

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

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IN THE MATTER OF

SUMMARY ORDER  
SUSPENDING REGISTRATION

SAM CLEMENTE SECURITIES, INC.,  
COOKE BAILLE CHRISTOPHER,  
THOMAS H. SUNDERLAND,  
DAVID ALLEN MULLENAX, AND  
ROBERT MABRY MULLENAX  
D/B/A MULLENAX FINANCIAL  
GROUP

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No. 99-062-S

**SUMMARY ORDER**

This Summary Order is entered pursuant to the provisions of the Arkansas Securities Act (the "Act"), specifically Ark. Code Ann. §23-42-308 and Rule 601.07(B) of the Rules of the Arkansas Securities Commissioner ("Rules"). The Arkansas Securities Department (the "Department") has received information and has in its possession certain evidence which indicates that San Clemente Securities, Inc. ("San Clemente"), CRD #21895, the president of San Clemente, Cooke Baille Christopher ("Christopher") CRD #1590203, the executive vice president of San Clemente, Thomas H. Sunderland ("Sunderland"), CRD #1636630, David Alan Mullenax ("Dave Mullenax"), CRD #3206327, and Robert Mabrey Mullenax ("Bob Mullenax"), CRD #3277517, have violated provisions of the Act, Ark. Code Ann. § 23-42-101 *et seq.* and Rules.

**FINDINGS OF FACT**

1. San Clemente is a broker-dealer, registered in the state of Arkansas from April 1995 to the present date. The home office of San Clemente is located at 1031 Calle Recodo, Suite B, San Clemente, California.
2. Christopher is the president, chief executive officer and compliance officer of San Clemente. The Christopher Family Trust is listed as a 50% or more owner of San Clemente. According to Christopher, he is directly responsible for the supervision of representatives who do business in Arkansas. Christopher has never been registered to sell securities in Arkansas.
3. Sunderland is the executive vice president of San Clemente and is listed as a 50% or more owner of the broker-dealer. Sunderland has never been registered to sell securities in Arkansas.
4. Dave Mullenax became a registered representative of San Clemente in Arkansas on July 27, 1999.
5. Bob Mullenax became a registered representative of San Clemente in Arkansas on September 20, 1999.
6. Dave and Bob Mullenax are brothers, doing business as Mullenax Financial Group ("Mullenax FG") located at Financial Park Place, Suite 316, 11219 Financial Centre Parkway, Little Rock, Arkansas.

**Misrepresentations**

7. Mullenax FG began advertising and offering certificates of deposit ("CDs") on September 19, 1999. Their advertisements have appeared a total of five times in the Arkansas Democrat/Gazette, a newspaper with statewide circulation. Each ad shows a rate for a one-year term certificate of deposit stated in terms of annual percentage yield ("APY"). Each ad uses the language "Bank CD" and "FDIC Insured". Christopher and San Clemente approved each ad prior to publication. (Attached as Exhibit "A" is the advertisement that appeared in the newspaper on September 22, 1999.)
8. San Clemente and Mullenax FG have represented that they are "CD Brokers". They explain that they specialize in accessing high yield CDs from banks throughout the United States. They advertise and offer the bank CDs with the assurance that they are covered by FDIC insurance.
9. Numerous Arkansas residents have responded to the Mullenax FG advertisements by calling them for more information. Several Arkansas residents have responded by calling the Department for information. According to Dave Mullenax, everyone that called his office was sent a packet of information and encouraged to make an appointment to meet with them in person. He stated that they only offered and sold CDs when a client met with them at their office. He stated the meetings were necessary in order for them to get to know the customer, assess their financial situation, determine their financial needs and objectives and make investment recommendations reflective of the information obtained.
10. The packet of information mailed to prospective customers included a document, which lists advantages offered by the Mullenax FG (Attached as Exhibit "B"). Advantages listed include: "No Commissions or Fees", "Same FDIC Insurance Protection", "Several Banks to Choose From" and "Serving Your Community for Years". Information available to the Department indicates all of these representations are false and misleading statements.
11. Arkansas residents who met with Dave or Bob Mullenax were offered three different CDs. The three CDs offered different maturities (one year, five year and ten year), different yields, different penalty terms and usually were issued by different financial institutions. Potential customers were shown an offering sheet with information about each CD offered. Christopher and San Clemente provided the offering sheets to Mullenax FG. Dave Mullenax provided the Department with the three offering sheets he used on September 24, 1999 (Attached as Exhibit "C").
12. Each offering sheet stated the name of the financial institution issuing the CD, that it was insured by the FDIC, that interest would be paid at maturity, the maturity date and information about the yield. Customers were shown and offered a yield figure titled "Average Annual Yield" on the offering sheet. Customers purchased the security by signing and dating the offering document after the words "OFFER ACCEPTED BY" and submitting a check to Mullenax FG. The offering documents given to the Department also included liquidity terms.
13. Information obtained by the Department indicates that the yield figure customers were shown and offered did not accurately reflect the annual percentage yield, "APY", the issuing bank was offering. With every offer, San Clemente, Christopher and Mullenax FG inflated the value of the yield shown to the customer.
14. San Clemente, Christopher and Mullenax have sold CDs to at least seven Arkansas residents. In each case it appears that the security offered and sold does not exist at the listed bank. For customers to receive the quoted yields and liquidity terms shown on the offering documents, San Clemente would have to create new securities with terms differing from those offered by the FDIC insured banks. Those new securities would be San Clemente securities, not bank CDs and not insured by FDIC. Any securities issued by San Clemente would be subject to

registration requirements prior to any offer or sale in Arkansas. Records of the Department reveal no security registration filings by San Clemente or Mullenax FG.

### **Sales by Unregistered Agents**

15. Information obtained by the Department indicates that unregistered agents of San Clemente have effected transactions in Arkansas. In February and March 1999, Eddie Leon Dubar ("Dubar") offered and sold CDs to Arkansas residents. At the time the transactions were effected Dubar was not registered to sell securities in Arkansas. In July 1999, Dubar applied for registration as a representative of San Clemente. Records of the Central Registration Depository ("CRD") reflect that his registration is deficient with the National Association of Securities Dealers ("FINRA") and pending in Arkansas.
16. Although Dubar offered and sold CDs to two Arkansas residents, records obtained by the Department list Tom Sunderland as the San Clemente agent responsible for the sales. According to CRD records Sunderland is a 50% owner of San Clemente, but has never been registered to sell securities in Arkansas.
17. In August 1997, Mark Zerebny, acting as an agent of San Clemente, offered and sold a \$100,000 CD to an Arkansas resident. According to CRD records, Zerebny was only registered with San Clemente from February 27, 1996 through April 21, 1997 and has never been registered in Arkansas. The last known address for Zerebny is in Hemet, California. In addition to Zerebny, San Clemente has listed two other names as their representative responsible for this account. Neither of the other two San Clemente agents listed on the account opened in August 1997 has been registered in Arkansas.
18. In June and November 1997 two Arkansas residents were offered and sold securities by another unregistered representative from San Clemente. On both accounts the agent listed on account documents is the president of San Clemente, Christopher, who has never been registered to sell securities in Arkansas.

### **Disciplinary History**

19. CRD records reflect that regulators in seven states and the National Credit Union Administration have initiated proceedings and entered orders against San Clemente. Each of those proceedings involves allegations of violations occurring with the offer and sale of securities represented to be Bank CDs. Allegations include sales by unregistered representatives and sales of unregistered securities. States have found that San Clemente has marketed investment contracts consisting of bank issued certificates of deposit with additional economic incentives created through pooling, fractionalizing and secondary markets.
20. CRD records reflect regulators have initiated seven disciplinary proceedings against Christopher. Actions include allegations of sales of unregistered securities and sales by unregistered agents.
21. CRD records reflect regulators have initiated six disciplinary proceedings against Sunderland. He has been named individually for sales of securities in Florida as an unregistered agent and in other jurisdictions for failure to supervise.

### **RELEVANT STATUTES AND RULES**

22. Ark. Code ann. § 23-42-501 states that it is unlawful for any person to offer or sell any security which is not registered or which is not exempt from registration under the terms of the Act.

23. Ark. Code Ann. § 23-42-301(a) states that it is unlawful for any person to transact business in this State as a broker-dealer or agent unless such person is registered under the terms of the Act.
24. Ark. Code Ann. § 23-42-507 states that it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:
- (1) To employ any device, scheme, or artifice to defraud;
  - (2) To make any untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; or
  - (3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.
25. Ark. Code Ann. § 23-42-308 states in part, that the commissioner may by order suspend or revoke any registration if he finds that an applicant or registrant or an officer of a broker-dealer:
- (B) Has willfully violated or willfully failed to comply with any provision of the Act;
  - (G) Has engaged in dishonest or unethical practices in the securities business;
  - (J) Has failed reasonably to supervise the agents of the broker-dealer;

In addition to revocation, the commissioner may fine any broker-dealer or representative up to a maximum of five thousand dollars (\$5,000) for each separate violation of the Act.

26. Ark Code Ann. § 23-42-308 further provides that the commissioner may by order summarily suspend the registration of registrants.
27. Rule 308.01 provides for suspension or revocation of the registration of a broker-dealer or agent that does not observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Grounds for action by the commissioner include:
- (B) Misrepresentations. Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer, or 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.
  - (C) Undisclosed Fees. Charging undisclosed, unreasonable and inequitable fees for services performed, including miscellaneous services such as safekeeping or custody of securities and other services related to its securities business, except where such fees are negotiated or have been previously disclosed to the customer.
  - (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.
  - (Q) Misleading Advertising. Using any advertising or sales material in such a fashion as to be deceptive or misleading.

**CONCLUSIONS OF LAW**

- I. The actions of San Clemente, Christopher, Sunderland, Dave Mullenax and Bob Mullenax as set forth in paragraphs 1 through 27 above, constitute violations of Ark. Code Ann. § 23-42-507 in that San Clemente, Christopher, Sunderland, Dave Mullenax and Bob Mullenax made misrepresentations or omissions of material facts to and otherwise engaged in a course of business which operated as a fraud or deceit to residents of Arkansas. Such violations constitute grounds to suspend or revoke the registrations of San Clemente, Dave Mullenax and Bob Mullenax and fine San Clemente, Christopher, Dave Mullenax and Bob Mullenax pursuant to Ark. Code Ann. §23-42-308.
- II. The actions of San Clemente, Christopher and Sunderland as set forth in paragraphs 1 through 27 above, constitute violations of Ark. Code Ann. § 23-42-301 in that San Clemente, Christopher and Sunderland willfully executed transactions in securities to residents of Arkansas without first registering Christopher, Sunderland and others as agents. Such violations constitute grounds to suspend or revoke the registration of San Clemente and fine San Clemente, Christopher and Sunderland pursuant to Ark. Code Ann. §23-42-308.
- III. The actions of San Clemente, Dave Mullenax and Bob Mullenax as set forth in paragraphs 1 through 27 above, constitute violations of Ark. Code Ann. § 23-42-501 in that San Clemente, Dave Mullenax and Bob Mullenax willfully executed transactions involving non-registered, non-exempt securities in Arkansas. Such violations constitute grounds to suspend or revoke the registrations of San Clemente, Dave Mullenax and Bob Mullenax and fine each pursuant to Ark. Code Ann. §23-42-308.
- IV. The actions of San Clemente and Christopher as set forth in paragraphs 1 through 27 above, constitute violations of Ark. Code Ann. § 23-42-308 in that San Clemente and Christopher failed to reasonably supervise the above described activities of Dave Mullenax, Bob Mullenax and other individuals acting as agents of San Clemente. San Clemente and Christopher failed to have in place or take reasonable measures to prevent, discourage, address or stop the fraudulent sales practices effected by Dave Mullenax, Bob Mullenax and other agents as described herein. Such violations constitute grounds to suspend or revoke the registration of San Clemente and Christopher and fine both pursuant to Ark. Code Ann. §23-42-308.
- V. The actions of San Clemente, Dave Mullenax and Bob Mullenax as set forth in paragraphs 1 through 27 above, constitute violations of Rule 308.01 (B) in that Dave Mullenax and Bob Mullenax misrepresented products they offered and sold, guaranteed customers they could not incur losses and made untruthful representations that securities sold could subsequently be traded. Such violations constitute grounds to suspend or revoke the registrations of San Clemente, Dave Mullenax and Bob Mullenax and fine each pursuant to Ark. Code Ann. §23-42-308.
- VI. The actions of San Clemente, Dave Mullenax and Bob Mullenax as set forth in paragraphs 1 through 27 above, constitute violations of Rule 308.01 (C) in that San Clemente, Dave Mullenax and Bob Mullenax represented to customers they would not be charged commissions or fees when in fact commissions and fees were charged. Such violations constitute grounds to suspend or revoke the registrations of San Clemente, Dave Mullenax and Bob Mullenax and fine each pursuant to Ark. Code Ann. §23-42-308.
- VII. The actions of San Clemente, Dave Mullenax and Bob Mullenax as set forth in paragraphs 1 through 27 above, constitute violations of Rule 308.01(D) in that Dave Mullenax and Bob Mullenax, acting as an agents of San Clemente, willfully recommended purchases of securities to customers without reasonable grounds for believing that the recommendations were suitable. Such violations constitute grounds to suspend or revoke the registrations of San

Clemente, Dave Mullenax and Bob Mullenax and fine each pursuant to Ark. Code Ann. §23-42-308.

VIII. The actions of San Clemente, Dave Mullenax and Bob Mullenax as set forth in paragraphs 1 through 27 above, constitute violations of Rule 308.01 (Q) in that San Clemente, Dave Mullenax and Bob Mullenax used advertising and sales material in such a fashion as to be deceptive and misleading. Such violations constitute grounds to suspend or revoke the registrations of San Clemente, Dave Mullenax and Bob Mullenax and fine each pursuant to Ark. Code Ann. §23-42-308.

### **OPINION**

It is the opinion of the Commissioner that it is in the public interest to suspend the registrations of San Clemente, Dave Mullenax and Bob Mullenax to conduct business in Arkansas as a broker-dealer and agents. This opinion is based upon the facts available to the Department which indicate significant violations of the Act and Rules. In addition to violations of securities laws in Arkansas, San Clemente and its principals have been the subject of administrative orders due to securities violations in at least eight other jurisdictions. Immediate action by the Commissioner is necessary to adequately address the ongoing violations committed by this broker-dealer and individuals through their aggressive statewide advertising and sales practices. The Commissioner has a statutory obligation to enforce the provisions of the Act to ensure the integrity and trust rightfully expected from the investing public in an Arkansas registered broker-dealer and its agents.

### **ORDER**

IT IS THEREFORE ORDERED THAT the Arkansas registrations of San Clemente Securities, Inc., David Alan Mullenax and Robert Mabry Mullenax be hereby suspended.

IT IS FURTHERED ORDERED THAT San Clemente Securities, Inc., David Alan Mullenax and Robert Mabry Mullenax immediately cease and desist any and all activity involving the sale of securities in Arkansas.

WITNESS MY HAND AND SEAL THIS 7<sup>th</sup> DAY OF OCTOBER, 1999.



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MAC DODSON  
SECURITIES COMMISSIONER