

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF SOUTH CAROLINA

IN THE MATTER OF:

Craig James Doherty,

Respondent.

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ORDER TO CEASE AND DESIST

File No. 05070

WHEREAS, the Securities Division of the Office of the Attorney General of the State of South Carolina (the "Division"), pursuant to authority granted in the South Carolina Uniform Securities Act of 2005 (the "Act"), S.C. Code Ann. § 35-1-101 to 35-1-703 (Supp. 2007), in or around January 2006, received information regarding alleged activities of Craig James Doherty ("Respondent" or "Doherty") which pertain to securities and which Doherty allegedly conducted in this State;

WHEREAS, the Act became effective on January 1, 2006;

WHEREAS, the Uniform Securities Act (the "Prior Act"), S.C. Code Ann. § 35-1-10 to 35-1-1590 (Supp. 2004), governs all actions and proceedings initiated based on conduct occurring before January 1, 2006;

WHEREAS, the information led the Division to open and conduct an investigation of Respondent pursuant to S.C. Code Ann. § 35-1-602 of the Act;

NOW THEREFORE, in connection with the investigation, the Division determined that the Respondent has engaged in acts or practices constituting violations of the Prior Act and hereby includes in this Order to Cease and Desist ("Order") a statement of the reasons for the

Order, a statement of the civil penalty sought as a result, and a notice that a hearing will be scheduled if Respondent requests a hearing.

I. FACTUAL HISTORY

1. Doherty was, at all times material herein, a resident of South Carolina.
2. Upon information and belief, at all times relevant herein, Respondent resided at 1100 Pavilion Drive, Apartment 201, Isle of Palms, South Carolina, 29451.
3. During the time period relevant herein, Doherty was the friend and neighbor of Helaine Kanter (“Kanter”), a resident of South Carolina residing at 1100 Pavilion Drive, Apartment 104, Isle of Palms, South Carolina, 29451.
4. In or about late December, 2003, Doherty approached Kanter and offered to act as a “financial advisor” for her retirement savings.
5. At the time she was approached, Kanter understood Doherty had previously been employed as a financial consultant with one or more well-known brokerage firms.
6. At the time of Doherty’s offer, Kanter’s retirement savings, which totaled approximately eighteen thousand one hundred dollars (\$18,100.00), were invested in mutual funds held at AIM Investments (“AIM”), Delaware Investments (“Delaware Investments”), and The Vanguard Group (“Vanguard”).
7. Doherty represented to Kanter that, if she liquidated her mutual fund investments and transferred her retirement savings into a new account (the “Account”) with Smith Barney Citigroup¹ (“Smith Barney”), Doherty could invest her retirement savings and “make them profitable again.”

¹ Smith Barney Citigroup is a division and service mark of Citigroup Global Markets, Inc. Neither Smith Barney nor Citigroup Global Markets, Inc. is a party to this case.

8. Doherty was not registered with the Division as a broker-dealer agent, investment adviser or investment adviser representative at the time he advised Kanter to move her retirement savings to his control.

9. To gain access to Kanter's funds, Doherty established a joint account in both his and Kanter's names with Don Kenyon Wells ("Wells"), a financial consultant employed by Smith Barney. Doherty and Wells were former co-workers in the Bend, Oregon, office of A.G. Edwards & Sons, Inc.

10. Doherty told Kanter that he would make investment recommendations to Wells regarding the Account, and that Wells would execute his investment recommendations.

11. In a pre-investment call with Kanter, Wells verified that he would not make any recommendations regarding the Account, but would ensure that Doherty's investment recommendations were executed.

12. Following Wells' conversation with Kanter, Wells sent to Doherty the New Account Application and Option Suitability forms (the "Account Forms") for signature by Doherty and Kanter.

13. Doherty presented Kanter with the Account Forms, which she signed at the advice and recommendation of Doherty.

14. The Account Forms were returned to Wells, who then spoke with Dougherty to obtain information that had not been provided but was necessary to properly complete the Account Forms.

15. Doherty provided false information to Wells, which led to the following Account Form inaccuracies:

- a. The Account Forms falsely stated Kanter's investment experience and investment objectives;

- b. The Account Forms falsely identified Doherty as Kanter's spouse; and
- c. The Account Forms falsely stated that the Account was to be a joint tenancy with right of survivorship.

16. Once the Account was open, Kanter liquidated her mutual fund investments and deposited eighteen thousand one hundred thirty-nine dollars and sixty-six cents (\$18,139.66), in the Account.

17. Doherty directed Wells to invest one hundred percent (100%) of the Account in short-term call options.

18. Doherty specifically directed each of the following transactions, all of which then were executed in the Account:

- a. On January 15, 2004, Paccar Inc. call options (the "Paccar Options") were purchased for \$6,810.38.
- b. On January 15, 2004, Sandisk Corp. call options (the "Sandisk Options") were purchased for \$6,466.47.
- c. On January 20, 2004, the Paccar Options were sold for a loss of \$2,458.60.
- d. On January 20, 2004, PMC Sierra, Inc. call options (the "PMC Sierra Options") were purchased for \$7,274.02.
- e. On January 21, 2004, the PMC Sierra Options were sold for a loss of \$1,041.74.
- f. On January 21, 2004, Electronic Arts Inc. call options (the "Electronic Arts Options") were purchased for \$3,737.92.
- g. On January 22, 2004, KLA-Tencor Corp. call options (the "KLA-Tencor Options") were purchased for \$4,344.64.
- h. On February 19, 2004, the KLA-Tencor Options were sold for a loss of \$4,299.65 (including commissions and fees).

- i. On February 19, 2004, the Electronic Arts Options were sold for a loss of \$1,243.04 (including commissions and fees).
 - j. On February 21, 2004, the Sandisk Options matured and expired, resulting in a loss of \$6,466.47.
19. Doherty's purchases resulted in more risk of loss in the Account than he had indicated to Kanter.
20. Doherty's purchases caused loss in the account, in violation of his earlier representation to Kanter that he would invest her funds and "make them profitable again."
21. Although Doherty and Wells discussed the losses in the Account, no such discussion was ever held with Kanter.
22. Kanter became aware of the losses in the Account in late February 2004, when she determined it necessary to consider using a portion of her savings as a down payment on a condominium.
23. On February 20, 2004, Kanter learned the Account balance had dropped from its initial balance of \$18,139.66 to a balance of \$2,630.36, a loss of over 85% of Kanter's principal in less than six weeks time.
24. Kanter then requested and received the remaining balance of the Account.

II. APPLICABLE LAW

25. Pursuant to S.C. Code Ann. § 35-1-703 of the Act, the Act took effect on January 1, 2006.
26. Pursuant to S.C. Code Ann. § 35-1-701 of the Act, the Prior Act governs actions instituted on the basis of conduct occurring before the effective date of the Act.
27. Pursuant to S.C. Code Ann. § 35-1-1210 of the Prior Act, it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to (i) employ

any device, scheme, or artifice to defraud; (ii) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (iii) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

28. Pursuant to S.C. Code Ann. §§ 35-1-601(a)(1) and 35-1-602(a)(1) of the Act, the Securities Commissioner or his designee may conduct public or private investigations within or outside South Carolina which he considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate the Act or a rule adopted or order issued under the Act, or to aid in the enforcement of the Act or in the adoption of rules and forms under the Act.

29. Regarding administrative remedies under the Act:

- a. Pursuant to S.C. Code Ann. § 35-1-604(a)(1) of the Act, if the Securities Commissioner or his designee determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of the Act or a rule adopted or order issued under the Act, he may issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with the Act.
- b. Pursuant to S.C. Code Ann. § 35-1-604(b) of the Act, a cease and desist order issued under S.C. Code Ann. § 35-1-604(a)(1) of the Act is effective on the date of issuance and must include a statement of any civil penalty or costs of investigation sought, a statement of the reasons for the order, and notice about a hearing.

- c. Pursuant to S. C. Code Ann. § 35-1-604(c) of the Act, if a hearing is requested or ordered pursuant to S.C. Code Ann. § 35-1-604(b) of the Act, a hearing must be held. A final order may be issued after the hearing that may make final, vacate, or modify the order issued under S. C. Code Ann. § 35-1-604(b) of the Act.

30. Pursuant to S.C. Code Ann. § 35-1-1475 of the Prior Act, an administrative fine in an amount not to exceed five thousand dollars (\$5,000) per violation can be imposed against any person found to have violated any provision of the Prior Act.

III. DETERMINATION

31. WHEREAS, based on the foregoing, the Division has determined that Respondent employed a device, scheme, or artifice to defraud Kanter when he had her sign incomplete Account Forms which were later completed with false information provided by Respondent, including information which caused the Respondent to be listed as Kanter's spouse, gave him a joint-tenancy with a right of survivorship and joint control over the Account, and which Respondent then used to execute unsuitable trades, both in violation of his agreement with Kanter and to Kanter's detriment, and that Respondent's actions constitute a violation of S.C. Code Ann. § 35-1-1210 of the Prior Act.

32. If this Order becomes effective by operation of law, the Division seeks an administrative fine of five thousand dollars (\$5,000.00) from Respondent. If Respondent seeks a hearing and a Hearing Officer or some other legal authority resolves the matter, the Securities Division seeks an amount not to exceed five thousand dollars (\$5,000.00) for each violation of the Prior Act by Respondent.

IV. CEASE AND DESIST ORDER

33. NOW THEREFORE, pursuant to S.C. Code Ann. § 35-1-604(a)(1) of the Act and S.C. Code Ann. §§ 35-1-60 and 35-1-1475 of the Prior Act, IT IS HEREBY **ORDERED** that the Respondent:

- a. Cease and desist from committing securities fraud in violation of § 35-1-501 of the Act; and
- b. Pay an administrative fine in the amount of five thousand dollars (\$5,000.00) if this Order becomes effective by operation of law, or, if Respondent seeks a hearing and a hearing officer or any other legal authority resolves this matter, pay an administrative fine in an amount not to exceed five thousand dollars (\$5,000.00) for each violation of the Prior Act.

V. REQUIREMENT OF ANSWER AND NOTICE OF OPPORTUNITY FOR HEARING

34. Respondent is hereby notified that he has the right to a hearing on the matters contained herein. To schedule such a hearing, Respondent must file with the Securities Division, Post Office Box 11549, Rembert C. Dennis Building, Columbia, South Carolina, 29211-1549, attention: Thresechia Navarro, within thirty (30) days of notification of the issuance of this Order a written Answer specifically requesting a hearing therein.


35. In the written Answer, the Respondent, in addition to requesting a hearing, shall admit or deny each factual allegation in this Order, shall set forth specific facts on which the Respondent relies, and shall set forth concisely the matters of law and affirmative defenses upon which the Respondent relies. If the Respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state.

36. Failure by the Respondent to file a written request for a hearing in this matter within the thirty-day (30) period stated above shall be deemed a waiver by the Respondent of his right to such a hearing. Failure of the Respondent to file an Answer, including a request for a hearing, shall result in this Order, including the stated administrative fine, becoming final as to the Respondent by operation of law.

37. CONTINUING TO ENGAGE IN ACTS DETAILED BY THIS ORDER AND/OR SIMILAR ACTS MAY RESULT IN THE DIVISION'S FILING ADDITIONAL ADMINISTRATIVE ACTIONS AND/OR SEEKING FURTHER ADMINISTRATIVE FINES. WILLFUL VIOLATION OF THIS ORDER COULD RESULT IN CRIMINAL PENALTIES. REGARDING MATTERS DESCRIBED HEREIN, THIS ORDER DOES NOT PRECLUDE THE FILING OF PRIVATE CAUSES OF ACTION OR THE FILING OF CRIMINAL CHARGES.

IT IS SO ORDERED.

This 29th day of July, 2008



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