

**STATE OF ARKANSAS**  
**SECURITIES DEPARTMENT**

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IN THE MATTER OF

ROBERT MITCHELL ROSS,  
Registered Representative,  
CRD No. 2372969

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No. 99-054-S

**CONSENT ORDER**

This consent order is entered pursuant to the Arkansas Securities Act, codified at Ark. Code Ann. §§ 23-42-101, *et seq.* (Repl. 1994), (the Act), the Rules of the Arkansas Securities Commissioner promulgated under the Act (the Rules) and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann. §§ 25-15-201, *et seq.* (Repl. 1996). This order is entered into with the consent of the respondent, Robert Mitchell Ross (Ross), in full settlement of all claims that could be brought against him by the Staff of the Arkansas Securities Department (the Staff). Ross waives his right to the filing of a formal complaint and a formal hearing. Ross denies the findings of fact set out herein and, solely for the purpose of settlement of these proceedings, consents to the entry of this order and agrees to abide by its terms.

**FINDINGS OF FACT**

1. Ross was a registered representative of Morgan Keegan & Company, Inc. (Morgan Keegan) at its branch office in Little Rock, Arkansas, from October, 1995, until January, 1998. From January, 1998, until 30 September 1998, he was employed as a registered representative of Prudential Securities, Inc. (Prudential) at its Little Rock, Arkansas, branch office.
2. On 16 January 1996 Charles J. Gordon, Jr. and his wife, Shirley Faye Gordon, opened an account with Ross at Morgan Keegan with approximately \$50,000 that Mr. Gordon received in settlement of a workers compensation claim. In order of priority, the Gordons marked investment objectives of income, safety of principal and growth. The Gordon's income was noted to be under \$25,000, and their approximate net worth was indicated to be between \$50,000 and \$100,000. Mr. Gordon's occupation was stated as "retired/disabled," and Mrs. Gordon stated her occupation as "retired." A margin account was opened simultaneously. Although the Gordons represented to Ross, as reflected in the new account form signed by the Gordons, that they had fifteen years experience with stocks, taxable bonds and tax-free bonds, it appears the Gordons had no experience whatever and were so unsophisticated about securities that they could never understand their monthly statements, nor the confirmations they received for each trade executed.
3. Ross and the Gordons discussed in what securities the \$50,000 would be invested. The Gordons told Ross that they needed \$360 a month from this investment in order to make ends meet.
4. Over a period of twenty-two months, from January, 1996, through October 31, 1997, the Gordons withdrew \$17,859.05 and suffered trading losses of \$29,772.28. Ross traded their account heavily on margin in an effort to achieve the amount of income the Gordons needed from the account. Instead of withdrawing \$360.00 per month, the Gordons withdrew money at a rate of around \$800.00 per month on average. Over the approximately twenty-six month life of the account, the account turnover ratio was 14, an acceptable turnover ratio being approximately 6. This trading was unsuitable for the Gordons and excessive.

5. The Gordons continued to receive monthly income after October of 1997 from Ross with deposits made from his own funds.

### **LAW**

6. Ark. Code Ann. § 23-42-308(g) (Supp. 1997), provides in pertinent part that in addition to the authority to suspend or revoke registration, the Arkansas Securities Commissioner (the Commissioner), upon notice and opportunity for a hearing, may fine a registered representative up to a maximum of \$5,000 for each separate violation of the Act.
7. Rule 308.01(D) defines the unfair, misleading or unethical practice commonly known as Unsuitable Recommendations as recommending to a customer the purchase or sale of a security without reasonable grounds for believing that the recommendation is suitable for the customer based on the facts of the customer's financial situation as disclosed by the customer or encouraging a customer to invest beyond his immediate financial resources.
8. Rule 308.01(E) defines the unfair, misleading or unethical practice of Excessive Trading as 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 for the registered representative and/or the broker-dealer.

### **CONCLUSIONS OF LAW**

9. The findings of fact set forth in ¶¶ 1 through 5 support the conclusion that this order is in the public interest.

### **OPINION**

10. It is the opinion of the Commissioner that this order is in the public interest.
11. It is the opinion of the Commissioner that the findings of fact set forth in ¶¶ 1 through 5 support findings of violations of the Act and Rules set out in ¶¶ 6 through 8.

### **CONSENT**

Ross denies any wrongdoing or violation of the Act or Rules and denies the correctness of the Findings of Fact and Conclusions of Law, but consents to the entry of this order. Affirmatively, Ross states that the trades made in the Gordons' account were suitable, based upon the information and instructions given to Ross by the Gordons, as reflected in the new account form signed by the Gordons.

### **UNDERTAKING**

In lieu of incurring additional legal fees and time in defending these allegations, Ross agrees to make an offer to the Gordons in the amount of \$8,750, in exchange for a full release of all claims against Ross by the Gordons, which, if accepted by the Gordons, will be made in two payments of \$4,375 each, the first on the date the offer is accepted and the second no later than six (6) months later. Ross, through his attorney, must make this offer to the Gordons within five (5) business days from the date of this order. The Gordons have until thirty days after this offer is mailed to accept this offer or thereafter waive their rights under this Consent Order.

### **ORDER**

IT IS THEREFORE ORDERED THAT Robert Mitchell Ross, CRD No. 2372969, through his attorney, within five (5) business days of the date of this order, make an offer to Charles J. Gordon, Jr. and Shirley Faye Gordon, his wife, in the amount of \$8,750 in exchange for a full release of all claims against Robert Mitchell Ross by the Gordons, which, if accepted by the Gordons will be payable in two installments of \$4,375, one upon acceptance by the Gordons of the offer and the second no later than six (6) months later.

WITNESS MY HAND AND SEAL this 16<sup>th</sup> day of September, 1999.



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MAC DODSON  
SECURITIES COMMISSIONER

Approved:

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Robert Mitchell Ross

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Jim Pender

*Attorney for Robert Mitchell Ross*