

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

TENNESSEE SECURITIES DIVISION,)	
Petitioner)	
)	Order No. 05- 019
vs.)	
)	
EDWARD A. MARTIN,)	
Respondent)	

CONSENT ORDER

The Tennessee Securities Division (“Division”) and Edward A. Martin, Respondent herein, agree to the entry of this Consent Order in accordance with Tenn. Code Ann. § 48-2-116 of the Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. § 48-2-101, et seq. (“Act”), which states that the Commissioner of Commerce and Insurance (“Commissioner”) from time to time may make such orders as are necessary to carry out the provisions of the Act.

GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner’s acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.

2. This Consent Order is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and

consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

3. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts or omissions not specifically addressed in this Consent Order for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner or any other state government representative against the Respondent for violations of law under other statutes, rules, or regulations of the State of Tennessee, which may arise out of the facts, acts, or omissions contained in the Findings of Fact and Conclusions of Law stated herein, or which may arise as a result of the execution of this Consent Order by the Respondent.

5. Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Consent Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Consent Order by the Commissioner.

FINDINGS OF FACT

1. The Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. § 48-2-101, et seq. ("Act"), places the responsibility for the administration of the Act on the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility. Tenn. Code Ann. § 48-2-115.

2. Respondent, Edward A. Martin ("Martin"), is a citizen and resident of Williamson County, Tennessee. Martin maintains his address at 218 Third Avenue North, Franklin, Tennessee 37064-2505. Martin was registered in Tennessee with the Division as an agent and/or investment adviser for American Express Financial Advisors, Inc., from 01/1992 to 03/2004. Martin was registered in Tennessee with the Division as an agent and investment adviser for Brecek & Young Advisors, Inc., from 03/2004 to 11/2004. Martin is not currently registered with the Division as an agent of a broker-dealer or investment adviser in Tennessee, said registration having been terminated on December 31, 2004. Martin's National Association of Securities Dealers ("NASD") CRD number was 2193457.

3. In May 2004 the Division received a referral from the NASD, District 5, involving the activities of Edward Alan Martin ("Martin"), who was a registered representative of American Express Financial Advisors, Inc. ("AEFA") at all times pertinent to the investigation, as those activities pertained to his client, Rose Davis ("Davis").

4. On June 14, 2000 Davis signed a service agreement for investment services to be performed by Martin. The annual fee was forty thousand dollars (\$40,000). Until 2003, Davis paid the annual fee, which was due in June each year, directly to AEFA by redemption from her account or a check made payable to AEFA. However, on April 11, 2003 Davis wrote a check, payable to Martin not AEFA, in the amount of forty thousand dollars (\$40,000). In the memo field of the check Davis wrote "Retainer for 03".

5. According to Davis, Martin claimed to be short of money and requested that she pay the 2003 retainer a few months early and make the check payable directly to Martin. On April 14, 2003 the check was deposited into a joint bank account at Franklin

National Bank in the names of Edward Alan Martin and Heather R. Martin, which Martin contends was a business account that was held in joint name because his wife was acting as his office manager and needed signatory authority on the account. Two (2) days later more than thirteen thousand dollars (\$13,000) was transferred to a different Franklin National Bank account held jointly in the names of Edward and Heather Martin. The transfer was made by Heather Martin in her capacity as Martin's office manager.

6. Martin did not remit the retainer to AEFA when it became due in June 2003, citing as the reason for his failure to do so Davis' indication that her attorney and children wanted her to move her account to Morgan Stanley. The Davis account was moved to Morgan Stanley sometime between August and November 2003.

7. On August 20, 2003, Martin's supervisor Larry Jensen ("Jensen") conducted an Annual Inspection and Compliance Interview with Martin. Martin told Jensen that he had "lost" Davis' retainer because she was going to move her account to Morgan Stanley to be handled by her attorney's sister. Martin also told Jensen that the last fee Martin received from Davis was in May or June of 2002. Martin did not tell Jensen about the April 11, 2003 check that Davis had made out directly to Martin.

8. On October 24, 2003 Davis' attorney filed a complaint with AEFA.

9. In January 2004 Martin refunded the annual fee to AEFA in the amount of forty thousand dollars (\$40,000) plus interest (6%) in the amount of nineteen hundred and thirty-nine dollars and seventy-three cents (\$1,939.73) by issuing a check drawn on his personal account. AEFA then negotiated a settlement with Davis and her attorney which made Davis whole as to the annual fee, resulting in a payment to Davis of forty-one

thousand, nine hundred and thirty-nine dollars and seventy-three cents (\$41,939.73). If Martin had remained Davis' financial adviser his share of the annual fee would have been Thirty Four Thousand Dollars (\$34,000).

10. On February 25, 2005 Martin was barred by the NASD from associating in any capacity with any NASD member firms, Disciplinary Proceeding No. C05040084.

CONCLUSIONS OF LAW

11. Pursuant to Tenn. Code Ann. §48-2-115(a), the responsibility for administration of the Act is upon the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility.

12. Tenn. Code Ann. § 48-2-121(a) states, it is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, directly or indirectly, to: (1) Employ any device, scheme, or artifice to defraud; (2) Make any untrue statement of a material fact or 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; or (3) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

13. Tenn. Code Ann. § 48-2-121(b) states, it is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise, in this state, to: (1) Employ any device, scheme, or artifice to defraud the other person; (2) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; or (3) Take or have

custody of any securities or funds of any client except as the commissioner may by rule permit or unless the person is licensed as a broker-dealer under this part.

14. Tenn. Code Ann. §48-2-112(a)(2)(G) states, in pertinent part, that the Commissioner by order may deny, suspend, or revoke any registration under this part if she finds that the order is in the public interest, necessary for the protection of investors, and if she finds that the registrant, or in the case of a broker-dealer or investment adviser, any officer, director, or any person occupying a similar status or performing similar functions has engaged in dishonest or unethical practices in the securities business.

15. Tenn. Comp. R. & Regs. 0780-4-3-.02(6)(b)(17) states, it shall be deemed as “dishonest or unethical business practices” under Tenn. Code Ann. § 48-2-112(a)(2)(G) for an agent to violate any rule of a national securities exchange or national securities dealers association of which the agent is an associated person with respect to any customer, transaction or business in this state.

16. NASD Conduct Rule 2330 states, no member or person associated with a member shall make improper use of a customer’s securities or funds.

17. The averments in paragraphs two through ten of this Consent Order, constitute practices by Martin which would provide grounds under Tenn. Code Ann. §48-2-112(a)(2)(G) for the entry of an order of sanctions against Martin.

18. The averments in paragraphs two through ten of this Consent Order, constitute practices by Martin which would provide grounds under Tenn. Code Ann. §48-2-121 for the entry of an order of sanctions against Martin.

ORDER

NOW, THEREFORE, on the basis of the foregoing, and Respondent's waiver of his right to a hearing and appeal under the Tennessee Securities Act and Tennessee's Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 et seq., and Respondent's admission of jurisdiction of the Commissioner, the Commissioner finds that Respondent, for the purpose of settling this matter, admits the matters herein, has agreed to the entry of this Consent Order and that the following Consent Order is appropriate, in the public interest and necessary for the protection of investors.

IT IS ORDERED, pursuant to Tennessee Code Annotated § 48-2-116(a) of the Tennessee Securities Act that:

1. Respondent shall fully comply with the Tennessee Securities Act, as amended, and all rules promulgated thereunder;
2. Respondent, Edward A. Martin, shall cease and desist in any further conduct as a broker-dealer, agent of a broker-dealer, investment adviser, or investment adviser representative from or in the state of Tennessee, beginning on the date this Consent Order is executed by the Commissioner for the Department of Commerce and Insurance.
3. Respondent, Edward A. Martin, shall cease and desist in conducting securities transactions on behalf of others from, in, or into the State of Tennessee, beginning on the date this Consent Order is executed by the Commissioner for the Department of Commerce and Insurance.

4. Respondent, Edward A. Martin, shall be permanently barred from applying for or seeking registration with the Division as a broker-dealer, agent of a broker-dealer, investment adviser, or investment adviser representative, beginning on the date this Consent Order is executed by the Commissioner for the Department of Commerce and Insurance.

5. Respondent, Edward A. Martin, shall be permanently barred from applying for or seeking registration and/or licensure administered by and/or handled through the Tennessee Department of Commerce and Insurance or any division thereof as follows:

- Insurance company/agent licensing
- Accountants-Certified Public Accountants
- Auctioneer commission
- Funeral directors, embalmers, burial and cemetery services
- Collection service companies
- Employee leasing
- Private probation service council

as of the date this Consent Order is executed by the Commissioner for the Department of Commerce and Insurance.

6. Respondent, Edward A. Martin, shall be barred for a period of five (5) years from applying for or seeking registration and/or licensure administered by and/or handled through the Tennessee Department of Commerce and Insurance or any division thereof as follows:

- Alarm system contractors
- Contractors/Home improvement
- Motor Vehicle Commission
- Pharmacy
- Private investigation and polygraph
- Real Estate Commission
- Real Estate Appraisers

7. Respondent, Edward A. Martin, hereby agrees that his failure to comply with all the requirements and prohibitions contained in this Order shall result in further enforcement action by the Division, the Department of Commerce and Insurance, and/or the State of Tennessee in order to enforce the provisions contained herein.

IT IS ORDERED that this Consent Order represents the complete and final resolution of, and discharge with respect to all administrative and civil, claims, demands, actions and causes of action by the Commissioner against Edward A. Martin for violations of the Act alleged by the Tennessee Securities Division to have occurred with respect to the transaction involving Rose Davis and the facts contained herein.

This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signature affixed below, Edward A. Martin affirmatively states that he has freely agreed to the entry of this Consent Order, that he waives his right to a hearing on the matters underlying this Consent Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

ENTERED this 25th day of April, 2006.

Paula A. Flowers
Paula A. Flowers, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

Edward A. Martin
Edward A. Martin, Respondent

Lee Dryer
Lee Dryer
Attorney for Respondent

Daphne D. Smith
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