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MARC SPITZER, Chairman
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KRISTIN K. MAYES

In the matter of:)
)
PHILIP WILLIAM MERRILL)
3788 N. 156th Drive)
Goodyear, Arizona 85338)
CRD #2436444,)
Respondent.)

DOCKET NO. S-03450A-02-0000

**DIVISION'S ACCOUNTING TO
ESTABLISH RESTITUTION
FIGURE REGARDING VIOLA
BROTHERSON IN RESPONSE TO
RECOMMENDED OPINION AND
ORDER**

DOCKETED

OCT 31 2003

DOCKETED BY *CA*

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") hereby submits its accounting, as referenced in paragraph 127 and at page 22 of the Recommended Opinion and Order of Administrative Law Judge Philip J. Dion III, in the above-referenced matter.

The Division is filing this accounting prior to the deadline for filing exceptions, due on November 14, 2003, to provide Respondent an opportunity to timely respond or to take exceptions, if any, relating to the calculation of the restitution amount for Viola Brotherson, so that all pending matters can be resolved at the Open Meeting on December 2, 2003. All relevant account statements and other documents within the possession of the Division, to calculate restitution for Ms. Brotherson, are available to Respondent for review upon request.

RESPECTFULLY SUBMITTED this 31st day of October, 2003.

Pamela T. Johnson

Pamela T. Johnson
Senior Counsel
Securities Division

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I.

DISCUSSION

The Recommended Opinion and Order orders the Securities Division to conduct an accounting to establish the appropriate restitution figure regarding the unsuitable transactions in Viola Brotherson's account. (See Recommended Opinion and Order at page 22, lines 11-16.) Pursuant to the recommended Order, the following analysis includes a calculation of the losses and charges incurred by Viola Brotherson due to her investments in the MSDW High Income/Yield Fund, MSDW Health Sciences Fund B and MSDW Information Fund B, subject to any set offs, including withdrawals or income payments made by Viola Brotherson from those funds, for the period of time that Respondent was Viola Brotherson's financial advisor. Pursuant to A.A.C. Rule R14-4-308, the restitution amount includes interest from the date of purchase payment for the investment. The restitution amount due to the State of Arizona as a result of Respondent's conduct related to Viola Brotherson is \$62,435.25. The calculation of the restitution amount for Viola Brotherson is attached hereto as Exhibit "A".

A. Losses incurred due to Viola Brotherson's investments in MSDW High Income and High Yield funds, the MSDW Health Sciences Fund B and the MSDW Information Fund B.

- On May 21, 1996, \$12,000 was invested into the Dean Witter High Income Fund ("DWHIF"); on May 22, 1996, \$1,600 was invested into the DWHIF; and on November 20, 1996, \$5,700 was invested into the DWHIF.
- On November 7, 1997, all of the DWHIF was sold and exchanged into Dean Witter High Yield Fund ("DWHY") (the result of a name change); on January 2, 1998, \$30,000 was invested into the DWHY; and on January 12, 1998, \$14,500 was invested into DWHY.
- On August 23, 2000, the DWHY was completely liquidated and exchanged into Morgan Stanley Dean Witter Information Fund ("MSDWIF"); on December 18, 2000, the

1 MSDWIF was completely liquidated and invested into Morgan Stanley Dean Witter
2 Health Sciences Fund ("MSDWHSF"); and on May 21, 2002, the MSDWHSF was
3 completely liquidated for \$22,050.47.

- 4 • Monies invested were: \$12,000, \$1,600, \$5,700, \$30,000 and \$14,500, for a total of
5 \$63,800. The proceeds of the liquidation sale were \$22,050.47, resulting in a loss of
6 \$41,749.53 in principal.

7
8 B. Offsets received by Ms. Brotherson through income payments from the MSDW Funds.

9 Dividends and Capital Gains were paid in the above identified mutual funds. During 1996,
10 \$1,077 was paid out in dividends and capital gains. During 1997, \$2,147.24 was paid out in
11 dividends and capital gains. During 1998, \$6,575.37 was paid out in dividends and capital gains.
12 During 1999, \$6,483.88 was paid out in dividends. During 2000, \$3,585.47 was paid out in
13 dividends. During 2001, no dividends or capital gains were paid out. During 2002, no dividends
14 or capital gains were paid out. The total amount of dividends and capital gains paid out of the
15 mutual funds in question and during the time in question was \$19,868.96.

16 C. Pre-judgment Interest calculation on restitution, pursuant to A.A.C. Rule R14-4-308.

17 In calculating pre-judgment interest on restitution, A.A.C. Rule R14-4-308 provides for
18 simple interest at 10% from the date of purchase. The total restitution amount requested by the
19 Division includes pre-judgment interest through the date of the Open Meeting when the
20 recommended Opinion and Order will be reviewed by the Commission, December 22, 2003.
21 Although the rule requires Respondent to pay interest through the date that the ordered restitution
22 is paid, post-judgment interest is not included because the date of actual payment is not yet known.
23 The Division's restitution figure related to Viola Brotherson includes pre-judgment interest from
24 the date of each investment, in the total amount of \$40,554.68, added to the amount of the
25 investments, and off-set by the amounts returned to the investor. *See Trimble v. American Savings*
26 *Life Insurance Co.*, 152 Ariz. 548, 733 P.2d 1131 (App. 1986).

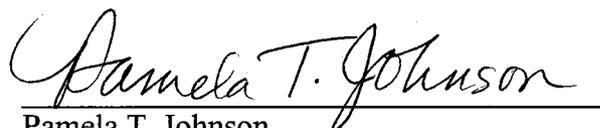
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II.

CONCLUSION

The lost principal resulting from Viola Brotherson's investments in MSDW High Income and High Yield funds, the MSDW Health Sciences Fund B, and the MSDW Information Fund B was \$41,749.53. The total restitution figure is \$62,435.25, which includes 10% interest from the date of each purchase, minus paid dividends and capital gains.

RESPECTFULLY SUBMITTED this 31st day of October, 2003.



Pamela T. Johnson
Senior Counsel
Securities Division

ORIGINAL AND 13 COPIES filed
With Docket Control on October 31st, 2003.

Copies of the foregoing mailed
October 31st, 2003, to:

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PHILIP MERRILL

CALCULATION OF RESTITUTION AMOUNT FOR VIOLA BROTHERSON

ANALYSIS OF INVESTMENTS AND INTEREST CALCULATION

<u>DATE OF INVESTMENT</u>	<u>ENDING DATE</u>	<u># OF DAYS OUTSTANDING</u>	<u>AMOUNT INVESTED</u>	<u>INTEREST RATE</u>	<u>INTEREST CALCULATED</u>
5/21/1996	12/2/2003	2,751	12,000.00	10%	9,044.38
5/22/1996	12/2/2003	2,750	1,600.00	10%	1,205.48
11/20/1996	12/2/2003	2,568	5,700.00	10%	4,010.30
1/2/1998	12/2/2003	2,160	30,000.00	10%	17,753.42
1/12/1998	12/2/2003	2,150	14,500.00	10%	8,541.10
			<u>63,800.00</u>	(1)	<u>40,554.68</u> (4)

OFFSETS - AMOUNTS RECEIVED

<u>YEAR</u>	<u>DIVIDENDS</u>	<u>CAP. GAINS</u>	<u>TOTAL</u>
1996	926.58	150.42	1,077.00
1997	2,089.58	57.66	2,147.24
1998	6,575.37	0.00	6,575.37
1999	6,483.88	0.00	6,483.88
2000	3,585.47	0.00	3,585.47
2001	0.00	0.00	0.00
2002	0.00	0.00	0.00
	<u>19,660.88</u>	<u>208.08</u>	<u>19,868.96</u> (3)

5/22/2002	Liquidation of investment - amount received		<u>22,050.47</u> (2)
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SUMMARY

Total Investments		63,800.00	(1)
Less: Amount received upon liquidation of investment		<u>-22,050.47</u>	(2)
		41,749.53	
Less: Amounts received - Dividends and Capital Gains		<u>-19,868.96</u>	(3)
Net loss before interest		21,880.57	
Add: Interest from dates of investments to December 2, 2003		<u>40,554.68</u>	(4)
Restitution amount as of December 2, 2003		<u>62,435.25</u>	

