

OPEN MEETING ITEM

11/17-18/15



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COMMISSIONERS
SUSAN BITTER SMITH, Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

JODI JERICH
EXECUTIVE DIRECTOR



SECURITIES DIVISION
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Phoenix, AZ 85007
TELEPHONE: (602) 542-4242
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ARIZONA CORPORATION COMMISSION

ORIGINAL

MEMORANDUM

TO: Susan Bitter Smith, Chairman
Bob Stump
Bob Burns
Doug Little
Tom Forese

Arizona Corporation Commission

DOCKETED

NOV 03 2015

FROM: Matthew J. Neubert *MJN*
Director of Securities

DOCKETED BY *KK*

DATE: 10/27/2015

RE: Biltmore Wealth Advisors, LLC, *et al.*, Docket No. S-20942A-15-0541

CC: Jodi Jerich, Executive Director

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AZ CORP COMMISSION
DOCKET CONTROL

Attached for your consideration is a proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties, and Consent to Same ("Order") against Biltmore Wealth Advisors, LLC and James S. Miller. The Order against respondents is a consent order.

The Order finds that beginning in approximately October 2012, BWA and Miller have provided information about their investment advisory services to clients and prospective clients through various media. This publicly-available information contained several inaccuracies, omissions, and misstatements, in violation of § 44-3241(A) of the Arizona Investment Management Act. These included altering Miller's work history in his resume so that more prestigious firms were given more time and less prestigious firms were given less time or omitted entirely; describing himself as an "adjunct professor" at prestigious universities when in fact he was teaching a continuing-education seminar on or near the university campuses; failing to describe the purpose of Miller's bankruptcy; including client testimonials on BWA's website; and failing to disclose risks and limitations in BWA's methodology for picking investments.

The Securities Division required respondents to correct the violations described in the Order. The Order requires respondents to permanently cease and desist from violating the Investment Management Act and to pay a \$5,000 administrative penalty. The Securities Division recommends the Order as appropriate, in the public interest and necessary for the protection of investors.

Originator: Ryan J. Millecam

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

SUSAN BITTER SMITH, Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

In the matter of)	DOCKET NO. S-20942A-15-0341
BILTMORE WEALTH ADVISORS, LLC,)	
an Arizona limited liability company, and)	DECISION NO. _____
JAMES S. MILLER and Elizabeth A.)	
Miller, husband and wife,)	ORDER TO CEASE AND DESIST, ORDER
Respondents.)	FOR ADMINISTRATIVE PENALTIES, AND
)	CONSENT TO SAME
)	BY: RESPONDENTS JAMES S. MILLER
)	AND BILTMORE WEALTH ADVISORS, LLC

Respondents Biltmore Wealth Advisors, LLC (CRD#165557) (“BWA”) and James S. Miller (CRD#4875515) (each a “Respondent,” together “Respondents”) elect to permanently waive any right to a hearing and appeal under Articles 7 and 8 of the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.* (“Investment Management Act”) with respect to this Order to Cease and Desist, Order for Administrative Penalties, and Consent to Same (“Order”). Respondents admit the jurisdiction of the Arizona Corporation Commission (“Commission”); admit the Findings of Fact and Conclusions of Law contained in this Order; and consent to the entry of this Order by the Commission.

**I.
FINDINGS OF FACT**

1. Miller has been conducting business as an investment adviser representative through his entity, BWA, since October 2012.
2. BWA is an Arizona limited liability company. Its formation documents, portions of which were originally filed in September 2012, were approved by the Commission on October 10,

1 2012. In its Articles of Organization, BWA lists two members: Miller and Miller's wife, Elizabeth
2 Ann Miller ("Respondent Spouse").

3 3. BWA has been a licensed investment adviser with the Commission since October 1,
4 2012. Miller is listed as the managing partner in BWA's licensing.

5 4. Miller has been an Arizona resident from approximately September 1998 to the
6 present. He has been licensed by the Commission as an investment adviser representative since
7 approximately August 2006 to the present.

8 5. At all relevant times Respondent Spouse has been married to Miller. Respondent
9 Spouse is joined in this action under A.R.S. § 44-3291(C) solely for the purpose of determining the
10 liability of her and Miller's marital community.

11 6. Beginning in October 2012, BWA and Miller have provided information about their
12 investment advisory services to clients and prospective clients through, among other things, BWA's
13 website, Miller's LinkedIn profile, a monthly newsletter, brochures, and Miller's Form ADV filed
14 with the Investment Adviser Registration Depository, information from which was posted on the
15 Securities and Exchange Commission's broker check website (www.adviserinfo.sec.gov).

16 7. This publicly-available information contained several inaccuracies, omissions, and
17 misstatements including the following:

18 a. Miller falsely reported times he worked at firms: more prestigious firms
19 were given more time, less prestigious firms were given less time or omitted entirely. For
20 example, Miller worked at PIMCO for a period of 2.7 years but reported his time there
21 as five years in his Form ADV and seven years in his LinkedIn profile. Similarly, Miller
22 reported his time at Northern Trust as five years when in fact he worked there for 2.4
23 years.

24 b. Miller described himself as an "adjunct professor" at Stanford, University
25 of Denver, and Arizona State University. In fact, Miller co-taught a 5 week, continuing-
26 education, investment course on the campuses of these universities from 2010 to 2012

1 while employed as a Managing Partner at Camelback Wealth Management. The use of
2 the term “adjunct” was misleading as the universities had no formal affiliation with
3 Miller and did not pay Miller for teaching the courses. As the owner of BWA, Miller,
4 on a pro bono basis, has taught his own 4-week investment course through Arizona State
5 University’s College of Public Programs from 2012 to present.

6 c. Miller filed for Chapter 7 bankruptcy on January 7, 2011, and obtained a
7 discharge on June 22, 2011. Miller stated in his Form ADV that “The purpose of the
8 Chapter 7 was to discharge a frivolous lawsuit filed by Mr. Miller’s former
9 employer...which was designed to ruin [Miller] financially....” In a brochure given to
10 existing and prospective clients, Miller described the bankruptcy as “involuntary” and a
11 “business decision.” In fact, the petition was a voluntary petition, filed by individuals
12 (though the Millers claim it was a business decision), and the Millers discharged a
13 substantial amount of personal debt, including \$72,500 in credit card debt. Of the credit
14 card debt discharged approximately \$10,000 was incurred in legal fees, bankruptcy legal
15 fees excluded. And after the discharge the Millers continued to stay current on their
16 financial obligations to their mortgage lender and creditors for both automobiles.

17 8. On its website, BWA stated that “We employ a mathematically-based process to
18 determine when to buy and sell our client’s investments to include the use of sophisticated hedging
19 and alternative investment solutions, when appropriate, to mitigate risk for our clients.” On another
20 page of the website, BWA stated that it “employs a 3-step mathematical process when it comes to
21 investing – using math, rather than emotion, to determine when to buy or sell investments.” In a
22 brochure given to clients and prospective clients, BWA states that “Over the past decade [Miller] has
23 developed mathematical algorithms and trading models that provide him and his clients with the
24 appropriate Buy and Sell signals. His proprietary and time-tested approach eliminates emotion from
25 the decision-making process and relies solely on math.” The website and brochure do not contain
26

1 any discussion of any limitations of these methods, any difficulties in using them, or any risks
2 involved.

3 9. BWA's website included a page titled "Client Testimonials" with testimonials from
4 six clients regarding Respondents' investment advisory services.

5 **II.**

6 **CONCLUSIONS OF LAW**

7 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
8 Arizona Constitution and the Investment Management Act.

9 2. Respondents violated A.R.S. § 44-3241(A) by (i) making untrue statements or
10 misleading omissions of material facts, (ii) misrepresenting professional qualifications with the intent
11 that the misrepresentation be relied on, and (iii) engaging in transactions, practices, or courses of
12 business that operate or would operate as a fraud or deceit as defined by R14-6-208(A)(1) & (3).

13 These violations include the following:

- 14 a. Inaccurately listing dates of employment and omitting employers from Miller's
15 work history;
- 16 b. Claiming to be an adjunct professor at universities having no formal affiliation
17 with Miller;
- 18 c. Claiming that Miller's 2012 bankruptcy was a business decision and solely to
19 discharge a "frivolous" lawsuit when substantial personal debt was also
20 discharged in the bankruptcy;
- 21 d. Representing that Respondents used a formula for maximizing gains without
22 disclosing the limitations and risks involved;
- 23 e. Including testimonials from clients on BWA's website.

24 3. Respondents' conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-
25 3292.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2015.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT

DISSENT

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

(RJM)

CONSENT TO ENTRY OF ORDER

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1. Respondents admit the jurisdiction of the Commission over the subject matter of this proceeding. Respondents acknowledge that Respondents have been fully advised of Respondents' right 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 7 of the Investment Management Act and Title 14 of the Arizona Administrative Code. Respondents acknowledge that this Order constitutes a valid final order of the Commission.

2. Respondents knowingly and voluntarily waive any right under 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 and Respondent Spouse acknowledge that they have been represented by an attorney in this matter, Respondents have reviewed this Order with their attorney, LaShawn Jenkins, and understand all terms it contains. Respondents and Respondent Spouse acknowledge that their attorney has apprised them of their rights regarding any conflicts of interest arising from dual representation. Respondents and Respondent Spouse acknowledge that they have each given their informed consent to such representation.

5. Respondents admit the Findings of Fact and Conclusions of Law contained in this Order. Respondents agree that they shall not contest the validity of the Findings of Fact and Conclusions of Law contained in this Order in any present or future proceeding in which the Commission is a party. Respondents further agree that they shall not deny or contest the Findings of Fact and Conclusions of Law contained in this Order in any present or future: (a) bankruptcy proceeding, or (b) non-criminal proceeding in which the Commission is a party (collectively, "proceeding(s)"). They further agree that in any such proceedings, the Findings of Fact and Conclusions of Law contained in this Order may be taken as true and correct and that this Order shall

1 collaterally estop them from re-litigating with the Commission or any other state agency, in any
2 forum, the accuracy of the Findings of Fact and Conclusions of Law contained in this Order. In the
3 event Respondents or Respondent Spouse pursues bankruptcy protection in the future, they further
4 agree that in such bankruptcy proceeding, pursuant to 11 U.S.C. § 523(a)(19), the following
5 circumstances exist:

6 A. The obligations incurred as a result of this Order are a result of the conduct set forth in
7 the Findings of Fact and Conclusions of Law in the Order and are for the violation of Arizona
8 state securities laws, pursuant to 11 U.S.C. § 523(a)(19)(A)(i);

9 B. This Order constitutes a judgment, order, consent order, or decree entered in a state
10 proceeding pursuant to 11 U.S.C. § 523(a)(19)(B)(i), a settlement agreement entered into by
11 Respondents X and Respondent Spouse pursuant to 11 U.S.C. § 523(a)(19)(B)(ii), and a court
12 order for damages, fine, penalty, citation, restitution payment, disgorgement payment,
13 attorney fee, cost or other payment owed by Respondents X and Respondent Spouse pursuant
14 to 11 U.S.C. § 523(a)(19)(B)(iii).

15 6. Respondents represent that they have corrected the violations described in the
16 Findings of Fact and Conclusions of law portions of the Order.

17 7. By consenting to the entry of this Order, Respondents agree not to take any action or
18 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of
19 Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual
20 basis.

21 8. While this Order settles this administrative matter between Respondents and the
22 Commission, Respondents understand that this Order does not preclude the Commission from
23 instituting other administrative or civil proceedings based on violations that are not addressed in this
24 Order.

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

4 10. Respondent Miller and Respondent Spouse acknowledge that any penalties imposed
5 by this Order are obligations of Miller as well as the marital community.

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

8 12. Respondents acknowledge and understand that if a Respondent fails to comply with
9 the provisions of this Order and this consent, including a failure to timely pay the administrative
10 penalties as ordered, the Commission may bring further legal proceedings against Respondents,
11 including administrative proceedings to suspend or revoke Respondents' licensure with the
12 Commission and an application to the superior court for an order of contempt.

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

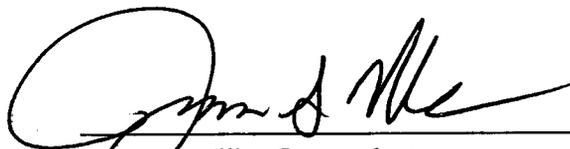
17 14. Respondents understand that default shall render Respondents liable to the
18 Commission for its costs of collection and interest at the maximum legal rate.

19 15. Respondent Miller represents that he is a member of Respondent BWA and has been
20 authorized by BWA to enter into this Order for and on behalf of it.

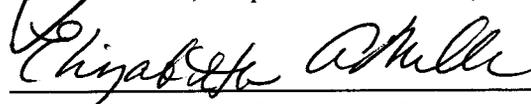
21 [Signature pages are below.]
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1 **Signature page for Respondent Miller and Respondent Spouse**

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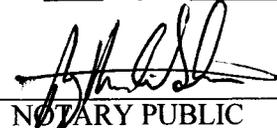
James S. Miller, Respondent



Elizabeth A. Miller, Respondent Spouse

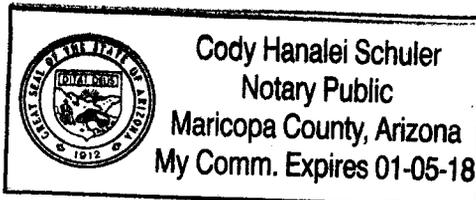
STATE OF ARIZONA)
) ss
County of)

SUBSCRIBED AND SWORN TO BEFORE me this 23rd day of October, 2015.


NOTARY PUBLIC

My commission expires:

01/05/2018



1 **Signature page for Respondent BWA**

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BILTMORE WEALTH ADVISORS, LLC, an
Arizona limited liability company

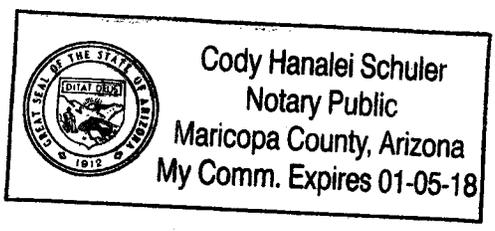
By: *[Signature]*
Its: *Founder & CEO*

STATE OF ARIZONA)
) ss
County of)

SUBSCRIBED AND SWORN TO BEFORE me this 23rd day of October, 2015.

[Signature]
NOTARY PUBLIC

My commission expires:
01/05/2018



1 SERVICE LIST FOR: In the matter of James S. Miller, et al.

2
3 LaShawn D. Jenkins, Esq.
4 Jenkins Law Firm
5 4020 N. 20th St., Suite 100
6 Phoenix, Arizona 85016
7 *Attorney for Respondents*
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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

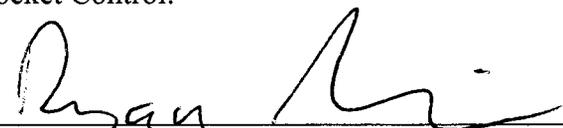
SUSAN BITTER SMITH, Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

In the matter of:)
)
BILTMORE WEALTH ADVISORS, LLC, an)
Arizona limited liability company, and)
)
JAMES S. MILLER and Elizabeth A. Miller,)
husband and wife,)
)
Respondents.)

DOCKET NO. S-20942A-15-0341

**NOTICE OF FILING OF PROPOSED
OPEN MEETING AGENDA ITEM**

Pursuant to A.A.C. R14-4-303, you are hereby notified that the attached: Order to Cease and Desist, Order for Restitution, and Order for Administrative Penalties, and Consent to Same, was filed with the Arizona Corporation Commission's Docket Control.

Dated: 11/3/15 By: 
Ryan J. Millicam, Staff Attorney

I hereby certify that I have this day served the foregoing document on all parties of record in this proceeding by mailing a copy thereof, properly addressed with first class postage prepaid to:

LaShawn D. Jenkins, Esq.
Jenkins Law Firm
4020 N. 20th St., Suite 100
Phoenix, Arizona 85016
Attorney for Respondents

Dated: 11/3/15 By: 
Emie R. Bridges, Executive Assistant

Decision No. _____