

NEW APPLICATION



0000171278

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

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2016 JUN 22 P 2: 53

AZ CORP COMMISSION
DOCKET CONTROL

In the matter of:	DOCKET NO. S-20973A-16-0199
TRACY N. WENGERT-CRD #3182678, and	NOTICE OF OPPORTUNITY FOR HEARING
JEANETTE WENGERT, husband and wife,	REGARDING PROPOSED ORDER TO CEASE
Respondents.	AND DESIST, ORDER OF REVOCATION,
	ORDER FOR RESTITUTION, ORDER FOR
	ADMINISTRATIVE PENALTIES, AND
	ORDER FOR OTHER AFFIRMATIVE
	ACTION

NOTICE: RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that Tracy N. Wengert ("Respondent") has engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona and provide grounds for revocation of his registration as a securities salesman under 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 to this matter, Respondent was married to Jeanette Wengert, and a resident of Arizona.

Arizona Corporation Commission
DOCKETED

JUN 22 2016

DOCKETED BY	
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1 3. Since at least February 18, 1999, to January 30, 2015, Respondent was registered with
2 the Financial Industry Regulatory Authority¹ (“FINRA”) and the Commission, in association with dealer
3 Transamerica Financial Advisors, Inc. (“Transamerica”), as a securities salesman, based in Arizona.

4 4. Jeanette Wengert (“Respondent Spouse”) is joined in this action under A.R.S. § 44-
5 2031(C) solely for purposes of determining the liability of the marital community.

6 5. At all times relevant, Respondent was acting for his own benefit and for the benefit or in
7 furtherance of his and Respondent Spouse’s marital community.

8 **III.**

9 **FACTS**

10 6. Between 2010 through 2015, Respondent, while associated with Transamerica, was the
11 account executive for at least five Arizona Investors’ individual retirement accounts [all five Investors
12 may be collectively referred to as “TDA Investors”].

13 7. The TDA Investors informed the Respondent that they were each looking for a secure
14 and low-risk investment; given that they were either retired or getting close to retirement age, and lacked
15 expertise with little-to-no experience in handling their financial affairs.

16 8. Respondent represented to at least one of the TDA Investors that Respondent “would
17 double or triple his money,” if the Investor opened a TD Ameritrade, Inc.² (“TD Ameritrade”) account,
18 and gave Respondent oral discretionary authority to execute trades in his account.

19 9. Respondent suggested to at least four of the TDA Investors to close out their
20 Transamerica retirement accounts, and open accounts with TD Ameritrade.

21 10. Respondent represented to at least two of the TDA Investors that their investments would
22 be secure and low-risk if they allowed Respondent to have oral discretionary authority over their TD
23 Ameritrade accounts.

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25 _____
26 ¹ FINRA is a non-governmental self-regulatory organization (SRO) authorized as a national securities association of
broker-dealers, under Section 15A of the Securities Act of 1934.

² TD Ameritrade, Inc., is a broker-dealer firm registered with FINRA (CRD #7870).

1 11. Respondent also suggested to another TDA Investor “to open a low-risk account with
2 TD Ameritrade,” in addition to her Transamerica account.

3 12. Respondent represented to a sixty-eight year old TDA Investor that if she opened a TD
4 Ameritrade account and gave Respondent oral discretionary authority to execute trades in her account,
5 she would have more investment choices, “which would be better suited for someone in her age bracket.”

6 13. The TDA Investors, as per the recommendation of the Respondent, opened individual
7 TD Ameritrade accounts. Respondent’s name was not on any of the TDA Investors’ accounts; however
8 Respondent was present, by way of conference call, and assisted each TDA Investor when they opened
9 their individual TD Ameritrade accounts. Respondent obtained each TDA Investor’s log-in information,
10 and was orally given discretion by each TDA Investor to execute trades on their behalf. Respondent
11 never obtained written discretionary authority to make transactions on behalf of the TDA Investors’
12 accounts.

13 14. Respondent failed to execute TD Ameritrade’s Trading Authorization Agreement
14 (“TAA”) authorizing him to trade on behalf of the TDA Investors. In this instance, the TAA would have
15 been a signed formal agreement between the Respondent and each TDA Investor, where they would
16 have authorized the Respondent to act as an authorized agent on their behalf. The TAA would have
17 notified TD Ameritrade that the Respondent was an authorized agent to trade on behalf of each of the
18 TDA Investor’s accounts.

19 15. At least three of the TDA Investors believed that Respondent would be handling their
20 TD Ameritrade accounts through his employment and affiliation with Transamerica. Respondent failed
21 to disclose to the TDA Investors that Respondent was never affiliated with TD Ameritrade, nor
22 registered as a securities salesman with TD Ameritrade.

23 16. At no time did the TDA Investors make any of the trades in their own individual TD
24 Ameritrade accounts. Each TDA Investor trusted the Respondent to execute trades on their behalf. The
25 TDA Investors admitted they lacked investment expertise and experience and relied solely on the
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1 Respondent to regularly update them on the status of their individual TD Ameritrade accounts even
2 though each received in electronic or written form their monthly financial statements.

3 17. Respondent disclosed to Investor A and Investor D that he would trade in Apple, Inc.
4 (“Apple”) stocks “because it was a large and reputable company,” however Respondent failed to
5 disclose to any of the TDA Investors that his investment strategy was to primarily trade in put and call
6 options, and use margin to buy options, of Apple stock. Respondent also failed to disclose any potential
7 risks associated with option trading, and that option trading is a more aggressive form of investment.
8 Respondent’s actions resulted in all of the TDA Investors losing substantial amounts of money over
9 short periods of time, specifically:

10 • In the month of May 2011, Investor A’s TD Ameritrade account lost approximately
11 \$22,000;

12 • In the month of July 2011, Investor B’s TD Ameritrade account lost approximately
13 \$291,000;

14 • In the month of February 2012, Investor E’s TD Ameritrade account lost approximately
15 \$311,000;

16 • In the month of September 2012, Investor D’s TD Ameritrade account lost
17 approximately \$42,000;

18 • In the month of September 2012, Investor C’s TD Ameritrade account lost
19 approximately \$241,000;

20 • In the month of January 2013, Investor C’s TD Ameritrade account lost approximately
21 \$73,000;

22 • In the month of March 2013, Investor B’s TD Ameritrade account lost approximately
23 \$46,000; and

24 • In the month of June 2014, Investor E’s TD Ameritrade account lost approximately
25 \$280,000.
26

1 18. In July 2013, Investor A requested an update on the status of his TD Ameritrade
2 accounts. Respondent represented that Investor A's accounts "were doing just fine." When in fact,
3 from February 2013 to July 2013, there was no trading activity in either of Investor A's TD
4 Ameritrade accounts and the two accounts had a collective balance of only \$325. Subsequently,
5 Respondent informed Investor A that his "TD Ameritrade accounts were not doing well, and that
6 Respondent made a mistake and lost all the money."

7 19. All TDA Investors paid commissions to TD Ameritrade for every transaction executed.
8 TD Ameritrade automatically deducted the fees directly from each individual TDA Investors' account.
9 In addition, at least two of the TDA Investors compensated Respondent for executing trades through the
10 Investors' TD Ameritrade accounts, specifically:

- 11 • Investor B paid Respondent approximately \$24,400; and
- 12 • Investor E paid Respondent [from September 2013 through December 2013]
13 approximately \$96,000.

14 20. In a document Respondent submitted to FINRA³, he acknowledged that "Investor E paid
15 him approximately \$96,000" for compensation.

16 21. Respondent represented to Investor E that "she would owe him a percentage of the
17 money he made for her," as compensation. Investor E asked the Respondent to "have the figure put on
18 paper, and write down the monies made and the monies owed to him" for compensation. Respondent
19 failed to disclose or provide an invoice to Investor E regarding any monies made or how the
20 compensation was to be calculated.

21 22. On or about October 6, 2014, Investor E informed the Respondent that she wanted to
22 know the balance of her TD Ameritrade account, as well as to close out her TD Ameritrade account,
23 and find another financial planner because she felt that something was not right in how the
24 Respondent was handling her TD Ameritrade account. Respondent represented to Investor E that

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26 ³ In August 2015, Respondent filed an Answer with FINRA, in response to Investor E's Statement of Claim and Demand for Arbitration filed against the Respondent. Respondent admitted in his response that he was paid approximately \$96,000 by Investor E.

1 “the current balance on her TD Ameritrade account was \$318,000.” When, in fact, for October 2014,
2 there was sparse activity in Investor E’s TD Ameritrade account. The account had an opening balance
3 of approximately \$809 and a closing balance of \$2.87. At no time in October 2014, was Investor E’s
4 TD Ameritrade account balance at or near \$318,000.

5 23. The TDA Investors collectively invested approximately \$1,830,000 into their TD
6 Ameritrade accounts. At least four of the TDA Investors received back approximately \$433,000. The
7 remaining principal amount owed to the TDA Investors is \$1,397,379.75.

8 TRANSAMERICA

9 24. From 2010 through 2015, Respondent failed to disclose or update his annual disclosure
10 forms to Transamerica regarding Respondent’s outside business activities, specifically: Respondent’s
11 handling the TDA Investors’ TD Ameritrade accounts and executing trades on behalf of the TDA
12 Investors’ accounts, in or through TD Ameritrade.

13 25. On January 5, 2015, Transamerica began an investigation of the Respondent in response
14 to a civil suit filed against him by Investor B. At that time, Respondent was placed on suspension by
15 Transamerica.

16 26. On or about January 30, 2015, Transamerica terminated Respondent, for cause.

17 27. Transamerica’s Uniform Termination Notice for Securities Industry Registration (“Form
18 U5”) was filed on or about February 2, 2015, Respondent is alleged to have managed client accounts on
19 a discretionary basis without approval or oversight through another broker-dealer, namely TD
20 Ameritrade.

21 28. On September 25, 2015, Transamerica amended the Respondent’s Form U5 to disclose
22 a customer arbitration filing alleging that Respondent established accounts for the client outside of
23 Transamerica and made unsuitable trades.

FINRA

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2 29. In connection with Respondent's for cause termination from Transamerica, FINRA's
3 Department of Enforcement conducted an investigation into Respondent's conduct as reported by
4 Transamerica Form U5 filing.

5 30. Respondent entered into a FINRA Letter of Acceptance, Waiver and Consent
6 ("AWC") which was accepted by FINRA on October 29, 2015.

7 31. The AWC states, in connection with an investigation by FINRA's Department of
8 Enforcement, Respondent is alleged to have opened brokerage accounts outside of the Firm on behalf
9 of Firm customers and engaged in unsuitable trading.

10 32. Under the AWC, Respondent agreed to a permanent bar from association with any
11 FINRA-regulated broker-dealer in any capacity, for failure to comply with FINRA Rules,
12 specifically: Respondent failed to produce FINRA requested documents and information. The bar
13 became effective October 29, 2015.

14 33. Respondent is not currently registered with FINRA or the Commission.

15 34. Notwithstanding that Respondent is not currently registered with the Commission, under
16 A.R.S. § 44-1963(D) Respondent continues to be subject to the Commission's jurisdiction for two years
17 after the termination of his registration for the purpose of denying, suspending, or revoking his
18 registration in connection with conduct that began before the termination of his registration.

IV.**VIOLATION OF A.R.S. § 44-1991****(Fraud in Connection with the Offer or Sale of Securities)**

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22 35. In connection with the offer or sale of securities within or from Arizona, Respondent,
23 directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue
24 statements of material fact or omitted to state material facts that were necessary in order to make the
25 statements made not misleading in light of the circumstances under which they were made; or (iii)
26 engaged in transactions, practices, or courses of business that operated or would operate as a fraud

1 or deceit upon offerees and Investors. Respondent's conduct includes, but is not limited to the
2 following:

3 a) Respondent failed to disclose to the TDA Investors, that his investment
4 strategy would be to primarily trade options in Apple stock;

5 b) Respondent failed to disclose that option trading is a more aggressive form of
6 investing;

7 c) Respondent failed to disclose any risks associated with trading in options,
8 even though the TDA Investors informed Respondent, that they wanted a secure and low-risk
9 investment;

10 d) Respondent failed to disclose to at least Investors A, C, and E that Respondent
11 was selling away from his registered dealer, Transamerica, by executing transactions in their TD
12 Ameritrade accounts;

13 e) Respondent misrepresented to the TDA Investors that if they gave him oral
14 discretionary authority to execute trades through their individual TD Ameritrade accounts, he would
15 invest in secure and low-risk investments;

16 f) Respondent misrepresented to Investor A that Respondent "would double or
17 triple his money," if given oral discretionary authority to execute trades in his TD Ameritrade
18 accounts;

19 g) In July 2013, Respondent further misrepresented to Investor A that his TD
20 Ameritrade accounts were "doing just fine." When in fact, from February 2013 to July 2013, there
21 was no trading activity in either of Investor A's TD Ameritrade accounts and the two accounts had
22 a collective balance of only \$325;

23 h) Respondent misrepresented to Investor C [who was 68 yrs. old] that if she
24 opened a TD Ameritrade account, and gave Respondent oral discretionary authority to execute trades
25 in her account, she would have more investment choices, "which would be better suited for someone in
26 her age bracket;" and

1 45. Respondent's conduct is grounds assess restitution, penalties, and/or take appropriate
2 affirmative action pursuant to A.R.S. § 44-1962.

3 VI.

4 REQUESTED RELIEF

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

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

8 2. Order Respondent to take affirmative action to correct the conditions resulting from
9 Respondent's acts, practices, or transactions, including a requirement to make restitution, pursuant to
10 A.R.S. §§ 44-1962 and 44-2032;

11 3. Order the revocation of Respondent's registration as a securities salesman pursuant to
12 A.R.S. §§ 44-1962 and 44-2032;

13 4. Order Respondent to pay the state of Arizona administrative penalties of up to five
14 thousand dollars (\$5000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

15 5. Order Respondent to pay the state of Arizona administrative penalties, pursuant to
16 A.R.S. §§ 44-1962 and 44-2032;

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

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

21 VII.

22 HEARING OPPORTUNITY

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

1 requesting Respondent must deliver or mail the request to Docket Control, Arizona Corporation
2 Commission, 1200 W. Washington St., Phoenix, Arizona 85007. Filing instructions may be obtained
3 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 20
6 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or
7 ordered by the Commission. If a request for a hearing is not timely made the Commission may, without
8 a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for
9 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. Bernal,
12 ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov. Requests should
13 be made as early as possible to allow time to arrange the accommodation. Additional information
14 about the administrative action procedure may be found at [http://www.azcc.gov/divisions/securities/
15 enforcement/AdministrativeProcedure.asp](http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp).

16 **VIII.**

17 **ANSWER REQUIREMENT**

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

24 Additionally, the answering Respondent must serve the Answer upon the Division. Pursuant
25 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
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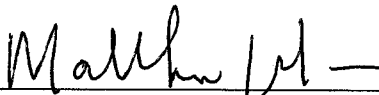
1 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
2 addressed to Michael Shaw.

3 The Answer shall contain an admission or denial of each allegation in this Notice and the
4 original signature of the answering Respondent or Respondent's attorney. A statement of a lack of
5 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not
6 denied shall be considered admitted.

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

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

12 Dated this 22 day of June, 2016.

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16 Matthew J. Neubert
17 Director of Securities
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