

State of Missouri
Office of Secretary of State

Case No. AP-11-17

IN THE MATTER OF:

JOSHUA D. GOULD, CRD# 4617397;

Respondent.

Serve Joshua D. Gould at:
8142 Amherst Avenue
St. Louis, Missouri 63130

CONSENT ORDER

SUMMARY OF ENFORCEMENT SECTION'S ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division ("Enforcement Section") has alleged that Joshua D. Gould, CRD # 4617397, ("Respondent"), offered and sold unregistered, non-exempt securities, made untrue statements of material fact in connection with the sale of a security, omitted to state material facts in connection with the sale of a security, and engaged in an act, practice, or course of business that would operate as a fraud or deceit upon another person in violation of the Missouri Securities Act of 2003, Chapter 409, RSMo. (Cum. Supp. 2009).
2. Respondent and the Enforcement Section desire to settle the allegations and the matters raised by the Enforcement Section relating to the alleged violations by Respondent.

CONSENT TO JURISDICTION

3. Respondent and the Enforcement Section stipulate and agree that the Commissioner has jurisdiction over the Respondent and these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, *et seq.*
4. Respondent and the Enforcement Section stipulate and agree that the Commissioner has authority to enter this Order pursuant to Section 409.6-604(h), RSMo. (Cum. Supp. 2009), which provides:

"The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act."

WAIVER AND EXCEPTION

5. Respondent waives his right to a hearing with respect to this matter.
6. Respondent waives any right that he may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondent specifically forever releases and holds harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner of Securities, and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter.
7. Respondent stipulates and agrees with the Enforcement Section that, should the facts contained herein prove to be false or incomplete, the Enforcement Section reserves the right to pursue any and all legal or administrative remedies at its disposal.

CONSENT TO COMMISSIONER'S ORDER

8. Respondent and the Enforcement Section stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
9. Respondent agrees not to take any action or to make or permit to be made any public statement creating the impression that this Order is without factual basis. Nothing in this paragraph affects Respondent's (a) testimonial obligations; (b) right to take legal or factual position in defense of litigation or in defense of other legal proceedings in which the Commissioner of Securities is not a party; or (c) right to make public statements that are factual.
10. Respondent agrees that Respondent is not the prevailing party in this action since the parties have reached a good faith settlement.
11. Respondent neither admits nor denies the allegations made by the Enforcement Section, but consents to the Commissioner's Findings of Fact, Conclusions of Law, and Order as set forth below solely for the purposes of resolving this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.

COMMISSIONER'S FINDINGS OF FACT,

CONCLUSIONS OF LAW, AND ORDER

I. FINDINGS OF FACT

12. On November 2, 2010, the Enforcement Section was contacted by the Chief Legal Officer of Woodbury to report potential securities violations by Gould. The Woodbury representative reported, among other things, the following:
 - a. Woodbury was contacted by Allianz, who had researched a claim and discovered inappropriate activity within a Gould client account;
 - b. On November 1, 2010, an internal investigation and onsite audit was initiated for Gould's branch office, during which Gould admitted to inappropriate activity;
 - c. Gould had executed unauthorized withdrawals and misappropriated funds in at least fifteen (15) of Gould's client accounts; and
 - d. On November 2, 2010, Woodbury terminated Gould due to unauthorized withdrawals and misappropriated funds in client accounts.

13. On November 3, 2010, the Chief Legal Officer of Woodbury provided the Enforcement Section with a copy of a written voluntary statement made by Gould on November 1, 2010, during Woodbury's internal investigation. In Gould's voluntary statement, Gould stated, among other things, the following:
 - a. that during 2006 or 2007, Gould entered an alliance with the principals of Coral Mortgage, Matt Kent ("Kent") and Dave Rubin ("Rubin"). The details of the alliance included, among other things:
 - i. Gould was responsible for investing seven hundred fifty thousand dollars (\$750,000) for the benefit of Coral Mortgage;
 - ii. Gould understood that these funds represented a portion of a one million dollar (\$1,000,000) investment made by a Coral Mortgage investor;
 - iii. Gould was to invest the Coral Mortgage funds in the stock market to maintain the principal and to cover interest payments to the Coral Mortgage investor, with any additional returns paid to Coral Mortgage; and
 - iv. Gould was to be paid a one to two percent advisory fee;
 - b. that Gould opened an Ameritrade brokerage account ("Coral Mortgage Account") to invest the Coral Mortgage funds in stocks;
 - c. that in 2008, the Coral Mortgage Account suffered significant investment losses resulting in a near total loss of the principal;
 - d. that Gould understood Kent and Rubin expected him to be responsible for the investment loss;
 - e. that Gould initially made interest payments to the Coral Mortgage investor by taking money from Gould's personal business, Sports Nook;
 - f. that Gould "took money whenever [Gould] could, however, soon [Sports Nook] could not keep up with the funds needed to make interest payments to [Coral Mortgage and the Coral Mortgage investor];"
 - g. that Gould forged documents to make unauthorized withdrawals and distributions for the purpose of misappropriating client funds;
 - h. that Gould withdrew funds from client investment accounts, without the client's knowledge, by keeping "blank signed copies of Distribution and Withdrawal paperwork for some clients. In some cases, [Gould] would simply change dates and amounts and send in a form from a previous form;"
 - i. that Gould directed the distribution of client funds first to PMA, then to Sports Nook and Coral Mortgage;
 - j. that Gould made some distributions with client knowledge and authority, however, the client understood that the client was investing in something with "an increased interest rate and that it was unconventional."
 - k. that Gould did not disclose to clients that he was using client funds to pay Coral Mortgage and pay the expenses of Sports Nook;
 - l. that Gould used client funds for, among other things, the following purposes:
 - i. to repay funds taken from Sports Nook;

- ii. to pay back other client funds he had previously taken;
 - iii. for Gould's own purposes; and
 - iv. as collateral for a line of credit to fund capital needs for Sports Nook.
14. On January 24, 2011, the Enforcement Section received an investigative summary from Woodbury. This summary included, among other things, the following information:
 - a. Gould had initiated third-party redemptions in numerous brokerage and annuity client accounts, in which the clients had denied having submitted or authorized any request for distribution of funds from their accounts;
 - b. All distribution requests included instructions to send the client funds via EFT¹ or wire transfer to a bank account in the name of PMA, with Gould listed as the authorized person on the account
 - c. Gould faxed redemption instructions, allegedly on behalf of his clients, to Allianz and to Woodbury. The forms contained instructions to deliver the funds for deposit in an account in the name of PMA. In some cases, the wire instructions indicated that the funds were for the further benefit of the underlying client for whom the funds were redeemed;
 - d. Gould utilized PMA, Apex and Citadel as fronts to solicit clients by offering unconventional investments with an increased rate of return;
 - e. Gould prepared "statements" for clients, which portrayed client funds as being invested in Apex, PMA and/or Citadel, even though no such investments existed;
 - f. In at least one transaction, Gould utilized funds from one client to purchase certificates of deposits that were then used as collateral for a line of credit with Royal Bank of Missouri ("Royal Bank"). Woodbury confirmed with Royal Bank that Gould utilized the entire line of credit and that Royal Bank holds a lien against the certificates;
 - g. Gould prepared a letter providing a statement of assets to serve as proof of collateral for a bank line of credit, when there were insufficient assets to cover the total portrayed in the letter; and
 - h. Gould applied for credit cards using client names and issued those cards to employees of Sports Nook.
15. Based on information received from Woodbury, from mid-2008 through October 2010, Gould initiated approximately sixty-six (66) unauthorized withdrawals from approximately twenty (20) Woodbury client accounts, including, among others, the following Missouri residents:
 - a. From December 2008 through April 2009, Gould initiated eight (8) unauthorized withdrawals, totaling approximately one hundred thirty-seven thousand five hundred dollars (\$137,500) from the Woodbury brokerage account of a 65-year-old, St. Louis, Missouri resident ("MR1"). On January 31, 2011, an investigator with the Enforcement Section confirmed, via telephone interview, the withdrawals were not authorized by MR1;
 - b. On or around September 2010, Gould initiated an unauthorized withdrawal in the amount of one hundred sixty thousand dollars (\$160,000) from an Allianz annuity account of a 72-year old, O'Fallon, Missouri resident ("MR2"). On January 31, 2011, an investigator with the Enforcement Section confirmed, via telephone interview, the withdrawal was not authorized by MR2; and
 - c. From June 2009 through April 2010, Gould initiated twenty-three (23) unauthorized withdrawals, totaling approximately six hundred seventy-nine thousand dollars (\$679,000) from the Woodbury brokerage account of an 80-year-old, St. Louis, Missouri resident ("MR3"). On January 31, 2011, an investigator with the Enforcement Section confirmed, via telephone interview, the withdrawals were not authorized by MR3.
16. According to Woodbury's internal investigation, the total misappropriation of funds by Gould, at this time, is in excess of three-million six hundred sixty-five thousand and six-hundred dollars (\$3,665,600).
17. During Woodbury's internal investigation, Woodbury identified six (6) persons who invested funds by making payments, totaling approximately three-hundred twelve thousand nine-hundred and one dollars (\$312,901), directly to Gould's PMA account, including, among others, a Florida resident ("FR"):
 - a. FR learned about Gould through family members and contacted Gould about investing;
 - b. Gould promised FR a six percent (6%) return on FR's investment in "something like a one-year certificate of deposit;"
 - c. Gould failed to make any disclosures to FR about how the funds would be invested;
 - d. On or around November 2008, FR invested eighty thousand dollars (\$80,000) via wire transfer directly into Gould's PMA account;

- e. Gould paid FR six percent (6%) return at the end of the first year;
 - f. When FR told Gould FR planned to move the investment, Gould promised an eight and five hundredths percent (8.05%) return for the second year;
 - g. A check of Woodbury client files indicates that Gould prepared a loan agreement and a promissory note evidencing the arrangements between PMA and FR; and
 - h. To date, FR has not received any principal or any additional interest since the interest payment at the end of the first year.
18. A check of the records maintained by the Commissioner of Securities indicates that Gould failed to take any of the following actions with respect to the investments in PMA, Apex, and/or Citadel which Gould offered and sold to clients: (1) register the securities with the State of Missouri, (2) claim an exemption from registration or exception from the definition of security in the State of Missouri, or (3) make a notice filing in the State of Missouri.
 19. The Enforcement Section's investigation revealed that the assets of the Sports Nook were liquidated and are being held in trust at the law firm of Respondent's attorney.

II. CONCLUSIONS OF LAW

20. The Commissioner finds Respondent offered and sold unregistered securities in violation of Section 409.3-301, RSMo. (Cum. Supp. 2009).
21. The Commissioner finds Respondent made untrue statements of material fact in connection with the sale of security, omitted to state material facts, and engaged in an act, practice, or course of business that would operate as a fraud or deceit upon another person in violation of Section 409.5-501, RSMo. (Cum. Supp. 2009).
22. The Commissioner, after consideration of the stipulations set forth above and on the consent of Respondent and the Enforcement Section, finds and concludes that the Commissioner has jurisdiction over Respondent and this matter and that the following Order is in the public interest, necessary for the protection of public investors and consistent with the purposes intended by Chapter 409, RSMo. (Cum. Supp. 2009).

III. ORDER

NOW, THEREFORE, it is hereby Ordered that:

1. Respondent is permanently BARRED from applying as a securities agent or an investment adviser representative in the State of Missouri or from associating in any capacity with a broker-dealer or investment adviser;
2. Respondent is ordered to pay civil penalties in the amount of twenty thousand dollars (\$20,000). This amount shall be suspended provided that Respondent complies with the terms of this order. If Respondent fails to comply with any of the terms of this order, this amount shall be immediately due and payable. This amount shall be sent to the Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101, and shall be payable to the State of Missouri. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri;
3. Respondent is ordered to pay five hundred fifty dollars (\$550) as the cost of this investigation. This amount shall be sent within ten (10) days of the effective date of this order to the Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101 and shall be payable to the Missouri Secretary of State's Investor Education and Protection Fund; and
4. Respondent shall pay his own costs and attorneys' fees with respect to this matter.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 15TH DAY OF APRIL, 2011.

ROBIN CARNAHAN
SECRETARY OF STATE

(Signed/Sealed)
MATTHEW D. KITZI
COMMISSIONER OF SECURITIES

Consented to by:
MISSOURI SECURITIES DIVISION

Kristine Sonnett Kauffin
Deputy Enforcement Counsel

Approved as to Form:

Attorney for Respondent

RESPONDENT

[\[1\]](#) Electronic Funds Transfer.