

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE CENTER, BLDGS. 68-69
1511 PONTIAC AVENUE
CRANSTON, RI 02920**

IN THE MATTER OF:	:	
	:	
MARTIN BENJAMIN FEIBISH,	:	DBR No. 11-S-0019
	:	
RESPONDENT.	:	
	:	

DECISION AND FINAL ORDER

Hearing Officer: Ellen R. Balasco, Esq.

Hearing Held: May 5, 2011

Appearances:

For the Department of Business Regulation: Neena Sinha Savage, Esq.

For Respondents: No appearance by Respondent or counsel.

I. INTRODUCTION

This matter was scheduled to be heard by the undersigned Hearing Officer on May 5, 2011, pursuant to an Order to Show Cause, Notice of Hearing and Appointment of Hearing Officer (“Order”) to Martin Benjamin Feibish (“Respondent”) requiring Respondent to appear before the Department and answer why the Director of the Department should not issue an order imposing administrative sanctions in accordance with R.I. Gen. Laws §§ 7-11-212, 602 and 710.

The filing of Department’s Order was based on allegations brought to its attention by a former employer of the Respondent which reported that they had terminated his employment due to their discovery of evidence that Respondent had engaged in a long term pattern of conduct which included fraud, misrepresentation, and misappropriation of client funds without the clients knowledge or consent.

The Respondent failed to appear at a show cause hearing held at the Department on May 5, 2011, after having been duly served with notice of the hearing in accordance with R.I. Gen. Laws § 42-35-9.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant R.I. Gen. Laws § 7-11-1 *et seq.*, R. I. Gen. Laws § 42-14-1, *et seq.*, and R.I. Gen. Laws § 42-35-1, *et seq.*

III. FINDINGS OF FACT

After hearing the testimony of the Department's witness and due consideration of the evidence presented by the Department in this matter, the undersigned Hearing Officer makes the following findings of fact:

1. Respondent Feibish was employed by MML Investment Services, Inc. at 300 Centerville Road, Suite 400, in Warwick, Rhode Island ("MML Warwick") from 6/27/2007 through 03/14/2011 as a licensed Sales Representative and Investment Adviser Representative.
2. Respondent and his counsel did not appear at the hearing on May 5, 2011; however, counsel for the Respondent sent a letter dated April 27, 2011 to the Hearing Officer, which stated in pertinent part:

"In an effort to facilitate your proceedings in the above-captioned matter, my client, Martin B. Feibish, has instructed me to inform you that he will not be contesting the allegations set forth in the Order. While he makes no specific admissions to those allegations, Mr. Feibish will voluntarily surrender the licenses in question and abide by the terms set forth by the hearing officer.

Additionally, Mr. Feibish would like the Department to know that any misconduct on his part was isolated to only one client file, and he and he alone was involved in the administration of that file. No other member or employee of his office knew, or had reason to know, that any rules were being violated."

3. The above statements in Respondent's Counsel's letter are afforded limited weight given the context of this proceeding and are not construed to exonerate

Respondent or any other individual or entity. Those statements were not made by the Respondent under oath, and were not corroborated by any other evidence presented at hearing.

4. Brad Simonds, Agency Supervisory Officer for MML Financial Group d/b/a Legacy Financial Group, LLC testified under oath at the hearing that:
 - A. He is employed at MML Financial Group d/b/a Legacy Financial Group, LLC in Providence, Rhode Island (“MML”) as Agency Supervisory Officer, which is basically an on-site compliance officer with supervisory authority over Respondent’s licensed activities at the branch located at 300 Centerville Road in Warwick, Rhode Island (“MML Warwick”).
 - B. On February 2, 2011 the Providence office of MML received a phone call from one of Respondent’s clients (the “Client”) and her counsel informing it that they wanted MML to remove Laurie Turchetti, the MML broker of record, from the Client’s brokerage accounts because of Ms. Turchetti’s affiliation with Respondent.
 - C. On February 23, 2011 Mr. Simonds went MML’s Warwick location for a scheduled meeting with Ms. Turchetti and Respondent to review a “selling away” issue that was alleged by the Client.
 - D. “Selling away” is defined as the act by a securities sales representative or investment adviser representative of selling, soliciting or brokering investment products not held by the brokerage firm and/or without its knowledge.
 - E. At the February 23, 2011 meeting Respondent admitted that he was selling away and seemed to know the basis for the Client’s allegations. Respondent produced a three-inch thick file (from under the desk) containing the Client’s financial records. Respondent indicated that he had forged documents and financial statements related to the Client’s accounts at Domestic Bank (now Admiral Bank) and misappropriated those funds for his own use. There were other documents in the file related to “MegaTrust.”
 - F. Respondent told Mr. Simonds that MegaTrust was a fraudulent mortgage-backed securities product that he created to create the façade that it paid interest when in fact it was not backed by any investment and it was fictitious but used as vehicle to justify his misappropriation of the Client’s monies.
 - G. Respondent explained to Mr. Simonds that he created fictitious investments and documents on his computer at home using an ink-jet printer and forged signatures to create the veneer of credibility on otherwise invalid and

fictitious documents. He used the Client's funds to make interest payments on those investments. Respondent indicated to Mr. Simonds that he had never missed an interest payment until February 2011 when he ran out money.

- H. Respondent told Mr. Simonds that he had spent millions of dollars due to a gambling problem.
 - I. John Milbier, an investigator for the legal department of MML was present when Respondent was talking to Mr. Simonds.
 - J. Respondent explained to Mr. Simonds that when he began handling the Client's money she was worth approximately 6 million dollars and over the course of his career he had misappropriated approximately 6 million dollars of the client's money and he did not want to leave her in a worse position than when he began his financial relationship with the client.
5. The Hearing Officer finds the testimony of the Department's witness to be credible, reliable and uncontradicted in the record.
 6. Based on Mr. Simonds' testimony and inferences that may be made from Respondent's counsel's April 27, 2011 letter as well as his failure to appear, Respondent is found to have engaged in fraud, misrepresentation, and misuse and misappropriation of a client's funds without the consent or knowledge of that client.
 7. It is in the public interest to permanently bar Respondent from associating with a broker dealer and/or investment adviser in the State of Rhode Island.
 8. It is in the public interest to order Respondent to permanently cease and desist from any engaging in any unethical or dishonest practices in the securities business in the State of Rhode Island.
 9. It is in the public interest to permanently bar Respondent from engaging in any securities business in the State of Rhode Island.
 10. Notwithstanding the Respondent's willingness to voluntarily surrender his sales representative license and his investment adviser representative licenses, the seriousness and extent of the violations he is found to have committed as set forth herein are such that the public interest is best served by the permanent revocation of said licenses by the Department.
 11. The Respondent has engaged in unethical or dishonest practices in the securities business.

12. The Respondent has in connection with offer to sell, sale, offer to purchase, or purchase of a security, directly: (i) employed a device, scheme, or artifice to defraud; (ii) made an untrue statement of a material fact or omit to state a material fact necessary in order to make the statement made, not misleading; and (iii) engaged in an act, practice, or course of business that operates or would operate as fraud or deceit on a person.
13. The Respondent, as an investment adviser representative and a sales representative, has directly: (i) employed a device, scheme, or artifice to defraud a client and (ii) engaged in an act, practice, or course of business that operates or would operate as a fraud or deceit upon a client; and, (iii) acted as a principal for his or her account, knowingly sold a security or purchased a security from a client, acted as a broker for a person other than the client, knowingly effected a sale or purchase of a security for the account of the client, without disclosing to the client, in writing, before the completion of the transaction the capacity in which he was acting and did not obtain the consent of the client to the transaction.

IV. CONCLUSIONS OF LAW

1. There is sufficient cause under R.I. Gen. Laws § 7-11-212(a) to: (i) permanently bar Respondent from associating with a broker dealer and investment adviser in the State of Rhode Island; (ii) order Respondent to permanently cease and desist from any engaging in any unethical or dishonest practices in the securities business in the State of Rhode Island; and, (iii) permanently bar Respondent from engaging in any securities business in the State of Rhode Island based on Respondent's:

- (i) willful violation or willful failure to comply with RIUSA, a predecessor act, or a rule or order under this chapter or a predecessor act under R.I. Gen. Laws § 7-11-212(b)(2);
- (ii) engaging in unethical or dishonest practices in the securities business under R.I. Gen. Laws § 7-11-212(b)(8) (and violation of violation of corresponding Rule 212(a)-1 subsections (A), (B), and (C) of the Securities Division Regulations;
- (iii) violation of R.I. Gen. Laws § 7-11-501 (in connection with offer to sell, sale, offer to purchase, or purchase of a security, directly: (i) employed a device, scheme, or artifice to defraud; (ii) made an untrue statement of a material fact or omit to state a material fact necessary in order to make the statement made, not misleading; and (iii)

engaged in an act, practice, or course of business that operates or would operate as fraud or deceit on a person).

- (iv) violation of R.I. Gen. Laws § 7-11-503 ((i) employed a device, scheme, or artifice to defraud a client and (ii) engaged in an act, practice, or course of business that operates or would operate as a fraud or deceit upon a client; and, (iii) acted as a principal for his or her account, knowingly sold a security or purchased a security from a client, acted as a broker for a person other than the client, knowingly effected a sale or purchase of a security for the account of the client, without disclosing to the client, in writing, before the completion of the transaction the capacity in which he was acting and did not obtain the consent of the client to the transaction).

2. The Department's right to impose a civil penalty for the above violations pursuant to R.I. Gen. Laws § 7-11-602(b)(4) are specifically reserved and may be asserted as deemed necessary and appropriate by the Department after notice and hearing to Respondent.

3. A default judgment against Respondent is appropriate given his failure to appear and/or defend this action in accordance with Section 21 of *Central Management Regulation 2 – Rules of Procedure for Administrative Hearings*.

VI. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the Director of the Department Order that:

1. The Respondent is defaulted for his failure to appear and/or defend this administrative enforcement action;
2. The Respondent is permanently barred from associating with any broker dealer and/or investment adviser in the State of Rhode Island;
3. The Respondent is to permanently cease and desist from any engaging in any unethical or dishonest practices in the securities business in the State of Rhode Island; and,
4. The Respondent is permanently barred from engaging in any securities business in the State of Rhode Island.
5. Any Sales Representative license or Investment Adviser Representative license previously held by the Respondent is hereby revoked.

DATED: 6/20/11


Ellen R. Balasco, Esq.
Hearing Officer

ORDER

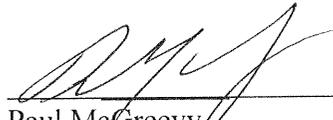
I have read the Hearing Officer's Recommendation in this matter, and I hereby take the following action with regard to the Recommendation:

ADOPT

REJECT

MODIFY

Dated: 20 June 2011


Paul McGreevy
Director

ENTERED as Administrative Order No. 11-053 on the 20th day of June, 2011.

THIS ORDER OF DISMISSAL CONSTITUTES A FINAL DECISION OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-1 ET SEQ. AS SUCH, THIS DECISION MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MAY BE COMPLETED BY FILING A PETITION FOR REVIEW IN SAID COURT.

CERTIFICATION

I hereby certify that on the 20th day of June, 2011, a true copy of this Decision and Final Order was sent by first class mail, postage prepaid to:

Martin B. Feibish, at 300 Centerville Road, Suite 400A, Warwick, Rhode Island 02886

Martin B. Feibish, at 51 Arbor Drive, Providence, Rhode Island 02908,

Benjamin A. Mesiti, Esq. at 986 Hartford Avenue, Johnston, Rhode Island 02919

and by electronic mail to the following parties at the Department of Business Regulation:

Neena Sinha Savage, Esq., Chief of Legal Services

Maria D'Alessandro, Deputy Director of Securities

Dennis R. Murray, Chief Securities Examiner

A handwritten signature in cursive script, appearing to read "Charles J. H. Jones", is written over a solid horizontal line.