

ADMINISTRATIVE PROCEEDING

BEFORE THE

SECURITIES COMMISSIONER OF SOUTH CAROLINA

IN THE MATTER OF:)
)
Samuel N. Smith,) **ORDER TO CEASE AND DESIST**
)
) **File No. 08063**
Respondent.)
_____)

WHEREAS, the Attorney General of the State of South Carolina, acting as the Securities Commissioner (“Commissioner”), administers the South Carolina Uniform Securities Act of 2005 (the “Act”), S.C. Code Ann. § 35-1-101 to 35-1-703 (Supp. 2008);

WHEREAS, the Securities Division of the Office of the Attorney General of the State of South Carolina (the “Division”) on or about November 8, 2008, received a letter from Samuel N. Smith (“Smith”) in which Smith stated that he was a “Registered Investment Adviser”;

WHEREAS, the Division determined that Smith was not a registered investment adviser;

WHEREAS, this information led the Division to open and conduct an investigation of Smith pursuant to Section 35-1-602 of the Act and to request information from Smith pursuant to Section 35-1-411(d) of the Act;

NOW THEREFORE, in connection with the investigation, the Division has determined that Smith has engaged, is engaging, or is about to engage in acts, practices, or courses of business constituting violations of the Act or a rule adopted or order issued under the Act and hereby includes in this Order to Cease and Desist (“C&D Order”) a statement of the reasons for the C&D Order, a statement of the civil penalty sought as a result, and a notice that a hearing will be scheduled if Smith requests a hearing.

FACTUAL HISTORY

1. Smith is a South Carolina resident.
2. Smith's home and work addresses, at all times relevant hereto, are located within Lexington County, South Carolina.
3. Upon information and belief, Smith, at all times relevant hereto, did business as a broker-dealer agent for World Capital Brokerage, Inc. ("World Capital") and as a sole proprietor under the name of Tax, Insurance & Investment Consultants ("TIIC").
4. Smith was registered as a broker-dealer agent in South Carolina for H.D. Vest Investment Services from February 18, 2005, through April 11, 2007, and as an investment adviser representative in South Carolina for H.D. Vest Advisory Services, Inc. from April 7, 2005, through April 17, 2007.
5. On May 29, 2007, Smith registered as only a broker-dealer agent in South Carolina for World Capital.
6. World Capital is not an investment adviser, so Smith could not register as an investment adviser representative employed by or associated with World Capital.
7. On Form U4, Uniform Application for Securities Industry Registration or Transfer, that was filed on May 29, 2007, by or for Smith, Smith applied for registration in South Carolina as a broker-dealer agent, not as an investment adviser representative. On Form U4, Smith also stated that he would not maintain registration with an investment adviser that is not affiliated with World Capital.
8. Doing business as TIIC, Smith, among other services, sells various insurance products, prepares income tax returns, and renders mortgage services.

9. Smith has and is responsible for a web site for TIIC in which he stated that he is a “registered Investment Adviser.”
10. In his TIIC web site, Smith states, “We do it all in one shot. Tax preparation, Insurance, Payroll/Bookkeeping, Investments.” Smith also lists tax preparation, bookkeeping and payroll, insurance, investments, and annuities as the five different services that he provides.
11. The Division at various times from January 8, 2009, through the present has accessed TIIC’s web site and seen the statements noted in paragraphs 9 and 10 above.
12. In his TIIC web site and under the heading, “Investments,” Smith states, “Need some assistance in finding the right place to put your money so you can be assured that you are getting the highest rate possible? We can help you.”
13. Smith submitted a letter to the Division that was received on or about November 8, 2008, in which Smith stated that he was a “Registered Investment Adviser.”
14. By stating on his web site that he was a registered investment adviser, that he provides services to clients regarding investments, and that he seeks to assist people to find the right place to put their money, Smith has offered to sell investment advisory services.
15. Smith has never been a registered investment adviser and has not been a registered investment adviser representative since April 17, 2007.
16. On December 19, 2008, the Division sent a letter to Smith pursuant to Section 35-1-411(d) of the Act asking Smith to produce six categories of specified documents and a statement of the types of business activities in which he had engaged since May, 2007.
17. Smith submitted a response to the Division’s December 19, 2008, request in a letter dated December 23, 2008. Smith’s response was incomplete.

18. On January 14, 2009, the Division sent a letter to Smith asking for a complete response to its December 19, 2008, request.
19. In a letter dated January 16, 2009, Smith submitted a second response to the Division's December 19, 2008, request. Although Smith's second response did provide some of the requested information, Smith's response still was not complete.
20. In Smith's January 16, 2009, response, he stated the following about his business activities and advertising from May 2007 to the date of his response:
 - a. "I have sold ZERO SECURITIES"
 - b. "I assisted a 20 year old with an IRA – he selected the investment – a mutual fund."
 - c. "I HAVE DONE ZERO ADVERTISING FOR SECURITIES."
21. In 2007 and 2008, Smith sold securities, in the form of mutual funds; had five securities-related clients; and advertised that he was a registered investment adviser on TIIC's web site.
22. On January 26, 2009, World Capital terminated Smith for "failure to comply with firm supervisory procedures [and] failure to report an investigation by a state regulatory authority."
23. Smith received a substantial amount of income in 2007. Approximately 99% of this income came from the sale of insurance products.
24. Smith earned \$147 and \$1,257 from securities transactions through World Capital in 2007 and 2008, respectively.

APPLICABLE LAW

25. Pursuant to S.C. Code Ann. § 35-1-102(15), an investment adviser is a person that, for compensation, engages in the business of advising others, either directly or through

publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice regarding securities to others for compensation as part of a business or that holds itself out as providing investment advice regarding securities to others for compensation.

26. In interpreting South Carolina securities laws, an examination of federal law may be helpful and federal courts' interpretation of federal securities laws may be applied. *See, e.g., Atlanta Skin & Cancer Clinic, P.C. v. Hallmark General Partners, Inc.*, 320 S.C. 113, 122-23, 463 S.E.2d 600, 606 (S.C. 1995).

27. Pursuant to 52 Fed. Reg. 38,400 (1987) (S.E.C. Rel. No. IA-1092 titled "Applicability of the Investment Advisers Act to Financial Planners, Pension Consultants, and Other Persons Who Provide Investment Advisory Services as a Component of Other Financial Services"), giving investment advice regarding securities includes:

- a. Providing advice which concerns securities, but such advice does not have to relate to specific securities;
- b. Providing advice to others concerning the relative advantages and disadvantages of investing in securities in general as compared to other investments; or
- c. In the course of developing a financial program for another, providing advice to a client as to the desirability of investing in, purchasing or selling securities, as opposed to, or in relation to, any non-securities investment or financial vehicle.

28. Pursuant to 52 Fed. Reg. 38,400 (1987), a person is in the business of giving advice regarding securities if the person holds himself out as an investment adviser or as one who provides investment advice or provides specific investment advice.
29. Pursuant to 52 Fed. Reg. 38,400 (1987), a person providing a variety of services to a client, including investment advisory services, for which the person receives an economic benefit, for example, by receipt of a single fee or commissions upon the sale to the client of insurance products or investments, would be performing investment advisor services for compensation.
30. Pursuant to S.C. Code Ann. § 35-1-403(a), it is unlawful for a person to transact business in South Carolina as an investment adviser unless that person is registered in South Carolina as an investment adviser or is exempt from registration.
31. Pursuant to S.C. Code Ann. § 35-1-406(a), investment advisers and investment adviser representatives register with the Division by filing an application and a consent to service of process, passing one or more required examinations, paying the fee required by statute, and paying any reasonable filing fee charged for processing the filing.
32. Pursuant to S.C. Code Ann. § 35-1-503(a), in a civil action or administrative proceeding under the Act, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.
33. Pursuant to S.C. Code Ann. § 35-1-411(d), the Division may audit or inspect an investment adviser registered or required to be registered under the Act and may obtain copies or any record the Division reasonably considers necessary or appropriate to conduct the audit or inspection.
34. Pursuant to S.C. Code Ann. § 35-1-412(d)(13), a person may be disciplined under S.C. Code Ann. § 35-1-412(a)-(c) if the person has engaged in dishonest or unethical practices in the

securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years.

35. Pursuant to S.C. Reg. § 13-501(B)(6), each broker-dealer agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Acts and practices, including but not limited to the following, are considered contrary to such standards and may constitute grounds for imposition of administrative fines or such other action authorized by statute:

- a. Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data.
- b. Violating any rule of the Securities and Exchange Commission, or of a national securities exchange or national securities association or self-regulatory association, of which the agent or the agent's broker is a member.

36. Pursuant to S.C. Code Ann. § 35-1-502(b), a rule adopted under the Act may define an act, practice, or course of business in connection with giving investment advice regarding securities as fraudulent, deceptive, or manipulative.

37. Pursuant to S.C. Reg. § 13-502(A)(8), (13), (20), and (21), each investment adviser and investment adviser representative shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Acts and practices, including but not limited to the following, are considered contrary to such standards and may constitute grounds for imposition of administrative fines or such other action authorized by statute:

- a. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the adviser, its representatives, or any employee, or misrepresenting the nature of the advisory services being offered or fees to be charged for such services, or omitting to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading;
 - b. Publishing, circulating, or distributing any advertisement that does not comply with 17 C.F.R. § 275.206(4)-1, which states that it is a fraudulent, deceptive, or manipulative act, practice, or course of business for any investment adviser registered or required to be registered, directly or indirectly, to publish, circulate, or distribute any advertisement that, among other things, contains any untrue statement of a material fact, or that is otherwise false or misleading;
 - c. Engaging in any act, practice, or course of business that is fraudulent, deceptive, or manipulative in contravention of 15 U.S.C. § 80b-6(4), under which 17 C.F.R. § 275.206(4)-1 is applicable; and
 - d. Employing any device, scheme, or artifice to defraud or engaging in any act, practice or course of business that operates or would operate as a fraud or deceit.
38. Pursuant to S.C. Reg. § 13-502(B), engaging in other conduct such as non-disclosure, incomplete disclosure, or deceptive practices by an investment adviser or investment adviser representative shall be grounds for imposition of administrative fines or such other action authorized by statute.
39. Pursuant to S.C. Code Ann. § 35-1-505, it is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under the Act, a statement

that, at the time and in the light of the circumstances under which it was made, is false or misleading in a material respect.

40. Pursuant to S.C. Code Ann. § 35-1-602(a)(1), the Securities Commissioner may conduct public or private investigations within or outside South Carolina which the Securities Commissioner 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.

41. Regarding administrative remedies under the Act:

- a. Pursuant to S.C. Code Ann. § 35-1-604(a)(1), if the Securities Commissioner 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, the Securities Commissioner 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), a cease and desist order issued under S.C. Code Ann. § 35-1-604(a)(1) is effective on the date of issuance and must include a statement of any civil penalty or costs of investigation the Securities Commissioner will seek, a statement of the reasons for the order, and notice about a hearing.
- c. Pursuant to S.C. Code Ann. § 35-1-604(c), if a hearing is requested or ordered pursuant to S.C. Code Ann. § 35-1-604(b), 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).

- d. Pursuant to S.C. Code Ann. § 35-1-604(d), in a final order, the Securities Commissioner may impose a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) for each violation.
- e. Pursuant to S.C. Code Ann. § 35-1-604(e), in a final order, the Securities Commissioner may charge the actual cost of an investigation or proceeding for a violation of the Act or a rule adopted or order issued under the Act.

DETERMINATION

42. WHEREAS, based on the foregoing, the Division has determined that Smith 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 as follows:

- a. Smith is an investment adviser pursuant to S.C. Code Ann. § 35-1-102(15) and is not exempt from registration in South Carolina under S.C. Code Ann. § 35-1-403(b).
- b. Smith did not apply for registration as an investment adviser or investment adviser representative in South Carolina after he was terminated by H.D. Vest Advisory Services, Inc. on April 17, 2007.
- c. Smith has never been registered in South Carolina as an investment adviser and has not been registered in South Carolina as an investment adviser representative since April 17, 2007.
- d. Smith has not asserted to the Division any claim of exemption from registration.

- e. Through his representations on TIIC's web site, Smith offered investment advice to clients and prospective clients.
- f. Smith has violated S.C. Code Ann. § 35-1-403(a) by transacting business in South Carolina as an investment adviser without being registered or without being exempt from such registration.
- g. From May 29, 2007, through January 26, 2009, Smith was a registered broker-dealer agent in South Carolina for World Capital.
- h. By falsely stating that he was a registered investment adviser on TIIC's web site, Smith used an advertisement in a deceptive or misleading fashion and engaged in dishonest and unethical practices in the securities, investment, and insurance businesses within the previous 10 years.
- i. Smith has engaged in dishonest or unethical practices in the securities, investment, or insurance business within the previous 10 years pursuant to S.C. Code Ann. § 35-1-412(13).
- j. Smith has violated S.C. Reg. § 13-501(B)(6) and S.C. Reg. § 13-501(A)(17) by using an advertisement in a fraudulent or deceptive fashion.
- k. Smith has violated S.C. Code Ann. § 35-1-502(b) and S.C. Reg. § 13-502(A)(8), (13), (20), and (21) by engaging in an act, practice, or course of business that is fraudulent, deceptive, or manipulative in connection with giving investment advice regarding securities. Such violations include the following:
 - i. Misrepresenting to advisory clients, or prospective advisory clients, that Smith was a registered investment adviser;

- ii. Publishing, circulating, or distributing an advertisement that contains an untrue statement of a material fact;
 - iii. Engaging in any act, practice, or course of business that is fraudulent, deceptive, or manipulative; and
 - iv. Employing any device, scheme, or artifice to defraud or engaging in any act, practice or course of business that operates or would operate as a fraud or deceit.
1. Smith violated S.C. Code Ann. § 35-1-505 by making the following false or misleading statements in a record used or filed under the Act:
 - i. In a letter to the Division, Smith stated that he had not sold any securities, when responding to the Division about his business activities from May 2007 to the present. However, from May 2007 through 2008, Smith had sold several securities, in the form of mutual funds, to five clients as a broker-dealer agent for World Capital.
 - ii. In a letter to the Division, Smith told the Division about only one client with whom he conducted a securities-related transaction when responding to the Division about his business activities from May 2007 to the present. However, Smith conducted multiple securities transaction with five clients from May 2007 through 2008.
 - iii. In a letter to the Division, Smith stated that he had not done any advertising related to securities when responding to the Division about his advertising from May 2007 to the present. However, on TIIC's web site, Smith advertised during some or all of the relevant period that he was a

registered investment adviser, assisted people in finding the right place to put their money, and assisted people with investments and IRAs.

43. If this Order becomes effective by operation of law, the Division seeks a civil penalty of \$500 from Smith. If Smith seeks a hearing and a hearing officer or some other legal authority resolves this matter, the Securities Commissioner seeks an amount not to exceed \$10,000 for each violation of the Act by Smith and the actual costs of the investigation.

CEASE AND DESIST ORDER

44. NOW THEREFORE, pursuant to S.C. Code Ann. § 35-1-604(a)(1) of the Act, IT IS HEREBY **ORDERED** that Smith:

- a. Cease and desist from transacting business, in violation of S.C. Code Ann. §§ 35-1-403(a), in South Carolina as an investment adviser while not registered, including, but not limited to, holding himself out as providing investment advice when not registered or exempt from registration;
- b. Cease and desist from using any advertisement, including but not limited to web sites, in a fraudulent or deceptive fashion, in violation of S.C. Reg. §§ 13-501(b)(6) and 13-501(A)(17);
- c. Cease and desist from engaging in fraudulent, deceptive, or manipulative acts, practices, or courses of business in connection with giving investment advice regarding securities, in violation of S.C. Code Ann. §§ 35-1-502(b) and S.C. Reg. § 13-502(A)(8), (13), (20), and (21);
- d. Cease and desist from making or causing to be made in a record used or filed under the Act a statement that is false or misleading in a material respect, in violation of S.C. Code Ann. §§ 35-1-505; and

- e. Pay a civil penalty of \$500, if this Order becomes effective by operation of law, or, if Smith seeks a hearing and a hearing officer or any other legal authority resolves this matter, pay a civil penalty in an amount not to exceed \$10,000 for each violation of the Act by Smith and the actual costs of the investigation.

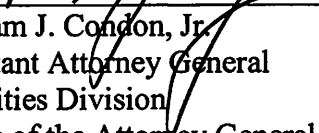
REQUIREMENT OF ANSWER AND NOTICE OF OPPORTUNITY FOR HEARING

- 45. Respondent is hereby notified that he has the right to a hearing on the matters contained herein. To schedule such a hearing, a 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 to Cease and Desist a written Answer specifically requesting a hearing therein. If Respondent timely requests a hearing, the Division, within fifteen (15) days after receipt of a request in a record from Respondent, will schedule the hearing.
- 46. 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. A Respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state.
- 47. Failure by a Respondent to file a written request for a hearing in this matter within the thirty (30) day period stated above shall be deemed a waiver by that Respondent of his right to such a hearing. Failure of a Respondent to file an Answer, including a request for a hearing, shall result in this Order, including the stated civil penalty, becoming final as to that Respondent by operation of law.

48. 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 UNDER S.C. CODE ANN. § 35-1-508. REGARDING MATTERS DESCRIBED HEREIN, THIS ORDER DOES NOT PRECLUDE THE FILING OF PRIVATE CAUSES OF ACTION OR THE FILING OF CRIMINAL CHARGES UNDER S.C. CODE ANN. § 35-1-508.

IT IS SO ORDERED.

This 30th day of June, 2009



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