV. MISUSE OF CUSTOMERS' FUNDS

Allen

30. After AG Edwards terminated Akin's employment in August, 1995, through conversations with Akin's supervisor, Taylor, Allen learned that \$6,000 he had given Akin had never been deposited into his account.
31. On June 16, 1993, Allen gave Akin \$58,000 in cash to invest for him. Akin gave Allen a personal check in the amount of \$58,000 as a receipt for the money and told him not to try to cash the check. Although instructed by Allen to deposit the sum into his account and invest the money, Akin instead deposited only \$7,000 of the cash on June 21, 1993. Akin continued to deposit and invest small portions of the \$58,000 over a nine month period. Akin made a total of six deposits totaling \$37,000 into Allen's account. In August, 1993, pursuant to a request by Allen for \$15,000, Akin sent Allen two cashiers checks totaling the amount requested. However, \$6,000 of the cash given to Akin was not accounted for when Akin terminated his employment with AG Edwards in August, 1995.
32. Akin did not immediately deposit the \$58,000 in cash money into Allen's account. Without authorization, Akin kept \$42,500 for two months, \$20,800 for six months, and did not return \$6,000 to Allen for a period exceeding two years, at which time Akin had terminated his employment with AG Edwards.

V. MISREPRESENTATIONS AND OTHER UNFAIR, MISLEADING
AND UNETHICAL PRACTICES

Morriss

33. Akin, through manipulations and deceptions, failed to observe high standards of commercial honor and just and equitable principles of trade in his position as agent over the Morriss account.
34. On several occasions Morriss telephoned Akin for an explanation of her monthly account statements, specifically inquiring about sections titled "total account value" and "money you owe us." Each time Akin would assure Morriss her account was doing very well and the fluctuations in the "total account value" and "money you owe us" were due to glitches in a new computer software program.
35. Morriss received several margin calls from the company and each time contacted Akin for an explanation. She was told each time that a mistake had occurred and she should ignore the notice and forget about it. Akin assured her over and over that her account was in good shape and the margin calls were due to errors.
36. Morriss relied on the explanations of Akin and took no action with regard to the margin calls. Because she was not contacted further by AG Edwards about these problems, Morriss trusted Akin's explanation of the margin calls and did not pursue to understand more fully what was transpiring in her account. Morriss' trust in Akin allowed him to continue draining assets out of the Account resulting in losses exceeding \$55,000.00.

APPLICABLE ARKANSAS STATUTES AND RULES

37. Ark. Code Ann. § 23-42-308(a) The commissioner may by order deny, suspend, or revoke any registration if he finds that:
 - (1) The order is in the public interest; and

(2) The applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director; any person occupying a similar status or performing similar functions; or any person directly or indirectly controlling the broker-dealer or investment adviser:

(B) Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act;

(G) Has engaged in dishonest or unethical practices in the securities business;

38. Ark. Code Ann. § 23-42-507 provides in part that it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

39. RULE 308.01 of the Rules provides in part as follows:

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 Sections 23-42-308 and 23-42-507 of the Act.

- D. Recommendations to Customers. 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 his other security holdings and as to his financial situation and needs, or encouraging a customer to invest beyond his immediate financial resources.
- E. Excessive Trading. Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account exclusively for the purpose of accumulating profits.
- O. Unauthorized Transactions. Causing the execution of a transaction which is unauthorized by a customer or the sending of a confirmation in order to cause a customer to accept transactions not actually agreed upon or exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders.
- P. Misuse of Customers' Funds or Securities. Unauthorized use or borrowing of customers' funds or securities.
- W. Other Unfair, Misleading and Unethical Practices. The unfair, misleading or unethical practices set forth above are not exclusive of other activities, such as forgery, embezzlement, non-disclosure 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.

CONCLUSIONS OF LAW

40. The unauthorized transactions executed by Akin in the accounts of customers Wallace, Allen and Morriss described in Paragraphs 6 through 18, above, constitute violations of Ark. Code Ann. § 23-42-308(a)(2)(G) and Rule 308.01 O and are, therefore, grounds for suspension or revocation of registration.
41. The recommendations made by Akin without reasonable grounds for believing that such recommendations were suitable for the customers, described in Paragraphs 19 through 26, above, constitute violations of Ark. Code Ann. § 23-42-308(a)(2)(G) and Rule 308.01 D and are, therefore, grounds for suspension or revocation of registration.
42. The excessive trading induced by Akin, described in Paragraphs 27 through 29, above, constitutes a violation of Ark. Code Ann. § 23-42-308(a)(2)(G) and Rule 308.01 E and is, therefore, grounds for suspension or revocation of registration.
43. The misuse of customers' funds by Akin, described in Paragraphs 30 through 32, above, constitutes a violation of Ark. Code Ann. § 23-42-308(a)(2)(G) and Rule 308.01 P and is, therefore, grounds for suspension or revocation of registration.
44. The material misrepresentations made by Akin to his customers, described in Paragraphs 30 through 36, above constitute violations of Ark. Code Ann. § 23-42-507, §23-42-308(a)(2)(G) and Rule 308.01 W and are, therefore, grounds for suspension or revocation of registration.

OPINION

For the reasons set forth herein, and based upon the Findings of Fact and Conclusions of Law recited above, it is the opinion of the Commissioner that the registration of Akin as an agent in the State of Arkansas be permanently revoked.

ORDER

Pursuant to the Findings of Fact, Conclusions of Law, and Opinion set forth above, and pursuant to Ark. Code Ann. § 23-42-308 (a), it is hereby Ordered that the registration of Michael Scott Akin, as an agent in the State of Arkansas is permanently revoked.

DATED THIS _____ DAY OF February, 1998.

MAC DODSON

Arkansas Securities Commissioner