



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)	
)	
MERRILL LYNCH, PIERCE, FENNER &)	
SMITH INCORPORATED,)	
)	Case No. AP-13-14
Respondent.)	
)	
Serve: Merrill Lynch, Pierce, Fenner &)	
Smith Incorporated)	
c/o Pete S. Michaels)	
Michaels, Ward & Rabinovitz, LLP)	
One Beacon Street, 2 nd Floor)	
Boston, MA 02108)	

CONSENT ORDER

SUMMARY OF ENFORCEMENT SECTION’S ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division of the Office of Secretary of State (“Enforcement Section”), through Assistant Commissioner Mary S. Hosmer, has alleged that Merrill Lynch, Pierce, Fenner & Smith Incorporated, (“Merrill” or “Respondent”), failed to reasonably supervise Greg John Campbell (“Campbell”), a Missouri-registered agent who engaged in dishonest or unethical practices in violation of Missouri law, and that this constitutes grounds to revoke, suspend, condition, limit or impose a civil penalty on Merrill in Missouri pursuant to Section 409.4-412(d)(9), RSMo. (Cum. Supp. 2011).
2. Respondent and the Enforcement Section desire to settle the allegations and the matters raised by the Enforcement Section relating to the Respondent’s above alleged violations while Campbell was a Missouri registered broker-dealer agent with Respondent.

CONSENT TO JURISDICTION

3. Respondent and the Enforcement Section stipulate and agree that the Missouri Commissioner of Securities (“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. 2011), 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 Respondent’s right to a hearing with respect to this matter.
6. Respondent waives any right that Respondent 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, 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 positions in defense of litigation or in defense of other legal proceedings in which the Commissioner 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. Merrill is a Missouri-registered broker-dealer with a home office address of One Bryant Park, New York, New York 10038. Merrill is registered in Missouri through the Central Registration Depository ("CRD") with number 7691. On January 1, 2009, Merrill became a wholly owned subsidiary of Bank of America Corporation ("BOA").
13. Campbell was a Missouri-registered broker-dealer agent with Merrill from June 16, 2006 to October 29, 2011, and was located at the Merrill branch office at 8325 Forsyth Boulevard, Clayton, Missouri 63105. Campbell was registered in Missouri through the CRD with number 4732999. Campbell's current mailing address is 20 Ladue Ridge Road, Ladue, Missouri 63124.
14. A check of the CRD records indicates Campbell has not been registered as a broker-dealer agent in Missouri since October 31, 2012.
15. Roger Rathmell ("Rathmell") was a Missouri-registered broker-dealer agent with Merrill from June 30, 1971, to October 17, 2012, and at all times relevant, was located at the Merrill branch office at 8325 Forsyth Boulevard, Clayton, Missouri 63105. Rathmell was registered in Missouri through the CRD with number 711949. From June 2006 to October 2011, Rathmell was one of Campbell's immediate supervisors at the Merrill branch office in Clayton.
16. On October 29, 2011, Merrill terminated Campbell's registration as an agent in Missouri. On Campbell's Uniform Termination Notice for Securities Industry Registration ("Form U5") Merrill listed Campbell's termination as "Voluntary".
17. In October 2012, Merrill contacted the Enforcement Section and reported the activities by Campbell in certain Merrill client accounts ("Merrill Client Accounts"). The Enforcement Section opened an investigation of Campbell and Merrill. Merrill cooperated with the Enforcement Section's staff during the investigation.
18. Between November 28, 2012, and May 20, 2013, Merrill sent documents to the Enforcement Section relating to the Merrill Client Accounts.

19. Investigators with the Enforcement Section interviewed clients that owned or controlled the Merrill Client Accounts.
20. A review of the interviews and documents provided to the Enforcement Section revealed that, while under Merrill's supervision, Campbell:
 - a. executed unauthorized activity over a span of four (4) years in at least five (5) Merrill Client Accounts (these clients ranged in age from thirty-four to eighty-six [34 to 86] years of age);
 - b. opened and forged at least two (2) unauthorized Bank of America loan management accounts ("LMAs") for Merrill Client Accounts;
 - c. initiated approximately seventy-seven (77) unauthorized transfers in Bank of America LMAs or Merrill Client Accounts totaling approximately one million nine hundred thousand dollars (\$1,900,000);
 - d. routed approximately one million nine hundred thousand dollars (\$1,900,000) of funds from Bank of America LMAs or Merrill Client Accounts to third-party accounts either owned by, or that benefited, Campbell;
 - e. forged at least three (3) Letters of Authorization ("LOAs") in the names of Merrill Client Account holders; and
 - f. performed unauthorized address changes in at least five (5) Merrill Client Accounts.
21. Between October 26, 2011, and September 23, 2012, at least two (2) of Campbell's clients sent correspondence to Rathmell regarding unauthorized activity in their LMAs and IRAs at Merrill.
22. On June 29, 2012, after receiving multiple inquiries from Campbell clients regarding the status of their complaints, Rathmell sent a memorandum to Merrill's Compliance Department and stated, among other things, that:
 - a. a client had expressed concerns regarding unauthorized distributions from the client's account;
 - b. a client had stopped receiving monthly account statements from Merrill; and
 - c. there were distributions from two Merrill clients' LMAs to a Wells Fargo bank to pay a loan on Campbell's residence;

23. On or about October 17, 2012, Merrill terminated Rathmell's agent registration in Missouri for "failure to elevate a compliance matter and to report client complaints."
24. On February 19, 2013, the Commissioner of Securities issued an order against Campbell and subsequently issued a Consent Order barring Campbell from registering in Missouri and ordering Campbell to pay restitution. Consent Order, *In re Greg John Campbell*, No. AP-13-01 (Mo. Sec. Div., Feb. 19, 2013).
25. Merrill in its supervision of Campbell failed to:
 - a. detect and identify the above-referenced LMA abuses by Campbell;
 - b. detect and identify pre-authorized debit abuses by Campbell;
 - c. report, investigate and properly elevate two client complaints received by Merrill in both emails and correspondence; and
 - d. detect and identify unauthorized activity in several of Campbell's customer accounts, including unauthorized transfers, IRA distributions, and changes of address.
26. Merrill has provided information not unacceptable to the Enforcement Section that it has in place policies, procedures and controls:
 - a. to review LMA applications;
 - b. to detect, identify, review, investigate, report and/or respond to customer complaints;
 - c. to detect, identify, review, and prevent potential unauthorized activity in customer accounts, concerning, but not necessarily limited to:
 - i. opening of accounts;
 - ii. e-mail/correspondence review;
 - iii. early IRA distributions;
 - iv. client address changes;
 - v. wire transfers; and
 - vi. letters of authorization.
 - d. to provide supervisor training, generally; and
 - e. to provide supervisor training, specifically regarding duties and obligations relating to customer complaints.

II. CONCLUSIONS OF LAW

27. The Commissioner finds Merrill failed to supervise a Missouri-registered agent employed by Merrill who engaged in dishonest and unethical practices in violation of Sections 409.4-212(d)(13), RSMo. (Cum. Supp. 2011). Merrill is subject to discipline for failing to reasonably supervise the agent's activities pursuant to Section 409.4-412 (d)(9), RSMo. (Cum. Supp. 2011).
28. The Commissioner, after consideration of the stipulations set forth above and on the consent of Merrill and the Enforcement Section, finds and concludes that the Commissioner has jurisdiction over Merrill 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. 2011).

III. ORDER

NOW, THEREFORE, it is hereby Ordered that:

1. Merrill, Merrill's agents, employees and servants, and all other persons participating in the above-described violations with knowledge of this order are permanently enjoined and restrained from engaging in dishonest or unethical practices in the securities business; and failing to reasonably supervise a Missouri-registered agent who has engaged in dishonest or unethical practices in violation of Sections 409.4-412, (d)(9), and (d)(13), RSMo. (Cum. Supp. 2011).
2. Merrill is hereby CENSURED.
3. Merrill shall compensate clients for any funds improperly withdrawn or transferred from any Merrill Client Accounts by Campbell. As of June 12, 2013, Merrill has compensated eighty-nine thousand fifty-five dollars and sixty-seven cents (\$89,055.67) to the Merrill Client Accounts.
4. Merrill and/or BOA shall not seek to collect on any client LMA balance that was incurred as a result of Campbell's fraudulent activities. As of June 12, 2013, Merrill and/or BOA have written off LMA balances for the Merrill Client Accounts totaling approximately one million five hundred thirty-two thousand five hundred twenty-four dollars (\$1,532,524).
5. Merrill shall pay to the Missouri Secretary of State's Investor Education and Protection Fund the sum of five hundred thousand dollars (\$500,000). This payment shall be sent within ten (10) days of the effective date of this Consent 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. The Division will send the money to the Missouri Secretary of State's Investor Education and Protection Fund.

6. Merrill shall pay its own costs and attorneys' fees with respect to this matter.
7. This Consent Order shall not disqualify Merrill, or any of its affiliates from any business that they otherwise are qualified or licensed to perform under any applicable state securities law. Further, this Consent Order is not intended to subject Merrill or any of its affiliates to any disqualifications contained in the federal securities law, the rules and regulations thereunder, the rules and regulations of self-regulatory organizations, various states' or U.S. Territories' securities laws including, but not limited to, any disqualifications from relying upon the registration exemptions or safe harbor provisions. In addition, this Order is not intended to form the basis for any such disqualifications.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,

MISSOURI THIS 31st DAY OF JULY, 2013.



JASON KANDER
SECRETARY OF STATE

A handwritten signature in blue ink that reads "Andrew M. Hartnett".

ANDREW M. HARTNETT
COMMISSIONER OF SECURITIES

Consented to by:
THE ENFORCEMENT SECTION OF THE
MISSOURI SECURITIES DIVISION

A handwritten signature in blue ink that reads "Mary S. Hosmer".
Mary S. Hosmer
Assistant Commissioner of Securities

MERRILL LYNCH, PIERCE FENNER &
SMITH INCORPORATED

BY:


NAME: RUSSEL D. FRANCISCO

TITLE: DIRECTOR - ASSISTANT
GENERAL COUNSEL

Approved as to Form:


Pete S. Michaels
Michaels, Ward & Rabinovitz, LLP