

ORIGINAL

NEW APPLICATION



0000125791

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

2011 JUN -8 A 9:34

Arizona Corporation Commission

DOCKETED

GARY PIERCE, Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

AZ CORP COMMISSION
DOCKET CONTROL

JUN -8 2011

DOCKETED BY

mm

In the matter of:

RODOLFO ALVAREZ (CRD No. 4375595)
and LAURA GONZALEZ, husband and
wife,

Respondents.

DOCKET NO. S-20807A-11-0237

**NOTICE OF OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER TO
CEASE AND DESIST, ORDER FOR
ADMINISTRATIVE PENALTIES, AND
ORDER OF REVOCATION**

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 respondent Rodolfo Alvarez has engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

I.

JURISDICTION

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

II.

RESPONDENT

2. At all times relevant, Rodolfo Alvarez ("ALVAREZ") was an Arizona resident.

3. From about January 20, 2005, to July 29, 2010, ALVAREZ was registered in Arizona as a securities salesman, CRD No. 4375595, in association with PFS Investments, Inc., CRD No. 10111, ("PFSI").

1 14. In or around January 2009, ALVAREZ requested a personal loan for \$3,000 from
2 Client A.

3 15. Client A agreed to provide the \$3,000 personal loan to ALVAREZ and wrote a
4 personal check to ALVAREZ in the amount of \$3,000 from Client A's checking account.

5 16. ALVAREZ deposited the \$3,000 into his personal checking account and used the
6 funds toward the purchase of a vehicle.

7 17. Client A is not a related family member of ALVAREZ.

8 18. PFSI did not provide written approval or authorization to ALVAREZ for the \$3,000
9 loan obtained from Client A.

10 19. ALVAREZ repaid Client A the \$3,000 through a series of payments, with a final
11 payment in June 2010.

12 20. In or around March 2010, Client A discussed with ALVAREZ the market
13 fluctuations in his account and Client A determined that he wanted to reallocate his funds to
14 achieve a more conservative portfolio.

15 21. ALVAREZ stated that a new account would be needed for a more conservative
16 portfolio because certain investments or security products were not available for purchase in Client
17 A's existing PFSI account.

18 22. On March 26, 2010, based on the advice provided by ALVAREZ, Client A
19 redeemed approximately \$45,000 worth of Legg Mason WA Managed Municipals A, symbol
20 SHMMX, held in his PFSI account. Client A then transferred the \$45,000 to a personal bank
21 account of Client A.

22 23. ALVAREZ directed Client A to submit the \$45,000 to ALVAREZ so that the funds
23 could be invested into a more conservative portfolio.

24 24. On or about April 5, 2010, Client A wrote two personal checks totaling \$45,000,
25 payable to ALVAREZ.

26 25. PFSI has no record of an additional or new account opened in the name of Client A.

1 26. On or about April 1, 2010, ALVAREZ purchased 900 shares of PRI stock in
2 ALVAREZ's personal brokerage account.

3 27. On or about April 6, 2010, ALVAREZ made a deposit of \$20,000 into his personal
4 checking account.

5 28. On or about April 9, 2010, ALVAREZ made a deposit of \$14,000 into his personal
6 checking account.

7 29. On or about April 9, 2010, ALVAREZ submitted a check to the brokerage firm at
8 which his personal brokerage account was held, in the amount of \$13,500, to pay for the 900 shares
9 of PRI stock purchased.

10 30. Client A is not a listed account holder or beneficiary on ALVAREZ's personal
11 brokerage account.

12 31. Based on contact initiated by Client A, PFSI initiated an investigation regarding the
13 \$45,000 transaction involving ALVAREZ.

14 32. During the PFSI investigation, ALVAREZ admitted that he used some of Client A's
15 \$45,000 for personal expenses, such as child support and past due rent.

16 33. At the conclusion of its investigation, PFSI reversed Client A's March 26, 2010,
17 redemption of SHMMX shares and restored the same number of shares that Client A had liquidated
18 to obtain \$45,000.

19 34. ALVAREZ made a payment of \$6,000 to PFSI and executed a contract assigning his
20 interest in all PRI stock held in his personal brokerage account to PFSI to help offset PFSI's cost
21 incurred as a result of their redemption of the SHMMX shares to Client A.

22 35. On July 20, 2010, PFSI terminated ALVAREZ's employment and affiliation.

23 36. On or about July 21, 2010, PFSI sent letters to all of ALVAREZ's customers
24 notifying them that ALVAREZ was no longer associated with PFSI. The letter also provided the
25 name and contact information of a new PFSI representative.

26

1 37. In response to PFSI's letter, multiple individuals contacted PFSI or a PFSI
2 representative to report transactions conducted with ALVAREZ.

3 **Client B**

4 38. On or about October 23, 2007, ALVAREZ assisted an Arizona resident in opening a
5 brokerage account with PFSI, or one of its affiliates. The PFSI brokerage account also contained
6 check writing authority for the Arizona resident and his spouse (collectively "Client B").
7 ALVAREZ is listed as the registered representative on the account application – client profile form.

8 39. Client B purchased Western Asset Money Market Fund A, symbol SBCXX, in the
9 PFSI brokerage account.

10 40. ALVAREZ is not a signatory and is not authorized to write checks from Client B's
11 PFSI brokerage account.

12 41. Checks written from this PFSI brokerage account would be debited from the
13 redemption of SBCXX shares.

14 42. Prior to February 22, 2010, ALVAREZ changed Client B's PFSI brokerage account
15 address of record to a residence located on Behrend Drive in Phoenix, Arizona.

16 43. Client B has never lived at the residence located on Behrend Drive in Phoenix,
17 Arizona.

18 44. Upon information and belief, the residence located on Behrend Drive in Phoenix,
19 Arizona is owned, leased, and/or controlled by ALVAREZ.

20 45. For the period of February 22, 2010, through August 25, 2010, Client B alleged that
21 ALVAREZ fraudulently obtained eight checks from the PFSI brokerage account and executed them
22 with forged signatures in a total amount of \$24,600. Seven of the checks are written to ALVAREZ.

23 46. As a result of the address change, Client B did not receive statements or transaction
24 confirmations for the eight fraudulently obtained checks written by ALVAREZ.

25 47. Client B did not sign any of the checks in question, did not authorize ALVAREZ to
26 write such checks, and did not authorize ALVAREZ to change the address of record.

1 48. In October 2010, Client B contacted PFSI and filed a complaint.

2 49. PFSI conducted an internal investigation and on or about December 29, 2010, PFSI
3 paid Client B \$24,600.

4 **Client C**

5 50. On or about May 16, 2008, an Arizona resident ("Client C") executed a PFSI
6 brokerage account application to transfer an employer sponsored 401K plan to PFSI. Client C
7 purchased certain mutual funds or annuities of MetLife.

8 51. ALVAREZ is listed as the registered representative on Client C's variable annuity
9 application.

10 52. After the purchase of the MetLife products, Client C expressed concerns to
11 ALVAREZ about the value of his MetLife investments.

12 53. ALVAREZ discussed with Client C the PRI Stock as an alternative investment.

13 54. Between January 4, 2009, and September 14, 2009, with the help of ALVAREZ,
14 Client C requested distributions or liquidations of the mutual funds or annuities held with MetLife.
15 The MetLife distributions were subsequently placed into Client C's personal bank account.

16 55. From September 25, 2009, through January 10, 2010, Client C wrote personal
17 checks totaling \$25,000 to ALVAREZ for the purchase of PRI Stock. Client C expected to receive
18 a brokerage account statement and/or online access for the PRI stock purchases.

19 56. To date, Client C has not received any information from ALVAREZ that establishes
20 Client C's ownership of PRI stock in the principal amount of \$25,000.

21 57. PFSI has no record of an additional or new account opened in the name of Client C
22 that evidences that PRI stock was purchased for Client C.

23 58. In or around March 2009, Client C asked ALVAREZ for assistance with his
24 residential mortgage. Client C was current in his mortgage payments, but was seeking to obtain a
25 loan modification to reduce his monthly mortgage obligation.

26

1 59. ALVAREZ advised Client C to stop paying his monthly mortgage obligation in
2 preparation for a loan modification negotiation. Client C stopped paying his monthly mortgage
3 obligations as instructed.

4 60. In or around May 2011, Client C wrote ALVAREZ a check in the amount of \$675 to
5 get the paperwork started on Client C's loan modification. Client C believed that a loan
6 modification for a lower monthly payment was negotiated by ALVAREZ and accepted by the
7 mortgagee.

8 61. Beginning June 2009, Client C wrote monthly checks payable to ALVAREZ and
9 thought that each payment was being forwarded to the mortgagee of Client C's residence.

10 62. From May 11, 2009, through November 2009, Client C wrote checks in a total
11 amount of \$9,587 from his personal bank account to ALVAREZ.

12 63. In late 2009, Client C received foreclosure and/or notice of sale letters from the
13 mortgagee.

14 64. Client C contacted ALVAREZ and ALVAREZ assured him that he would take care
15 of the matter.

16 65. On or about January 5, 2010, Client C's residential property was sold to a third party
17 pursuant to a trustee sale.

18 66. None of Client C's payments to ALVAREZ were forwarded to the mortgagee.

19 67. In November 2010, Client C contacted PFSI and filed a complaint.

20 68. On or about December 16, 2010, PFSI paid Client C \$30,000.

21 **Client D**

22 69. On or about August 3, 2005, an Arizona resident completed a variable annuity
23 application to purchase a variable annuity product. ALVAREZ was the listed registered
24 representative for this transaction.

25 70. On or about March 25, 2010, and March 27, 2010, Client D wrote personal checks
26 in the amounts of \$2,000 and \$3,000 payable to ALVAREZ.

1 71. ALVAREZ stated that the \$5,000 would be used to purchase PRI stock.

2 72. To date, Client D has not received any information from ALVAREZ that establishes
3 Client D's ownership of PRI stock in the principal amount of \$5,000.

4 73. PFSI has no record of an additional or new account opened in the name of Client D
5 that evidences that PRI stock was purchased for Client D.

6 74. In general, PFSI representatives are not authorized to offer for sale PRI stock.

7 75. In November 2010, Client D contacted PFSI and filed a complaint.

8 76. On or about December 29, 2010, PFSI paid Client D \$5,000.

9 **Client E**

10 77. On or about April 19, 2006, an Arizona resident ("Client E") completed a variable
11 annuity application to purchase a variable annuity product. ALVAREZ was the listed registered
12 representative for this transaction.

13 78. ALVAREZ told Client E that he had inside information about a drug store stock and
14 recommended that Client E purchase shares of the drug store stock.

15 79. On or about April 6, 2010, Client E wrote a personal check in the amount of \$15,000
16 payable to ALVAREZ for the purchase of the drug store stock.

17 80. To date, Client E has not received any information from ALVAREZ that establishes
18 Client E's ownership of a drug store stock in the principal amount of \$15,000.

19 81. PFSI has no record of an additional or new account opened in the name of Client E
20 that evidences that a drug store stock was purchased for Client E.

21 82. In February 2011, Client E contacted PFSI and filed a complaint.

22 83. On or about March 2, 2011, PFSI paid Client E \$15,000.

1 IV.

2 VIOLATION OF A.R.S. § 44-1991

3 (Fraud in Connection with the Offer or Sale of Securities)

4 84. In connection with the offer or sale of securities within or from Arizona, ALVAREZ
5 directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements
6 of material fact or omitted to state material facts that were necessary in order to make the statements
7 made not misleading in light of the circumstances under which they were made; or (iii) engaged in
8 transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon
9 offerees and investors. ALVAREZ's conduct includes, but is not limited to, the following:

10 a) Misrepresenting to Client A that ALVAREZ could reallocate Client A's
11 investment into a more conservative portfolio and advised Client A to transfer \$45,000 to
12 ALVAREZ to effectuate a transition to a more conservative portfolio; however, Client A's funds
13 were never placed into an investment portfolio in the name of and for the benefit of Client A;

14 b) Failing to disclose to Client A that ALVAREZ used Client A's funds for
15 personal expenses, such as child support and past due rent;

16 c) Changing Client B's PFSI brokerage account address of record to a residence
17 located on Behrend Drive in Phoenix, Arizona without Client B's authorization or knowledge;

18 d) Fraudulently obtaining eight checks from Client B's PFSI brokerage account
19 and executing them with forged signatures in a total amount of \$24,600;

20 e) Misrepresenting to Client C that the \$25,000 from Client C would be used to
21 purchase PRI stock and failing to purchase the PRI Stock;

22 f) Misrepresenting to Client D that the \$5,000 from Client D would be used to
23 purchase PRI and failing to purchase the PRI stock; and

24 g) Misrepresenting to Client E that the \$15,000 payment from Client E would be
25 used to purchase a drug store stock and failing to purchase the drug store stock.

26 85. This conduct violates A.R.S. § 44-1991.

V.

REMEDIES PURSUANT TO A.R.S. § 44-1962

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

86. ALVAREZ’s conduct is grounds to revoke his registration as a securities salesman with the Commission pursuant to A.R.S. § 44-1962. Specifically, ALVAREZ has:

a) Engaged in dishonest or unethical practices in the securities industry, within the meaning of A.R.S. § 44-1962(A)(10), which includes, but is not limited to:

(i) Borrowing money from a customer who is not a relative, within the meaning of R14-4-130(A)(15);

(ii) Making unauthorized use of customer funds or converting customer funds for personal benefit within the meaning of R14-4-130(A)(16); and

(iii) Employing in connection with a purchase or sale of a security, a manipulative or deceptive device or contrivance within the meaning of R14-4-130(A)(14), when ALVAREZ fraudulently obtained eight checks from the PFSI brokerage account and executed them with forged signatures in a total amount of \$24,600.

b) Within the meaning of A.R.S. § 44-1962(A)(2), violated A.R.S. § 44-1991.

87. ALVAREZ’s conduct is grounds to assess restitution, penalties, and/or take appropriate affirmative action pursuant to A.R.S. § 44-1962. Specifically, ALVAREZ has:

a) Engaged in dishonest or unethical practices in the securities industry, within the meaning of A.R.S. § 44-1962(A)(10), which includes, but is not limited to:

(i) Borrowing money from a customer who is not a relative, within the meaning of R14-4-130(A)(15);

(ii) Making unauthorized use of customer funds or converting customer funds for personal benefit within the meaning of R14-4-130(A)(16); and

1 (iii)Employing in connection with a purchase or sale of a security, a manipulative
2 or deceptive device or contrivance within the meaning of R14-4-130(A)(14),
3 when ALVAREZ fraudulently obtained eight checks from the PFSI brokerage
4 account and executed them with forged signatures in a total amount of \$24,600.

5 b) Within the meaning of A.R.S. § 44-1962(A)(2), violated A.R.S. § 44-1991.

6 **VI.**

7 **REQUESTED RELIEF**

8 The Division requests that the Commission grant the following relief:

9 1. Order ALVAREZ to permanently cease and desist from violating the Securities Act,
10 pursuant to A.R.S. §§ 44-2032 and 44-1962;

11 2. Order ALVAREZ to pay the state of Arizona administrative penalties of up to five
12 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

13 3. Order ALVAREZ to pay the state of Arizona administrative penalties, pursuant to
14 A.R.S. § 44-1962;

15 4. Order the revocation or suspension of ALVAREZ's registration as a securities
16 salesman pursuant to A.R.S. § 44-1962;

17 5. Order that the marital community of ALVAREZ and Respondent Spouse be subject to
18 any order of restitution, rescission, administrative penalties, or other appropriate affirmative action
19 pursuant to A.R.S. § 25-215; and

20 6. Order any other relief that the Commission deems appropriate.

21 **VII.**

22 **HEARING OPPORTUNITY**

23 Each respondent, including Respondent Spouse, may request a hearing pursuant to A.R.S.
24 § 44-1972 and A.A.C. R14-4-306. **If Respondent or Respondent Spouse requests a hearing, the**
25 **requesting respondent must also answer this Notice.** A request for hearing must be in writing and
26 received by the Commission within 10 business days after service of this Notice of Opportunity for

1 Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona
2 Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be
3 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
4 <http://www.azcc.gov/divisions/hearings/docket.asp>.

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

10 Persons with a disability may request a reasonable accommodation such as a sign language
11 interpreter, as well as request this document in an alternative format, by contacting Shaylin A.
12 Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov.
13 Requests should be made as early as possible to allow time to arrange the accommodation.

14 VIII.

15 ANSWER REQUIREMENT

16 Pursuant to A.A.C. R14-4-305, if Respondent or Respondent Spouse requests a hearing, the
17 requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to
18 Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007,
19 within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained
20 from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
21 <http://www.azcc.gov/divisions/hearings/docket.asp>.

22 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant
23 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
24 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
25 addressed to Phong (Paul) Huynh.

26

