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MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR



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ARIZONA CORPORATION COMMISSION

ORIGINAL

MEMORANDUM

TO: Kristin K. Mayes, Chairman
Gary Pierce
Paul Newman
Sandra D. Kennedy
Bob Stump

Arizona Corporation Commission

DOCKETED

MAY - 1 2009

FROM: Mark Dinell *MD*
Assistant Director of Securities

DOCKETED BY *MD*

DATE: April 27, 2009

RE: Proposed Order to Cease and Desist, Order of Restitution, Order of Revocation and Denial, Order for Administrative Penalties and Consent to Same: Michael V. Bradley and Wealth Enhancement & Preservation, LLC; Docket No. S-20662A-09-0188

CC: Michael P. Kearns, Interim Executive Director

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DOCKET CONTROL

Attached is a proposed Order to Cease and Desist, Order of Restitution, Order of Revocation and Denial, Order for Administrative Penalties and Consent to Same ("Order"), executed by Respondent Michael V. Bradley, on behalf of himself and his investment adviser firm, Wealth Enhancement & Preservation, LLC. The proposed Order requires Respondents to cease and desist from violations of the Arizona Securities Act and the Arizona Investment Management Act. The proposed order further requires Respondents to pay restitution in the amount of \$95,006.00, the total compensation and profits received from their involvement in the sale of interests in unregistered securities in a hedge fund known as APEX Equity Options Fund, L.P., sold as a private offering. The Order also requires Respondents to pay administrative penalties in the amount of \$50,000, revokes Mr. Bradley's securities salesman registration and denies his pending applications.

The Division supports this proposed Order as serving the public interest.

Originator: Pam Johnson

MN/ptj

1 (“CRD”) of the Financial Industry Regulatory Authority, Inc. (“FINRA”) that Bradley was
2 discharged based upon the firm’s internal review of “the advisor’s (sic) sales of a hedge fund to
3 several of his clients that was not on the firm’s approved product list. The firm concluded that the
4 advisor did not obtain prior written approval from the firm to engage in those sales; although the rep
5 believes that his OSJ was obtaining that approval from the firm.” Bradley submitted a Form U-4 to
6 FINRA disputing the nature of ASC’s report, stating his position as follows:

7 Bradley’s ASC-appointed OSJ recommended APEX to Bradley and the OSJ had
8 advised ASC, in writing, of his intent to place clients in APEX. Bradley had provided
9 APEX promotional materials to ASC and ASC had approved those materials for use by
10 Bradley. Representatives of ASC were informed by Bradley on at least two occasions
11 during branch audits that Bradley was offering APEX to certain clients. Bradley
12 advised ASC of this activity in his annual compliance questionnaire. APEX was not on
13 ASC’s approved product list although Bradley understood from his ASC-appointed OSJ
14 that his OSJ had obtained approval from ASC.

15 Prior to his association with ASC, Bradley was affiliated with WS Griffith Securities, Inc., from
16 November 21, 2002 to April 8, 2003. Bradley’s registration as a securities salesman was
17 automatically suspended at the time of his termination from ASC in June 2008, and lapsed on
18 December 31, 2008. In or around July 2008, BRADLEY filed an application for registration as a
19 securities salesman in Arizona in affiliation with Berthal, Fisher & Company Financial Services,
20 Inc., which is currently pending. Bradley is and was at all pertinent times the manager and owner
21 of Wealth Enhancement & Preservation, LLC (“WEP”), CRD# 131808, an Arizona limited
22 liability company registered with the U.S. Securities and Exchange Commission (“SEC”) as a
23 registered investment adviser (“RIA”), located at 1757 E. Baseline Road, Suite 137, Gilbert,
24 Arizona 85233. At all relevant times, Bradley was also licensed in Arizona as an investment
25 adviser representative (“IAR”) of WEP. Bradley’s IAR licensure lapsed on December 31, 2008,
26 when he failed to renew his IAR license with the Commission. On February 13, 2009, Bradley
filed an application for licensure as an IAR with the Commission, which is currently pending.
Bradley is also licensed with the Arizona Department of Insurance as a producer.

...

1 2. WEP, CRD# 131808, is and was at all relevant times an RIA operating from a
2 location at 1757 E. Baseline Road, Suite 137, Gilbert, Arizona 85233.

3 3. Bradley and WEP may be referred to as “Respondents.”

4 4. From in or around January 2006 through August 2007, Respondents sold
5 approximately 22 limited partnership interests, i.e., securities, in a hedge fund called the APEX
6 Equity Options Fund, L.P. (“APEX fund” or “APEX”), to clients of WEP and of Bradley’s dealer,
7 ASC. The APEX fund was a Delaware limited partnership managed by Thompson Consulting, Inc.
8 (“TCI”), sold as a private offering. TCI was at all relevant times a Utah corporation registered with
9 the SEC as an RIA.

10 5. Of the over 300 clients at WEP, 22 invested in the APEX fund. Of the 22 WEP
11 clients who invested in the APEX fund, 18 lost money in APEX, and of the 18, 12 are still clients of
12 WEP. Ultimately, six of the impacted clients closed their accounts with the firm. Bradley and three
13 of his clients withdrew their funds from APEX before it failed, and realized a profit on their APEX
14 investments.

15 6. Respondents’ clients invested over \$6,062,896.00 in the APEX fund.

16 7. Bradley represented to Respondents’ clients that the APEX fund provided safety of
17 principal and liquidity. The APEX trading strategy purportedly involved the purchase of puts and
18 sale of covered calls—strategies employed by investment professionals to benefit from the upside
19 potential of an investment while limiting downside risk at the same time. Such positions are
20 often referred to as “hedged positions” based upon the theory that the risk associated with the
21 position has been hedged, a strategy promoted as an excellent method for managing risk. The
22 objective of such a strategy is to preserve principal. Based upon APEX’s representations
23 regarding its options strategy, Bradley described the limited risk features of the investment by
24 representing to Respondents’ clients that their principal was secure. APEX apparently chose to
25 ignore its stated investment strategy, resulting in massive losses.

26 ...

1 8. Respondents' clients purchased interests in the APEX fund because of the trust they
2 placed in Bradley as their investment adviser and financial planner. Respondents owed a duty to
3 their investment advisory clients to protect their best interests and to avoid any conflicts of interest,
4 which included a duty to give them full disclosure regarding any matter that could benefit
5 Respondents at the expense of their clients. Respondents charged investment advisory fees to their
6 clients, and received additional advisory fees from TCI, which were not disclosed to investors in
7 writing as required under WEP's registration with the SEC, although Bradley contends that he told
8 some if not all of his clients about the advisory fees to be paid by TCI verbally. The advisory fees
9 he received from TCI were purportedly to be paid only if APEX generated profits for investors
10 and for the quarters where APEX did not turn a profit Bradley was not to receive the advisory
11 fees from TCI.

12 9. In soliciting APEX investments from Respondents' clients, Bradley claimed that TCI
13 required Bradley to tell his clients that the minimum investment in the APEX fund was \$250,000.00.
14 Bradley further represented that the investment was suitable for even his conservative investors, and
15 that he himself had purchased interests in the APEX fund.

16 10. Bradley purchased his APEX interests in June 2006 for a deposit of \$75,000.00.
17 Bradley's earnings on his investment totaled approximately \$9,114.00, from the period June through
18 August 2006. In September 2006, Bradley withdrew \$80,000.00 from his APEX account, leaving
19 an equity balance of \$4,114.00. Bradley withdrew his remaining equity balance in January 2007.
20 Bradley failed to inform his APEX investors of his decision to withdraw his APEX investments.

21 11. Bradley knew or should have known that his clients who invested in the APEX fund
22 did so as a result of (1) the faith and trust they placed in Respondents and Bradley's purported
23 knowledge and expertise as their investment adviser; (2) Bradley's own purported knowledge of the
24 operations of the APEX fund, resulting from his purported due diligence investigation of the
25 management of the fund, and (3) Bradley's own decision to invest his savings in the APEX fund.

26 ...

1 12. In fact, Bradley relied solely upon what he was told by the principals of APEX and
2 the purported due diligence investigation performed by Bradley's ASC-appointed supervisor, who
3 had initially introduced Bradley to the principals of APEX in 2005.

4 13. Respondents requested but failed to obtain sufficient information about the ongoing
5 financial condition of the APEX fund and the operations of the fund.

6 14. In August 2007, the promoters of the APEX fund reported that the fund had
7 collapsed, resulting in total loss to 18 of Respondents' clients, including Bradley's father, who still
8 had their investments in their APEX accounts at that time. The total losses suffered by
9 Respondents' clients were approximately \$5,506,222.00.

10 15. Some of Respondents' investors lost their retirement savings in the APEX fund.

11 16. After the APEX fund failed, Respondents learned several alleged undisclosed facts
12 about the fraudulent management of the fund, including the following:

13 a) That the APEX fund managers did not follow the low-risk investment
14 strategy that was represented to Respondents' clients. Instead, at various times, the fund invested in
15 large numbers of put option contracts on the stock of a subprime lender without writing any
16 offsetting call contracts.

17 b) That in the summer of 2007, the APEX fund managers wrote significant
18 numbers of non-hedged call contracts on the Chicago Board Options Exchange Volatility Index (the
19 "VIX"). These non-hedged positions were contrary to the low-risk investment strategy set forth in
20 the APEX Private Placement Memorandum ("PPM") and represented to Respondents and their
21 clients and resulted in a virtual total loss.

22 c) That the APEX fund managers engaged in preferential transfers of
23 approximately \$1.5 million and the misappropriation of \$3 million of APEX funds.

24 17. In March 2008, the SEC filed an enforcement action against TCI and three of its
25 principals for making undisclosed subprime and other high-risk investments that resulted in the near
26 total asset losses of two hedge funds managed by the adviser. *Securities and Exchange Commission*

1 v. *Thompson Consulting, Inc.*, Case Number 2:08-cv-00171 (D.Ut. filed March 4, 2008). One of
2 those hedge funds was the APEX fund that Respondents sold to their clients. The enforcement
3 action alleged that the collapse of the APEX fund was caused by the principals' deviation from the
4 low-risk trading strategy described in the APEX PPM.

5 18. From April 2003 through the summer of 2006, Bradley's ASC-appointed supervisor,
6 known in the industry as an Officer of Supervisory Jurisdiction ("OSJ"), was Jeffrey Forrest
7 ("Forrest"). In or around October 2005, Forrest told Bradley about APEX and advised Bradley that
8 the APEX fund might be a suitable investment for some of Bradley's clients.

9 19. Bradley contends that Forrest performed a due diligence investigation of the APEX
10 fund and that Forrest claimed that he would obtain the necessary approvals from ASC to enable
11 ASC registered representatives to offer APEX.

12 20. Bradley contends that before he started selling APEX, Forrest reassured Bradley
13 that, as Bradley's OSJ, Forrest had already sought approval of APEX from ASC and that Forrest had
14 already placed several clients' money with APEX.

15 21. In 2006, Bradley submitted an Annual Compliance Questionnaire to ASC. Bradley
16 informed ASC that he was licensed as an independent IAR with WEP as his RIA, not ASC. Bradley
17 further informed ASC that through WEP, as his independent RIA, he offered financial planning,
18 asset management, asset-management through a third party, and "other" services to his clients.
19 Bradley disclosed the existence of Fiserv First Trust Accounts ("Fiserv") to ASC as the "other"
20 services he provided under his independent RIA, and that \$6,000,000.00 of his clients' assets were
21 under management through his independent RIA.

22 22. Although Bradley contends that he disclosed the APEX investor funds to ASC, he
23 reported those transactions as funds within a "Fiserv" account, without identifying the underlying
24 investments in APEX. Bradley also used Fiserv in connection with mutual fund products sold by
25 WEP with ASC's knowledge and approval.

26 ...

1 23. Bradley contends that he believed that ASC was informed of and had authorized
2 Bradley's APEX fund activity through WEP based upon ASC's approval of a draft client invitation
3 to attend an APEX informational dinner meeting, on or about November 6, 2006, several months
4 after Bradley had started soliciting investors for the APEX fund. Although the invitation referenced
5 APEX, it did not identify APEX as a hedge fund or a securities product.

6 24. Although Bradley sold APEX securities through his RIA, WEP, and not through
7 ASC, he was registered as a salesman with ASC during the time period of his APEX securities sales
8 and, therefore, he was subject to ASC's compliance policies and procedures relating to that activity.

9 25. ASC's Compliance Manual required its registered securities salesmen to provide
10 written notice to the dealer and to obtain written authorization from the dealer before engaging or
11 participating in any manner in a private securities transaction. That rule also specifically applies
12 even when a salesman plans to execute transactions for his clients as part of the services offered
13 through his separately registered RIA.

14 26. Bradley did not request authorization from ASC in writing as required by his dealer
15 prior to soliciting investments in the APEX securities, and never received written authorization from
16 ASC to solicit investors for the APEX fund.

17 27. Bradley did not at any time personally provide written notice to ASC prior to
18 engaging in solicitation of funds for APEX, nor did Bradley personally receive written authorization
19 from ASC to engage in such activities. Neither did Bradley directly observe any written
20 authorization obtained from ASC or inquire of ASC whether Forrest had requested or received such
21 authorization.

22 28. Bradley did not directly observe any written request from Forrest to ASC for
23 authorization to solicit funds for APEX until after the APEX fund had failed, and ASC had informed
24 Bradley that it had received no prior notice of Bradley's involvement in the APEX fund.¹

25 _____
26 ¹ The SEC took an action, which is currently pending, against Forrest related to his failure to disclose
to investors participation fees he received from his involvement in the APEX fund.

1 29. There is no record of any written authorization from ASC to anyone to engage in
2 solicitation of funds for the APEX hedge fund. APEX was never on ASC's approved product list.

3 30. Bradley represented to his clients that ASC had approved his solicitation of funds for
4 APEX.

5 31. Bradley provided monthly statements to his APEX investors regarding their APEX
6 investment balances on WEP's letterhead stationery.

7 32. Bradley did not provide copies of this client correspondence to ASC as required
8 under ASC's compliance policies and procedures.

9 33. The WEP letterhead included statements reflecting Bradley's affiliation with ASC.
10 Use of this letterhead containing ASC's affiliation for APEX monthly statements was misleading to
11 investors in that ASC did not authorize Bradley to sell APEX and APEX was not an approved
12 product of ASC.

13 34. ASC's Compliance Manual further provided that if the proposed transaction was for
14 "compensation" and approved by ASC, the transaction must be recorded on the books and records
15 of ASC and is subject to ASC's supervision. Advisory fees charged to clients by the salesman/RIA
16 are considered "compensation." Therefore, written notification and approval from ASC was
17 required for those transactions to be executed at broker/dealers or trust companies other than ASC.

18 35. Bradley did not report that he received compensation from his participation in the
19 APEX fund to ASC, and APEX transactions were not recorded on the books and records of ASC.

20 36. Bradley misrepresented on his dealer's annual compliance questionnaires in 2006
21 and 2007, that he received no compensation from securities activities outside ASC.

22 37. From approximately April 2006 through June 2007, Bradley and WEP received
23 investment advisory fees from their clients totaling approximately \$54,655.00 in connection with
24 Bradley's unauthorized sales of the APEX fund securities. From approximately July 2006 through
25 June 2007, Bradley and WEP received performance fees from Thompson Consulting totaling
26 approximately \$31,237.00 in connection with Bradley's unauthorized sales of APEX securities.

1 \$31,237.00 in adviser performance fees from the APEX fund, and the \$9,114.00 in profit returned
2 to Bradley when he withdrew his investment from the APEX fund. Payment shall be made in full
3 on the date of this Order. Payment shall be made to the "State of Arizona" to be placed in an
4 interest-bearing account controlled by the Commission. Any amount outstanding shall accrue
5 interest at the rate of 10% per annum from the date of this Order until paid in full. The
6 Commission shall disburse the funds on a pro-rata basis to investors shown on the records of the
7 Commission. Any restitution funds that the Commission cannot disburse because an investor
8 refuses to accept such payment shall be disbursed on a pro-rata basis to the remaining investors
9 shown on the records of the Commission. Any funds that the Commission determines it is unable
10 to or cannot feasibly disburse shall be transferred to the general fund of the state of Arizona.

11 IT IS FURTHER ORDERED, pursuant to A.R.S. §§ 44-2036, 44-3296 and 44-1962, that
12 Respondents shall, jointly and severally, pay administrative penalties in the amount of \$50,000.00.
13 Payment shall be made to the "State of Arizona." Any amount outstanding shall accrue interest at
14 the rate of 10% per annum from the date of this Order until paid in full. The payment obligations
15 for these administrative penalties shall be subordinate to any restitution obligations ordered herein
16 and shall become immediately due and payable only after restitution payments have been paid in
17 full or upon Respondents' default with respect to Respondents' restitution obligations.

18 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-1962, that Respondent Bradley's
19 securities salesman registration is revoked and his pending application is denied.

20 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-3201, that Respondent Bradley's
21 investment adviser representative license is revoked and his pending application is denied. For
22 purposes of this Order, a bankruptcy filing by Respondents shall be an act of default. If
23 Respondents do not comply with this Order, any outstanding balance may be deemed in default
24 and shall be immediately due and payable.

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1 IT IS FURTHER ORDERED, that if Respondents fail to comply with this order, the
2 Commission may bring further legal proceedings against Respondents including application to the
3 superior court for an order of contempt.

4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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8 CHAIRMAN

COMMISSIONER

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10 COMMISSIONER

COMMISSIONER

COMMISSIONER

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12 IN WITNESS WHEREOF, I, MICHAEL P. KEARNS,
13 Interim Executive Director of the Arizona Corporation
14 Commission, have hereunto set my hand and caused the
15 official seal of the Commission to be affixed at the
16 Capitol, in the City of Phoenix, this _____ day of
17 _____, 2009.

18 _____
19 MICHAEL P. KEARNS
20 INTERIM EXECUTIVE DIRECTOR

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22 _____
23 DISSENT

24
25 _____
26 DISSENT

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator,
voice phone number 602-542-3931, e-mail sbernal@azcc.gov.

(ptj)

CONSENT TO ENTRY OF ORDER

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1. Respondent Michael V. Bradley (“Bradley”) and Wealth Enhancement Preservation, LLC (“WEP”) (collectively “Respondents”) admit the jurisdiction of the Commission over the subject matter of this proceeding. Respondents acknowledge that Respondents have been fully advised of Respondents’ rights to a hearing to present evidence and call witnesses and Respondents knowingly and voluntarily waive any and all rights to a hearing before the Commission and all other rights otherwise available under Article 11 of the Securities Act, Article 7 of the Investment Management Act, and Title 14 of the Arizona Administrative Code. Respondents acknowledge that this Order To Cease And Desist, Order of Restitution, Order of Revocation and Denial, Order for Administrative Penalties and Consent to Same (“Order”) constitutes a valid final order of the Commission.

2. Respondents knowingly and voluntarily waive any right under Article 12 of the Securities Act and Article 8 of the Investment Management Act to judicial review by any court by way of suit, appeal, or extraordinary relief resulting from the entry of this Order.

3. Respondents acknowledge and agree that this Order is entered into freely and voluntarily and that no promise was made or coercion used to induce such entry.

4. Respondents have been represented by an attorney in this matter, Respondent Bradley have reviewed this order with their attorney, Jennifer Dioguardi, and understand all terms it contains.

5. Respondents neither admit nor deny the Findings of Fact and Conclusions of Law contained in this Order. Respondents agree that Respondents shall not contest the validity of the Findings of Fact and Conclusions of Law contained in this Order in any present or future administrative proceeding before the Commission or any other state agency concerning the denial or issuance of any license or registration required by the state to engage in the practice of any business or profession.

...

1 6. By consenting to the entry of this Order, Respondents agree not to take any action
2 or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding
3 of Fact or Conclusion of Law in this Order or creating the impression that this Order is without
4 factual basis. Respondents will undertake steps necessary to assure that all of Respondents' agents
5 and employees understand and comply with this agreement. Notwithstanding the foregoing, this
6 Order is not intended to collaterally estop, factually bind or preclude the Respondents from
7 defending themselves in any administrative, civil or criminal proceeding to which the Commission
8 is not a party.

9 7. While this Order settles this administrative matter between Respondents and the
10 Commission, Respondents understand that this Order does not preclude the Commission from
11 instituting other administrative or civil proceedings based on violations that are not addressed by
12 this Order.

13 8. Respondents understand that this Order does not preclude the Commission from
14 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
15 that may be related to the matters addressed by this Order.

16 9. Respondents understand that this Order does not preclude any other agency or
17 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal
18 proceedings that may be related to matters addressed by this Order.

19 10. Bradley agrees that he will not exercise any control over any entity that offers or
20 sells securities or provides investment advisory services within or from Arizona until such time as
21 all restitution and penalties under this Order are paid in full.

22 11. Respondents agree that Respondents will not sell any securities in or from Arizona
23 without being properly registered in Arizona as a dealer or salesman, or exempt from such
24 registration; Respondents will not sell any securities in or from Arizona unless the securities are
25 registered in Arizona or exempt from registration; and Respondents will not transact business in

26 ...

1 Arizona as an investment adviser or an investment adviser representative unless properly licensed
2 in Arizona or exempt from licensure.

3 12. Respondents agree that Respondents will continue to cooperate with the Securities
4 Division including, but not limited to, providing complete and accurate testimony at any hearing in
5 this matter and cooperating with the state of Arizona in any related investigation or any other
6 matters arising from the activities described in this Order.

7 13. Respondents consent to the entry of this Order and agree to be fully bound by its
8 terms and conditions.

9 14. Respondents acknowledge and understand that if Respondents fail to comply with
10 the provisions of the order and this consent, the Commission may bring further legal proceedings
11 against Respondents, including application to the superior court for an order of contempt.

12 15. Respondents understand that default shall render Respondents liable to the
13 Commission for its costs of collection and interest at the maximum legal rate.

14 16. Respondents agree and understand that if Respondents fail to make any payment as
15 required in the Order, any outstanding balance shall be in default and shall be immediately due and
16 payable without notice or demand. Respondents agree and understand that acceptance of any
17 partial or late payment by the Commission is not a waiver of default by Commission.

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1 17. Bradley represents that he is Manager of WEP and has been authorized by WEP to
2 enter into this Order for and on behalf of it.

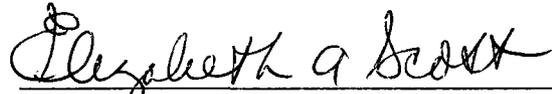
3 
4 _____
5 MICHAEL V. BRADLEY

6 WEALTH ENHANCEMENT & PRESERVATION, LLC

7
8 By 
9 _____
10 Its Manager, Michael V. Bradley

11 STATE OF ARIZONA)
12) ss
13 County of Maricopa)

14 SUBSCRIBED AND SWORN TO BEFORE me this 17th day of March, 2009.

15 
16 _____
17 NOTARY PUBLIC

18 My commission expires:

