

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

JUN 14 2011

COMMISSIONERS 2011 JUN 14 P 12: 02

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

DOCKETED BY NR

In the matter of:
GARY PATRICK DUFFY (CRD #1779786),
an unmarried man,
THE INVESTMENT ADVISORY GROUP,
L.L.C., an Arizona limited liability company,
Respondents.

DOCKET NO. S-20808A-11-0241

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

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 PATRICK DUFFY and THE INVESTMENT ADVISORY GROUP,
L.L.C., have engaged in acts, practices, and transactions 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.

II.

RESPONDENTS

2. At all times relevant, GARY PATRICK DUFFY ("DUFFY") has been an Arizona
resident.

1 12. In May 2008, DUFFY met with Client A at her Phoenix residence. During the
2 meeting, DUFFY advised Client A that he was moving away from a commission-based
3 compensation structure to a fee-based structure for the rendering of investment advisory services.

4 13. According to DUFFY, the formula used to calculate the fee for his investment
5 advisory services would be the same formula used by one of his previous firms and would equal a
6 percentage of the assets held by Client A, including the securities held in Client A's portfolio.

7 14. DUFFY represented to Client A that the fee he was requesting was payment for
8 "financial advice" to be provided by DUFFY to Client A with regard to the assets held in her
9 portfolio that included various securities.

10 15. On May 20, 2008, Client A signed a check payable to IAG in the amount of \$8,200.
11 Other than Client A's signature, DUFFY completed all portions of the check. DUFFY wrote in the
12 memo portion of the check the words "Financial Planning."

13 16. On May 21, 2008, DUFFY endorsed the back of Client A's check and deposited it
14 into a checking account in the name of IAG.

15 17. From May 21, 2008 to April 8, 2010, IAG, through DUFFY, did provide investment
16 advice to Client A related to the securities held in her portfolio and advised her with regard to the
17 appropriateness of various investment opportunities involving securities.

18 18. From May 21, 2008 to April 8, 2010, DUFFY was responsible for managing the
19 investment portfolio of Client A and making recommendations to her as to the advisability of
20 various investment opportunities involving securities.

21 19. DUFFY's management of Client A's investment portfolio included, in part, a
22 recommendation to purchase two investment contracts involving the renovation and resale of two
23 residential properties.

24 20. With regard to the residential properties, DUFFY advised Client A as to the specific
25 properties to be purchased and formulated a plan to renovate the properties for resale. According to
26 DUFFY's plan, Client A would supply the funds to be used to purchase and renovate the real estate

1 while DUFFY would coordinate all other services including the purchases, sales listings and
2 closings on the properties. With regard to the renovation work to be performed on the properties,
3 DUFFY was responsible for hiring contractors to complete any work he did not complete himself.

4 21. Despite being provided with the funds by Client A necessary to complete the
5 renovations on the two properties purchased, DUFFY failed to fully complete the renovations.

6 22. The investment advice provided by DUFFY to Client A was delivered via phone
7 calls, and meetings held between Client A and DUFFY at Client A's residence.

8 23. At all times relevant, IAG was not licensed as an investment adviser.

9 24. Neither DUFFY nor IAG, through DUFFY, informed Client A that IAG was not a
10 licensed investment adviser authorized to accept a fee for providing investment advisory services.

11 25. Neither DUFFY nor IAG, through DUFFY, informed Client A that on July 18, 2008,
12 DUFFY's registration with the Financial Industry Regulatory Authority (FINRA) had been suspended.

13 26. Neither DUFFY nor IAG, through DUFFY, disclosed to Client A DUFFY'S failure
14 to comply with the arbitration award entered against him on August 11, 2006.

15 27. Neither DUFFY nor IAG, through DUFFY, informed Client A that IAG was an
16 entity owned and controlled by DUFFY.

17 **Client B**

18 28. In the late 1980s and around the same time that DUFFY met Client A, DUFFY met
19 another Arizona resident ("Client B") and became her investment adviser. Client B is 79 years old.

20 29. Over the course of approximately 20 years from the late 1980s to at least 2008,
21 DUFFY sold to Client B investment products such as annuities, mutual funds, stocks and life
22 insurance that were offered through various entities by whom DUFFY was employed.

23 30. In or around March 2010, DUFFY approached Client B and requested that she make
24 a personal loan to DUFFY.

25
26

1 31. Beginning in April 2010 and continuing through June 2010, Client B made three
2 separate loans to DUFFY totaling \$15,000. Each of the three checks written by Client B were
3 payable to DUFFY, who deposited each of the checks into his personal checking account.

4 32. The three loans made to DUFFY by Client B were documented with separate
5 promissory notes signed by DUFFY.

6 33. The terms of the promissory notes included that DUFFY was to repay Client B the
7 principal amount, plus interest at the rate of ten percent.

8 34. One of the promissory notes required DUFFY to pay to Client B, in addition to the
9 principal amount (\$5,000) being loaned, a surrender fee incurred by Client B. The surrender fee
10 was incurred by Client B as a result of her being required to cash out an annuity to obtain the funds
11 to be used to make the loan to DUFFY. The annuity cashed out by Client B had been sold to her
12 by DUFFY

13 35. Prior to requesting the loans from Client B, DUFFY had represented to Client B that
14 he was operating a business involving the fixing up of homes for resale. At the time he requested
15 the loans from Client B, he represented to Client B that the funds being borrowed would be used in
16 connection with his home remodeling and renovation business.

17 36. On at least one of the checks written to DUFFY, Client B wrote in the memo portion
18 of the check the words "Home Renovation."

19 37. After depositing the funds received from Client B into his personal checking
20 account, DUFFY used the funds for his personal expenses unrelated to his home remodeling and
21 renovation business.

22 38. To date, despite the due date for repayment of the loan amounts having passed,
23 Client B has not received payment of the principal or interest due on the promissory notes executed
24 by DUFFY.

25 39. The promissory notes have not been registered with the Commission.
26

1 renovation business while failing to further disclose that the funds borrowed had been used by DUFFY
2 for his own personal expenses.

3 47. This conduct violates A.R.S. § 44-1991.

4 **VII.**

5 **VIOLATION OF A.R.S. § 44-3151**

6 **(Transactions by Unlicensed Investment Advisers or Investment Adviser Representatives)**

7 48. With regard to Client A from May 21, 2008 through April 8, 2010, IAG transacted
8 business in Arizona as an investment adviser while not licensed or in compliance with Article 4 of the
9 IM Act.

10 49. With regard to Client A from July 24, 2008 through April 8, 2010, DUFFY transacted
11 business in Arizona as an Investment Adviser Representative, in association with IAG, while not
12 licensed or in compliance with Article 4 of the IM Act.

13 50. This conduct violates A.R.S. § 44-3151.

14 **VIII.**

15 **VIOLATION OF A.R.S. § 44-3241**

16 **(Fraud in the Provision of Investment Advisory Services)**

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

1 a) Within the meaning of A.R.S. § 44-3241(A)(4) and pursuant to A.A.C. R14-6-
2 209(A)(2) and A.A.C. R14-6-209(B)(1)(c), IAG failed to disclose to Client A that DUFFY's
3 registration with the Financial Industry Regulatory Authority (FINRA) had been suspended;

4 b) Within the meaning of A.R.S. §44-3241(A)(4) and pursuant to A.A.C. R14-6-
5 209(A)(3), IAG failed to disclose to Client A that DUFFY had failed to comply with the arbitration
6 award entered against him on August 11, 2006;

7 c) Within the meaning of A.R.S. §44-3241(A)(3), DUFFY failed to disclose to
8 Client A that DUFFY's registration with the Financial Industry Regulatory Authority (FINRA) had
9 been suspended as a result of his failure to comply with the arbitration award entered against him on
10 August 11, 2006; and

11 d) DUFFY and IAG, through DUFFY, failed to disclose to Client A that IAG was
12 an entity owned and controlled by DUFFY.

13 52. This conduct violates A.R.S. § 44-3241.

14 **IX.**

15 **REQUESTED RELIEF**

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

17 1. Order DUFFY to permanently cease and desist from violating the Securities Act,
18 pursuant to A.R.S. § 44-2032;

19 2. Order Respondents to permanently cease and desist from violating the IM Act,
20 pursuant to A.R.S. § 44-3292;

21 3. Order DUFFY to take affirmative action to correct the conditions resulting from the
22 acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-
23 2032;

24 4. Order Respondents to take affirmative action to correct the conditions resulting from
25 the acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-
26 3292;

1 **XI.**

2 **ANSWER REQUIREMENT**

3 Pursuant to A.A.C. R14-4-305, if a Respondent requests a hearing, the requesting
4 respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket
5 Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within
6 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from
7 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
8 <http://www.azcc.gov/divisions/hearings/docket.asp>

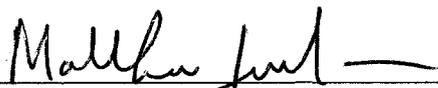
9 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant
10 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
11 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
12 addressed to William W. Black.

13 The Answer shall contain an admission or denial of each allegation in this Notice and the
14 original signature of the answering respondent or respondent's attorney. A statement of a lack of
15 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not
16 denied shall be considered admitted.

17 When the answering respondent intends in good faith to deny only a part or a qualification
18 of an allegation, the respondent shall specify that part or qualification of the allegation and shall
19 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

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

22 Dated this 14 day of June, 2011.

23
24 
25 _____
26 Matthew J. Neubert
Director of Securities