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NEW APPLICATION

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

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COMMISSIONERS

DOUG LITTLE - Chairman
BOB STUMP
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TOM FORESE
ANDY TOBIN

AZ CORP COMMISSION
DOCKET CONTROL

In the matter of:
John Anthony Waszolek (CRD No. 800403)
and Kathleen Waszolek, husband and wife,
Respondents.

DOCKET NO. S-20977A-16-0242

**NOTICE OF OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER FOR
RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES, ORDER OF
REVOCATION, AND ORDER FOR OTHER
AFFIRMATIVE ACTION**

**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 John Anthony Waszolek (CRD No. 800403) 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.

Arizona Corporation Commission

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1 **II.**

2 **RESPONDENTS**

3 2. John Anthony Waszolek ("Waszolek" or "Respondent") has resided in Arizona since
4 1979. Beginning on December 13, 1979, Waszolek has been licensed as a securities salesman by the
5 Commission (CRD No. 800403).

6 3. Kathleen Waszolek was at all relevant times the spouse of Waszolek. Kathleen
7 Waszolek may be referred to as "Respondent Spouse". Respondent Spouse is joined in this action under
8 A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

9 4. At all times relevant, Waszolek was acting for his own benefit and for the benefit or in
10 furtherance of his and Respondent Spouse's marital community.

11 **III.**

12 **FACTS**

13 *Waszolek's Tenure In The Securities Industry In Arizona*

14 5. In September 1979, Waszolek joined the Scottsdale, Arizona office of Paine Webber.
15 In 1999, UBS Financial Services Inc. ("UBS") (CRD No. 8174) acquired Paine Webber, and
16 Waszolek remained registered with UBS until March 6, 2009.

17 6. On March 6, 2009, Waszolek joined the Scottsdale office of Morgan Stanley & Co.
18 Incorporated (CRD No. 8209), which in June 2009 merged into Morgan Stanley Smith Barney (CRD
19 No. 149777). This Notice refers to Morgan Stanley & Co. Incorporated and Morgan Stanley Smith
20 Barney collectively as "Morgan Stanley." Waszolek was a registered representative of Morgan
21 Stanley from March 6, 2009 until January 27, 2012, when it terminated him.

22 7. Morgan Stanley filed a Uniform Termination Notice For Securities Industry
23 Registration Form U5 ("Form U5") on January 27, 2012, which terminated Waszolek's registration with
24 the securities industry's self-regulatory authority, FINRA, and the Commission. That U5 states that
25 Morgan Stanley terminated Waszolek due to "concerns regarding failure to follow policies and
26

1 procedures regarding a client's testamentary bequest to the advisor, and lack of execution of a
2 transaction relating to the client's successor trustee."

3 8. On February 7, 2012, Waszolek once again became a registered representative with
4 FINRA and a registered securities salesman with the Commission when he joined the Scottsdale office
5 of broker-dealer Raymond James & Associates, Inc. ("Raymond James") (CRD No. 705). He
6 remained at Raymond James until June 18, 2015.

7 9. On June 18, 2015, Raymond James filed a Form U5 stating that it permitted Waszolek
8 to resign because "it became apparent that John Waszolek failed to give accurate and complete
9 information concerning the circumstances that led to his termination from his prior employer."

10 10. Waszolek is not currently registered with FINRA, and his registration with the
11 Commission has lapsed because he is not currently associated with a registered dealer.

12 11. Under A.R.S. § 44-1963(D), Waszolek continues to be subject to the Commission's
13 jurisdiction for two years after the lapse of his registration for the purpose of denying, suspending or
14 revoking his registration in connection with conduct that began before the lapse of his registration.

15 **JL Becomes Waszolek's Customer**

16 12. JL was born in 1927.

17 13. JL and her husband, WL, retired to a retirement community in Sun Lakes, Arizona.

18 14. In approximately 1982, while Waszolek was associated with Paine Webber, JL and
19 WL became Waszolek's clients.

20 15. JL and WL had no children.

21 16. On May 26, 1998, WL died.

22 17. After WL's death, JL lived alone in the Sun Lakes residence she had previously shared
23 with WL.

24 18. After WL's death, JL maintained an individual, commission-based account at UBS.
25 Waszolek was the registered representative on that account.

26

The JL Trust

19. On October 1, 2003, JL established a trust (the "JL Trust") and a Last Will and Testament (the "JL Will").

20. On November 3, 2003, JL's UBS individual account was retitled as a trust account in the name of the JL Trust (the "UBS JL Trust Account"). Waszolek was the registered representative on this account.

21. Under the terms of the JL Will, JL's estate assets were to be distributed "according to the terms and provisions of the [JL Trust], including any amendments thereto in effect at [JL's] death."

22. In its original form, the JL Trust designated JL as trustor and trustee. Upon JL's death, incapacity or resignation, Comerica Bank & Trust, N.A. ("Comerica") was to serve as successor trustee.

23. Upon JL's death, the JL Trust called for the distribution of personal property to certain family members and the distribution of cash proceeds, which would be derived from the UBS JL Trust Account, to four charities (collectively, the "Charitable Beneficiaries") as follows:

Distribution of Cash Proceeds

<u>Distribution Amount</u>	<u>Beneficiary</u>	<u>Location</u>
40%	Charity A	Chandler, Arizona
25%	Charity B	Phoenix, Arizona
25%	Charity C	Tampa, Florida
10%	Charity D	Nevada, Missouri

24. According to Waszolek, in 2003 when JL established the JL Trust, "She was just another client to me...."

1 36. Attorney One prepared a "Health Care Power of Attorney and Living Will" appointing
2 Waszolek as JL's "agent and attorney-in-fact."

3 37. Attorney One refused, however, to prepare an amendment to the JL Trust until JL's
4 testamentary capacity was evaluated.

5 38. On November 17, 2008, Attorney One referred JL to PW, a clinical
6 neuropsychologist, for an evaluation to determine JL's testamentary capacity.

7 39. On December 7, 2008, PW sent Attorney One a report of PW's evaluation of JL (the
8 "PW Report"), which stated, in part, that JL was "susceptible to undue influence" and did not have
9 testamentary capacity.

10 40. PW further opined that JL was "*completely unable to protect herself from*
11 *exploitation.*" (Emphasis added).

12 41. In December 2008, Waszolek received and reviewed a copy of the PW Report.

13 42. After Attorney One reviewed the PW Report, she informed Waszolek she would not
14 draft the amendment to JL's Trust to make him a beneficiary.

15 ***Waszolek Refers JL To Another Attorney To Amend The JL Trust***

16 43. In late 2008, Waszolek arranged for JL to move to an assisted living facility in
17 Scottsdale, which was closer to his home. The drive of approximately 35 minutes from Scottsdale
18 to Chandler had been frustrating Waszolek. So he arranged for JL to move to Scottsdale to be closer
19 to him.

20 44. In approximately March 2009, a physician at JL's assisted living facility again
21 diagnosed JL as suffering from Alzheimer's disease. Waszolek was present when the physician gave
22 the diagnosis.

23 45. Also in March 2009, Waszolek contacted another attorney ("Attorney Two") for the
24 purpose of amending the JL Trust.

25 46. Waszolek had known Attorney Two for over twenty years. Attorney Two did legal
26 work for several of Waszolek's clients.

1 47. Waszolek wanted Attorney Two to facilitate JL's amendment of her Trust despite
2 knowing that JL suffered from Alzheimer's disease, and a neuropsychologist had recently concluded
3 that she lacked testamentary capacity and was "completely unable to protect herself from
4 exploitation."

5 48. On March 5, 2009, Attorney Two met with JL at her assisted living facility.

6 49. That same day, JL purportedly signed an amendment to her Trust (the "JL Trust
7 Amendment") that reduced the amount to be distributed to the Charitable Beneficiaries by
8 \$1,321,082.45 and instead directed that Waszolek receive that amount. The JL Trust Amendment's
9 changes to the cash distributions are reflected on the following table:

<u>Original Distribution</u> <u>Amount</u>	<u>Approximate Value</u> <u>of Original</u> <u>Distribution Amount</u> <u>As of March 2009</u>	<u>New Distribution</u> <u>Amount Under</u> <u>Amendment</u>	<u>Beneficiary</u>
40%	\$568,432.98	\$40,000	Charity A
25%	\$355,270.61	\$25,000	Charity B
25%	\$355,270.61	\$25,000	Charity C
10%	\$142,108.25	\$10,000	Charity D
0%	\$0	\$1,321,082.45	Waszolek

20
21 50. In addition to adding Waszolek as a beneficiary, the JL Trust Amendment appointed
22 Waszolek to serve as the successor trustee upon the resignation, incapacity or death of JL.

23 51. In March 2009, UBS maintained written policies requiring: "If an employee becomes
24 aware of being named as the beneficiary of a non-family bequest or inheritance from a client, the
25 employee must immediately notify his or her [Branch Office Manager] or Supervisor, who should
26 consult with the Regional Compliance Officer."

1 52. Similarly, in March 2009, UBS maintained written policies that prohibited an
2 employee from serving as a trustee or in any fiduciary capacity for any non-family related person
3 “without the prior written consent of [UBS].”

4 53. While he was at UBS, Waszolek signed annual certifications acknowledging that it
5 was his responsibility to familiarize himself with UBS’ policies, and that he in fact adhered to the
6 firm’s written policies. In these certifications, Waszolek also represented he had not “engaged in
7 activities, interests or relationships that might conflict, or appear to conflict, with [his] ability to act
8 in the best interest of the Firm and its clients.”

9 54. Waszolek failed to disclose to UBS that he had received a healthcare power of attorney
10 for JL in November 2008.

11 55. Waszolek failed to disclose to UBS that through the JL Trust Amendment, he was to
12 serve as the successor trustee and be the residual beneficiary of the JL Trust.

13 ***Waszolek Leaves UBS and Registers With Morgan Stanley***

14 56. On March 6, 2009, the day after the JL Trust Amendment was made, Waszolek
15 resigned from UBS and joined Morgan Stanley.

16 57. On March 8, 2009, the UBS JL Trust Account was transferred from UBS to Morgan
17 Stanley (the “Morgan Stanley JL Trust Account”). Waszolek remained the registered representative
18 on this account.

19 58. In connection with the transfer of the Trust Account from UBS, Waszolek submitted
20 to Morgan Stanley an “Active Assets Account Application,” which JL purportedly signed on March
21 10, 2009.

22 59. The Account Application failed to mention the JL Trust Amendment and left blank
23 the space for “The date of the latest trust amendment (if any). . . .”

24 60. The Account Application also left blank the space for “Successor Trustee” even
25 though Waszolek knew he had been appointed successor trustee just five days earlier.

26

1 61. On March 12, 2009, Waszolek provided Morgan Stanley with a copy of the JL Trust
2 but not the JL Trust Amendment that JL purportedly signed a week earlier.

3 62. In March 2009, Morgan Stanley's written supervisory policies governing fiduciary
4 appointments and beneficiary designations stated in relevant part:

5 A **fiduciary** is any person who holds, or controls, assets for the benefit
6 of another person. Types of fiduciaries include **trustees**, executors,
7 administrators, **attorneys-in-fact (such as those holding a power of attorney)**, conservators, custodians and guardians.

8 In general, **an FA/IR may not act as a fiduciary for any person**. As
9 described below, exceptions may sometimes be granted, particularly
10 for immediate family members. In these cases, your approval and that
11 of the Compliance Department is required prior to the FA/IR agreeing
12 to serve in any fiduciary capacity. In addition, **an FA/IR may not knowingly be designated as a beneficiary under a client's will, trust, IRA, TOD or other account or instrument that would take effect at death, other than for family members**. [Emphases added].

13 63. On February 25, 2010, Waszolek completed a Morgan Stanley Sales Questionnaire in
14 which he was asked, "Are you named as a beneficiary on any non-family member account(s) which
15 has been opened within the last 12 months?" Despite being named the residual beneficiary for the
16 JL Trust, an account he opened at Morgan Stanley less than 12 months earlier, Waszolek answered
17 "No."

18 64. Morgan Stanley's Sales Questionnaire also asked, "Do you have any accounts
19 (Morgan Stanley Smith Barney or NON-Morgan Stanley Smith Barney) for which you act in a
20 fiduciary capacity?" Despite being named the successor trustee for the JL Trust and having a
21 healthcare power of attorney for JL, Waszolek answered "No."

22 65. From March 6, 2009, until at least August 2, 2010, Waszolek failed to disclose to
23 Morgan Stanley that he functioned as a fiduciary for JL because he held a healthcare power of
24 attorney for her and he was named as the successor trustee.

25 66. During that same 14-month period, Waszolek failed to disclose to Morgan Stanley
26 that he was the residual beneficiary of JL's Trust.

1 *JL Dies And Waszolek Attempts To Collect \$1.8 Million From Her Estate*

2 67. On April 19, 2010, Waszolek executed a "Declination of Nominated Successor
3 Trustee," which, under the JL Trust Amendment, had the effect of making Comerica the successor
4 trustee instead of Waszolek upon JL's death.

5 68. On May 8, 2010, JL passed away. She was 83 years old.

6 69. Following JL's death, Waszolek attempted to collect as the residual beneficiary the
7 cash proceeds held within the Morgan Stanley JL Trust Account, which had increased in value to
8 over \$1.8 million.

9 70. Comerica, the successor trustee of the JL Trust, refused to distribute this amount to
10 Waszolek unless and until Morgan Stanley approved the distribution.

11 71. On August 2, 2010, Waszolek requested approval from Morgan Stanley to be a
12 beneficiary of JL's Trust.

13 72. On August 3, 2010, Morgan Stanley informed Waszolek that it denied his request to
14 make an exception to the firm's policy prohibiting employees from being a beneficiary under a
15 client's will or trust.

16 73. On October 27, 2010, Morgan Stanley again informed Waszolek that "the firm has
17 denied your request for an exception to inherit your deceased client's assets under her trust
18 instrument."

19 74. On January 6, 2011, Morgan Stanley issued a Letter of Reprimand, which Waszolek
20 signed on February 25, 2011. The Letter of Reprimand stated in relevant part: "Based on our
21 investigation, the Firm has concluded that you violated Morgan Stanley Smith Barney policies and
22 procedures. Specifically, you failed to disclose to the Firm that (1) you were the fiduciary for a Firm
23 customer and that (2) you were also the beneficiary of that customer's trust."

24 75. The Letter of Reprimand reiterated Morgan Stanley's denial of Waszolek's request to
25 inherit JL's assets from the JL Trust.

26

1 76. Beginning on September 17, 2010, Comerica distributed the personal property to JL's
2 specified family members, and cash proceeds to the Charitable Beneficiaries in the amounts set forth
3 in the JL Trust Amendment.

4 77. Comerica did not distribute to Waszolek the remaining cash proceeds to which he
5 contended he was entitled under the JL Trust Amendment.

6 78. Despite Morgan Stanley's repeated denials of his requests to receive a distribution
7 pursuant to the JL Trust Amendment and having received a Letter of Reprimand, on August 2, 2011,
8 Waszolek filed a "Petition for Trust Administration" in the Arizona Superior Court ("Waszolek's
9 Lawsuit").

10 79. Waszolek sought a court order requiring Comerica to (i) make a distribution to him
11 and (ii) issue instructions for the Morgan Stanley JL Trust Account to be transferred to him.

12 80. Comerica and the four Charitable Beneficiaries were all joined to Waszolek's
13 Lawsuit.

14 81. Waszolek did not inform Morgan Stanley he had filed a lawsuit seeking to inherit JL's
15 remaining assets.

16 82. Morgan Stanley learned of Waszolek's Lawsuit in November 2011, when Comerica
17 contacted Morgan Stanley's Trust Department to discuss Comerica's concerns regarding Waszolek's
18 actions regarding the JL Trust.

19 83. On January 27, 2012, Morgan Stanley terminated Waszolek for the reasons it stated in
20 its U5 filing of that date, namely "concerns regarding failure to follow policies and procedures
21 regarding a client's testamentary bequest to the advisor, and lack of execution of a transaction relating
22 to the client's successor trustee."

23 84. Ultimately, Waszolek entered into a settlement agreement with Comerica and the
24 Charitable Beneficiaries.

1 85. Under the settlement, Waszolek received \$50,000 from Comerica, although none of
2 that amount came from the assets of the JL Trust. In fact, as part of the settlement, Waszolek agreed
3 the JL Trust Amendment was “invalid by reason of [JL’s] incapacity.”

4 ***FINRA’s Investigation and Disciplinary Action Against Waszolek***

5 86. In February 2012, Raymond James hired Waszolek as a Senior Vice President in its
6 Scottsdale office.

7 87. Also in February 2012, FINRA began investigating Waszolek based on the reasons
8 Morgan Stanley stated for terminating him in its U5 filing.

9 88. As part of its investigation, on February 14, 2013, FINRA took Waszolek’s testimony
10 in FINRA’s offices in Woodbridge, New Jersey.

11 89. On June 11, 2015, FINRA initiated an action against Waszolek in Disciplinary
12 Proceeding No. 2012031181001.

13 90. On June 18, 2015, Waszolek’s employment with Raymond James terminated.

14 91. Raymond James filed a U5 stating that it permitted Waszolek to resign because “It
15 became apparent that John Waszolek failed to give accurate and complete information concerning
16 the circumstances that led to his termination from his prior employer [Morgan Stanley].”

17 92. On July 13, 2015, FINRA accepted an Offer of Settlement with Waszolek in
18 Disciplinary Proceeding No. 2012031181001. FINRA entered an Order Accepting Offer of
19 Settlement (“Order”) that same date.

20 93. In the Order, FINRA found that Waszolek had violated FINRA Rule 2010 by taking
21 “unfair advantage of JL by having JL give Waszolek the[] roles and responsibilities [as successor
22 trustee and residual beneficiary] when he knew of her declining mental condition and lack of
23 testamentary capacity.”

24 94. FINRA also found that Waszolek violated FINRA Rule 2010 by concealing his role
25 as successor trustee, beneficiary and health care power of attorney for JL from UBS and Morgan
26 Stanley in violation of those firms’ written policies.

1 95. FINRA ordered that Waszolek be barred from association in any and all capacities
2 with any FINRA member. FINRA further found that this permanent bar against Waszolek was in
3 the public interest.

4 **IV.**

5 **REMEDIES PURSUANT TO A.R.S. § 44-1962**

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

8 96. Waszolek's conduct is grounds to revoke his registration as a securities salesman with
9 the Commission pursuant to A.R.S. § 44-1962(A)(10). Specifically, Waszolek has engaged in dishonest
10 or unethical practices in the securities industry by:

11 a) Procuring the JL Trust Amendment to become the residual beneficiary and
12 successor trustee despite knowing that JL suffered from dementia and Alzheimer's disease, and a
13 neuropsychologist had concluded before the amendment that JL lacked testamentary capacity and was
14 "completely unable to protect herself from exploitation;"

15 b) Concealing from UBS that he held the health care power of attorney for JL in
16 violation of that firm's written policies;

17 c) Concealing from Morgan Stanley his role as successor trustee and residual
18 beneficiary of the JL Trust, and that he held the health care power of attorney for JL, in violation of that
19 firm's written policies;

20 d) Falsely certifying to Morgan Stanley on its Sales Questionnaire dated February
21 25, 2010, that he was not named as a beneficiary on any non-family member accounts which had been
22 opened within the previous 12 months, when he was in fact the residual beneficiary of the JL Trust
23 Account;

24 e) Falsely certifying to Morgan Stanley on its Sales Questionnaire dated February
25 25, 2010, that he did not have any accounts for which he acted in a fiduciary capacity, when he was the
26 designated successor trustee for the JL Trust and held a healthcare power of attorney for JL; and

1 f) Failing to give Raymond James accurate and complete information concerning
2 the circumstances that led Morgan Stanley to terminate him.

3 97. The following additional grounds exist to revoke Waszolek's registration as a securities
4 salesman with the Commission pursuant to A.R.S. § 44-1962(A):

5 a) Waszolek is lacking in integrity or is not of good business reputation within the
6 meaning of A.R.S. § 44-1962(A)(4);

7 b) Waszolek is not employed by a registered dealer within the meaning of A.R.S.
8 § 44-1962(A)(5); and

9 c) Waszolek is subject to an order of FINRA, an SRO, permanently revoking
10 membership or registration as a broker or dealer in securities within the meaning of A.R.S. § 44-
11 1962(A)(8).

12 98. Waszolek's conduct is grounds to assess penalties and take other appropriate affirmative
13 action pursuant to A.R.S. § 44-1962(B). Specifically, Waszolek has engaged in dishonest or unethical
14 practices in the securities industry as alleged above.

15 **V.**

16 **REQUESTED RELIEF**

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

18 1. Order the revocation of Waszolek's registration as a securities salesman pursuant to
19 A.R.S. § 44-1962;

20 2. Order Waszolek to take affirmative action to correct the conditions resulting from his
21 acts, practices, or transactions pursuant to A.R.S. § 44-1962;

22 3. Order Waszolek to pay the state of Arizona administrative penalties, pursuant to A.R.S.
23 § 44-1962;

24 4. Order that the marital community of Waszolek and Respondent Spouse be subject to any
25 order of administrative penalties or other appropriate affirmative action pursuant to A.R.S. § 25-215;
26 and

1 Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007,
2 within 30 calendar days after the date of service of this Notice. 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>.

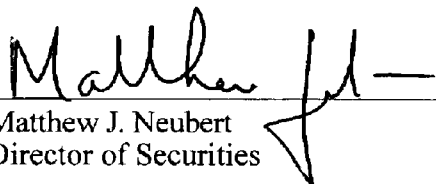
5 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant
6 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
7 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
8 addressed to James D. Burgess.

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

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

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

18 Dated this 8 day of July, 2016.

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21 Matthew J. Neubert
22 Director of Securities
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