

ORIGINAL



0000090510

BEFORE THE ARIZONA CORPORATION COMMISSION

03

COMMISSIONERS:
MIKE GLEASON – Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

2008 NOV -3 P 3: 51

Arizona Corporation Commission
DOCKETED

AZ CORP COMMISSION
DOCKET CONTROL

NOV -3 2008

DOCKETED BY nr

In the matter of:

Docket No. S-20631A-08-0503

ROBERT FRANKLIN HOCKENSMITH, JR.,
CRD #1798614

**RESPONDENT ROBERT FRANKLIN
HOCKENSMITH, JR.'S ANSWER**

Respondent.

Respondent Robert Franklin Hockensmith, Jr. ("Respondent"), by and through undersigned counsel, does hereby file his Answer to the Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order For Restitution, Administrative Penalties, of Revocation and For Other Affirmative Action (hereafter, "the Notice"), and does hereby admit, deny and affirmatively allege as follows:

1. Respondent admits the allegations contained in Paragraph No. 1 of the Notice.

2. Respondent admits that he is a resident of Glendale, Arizona, was a registered securities salesman affiliated with H.D. Vest Investment Services, Inc. ("HD Vest") and that he was terminated by the firm on or about April 17, 2008. Respondent states that the Form U-5 filed by the firm speaks for itself. Respondent is without sufficient information to form a belief as to what the Securities Division means by, "at all pertinent times" and, therefore, denies any remaining allegations contained in Paragraph No. 2 of the Notice.

3. Respondent is without sufficient information to form a belief as to what the Securities Division means by, "at all pertinent times" and, therefore, denies the allegations contained in Paragraph 3 of the Notice.

4. In answering Paragraph No. 4 of the Notice, Respondent admits that he is a certified public accountant licensed by the Arizona Board of Accountancy, that Respondent owns Robert F. Hockensmith, P.C., an Arizona professional corporation and that he is licensed by the Arizona

1 Department of Insurance to sell variable life and annuity products and life and health policies.
2 Respondent is without sufficient information to form a belief as to what the Securities Division
3 means by, "at all pertinent times" and, therefore, denies any remaining allegations contained in
4 Paragraph No. 4 of the Notice.

5 5. In answering the allegations contained in Paragraph No. 5 of the Notice, Respondent
6 alleges that the letterhead, e-mails and fax cover sheets referred to in Paragraph No. 5 speak for
7 themselves. Respondent is without sufficient information to form a belief as to what the Securities
8 Division means by, "at all pertinent times" and, therefore, denies any remaining allegations
9 contained in Paragraph No. 5 of the Notice.

10 6. Respondent denies the allegations contained in Paragraph No. 6 of the Notice.

11 7. In answering Paragraph No. 7 of the Notice, Respondent states he is without
12 sufficient information to form a belief as to the truth of the allegations contained in Paragraph No.
13 7 of the Notice and, therefore, denies same.

14 8. In answering Paragraph No. 8 of the Notice, Respondent states he is without
15 sufficient information to form a belief as to the truth of the allegations contained therein and,
16 therefore, denies same.

17 9. In answering Paragraph No. 9 of the Notice, Respondent states he is without
18 sufficient information to form a belief as to the truth of the allegations contained therein and,
19 therefore, denies same.

20 10. In answering Paragraph No. 10 of the Notice, Respondent states he is without
21 sufficient information to form a belief as to the truth of the allegations contained therein and,
22 therefore, denies same.

23 11. In answering Paragraph No. 11 of the Notice, Respondent states he is without
24 sufficient information to form a belief as to the truth of the allegations contained therein and,
25 therefore, denies same.

26
27

1 12. In answering Paragraph No. 12 of the Notice, Respondent states he is without
2 sufficient information to form a belief as to the truth of the allegations contained therein and,
3 therefore, denies same.

4 13. In answering Paragraph No. 13 of the Notice, Respondent is without sufficient
5 information to form a belief as to what the Securities Division means by "observation of Roberts'
6 trading in the FOMAC program" and, therefore, denies the allegations contained in Paragraph 13.

7 14. Respondent denies the allegations contained in Paragraph 14 of the Notice.

8 15. Respondent is without sufficient information to form a belief as to the truth of the
9 allegations contained in Paragraph 15 of the Notice and, therefore, denies same.

10 16. Respondent denies the allegations contained in Paragraph 16 of the Notice.

11 17. In answering Paragraph No. 17 of the Notice, Respondent states he is without
12 sufficient information to form a belief as to the truth of the allegations contained therein and,
13 therefore, denies same.

14 18. In answering Paragraph No. 18 of the Notice, Respondent admits that he
15 investigated Roberts and the FOMAC program and that he borrowed against his home and rental
16 properties to invest in the FOMAC program. Respondent is without sufficient information to form
17 a belief as to the truth of the remaining allegations contained in Paragraph No. 18 and, therefore,
18 denies same.

19 19. In answering Paragraph No. 19 of the Notice, Respondent states that the documents
20 speak for themselves. Respondent is without sufficient information to form a belief as to the truth
21 of any remaining allegations contained therein and, therefore, denies same.

22 20. In answering Paragraph No. 20 of the Notice, Respondent states that the documents
23 speak for themselves. Respondent is without sufficient information to form a belief as to the truth
24 or falsity of any remaining allegations contained therein and, therefore, denies same.

25 21. In responding to Paragraph No. 21 of the Notice, Respondent states that any
26 documents speak for themselves. Respondent is without sufficient information to form a belief as
27 to the truth of any remaining allegations contained therein and, therefore, denies same.

1 22. In answering Paragraph No. 22 of the Notice, Respondent states that the documents
2 speak for themselves. Respondent states that he is without sufficient information to form a belief
3 as to the truth of any remaining allegations contained therein and, therefore, denies same.

4 23. In answering Paragraph No. 23 of the Notice, Respondent states that all documents
5 speak for themselves. Respondent states that he is without sufficient information to form a belief
6 as to the truth of the allegations contained therein and, therefore, denies same.

7 24. Respondent denies the allegations contained in Paragraph No. 24 of the Notice.

8 25. In answering Paragraph No. 25 of the Notice, Respondent states that he is without
9 sufficient information to form a belief as to the truth of the allegations contained therein and,
10 therefore, denies same.

11 26. In answering Paragraph No. 26 of the Notice, Respondent states that he is without
12 sufficient information to form a belief as to the truth of the allegations contained therein and,
13 therefore, denies same.

14 27. In answering Paragraph No. 27 of the Notice, Respondent states that he is without
15 sufficient information to form a belief as to the truth of the allegations contained therein and,
16 therefore, denies same.

17 28. In answering Paragraph No. 28 of the Notice, Respondent states that he is without
18 sufficient information to form a belief as to the truth of the allegations contained therein and,
19 therefore, denies same.

20 29. In answering Paragraph No. 29 of the Notice, Respondent states that he is without
21 sufficient information to form a belief as to the truth of the allegations contained therein and,
22 therefore, denies same.

23 30. In answering Paragraph No. 30 of the Notice, Respondent states that he is without
24 sufficient information to form a belief as to the truth of the allegations contained therein and,
25 therefore, denies same.

26
27

1 31. In answering Paragraph No. 31 of the Notice, Respondent states that the
2 Commission's rules speak for themselves. Respondent denies the remaining allegations contained
3 in Paragraph No. 31.

4 32. In answering Paragraph No. 32 of the Notice, Respondent states that the
5 Commission's Rules speak for themselves. Respondent denies the allegations contained in
6 Paragraph No. 32 of the Notice.

7 33. In answering Paragraph No. 33 of the Notice, Respondent states that the
8 Commission's rules speak for themselves. Respondent admits that he borrowed funds from an
9 individual with whom he had a personal relationship and who was also a customer. The funds have
10 been repaid. Respondent is without sufficient information to form a belief as to the truth of the
11 remaining allegations contained therein and, therefore, denies same.

12 34. In answering Paragraph No. 34 of the Notice, Respondent states that the fact he was
13 terminated by HD Vest was public record and that the documents speak for themselves.
14 Responding to the remaining allegations in Paragraph No. 34 of the Notice, Respondent states that
15 he is without sufficient information to form a belief as to the truth of the remaining allegations
16 contained therein and, therefore, denies same.

17 35. In answering Paragraph No. 35 of the Notice, Respondent states that any document
18 referred to herein speaks for itself. Respondent states that he is without sufficient information to
19 form a belief as to the truth of the remaining allegations contained therein and, therefore, denies
20 same.

21 36. In answering Paragraph No. 36 of the Notice, Respondent denies customers
22 purchased "FOMAC securities" from him. Respondent is without sufficient information to form a
23 belief as to the truth of the remaining allegations contained therein and, therefore, denies same.

24 37. Respondent denies the allegations contained in Paragraph No. 37 of the Notice.

25 38. Respondent denies the allegations contained in Paragraph No. 38 of the Notice.

26 39. Respondent denies the allegations contained in Paragraph No. 39 of the Notice.

27 40. Respondent denies the allegations contained in Paragraph No. 40 of the Notice.

1 41. Respondent is without sufficient information to form a belief as to the truth of the
2 allegations contained in Paragraph No. 41 of the Notice and, therefore, denies same.

3 42. Respondent denies the allegations contained in Paragraph No. 42 of the Notice.

4 43. Respondent denies the allegations contained in Paragraph No. 43 of the Notice.

5 44. In answering Paragraph No. 44 of the Notice, Respondent admits he attended a
6 two-day presentation regarding foreign currency in Los Angeles. Respondent denies the remaining
7 allegations contained therein.

8 45. In answering Paragraph No. 45 of the Notice, Respondent denies he mislead anyone
9 concerning the FOMAC program and denies the allegations contained therein.

10 46. In answering Paragraph No. 46 of the Notice, Respondent states that he is without
11 sufficient information to form a belief as to the truth of the allegations contained therein and,
12 therefore, denies same.

13 47. In answering Paragraph No. 47 of the Notice, Respondent states that the e-mail
14 speaks for itself. Respondent denies the remaining allegations, if any, contained therein.

15 48. Respondent admits the allegations contained in Paragraph No. 48 of the Notice.

16 49. In answering Paragraph No. 49 of the Notice, Respondent admits that he reported
17 the FOMAC situation to the FBI and that he communicated with individuals regarding revelations
18 concerning the FOMAC program. Respondent is without sufficient information to form a belief as
19 to the truth of the remaining allegations contained therein and, therefore, denies same.

20 50. In answering Paragraph No. 50 of the Notice, Respondent states that the U. S.
21 Department of Justice Victim Notification System's activities and the Securities and Exchange
22 Commission's filings speak for themselves.

23 51. In answering Paragraph No. 51 of the Notice, Respondent states that the U. S.
24 Department of Justice Victim Notification System's activities and the Securities and Exchange
25 Commission's filings speak for themselves.

26 52. Respondent denies the allegations contained in Paragraph No. 52 of the Notice.

27 53. Respondent denies the allegations contained in Paragraph No. 53 of the Notice.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Sixth Affirmative Defense

6. For his sixth affirmative defense, Respondent alleges that all of his actions were taken for a proper purpose.

Seventh Affirmative Defense

7. For his seventh affirmative defense, Respondent alleges that the Securities Division has failed to allege securities fraud with reasonable particularity as required by Rule 9(b) of the Arizona Rules of Civil Procedure.

Eighth Affirmative Defense

8. For his eighth affirmative defense, Respondent alleges that he did not know, and in the exercise of reasonable care could not have known, of any alleged untrue statements or material omissions as set forth in the Notice.

Ninth Affirmative Defense

9. For his ninth affirmative defense, Respondent states he has not acted with the requisite scienter.

Tenth Affirmative Defense

10. For his tenth affirmative defense, Respondent states that he has not employed a deceptive or manipulative device.

Eleventh Affirmative Defense

11. For his eleventh affirmative defense, Respondent states that he never made any misrepresentations or omissions, material or otherwise.

Twelfth Affirmative Defense

12. For his twelfth affirmative defense, Respondent alleges that the purchasers relied on others, and not the Respondent named in this action, in connection with the matters at issue in the Notice.

...
...
...

ROSHKA DeWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Twenty-Eighth Affirmative Defense

28. For his twenty-eighth affirmative defense, Respondent states the Securities Division's claims are barred because Respondent acted in good faith and did not directly or indirectly induce the conduct at issue.

Twenty-Ninth Affirmative Defense

29. For his twenty-ninth affirmative defense, Respondent states Respondent's liability, if any, must be in direct proportion to the Respondent's percentage of fault. Respondent's liability must be reduced by the fault of all persons who caused or contributed to the alleged damages, if any, regardless of whether they are parties to this action or could have been named in this action.

Respondent hereby puts the Securities Division on notice that he expressly reserves the right to add defenses and/or claims which may become apparent during the course of discovery, and the Respondent reserves the right to amend his Answer accordingly.

Thirtieth Affirmative Defense

30. For his thirtieth affirmative defense, Respondent states that the Division's claim for restitution must be dismissed as FOMAC participants agreed to pursue any disputes or damages through arbitration.

SECURITIES DIVISION'S REQUESTED RELIEF

Respondent requests that the Commission deny the Requested Relief sought in Section VII of the Notice.

HEARING OPPORTUNITY

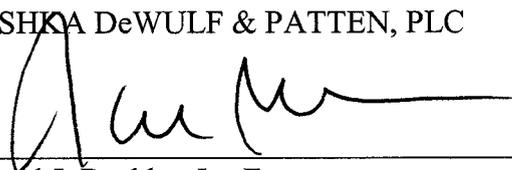
Respondent has requested a hearing pursuant to A.R.S. § 44-1972.

...
...
...

ROSHKA DeWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 RESPECTFULLY SUBMITTED this 3rd day of November, 2008.

2 ROSHKA DeWULF & PATTEN, PLC

3
4 By 

5 Paul J. Roshka, Jr., Esq.
6 Jeffrey D. Gardner, Esq.
7 One Arizona Center
8 400 East Van Buren Street, Suite 800
9 Phoenix, Arizona 85004
 602-256-6100 (telephone)
 602-256-6800 (facsimile)
 Attorneys for Respondent
 Robert F. Hockensmith, Jr.

10 ORIGINAL and thirteen copies of the foregoing
11 filed this 3rd day of November, 2008 with:

12 Docket Control
13 Arizona Corporation Commission
14 1200 West Washington Street
 Phoenix, Arizona 85007

15 Copy of the foregoing hand-delivered
16 this 3rd day of November, 2008 to:

17 Marc E. Stern, Administrative Law Judge
18 Hearing Division
19 Arizona Corporation Commission
 1200 West Washington Street
 Phoenix, Arizona 85007

20 Matthew J. Neubert
21 Director of Securities
 Securities Division
22 Arizona Corporation Commission
23 1300 West Washington Street, 3rd Floor
 Phoenix, Arizona 85007

24 Pamela T. Johnson, Esq.
25 Senior Counsel
 Securities Division
26 Arizona Corporation Commission
27 1300 West Washington Street, 3rd Floor
 Phoenix, Arizona 85007

ROSHKA DEWULF & PATTEN, PLC

ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27

Ruth B. Aubrey
Hockensmith.ACC/pld/Answer.doc