

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, SEPTEMBER 11, 2015

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STATE CORPORATION COMMISSION
SEP 11 2015

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2014-00035

WELLS FARGO ADVISORS, LLC,
Defendant

SETTLEMENT ORDER

The Division of Securities and Retail Franchising ("Division") of the State Corporation Commission ("Commission") conducted an investigation of Wells Fargo Advisors, LLC ("Wells Fargo Advisors" or "Defendant") and Christopher M. Cunningham ("Cunningham"), pursuant to § 13.1-518 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia ("Code"). Based on the Division's investigation, the Division alleges as follows:

Wells Fargo Advisors has been a registered broker-dealer with the Commission since December 1, 1989, and registered as a federal-covered investment advisor¹ with the United States Securities and Exchange Commission since October 10, 1990. Wachovia Securities, LLC (Wells Fargo Advisors' predecessor) and Wells Fargo Advisors employed Cunningham (CRD # 2390800) as a broker-dealer agent and an investment advisor representative from June 6, 2005 to his involuntary termination on October 15, 2009.

During his employment with Wells Fargo Advisors, Cunningham obtained \$434,780 from five residents of the Commonwealth of Virginia ("Virginia") through seven separate solicitations from 2005 to 2009. Four of these individuals were clients of Wells Fargo Advisors

¹ Federal covered advisors are required to notice file in the states in which they conduct business.

at the time of the solicitation. The fifth later became a client of Wells Fargo Advisors.

Cunningham represented each solicitation as an investment into his companies, Rock Solid Distributors, LLC, and SGI, LLC, and his business partner's company, Island Style Consulting, LLC. At least half of the money was used for Cunningham's personal benefit. Cunningham repaid one client \$48,000. Three of the clients are deceased, but are survived by their spouse or children.

Based on these activities and other similar activities contributing to a \$1.2 million fraud, Cunningham pled guilty in the U.S. District Court for the Eastern District of Virginia to one count of wire fraud on July 8, 2014, and was sentenced on October 10, 2014, to 57 months in prison.

Wells Fargo Advisors violated the Act and the Commission's Rules governing Broker-Dealers, Broker-Dealer Agents, and Agents of the Issuer, 21 VAC 5-20-10 *et seq.* ("Rules") by failing to: (1) supervise Cunningham who engaged in dishonest and unethical practices, (2) properly review customer accounts, (3) enforce its written policies and procedures, and (4) provide proper disclosures to clients and regulatory authorities. In addition, most of the alleged violations involved elderly Wells Fargo Advisors customers.

Wells Fargo Advisors received two complaints referencing Cunningham's actions when he was employed by Morgan Stanley DW Inc. ("Morgan Stanley") within 14 months of hiring Cunningham. One of these complaints was denied by Morgan Stanley. The second complaint was eventually settled by Cunningham while he was employed by Wells Fargo Advisors. Wells Fargo Advisors did not take any remedial action to ensure that the alleged offenses outlined in these complaints were legitimate or prevent the alleged offenses from occurring again while Wells Fargo Advisors employed Cunningham. Wells Fargo Advisors failed to follow up with

Cunningham regarding the status of his outside business brought to light by the customer complaints.

During his employment with Wells Fargo Advisors, Cunningham obtained \$434,780 from five Virginia residents through seven separate solicitations from 2005 to 2009. Four of these individuals were clients of Wells Fargo Advisors at the time of the solicitation. The fifth later became a client of Wells Fargo Advisors. These funds were in exchange for unregistered securities related to Cunningham's and his business partner's companies. Wells Fargo Advisors failed to prevent or address these transactions on a timely basis.

Many of the unsupervised transactions involved debit memos requested by Cunningham directly from Wells Fargo Bank, N.A. employees. Wells Fargo Advisors neglected to establish sufficient boundaries between the banking and brokerage sides of its offices where Cunningham was located.

Wells Fargo Advisors failed to conduct a complete review of at least one client's account to determine if there were any conflicts of interest or other risk factors. Wells Fargo Advisors identified this account "in the care of" Cunningham's wife, who was sanctioned by the Financial Industry Regulatory Authority ("FINRA").²

Wells Fargo Advisors failed to thoroughly review Cunningham's customer accounts or take action when digital account alerts relating to Cunningham's customer accounts were generated by Wells Fargo Advisors' systems.

Wells Fargo Advisors failed to ensure Cunningham did not abuse personal banking privileges or monitor Cunningham's relationship with others for conflicts of interest.

² Edith Mechling's CRD report states that she was suspended from association with any NASD member in any capacity for three months, April 3, 2006 to July 2, 2006.

Wells Fargo Advisors failed to disclose all the reasons related to Cunningham's involuntary termination on Cunningham's Uniform Termination Notice for Securities Industry Registration Form U5 and report a customer complaint to FINRA.

Wells Fargo Advisors failed to disclose to Cunningham's elderly clients that Cunningham had previously sold unregistered securities that were unauthorized by Wells Fargo Advisors. After receiving information that a customer invested in one of Cunningham's companies, Wells Fargo Advisors failed to disclose the risk associated with investing in an unregistered security.

Wells Fargo Advisors failed to disclose to a customer that Cunningham had possession of the customer's checkbook. In addition, Wells Fargo Advisors failed to disclose an uncashed check for a client found in Cunningham's desk.

Based on the investigation, the Division alleges the Defendant committed multiple violations of: (i) Rule 21 VAC 5-20-260 B by failing to exercise diligent supervision over the securities activities of its agent; (ii) Rule 21 VAC 5-20-260 D (2) by failing to monitor and conduct frequent examinations of all customer accounts to detect and prevent irregularities or abuses; and (iii) Rule 21 VAC 5-20-260 D by failing to enforce its written policies and procedures.

If the provisions of the Act are violated, the Commission is authorized by § 13.1-506 of the Act to revoke a defendant's registration, by § 13.1-519 of the Act to issue temporary or permanent injunctions, by § 13.1-518 A of the Act to impose costs of investigation, by § 13.1-521 A of the Act to impose certain monetary penalties, by § 13.1-521 C of the Act to order a defendant to make rescission and restitution, and by § 12.1-15 of the Code to settle matters within its jurisdiction.

The Defendant neither admits nor denies these allegations but admits to the Commission's jurisdiction and authority to enter this Settlement Order ("Order").

Prior to the date of this Order, the Defendant offered to pay restitution totaling \$386,780 to clients or beneficiaries. The Defendant paid the amounts applicable to each customer who accepted the Defendant's offer.

As a proposal to settle all matters arising from these allegations, the Defendant has made an offer of settlement to the Commission wherein the Defendant will abide by and comply with the following terms and undertakings:

(1) The Defendant will pay to the Treasurer of Virginia ("Treasurer"), contemporaneously with the entry of this Order the amount of One Hundred Fifty Thousand Dollars (\$150,000) in monetary penalties.

(2) The Defendant will pay to the Treasurer, contemporaneously with the entry of this Order, the amount of Fifty-five Thousand Dollars (\$55,000) to defray the costs of investigation.

(3) The Defendant will provide each customer offered restitution a copy of this Order within ten (10) days of the date of its entry.

(4) The Defendant will not violate the Act in the future.

The Division has recommended that the Commission accept the offer of settlement of the Defendant.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Division, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

(1) The offer of the Defendant in settlement of the matter set forth herein is hereby accepted.

(2) The Defendant shall fully comply with the aforesaid terms and undertakings of this settlement.

(3) This case is dismissed and the papers herein shall be placed in the file for ended causes.

Dismissal of this case does not relieve the Defendant from its reporting obligations to any regulatory authority.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:
Wells Fargo Advisors, LLC, 1 North Jefferson Avenue, St. Louis, Missouri 63103; Gary C. Liddicoat, Senior Counsel, Wells Fargo Advisors, LLC Law Department, 1 North Jefferson Avenue, St. Louis, Missouri 63103; and a copy shall be delivered to the Commission's Office of General Counsel and Division of Securities and Retail Franchising.

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Defendant

ADMISSION AND CONSENT

Wells Fargo Advisors, LLC ("Defendant"), admits to the jurisdiction of the State Corporation Commission ("Commission") as to the party and subject matter hereof and, neither admitting nor denying the allegations made herein by the Division of Securities and Retail Franchising, hereby consents to the form, substance and entry of the foregoing Settlement Order ("Order").

The Defendant further states that no offer, tender, threat or promise of any kind whatsoever has been made by the Commission or any member, subordinate, employee, agent or representative thereof in consideration of the foregoing Order.

Date:

8/24/15

Wells Fargo Advisors, LLC

By:

Lincoln Yersin,
Senior Managing Director/Brokerage

Seen and Approved By:

Date:

8/27/15

By:

Clay L. Grumke,
Assistant General Counsel