

**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
OF THE STATE OF TENNESSEE AT NASHVILLE**

TENNESSEE SECURITIES DIVISION)	
)	
Petitioner,)	
)	
VS.)	
)	File No.: 98-011
CARLIN EQUITIES CORPORATION;)	
FRED E. ZIMMERMAN; AND)	
DARRELL F. FLOWERS)	
)	
Respondents.)	
)	

**ORDER TO CEASE AND DESIST
AND
ORDER OF SUMMARY SUSPENSION**

This Order issues as a result of a Petition and its exhibits attached hereto filed by the Tennessee Securities Division of the Department of Commerce and Insurance and is predicated upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1 Carlin Equities Corp. ("Carlin") (CRD #31295) has been registered as a broker-dealer pursuant to the Tennessee Securities Act of 1980 et seq. since May 20, 1994. Carlin maintains its principal place of business at 1270 Avenue of the Americas - 12th Floor, New York, New York 10020.

2 Carlin maintains an office in the State of Tennessee, located at 7003 Chadwick Drive, Suite 101, Brentwood, Tennessee 37027, although on November 25, 1998.

the broker-dealer amended its Form B-D by deleting the Brentwood office from the Schedule E listing of its branch offices and other business locations.

3. Frederick E. Zimmerman (“Zimmerman”) (CRD #3094394) is a citizen of Tennessee and a resident of Nashville. Zimmerman has been registered as an agent of Carlin pursuant to the Tennessee Securities Act of 1980 et seq. since October 9, 1998. Zimmerman is the supervisor of Carlin’s Brentwood business location. Zimmerman maintains his business address at 7003 Chadwick Drive, Suite 101, Brentwood, Tennessee 37027.

4. Darrell F. Flowers (“Flowers”) (CRD #2242139) is a citizen of Tennessee and a resident of Fairview. Flowers is employed as an agent in Carlin’s Brentwood business location. Flowers maintains his business address at 7003 Chadwick Drive, Suite 101 Brentwood, Tennessee 37027.

5. Through its Brentwood business location, Carlin permits its customers to engage in “day trading.” Customers are required to open trading accounts at Spear, Leeds & Kellogg, with Carlin serving as the “introducing firm.” As a part of their account application, customers are required to sign a “Professional Trader Supplemental Agreement” in which the customers “represent that [they are] professional expert trader[s] who allocate a substantial portion of [their] time to trading securities and [have] full understanding of the securities to be traded in the Account[s].” Customers are also asked by Carlin to make an initial minimum deposit of \$25,000.00.

6. Carlin earns a significant profit from the transactional fees charged to its “day trading” customers.

7. Carlin customers interested in learning how to “day trade” must travel to New York for training classes. “Day trading” is a high-risk form of investing that involves the same quick-time issuance and acceptance of offers experienced by professional traders working on the “floors” of the stock exchanges. “Day traders” typically purchase and sell stock positions during the course of a day, rarely holding their investments overnight.

8. The Respondent Darrell F. Flowers is not currently, nor has he ever been, registered as an agent of Carlin pursuant to the Securities Act of 1980 et seq.

9. The Respondent Darrell F. Flowers is presently and will continue to execute trades in customer accounts, and as a result of this activity the public will suffer immediate and irreparable injury, loss or damage.

10. The Respondents Carlin Equities Corp. and Fred E. Zimmerman are presently employing and will continue to employ the Respondent Darrell F. Flowers as an unregistered agent, and as a result of this activity the public will suffer immediate and irreparable injury, loss or damage.

The Respondents Carlin Equities Corp. and Fred E. Zimmerman are presently requiring and will continue to require customers to untruthfully represent themselves as professional traders to Spear, Leeds & Kellogg in order to open trading accounts and engage in “day trading.” and as a result of this activity the public will suffer immediate and irreparable injury, loss or damage.

12. The Respondent Carlin Equities Corp. is presently failing and will continue to fail to reasonably supervise the conduct and activities of the Respondents Fred E. Zimmerman and Darrell F. Flowers, as well as the activities of the Brentwood business

location, and as a result of this activity the public will suffer immediate and irreparable injury, loss or damage.

13. The Respondent Carlin Equities Corp. is presently acting and will continue to act as a broker-dealer at 7003 Chadwick Drive, Suite 101, Brentwood, Tennessee 37027, in spite of the form filing made with the Commissioner of Commerce and Insurance in which that office was deleted from the list of Carlin branch offices and business locations, and as a result of this activity the public will suffer immediate and irreparable injury, loss or damage.

14. This Order is in the public interest and necessary for the protection of investors, and consistent with the purposes fairly intended by the Act.

CONCLUSIONS OF LAW

Tennessee Code Annotated §48-2-102(2) provides that an “agent” means any individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities from, in or into this state.

2. Tennessee Code Annotated §48-2-109(a) provides that it is unlawful for any person to transact business from or in this state as a broker-dealer or agent unless such person is registered as a broker-dealer or agent under this part.

3. Based upon the Findings of Fact and the Exhibits filed by the Petitioner, Respondent Darrell F. Flowers has violated and is violating Tennessee Code Annotated §48-2-109(a) by acting as a unregistered agent of Carlin Equities Corp.

4. Tennessee Code Annotated §48-2-112(a)(2)(B) provides, in pertinent part, that the commissioner may by order suspend or revoke any registration under this part if the commissioner finds that the order is in the public interest and necessary for the protection of

investors, and the registrant has willfully violated or willfully failed to comply with any provision of this part.

5. Tennessee Code Annotated §48-2-109(b) provides that it is unlawful for any broker-dealer to employ an agent to transact business as an agent unless the agent is registered under this part.

6. Based upon the Findings of Fact and the Exhibits filed by the Petitioner, the Respondent Carlin Equities Corp. has violated and is violating Tennessee Code Annotated §48-2-109(b) by employing Darrell F. Flowers as an unregistered agent.

7. Tennessee Code Annotated §48-2-112(a)(2)(G) provides, in pertinent part, that the commissioner may by order suspend or revoke any registration under this part if the commissioner finds that the order is in the public interest and necessary for the protection of investors, and the registrant has engaged in dishonest or unethical practices in the securities business.

8. Rule 0780-4-3-.02(6)(a)&(b) provide in pertinent part, that the term “dishonest or unethical business practices” by a broker-dealer or agent under Tennessee Code Annotated §48-2-112(a)(2)(G) shall not be limited by the practices specified therein.

9. Based upon the Findings of Fact and the Exhibits filed by the Petitioner, the Respondent Fred E. Zimmerman has committed and is committing dishonest or unethical practices in the business of securities by hiring Darrell F. Flowers to work as an agent in Carlin’s Brentwood business location in spite of the fact that Flowers is not registered as an agent of Carlin.

10. Tennessee Code Annotated §48-2-112(a)(2)(B) provides, in pertinent part, that the commissioner may by order suspend or revoke any registration under this part if the commissioner finds that the order is in the public interest and necessary for the protection of investors, and the registrant has willfully violated or willfully failed to comply with any provision of this part.

Tennessee Code Annotated §48-2-121(c) provides that it is unlawful for any person to make or cause to be made, in any document filed with the commissioner any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

12. Rule 0780-3-3-.01(7)(a) provides in pertinent part that every broker-dealer registered in Tennessee shall notify the Division of the establishment of any office in Tennessee, as well as its address and the name or names of agents in charge.

3. Based upon the Findings of Fact and the Exhibits filed by the Petitioner, the Respondent Carlin Equities Corp. has violated and is violating Tennessee Code Annotated §48-2-121(c) by filing an amendment to the Form B-D, Schedule E listing of branch offices and business locations which deleted the Brentwood business location, thereby untruthfully representing to the Commissioner of Commerce and Insurance that Carlin has ceased conducting business at that location.

14. Tennessee Code Annotated §48-2-112(a)(2)(J) provides, in pertinent part, that the commissioner may by order suspend or revoke any registration under this part if the commissioner finds that the order is in the public interest and necessary for the protection of

investors, and the registrant has failed reasonably to supervise such person's agents if the person is a broker-dealer.

15. Based upon the Findings of Fact and the Exhibits filed by the Petitioner, the Respondent Carlin Equities Corp. has failed reasonably to supervise its agent Fred E. Zimmerman which has lead to the hiring of Darrell F. Flowers as an unregistered agent in the Brentwood business location, and has failed reasonably to supervise its agent Darrell Flowers which has lead to his failure to obtain agent registration pursuant to the Tennessee Securities Act of 1980 et seq. and has enabled him to execute transaction for customers in spite of his unregistered status.

16. Tennessee Code Annotated §48-2-112(a)(2)(G) provides, in pertinent part, that the commissioner may by order suspend or revoke any registration under this part if the commissioner finds that the order is in the public interest and necessary for the protection of investors, and the registrant has engaged in dishonest or unethical practices in the securities business.

7. Rule 0780-4-3-.02(6)(a)&(b) provide in pertinent part, that the term "dishonest or unethical business practices" by a broker-dealer or agent under Tennessee Code Annotated §48-2-112(a)(2)(G) shall not be limited by the practices specified therein.

18. Based upon the Findings of Fact and the Exhibits filed by the Petitioner, the Respondents Carlin Equities Corp. and Fred E. Zimmerman have committed "dishonest or unethical business practices" by requiring customers to untruthfully represent themselves as professional traders to Spear, Leeds & Kellogg in order to open trading accounts and engage in "day trading.

19. Tennessee Code Annotated §48-2-116 provides that the Commissioner may make, promulgate, amend, and rescind such Orders as are necessary to carry out the provisions of the Tennessee Securities Act of 1980 and that such Order is in the public interest, necessary for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act.

20. Tennessee Code Annotated §48-2-116(e)(2) states, in pertinent part, that no Order may be entered without: prior notice to affected parties, unless the Commissioner determines that prior notice would not be in the public interest and would be detrimental to the protection of investors; an opportunity for a hearing before the Commissioner; and written Findings of Fact and Conclusions of Law

21. Based upon the Findings of Fact, it would not be in the public interest and it would be detrimental to the protection of investors if prior notice of this Order were given to affected parties.

22. Tennessee Code Annotated §48-2-112(e) states, in pertinent part, that pending final determination whether or not any registration under this section shall be revoked, the commissioner may by order suspend such registration, if after notice and opportunity for hearing, the commissioner finds such suspension to be in the public interest and necessary for the protection of investors.

23. Based upon the Findings of Fact, it would not be in the public interest and it would be detrimental to the protection of investors if the registrations of Respondents Carlin Equities Corp. and Fred E. Zimmerman were not suspended pending the final determination

of whether the registrations shall be revoked pursuant to grounds under Tennessee Code Annotated §48-2-112(e).

24. Tennessee Code Annotated §4-5-320(d) states, in pertinent part, that in issuing an order of summary suspension of a license the agency shall use . . . the following procedure: . . . (B) the agency shall proceed with the summary suspension and notify the licensee of the opportunity for an informal hearing, review or conference before the agency within seven (7) business days of the issuance of the order of summary suspension.

25. Based upon the Findings of Fact, it is necessary to conduct an informal conference within seven (7) days of the date of issuance of this order of summary suspension in order to discuss whether the public health, safety or welfare imperatively required emergency action by the Tennessee Securities Division.

NOW, THEREFORE, in consideration of the foregoing, it is **ORDERED** that:

The Respondent Darrell F. Flowers shall cease and desist in further conduct as an agent of Carlin Equities Corp. from, in, or into the State of Tennessee until such time he is effectively registered with the Division to engage in such activity.

2. The registrations of the Respondents Carlin Equities Corp. and Fred E. Zimmerman are summarily suspended until the final determination of whether their registrations shall be revoked pursuant to grounds under Tennessee Code Annotated §48-2-112(a).

3. All persons in any way assisting, aiding, or helping any of the aforementioned Respondent in any of the aforementioned violations of the Tennessee Securities Act of 1980.

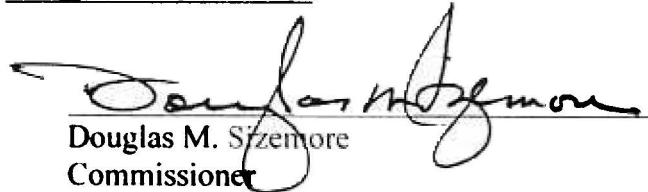
as amended, Tennessee Code Annotated §§48-2-101 et seq. shall cease and desist from all such activities in violation of the Tennessee Securities Act of 1980, as amended.

4. An informal conference shall be held on December 17, 1998 at Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243.

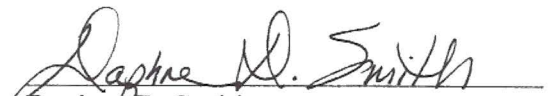
This Order is not intended to prohibit any lawful conduct in which any of the Respondents might be engaged.


Entry of this Order shall not in any way restrict the Tennessee Securities Division or the Commissioner of Commerce and Insurance from taking further action with respect to these or other possible violations by Respondents of the Act or any of the Rules promulgated thereunder.

Entered this 11th day of December, 1998.


Douglas M. Sizemore
Commissioner

APPROVED FOR ENTRY:


Daphne D. Smith
Assistant Commissioner for Securities
Department of Commerce and Insurance


Maliaka Bass EssamelDin, #015362
Department of Commerce and Insurance
Office of Legal Counsel
312 Eighth Avenue, North, 25th Floor
Nashville, Tennessee 37243
(615) 741-5917