



BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

2005 OCT 27 P 3:48

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

AZ CORP COMMISSION
DOCUMENT CONTROL

In the matter of: GARY WAYNE HARDY, CRD#1298371, dba HARDY ASSET MANAGEMENT, and SHERRY HARDY, husband and wife 1711 W. Gary Drive Chandler, AZ 85224 HARDY ASSET MANAGEMENT, a sole proprietorship 4625 S. Wendler Drive, Suite 111 Tempe, AZ 85282 Respondents.) DOCKET NO. S-20426A-05-0768)) NOTICE OF OPPORTUNITY FOR HEARING) REGARDING PROPOSED ORDER TO) CEASE AND DESIST, ORDER FOR) RESTITUTION, FOR ADMINISTRATIVE) PENALTIES, OF REVOCATION, AND FOR) OTHER AFFIRMATIVE ACTION
---	---

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING
EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents GARY WAYNE HARDY ("HARDY") dba HARDY ASSET MANAGEMENT have engaged in or are about to engage in acts and practices that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801, *et seq.* ("Securities Act"), and the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.* ("IM Act").

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution, the Securities Act and the IM Act.

...
...

III.**FACTS**

1
2
3 7. HARDY resigned from SunAmerica on June 9, 2005, after SunAmerica received a
4 report that HARDY had been arrested on misdemeanor charges for harassing his adult step-
5 daughter. SunAmerica obtained all of HARDY's customer files from HARDY'S branch office, and
6 notified HARDY's customers that HARDY was no longer affiliated with SunAmerica.

7 8. On June 18, 2005, a SunAmerica customer informed SunAmerica of his purported
8 purchase of CDs called "Internotes", in late February 2005, from HARDY. The customer had sent
9 HARDY a check for \$50,000 payable to HARDY ASSET MANAGEMENT. HARDY sent the
10 customer an "InterNotes" document purportedly showing \$50,000 worth of "Selected Bonds" that
11 he claimed to have acquired for the customer. These purported bonds were not SunAmerica-
12 approved products and SunAmerica had no knowledge of this outside sales activity by HARDY.
13 The customer complaint suggested that HARDY had engaged in prohibited "selling away" and other
14 misconduct.

15 9. Upon questioning by a SunAmerica regional manager, on June 20, 2005, HARDY
16 claimed that he had misappropriated funds from between eight and twelve investors. SunAmerica
17 investigated HARDY's customer accounts for potential misappropriation. SunAmerica has
18 determined that HARDY misappropriated at least \$612,500 from nine investors who were
19 customers of Allmerica and/or SunAmerica, between 1998 and 2005.

20 10. HARDY directed customers to write checks to HARDY ASSET MANAGEMENT,
21 purportedly to purchase non-existent certificates of deposits ("CDs"), bonds and "private CD
22 annuities"--investments that were not sold through or approved by his dealers.

23 11. Investors received no confirmations, statements, or other written information about
24 the investments. HARDY sent some customers HARDY ASSET MANAGEMENT statements or
25 "customer reports" reflecting their purported investments, while other customers received no
26 information or documents concerning how HARDY invested their money.

V.

REMEDIES PURSUANT TO A.R.S. § 44-1962

(Denial, Revocation or Suspension of Registration of Salesman; Restitution, Penalties, or other Affirmative Action)

16. HARDY's conduct is grounds to revoke HARDY's registration as a securities salesman with the Commission, pursuant to A.R.S. § 44-1962. Specifically, HARDY:

a) Has violated § 44-1991, the anti-fraud provisions of the Securities Act, within the meaning of A.R.S. § 44-1962(A)(2); and

b) Has engaged in dishonest or unethical practices in the securities industry, within the meaning of A.R.S. § 44-1962(A)(10), including:

(i) Executing transactions on behalf of customers without authority to do so, as defined by A.A.C. Rule R14-4-130(6);

(ii) Employing, in connection with the purchase or sale of a security, a manipulative or deceptive device or contrivance, as defined by A.A.C. Rule R14-4-130(14);

(iii) Making unauthorized use of securities or funds of a customer or converting customer securities or funds for personal benefit, as defined by A.A.C. Rule R14-4-130(16); and

(iv) Engaging in dishonest or unethical practices within the meaning of A.R.S. § 44-1962(10) as defined by A.A.C. R14-4-130(A)(17), by selling securities that were not recorded on the records of the dealer with whom he was registered at the time of the transactions.

VI.

REMEDIES PURSUANT TO A.R.S. § 44-3201

(Denial, Revocation or Suspension of Investment Adviser or Investment Adviser Representative License; Restitution, Penalties, or other Affirmative Action)

17. HARDY ASSET MANAGEMENT's conduct is grounds to revoke its license as an investment adviser with the Commission pursuant to A.R.S. § 44-3201, and revocation of HARDY

1 ASSET MANAGEMENT's license would be in the public interest. Specifically, HARDY ASSET
2 MANAGEMENT has:

3 a) Engaged in a transaction or transactions within or from Arizona involving the
4 provision of investment advisory services in which HARDY ASSET MANAGEMENT, directly or
5 indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of
6 material fact or omitted to state material facts which were necessary in order to make the statements
7 made not misleading in light of the circumstances under which they were made; (iii) misrepresented
8 professional qualifications with the intent that the client rely on the misrepresentation; or (iv)
9 engaged in transactions, practices or courses of business which operated or would operate as a fraud
10 or deceit, in violations of A.R.S. § 44-3241, as described in paragraph 19 below, within the meaning
11 of A.R.S. § 44-3201(A)(3);

12 b) Permitted HARDY to render investment advice in violation of A.R.S. § 44-
13 3241, within the meaning of A.R.S. § 44-3201(A)(6);

14 c) Failed to reasonably supervise HARDY, in violation of A.R.S. §§ 44-3151
15 and 44-3241, within the meaning of A.R.S. § 44-3201(A)(12);

16 d) Engaged in dishonest or unethical practices in the securities industry,
17 within the meaning of A.R.S. § 44-3201(A)(13) and as defined by A.A.C. Rule R14-6-203(17),
18 by committing any act that results in denial, revocation, or suspension by an agency of any state
19 of a license or registration relating to securities, where such denial, revocation, or suspension
20 arises out of any scheme, act, practice, or course of business that operates or would operate as
21 fraud or deceit, or arises out of a violation of Article 13 of the Securities Act, defining fraudulent
22 practices, or the rules promulgated thereunder.

23 18. HARDY ASSET MANAGEMENT's conduct is grounds to assess restitution,
24 penalties, and/or take appropriate affirmative action within the meaning of A.R.S. § 44-3201.

25 ...

26 ...

VII.

VIOLATION OF A.R.S. § 44-3241

(Fraud in the Provision of Investment Advisory Services)

19. HARDY ASSET MANAGEMENT engaged in a transaction or transactions within or from Arizona involving the provision of investment advisory services in which HARDY ASSET MANAGEMENT, directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; (iii) misrepresented professional qualifications with the intent that the client rely on the misrepresentation; or (iv) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit. HARDY ASSET MANAGEMENT's conduct includes, but is not limited to, the following:

- a) Misrepresenting and/or failing to disclose the use of the customers' investment funds;
- b) Misrepresenting and/or failing to disclose background or financial information about the purported investments;
- c) Failing to disclose risks of the purported investments;
- d) Engaging in unauthorized transactions in clients' accounts; and
- e) Misappropriating investment funds.

20. This conduct violates A.R.S. § 44-3241.

VIII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order RESPONDENTS to permanently cease and desist from violating the Securities Act and the IM Act, pursuant to A.R.S. §§ 44-2032, 44-3292, 44-1962, and 44-3201;

1 Docket Control cover sheet must accompany the request. A cover sheet form and instructions may
2 be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web
3 site at www.cc.state.az.us/utility/forms/index.htm.

4 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
5 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
6 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission
7 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of
8 Opportunity for Hearing.

9 Persons with a disability may request a reasonable accommodation such as a sign language
10 interpreter, as well as request this document in an alternative format, by contacting Linda Hogan,
11 Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-mail
12 lhogan@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the
13 accommodation.

14 **X.**

15 **ANSWER REQUIREMENT**

16 Pursuant to A.A.C. R14-4-305, if HARDY, HARDY ASSET MANAGEMENT, and/or
17 SHERRY HARDY requests a hearing, HARDY, HARDY ASSET MANAGEMENT, and/or
18 SHERRY HARDY must deliver or mail an Answer to this Notice of Opportunity for Hearing to
19 Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
20 85007, within 30 calendar days after the date of service of this Notice. A Docket Control cover
21 sheet must accompany the Answer. A cover sheet form and instructions may be obtained from
22 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
23 www.cc.state.az.us/utility/forms/index.htm.

24 Additionally, HARDY, HARDY ASSET MANAGEMENT, and/or SHERRY HARDY
25 must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the
26

1 Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at
2 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to Pamela T. Johnson.

3 The Answer shall contain an admission or denial of each allegation in this Notice and the
4 original signature of HARDY, HARDY ASSET MANAGEMENT, and/or SHERRY HARDY or
5 their attorneys. A statement of a lack of sufficient knowledge or information shall be considered a
6 denial of an allegation. An allegation not denied shall be considered admitted.

7 When HARDY, HARDY ASSET MANAGEMENT, and/or SHERRY HARDY intends in
8 good faith to deny only a part or a qualification of an allegation, HARDY, HARDY ASSET
9 MANAGEMENT, and/or SHERRY shall specify that part or qualification of the allegation and
10 shall admit the remainder. HARDY, HARDY ASSET MANAGEMENT, and/or SHERRY
11 HARDY waive any affirmative defense not raised in the answer.

12 The officer presiding over the hearing may grant relief from the requirement to file an
13 Answer for good cause shown.

14 Dated this 27 day of October, 2005.

15
16 
17 _____
18 Matthew J. Neubert
19 Director of Securities
20
21
22
23
24
25
26