

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 16, 2021

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2021-00008

SECURITIES AMERICA, INC.,
and
SECURITIES AMERICA ADVISORS, INC.,
Defendants

SETTLEMENT ORDER

The State Corporation Commission's ("Commission") Division of Securities and Retail Franchising ("Division") conducted an investigation of Securities America Inc. ("SAI") and Securities America Advisors, Inc. ("SAA") (collectively, "Defendants") pursuant to § 13.1-518 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia ("Code").

SAI is a broker-dealer firm that registered with the United States Securities and Exchange Commission on September 18, 1981 and has been registered in Virginia as a broker-dealer from March 29, 1985 to present. SAI is a Delaware corporation with a principal office located at 12325 Port Grace Boulevard, La Vista, Nebraska 68128. SAI is in the business of offering and selling securities through its broker-dealer agents in multiple states, including Virginia. From December 17, 2010 to July 31, 2018, Michael Finnie ("Finnie") was registered with SAI in Virginia as a broker-dealer agent, working in and from an office in Virginia.

SAA is an investment advisor that registered with the United States Securities and Exchange Commission on January 25, 1994 and notice filed with Virginia on March 21, 1994. SAA is a Nebraska corporation with a principal office also located at 12325 Port Grace Boulevard, La Vista, Nebraska 68128. SAA provides investment advisory services to clients and

has offices throughout the United States, including Virginia. Finnie was registered with SAA in Virginia as an investment advisor representative from December 17, 2010 to February 19, 2014 and again from February 26, 2016 to July 31, 2018.

Based on its investigation, the Division alleges the following: in 2013, Finnie, acting as a broker-dealer agent with SAI and an investment advisor representative with SAA, recommended that a 72-year old Virginia client customer ("Client") purchase shares in Business Development Corporation of America ("BDCA"), an illiquid alternative investment for a Client with no prior experience with such alternative investments. The Client had a time horizon of 5 - 10 years and stated her investment objective with the BDCA purchase was for additional monthly income. However, this was a long-term investment with an indefinite holding period and the distribution plan on the subscription agreement indicated she wished to "reinvest the entire cash distribution," therefore contradicting the rationale of the purchase. On May 20, 2013, the transaction was complete and Finnie sold the Client the BDCA shares for \$50,000 which was about 24% of the Client's total account value.

The Division alleges that SAI violated Rule 21 VAC 5-20-280 (A) (3) of the Commission's Rules Governing Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer 21 VAC 5-20-10 *et seq.*, ("B-D Rules") by recommending the purchase of the unsuitable BDCA securities to the Client. The Division further alleges that SAI violated B-D Rule 21 VAC 5-20-260 (A) by failing to supervise the activities of its broker-dealer agent Finnie in connection with the Client's purchase of the BDCA shares, an unsuitable alternative investment that was contrary to the Client's stated objectives. Specifically, SAI failed to identify the discrepancy between the Client's investment objective, stated time horizon, and the long-term illiquid nature of the BDCA investment purchase. In addition, on an April 19, 2013 Alternative Investment Purchase

Acknowledgement form, the Client's net worth was listed as \$700,000. Three weeks later, on May 7, 2013, on another Alternative Investment Purchase Acknowledgement form, the Client's net worth was listed as \$600,000. The Defendants have no documentation indicating there was an inquiry or any supervision by SAI of the broker-dealer agent regarding the \$100,000 difference in the Client's net worth within one month of the purchase of the BDCA shares.

The Division further alleges that SAA violated Rule 21 VAC 5-80-200 (A) (1) of the Commission's Rules Governing Investment Advisors, 21 VAC 5-80-10 *et seq.* ("IA Rules") by recommending the Client purchase the BDCA shares without reasonable grounds to believe that the recommendation was suitable for the Client based on the Client's investment objective, financial situation, risk tolerance and needs, and any other information known or acquired by the investment advisor after reasonable examination of the Client's financial records, thereby violating their fiduciary duty.

If the provisions of the Act are violated, the Commission is authorized by § 13.1-519 of the Act to issue temporary or permanent injunctions; by § 13.1-521 (A) of the Act to impose a civil penalty; by § 13.1-521 (C) of the Act to order the defendant make rescission and restitution; and by § 12.1-15 of the Code to settle matters within its jurisdiction.

The Defendants neither admit nor deny the allegations made herein but admit to the Commission's jurisdiction and authority to enter this Order.

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

(1) The Defendants, within thirty (30) days of the entry of this Order, will purchase the remaining shares the Client holds in BDCA for the full purchase price of \$50,000;

(2) The Defendants, within sixty (60) days of the entry of this Order, will provide the Division with proof of the purchase of the BDCA shares from the Client as outlined above in Paragraph (1);

(3) The Defendants, contemporaneously with the entry of this Order, will pay, jointly and severally, to the Treasurer of Virginia the amount of Twenty Thousand Dollars (\$20,000) in monetary penalties;

(4) The Defendants, contemporaneously with the entry of this Order, will pay, jointly and severally, to the Treasurer of Virginia the amount of Five Thousand Dollars (\$5,000) to defray the costs of investigation in this matter; and

(5) The Defendants are permanently enjoined from violating the Act in the future.

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

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

Accordingly, IT IS ORDERED THAT:

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

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

(3) The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding, or taking such other action it deems appropriate on account of the Defendants' failure to comply with the terms and undertakings of the settlement.

A COPY hereof shall be sent by the Clerk of the Commission by electronic mail to:
 Steve Wastek, Esquire, Associate General Counsel, Advisor Group, Inc., at
Steve.Wastek@advisorgroup.com, 20 East Thomas Road, Suite 2000, Phoenix, Arizona 85012;
 and a copy shall be delivered to the Commission's Office of General Counsel and the Division of
 Securities and Retail Franchising.

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STATE CORPORATION COMMISSION

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Defendants

ADMISSION AND CONSENT

Securities America, Inc. and Securities America Advisors, Inc. (collectively, the "Defendants") admit to the jurisdiction of the State Corporation Commission ("Commission") as to the party and subject matter hereof, and neither admit nor deny the allegations made herein by the Division of Securities and Retail Franchising, hereby consent to the form, substance and entry of the foregoing Settlement Order ("Order").

The Defendants further state 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: 03/19/21

Securities America, Inc.

By: [Signature]

Its: Interim Chief Compliance Officer

Securities America Advisors, Inc.

Date: _____

By: _____

Its: _____

Seen and Approved by:

[Signature]
Steve Wastek, Esquire

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Securities America, Inc.

Date: _____

By: _____

Its: _____

Securities America Advisors, Inc.

Date: 3/18/2021

By: Jamie Wentz

Its: President

Seen and Approved by:

Steve Wasiek
Steve Wasiek, Esquire