

**ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND**

IN THE MATTER OF:	*	
DANIEL G. FALK, (Personally and as owner of Danuel G. Falk & Associates, PC and DGF Investment Advisors, Inc.)	*	
	*	
DANIEL G. FALK & ASSOCIATES, PC,	*	Case No. 2004-0536
	*	Case No. 2005-0054
DGF INVESTMENT ADVISORS, INC.,	*	
	*	
SEAN FALK, (personally and as owner of Secured Financial Services, Inc.)	*	
	*	
AND	*	
	*	
SECURED FINANCIAL SERVICES, INC.	*	
	*	
Respondents.	*	
	*	
* * * * * * *		

CONSENT ORDER

WHEREAS, the Securities Division of the Office of the Maryland Attorney General (the “Division”), pursuant to the authority granted by Section 11-701 of the Maryland Securities Act, Corporations and Associations Article, Title 11, Annotated Code of Maryland (1999 Repl. Vol. & Supp. 2004) (the “Securities Act”), conducted an investigation of Daniel G. Falk, Daniel G. Falk & Associates PC, DGF Investment Advisors, Inc., Sean Falk and Secured Financial Services, Inc. (collectively the “Respondents”); and

WHEREAS, on the basis of its investigation the Maryland Securities Commissioner (the “Commissioner”) has determined that Respondents have engaged in acts or practices constituting violations of provisions of the Securities Act; and

WHEREAS, on March 11, 2005, the Commissioner issued an Order to Show Cause against Respondents and issued an Order of Summary Postponement against Sean Falk; and

WHEREAS, without holding a hearing and without trial or adjudication of any issue of fact or law, the Commissioner and Respondents have reached an agreement to resolve this matter; and

WHEREAS, Respondents, without admitting or denying any of the Commissioner’s findings of fact or conclusions of law, except that Respondents expressly consent to the Commissioner’s jurisdiction in this proceeding pursuant to Section 11-701.1 of the Act, and to the terms of this Order; and

WHEREAS, Respondents may deny any findings of fact or conclusions of law of the Order in any other proceeding, litigation or arbitration against the Respondents in which the Commissioner is not a party or in connection with any inquiry or proceeding by the Commissioner of Insurance or any accountancy board; and

WHEREAS, the Commissioner has determined that it is in the public interest to issue this Consent Order.

NOW, THEREFORE, THE COMMISSIONER FINDS:

I.
JURISDICTION

1. The Securities Commissioner has jurisdiction in this proceeding pursuant to Section 11-701.1 of the Securities Act.

II. **RESPONDENTS**

2. Daniel G. Falk resides in Silver Spring, Maryland. He has been a registered investment adviser representative of DGF Investment Advisors, Inc. in Maryland since July 10, 1998. He is not registered as a broker-dealer or broker-dealer agent in Maryland.

3. DGF Investment Advisors, Inc. (the “IA Firm”) is doing business from 405 East Gude Drive, Suite 201, Rockville, Maryland 20850 and has been a registered investment adviser in Maryland since July 10, 1998. Daniel Falk is the owner and president of the IA Firm. The IA Firm is not registered as a broker-dealer in Maryland.

4. Daniel G. Falk & Associates, P.C. (the “CPA Firm”) is a Maryland professional corporation doing business from 405 East Gude Drive, Suite 201, Rockville, Maryland 20850. Daniel Falk is the owner and president of the CPA Firm. The CPA Firm is not registered as a broker-dealer or investment adviser in Maryland.

5. Sean Falk resides in Mt. Airy, Maryland. On December 16, 2004, Sean Falk applied to be a broker-dealer agent with Golden Beneficial Securities Corporation, a broker-dealer registered in Maryland.¹ He was a registered in Maryland as a broker-dealer agent with NT Securities, LLC (“NT”) from June 2003 until November 10, 2004, and before that was registered as a broker-dealer agent in Maryland with The Concord Equity Group, LLC between October 1999 and June 2003. Sean Falk is not registered as an investment adviser or investment adviser representative in Maryland.

6. Secured Financial Services, Inc. (“SFS”) is a Maryland corporation doing business

¹ Sean Falk voluntarily waived automatic effectiveness under Section 11-405(f) of the Act until March 25, 2005.

from 405 East Gude Drive, Suite 201, Rockville, Maryland 20850. Sean Falk is the owner and president. SFS is not registered as an investment adviser or broker-dealer in Maryland.

III. STATEMENT OF FACTS

7. Sean and Daniel Falk (collectively the “Falks”) operate their businesses from the same office. They share many of the same clients. Sean Falk acts as a broker-dealer agent and insurance sales person, and Daniel Falk acts as an investment adviser representative and accountant. According to information in Sean Falk’s Form U-4 filed with the Commissioner, he also works in administrative positions for Daniel Falk’s CPA and IA Firms. When clients come to the office at East Gude Drive, they routinely meet with both the Falks. Some clients do not distinguish the roles in which the Falks are acting when they meet with the Falks, and the Falks do not clarify their roles when they advise clients.

8. A business card used by Sean Falk stated that he offered the following services through SFS: “Investments - Stocks & Bonds, Mutual Funds, Fixed, Variable & Indexed Annuities, CDs, Portfolio Management.”

Mutual Benefits Corporation (“MBC”)

9. MBC is a viatical settlement company. It brokered viatical settlement contracts.

10. Viatical settlement contracts are contracts to purchase an interest in the benefits of a life insurance policy of a terminally ill or elderly person. A viatical settlement company locates insureds, known as viators, who sell the rights to the benefits of their life insurance policies. Viatical settlement companies also locate investors to buy those benefits for less than the face value of the policy.

11. In 2002, the Falks attended a training meeting in Florida with representatives of

MBC. During the meeting, MBC representatives described the history of viatical sales, including examples of fraudulent viatical companies. MBC representatives also explained that some states regulated viaticals as securities. The Falks state that in-house and outside general counsel for MBC told them that Maryland did not regulate viaticals as securities. The Falks relied on the representations made by MBC and its counsel and did no further investigation into MBC or the issue of whether viaticals were considered securities in Maryland.

12. On September 19, 2002, Daniel Falk and the CPA Firm entered into a Sales Representative Agreement with MBC.

13. On November 7, 2002, Daniel Falk and the CPA Firm sponsored a dinner at the Pooks Hill Marriott where the Falks offered and promoted MBC viaticals. Sean Falk assisted Daniel Falk at the dinner seminar. They continued to offer and sell MBC viaticals to Maryland investors and from Maryland through February 2003. They sold a total of \$725,000 worth of MBC viaticals. The CPA Firm earned \$68,800 in commissions. In addition, Daniel Falk personally invested in the MBC viaticals.

14. After MBS declined to accept additional Maryland sales, the Falks got in touch with the Division for the first time to inquire about the Division's position on vaticals.

15. In the spring of 2004, the SEC filed a complaint against MBC alleging the sale of unregistered securities and the operation of an illegal Ponzi scheme. The U.S. District Court for the Southern District of Florida has appointed a receiver to take over the operations of MBC. The court denied MBC's motion to dismiss, finding as a preliminary matter that MBC's viaticals are securities. That issue was affirmed on appeal by the Eleventh Circuit. A magistrate judge of that court also recommended granting the SEC's motion for preliminary injunction, finding fraud.

16. The Falks did not disclose to investors that the MBC viaticals were required to be

registered in Maryland but were not. Nor did they disclose previous SEC and CFTC orders against the owners and operators of MBC that found registration violations and fraud. The Falks state that they did not know about the regulatory orders against the owners and operators of MBC.

17. The viatical settlement contracts of MBC have never been registered with the Division. Nor has a claim of exemption or of preemption by federal legislation been filed with the Division.

Life Asset Partners I, LP (the “Partnership”)

18. The Partnership was formed on April 4, 2003. On June 12, 2003, the Partnership made a Regulation D, Rule 506 filing with the Division. According to the filing, no one was to be compensated for the sale of Partnership interests. The filing was made by counsel for the Partnership.

19. On August 28, 2003, SFS and the IA Firm entered into an agreement with Life Asset Group, LLC,² the general partner for the Partnership. Under the terms of the agreement, the general partner would “exclusively” use the IA Firm and SFS to promote the Partnership interests. According to the agreement, the IA Firm and SFS would share in the general partner’s management fee and profit distribution. Specifically, the IA Firm and SFS together were to be paid “A 1/3 (33.3%) share of all Partnership Management Fees (net of actual formation & funding costs, professional fees/expenses), that are earned and collected by the Life Asset Group (as General Partner) from the management of the Limited Partnership: LAP, ILP; to be paid from available cash-flow;” and 50% of the general partner’s profit distribution from the operation of the Partnership. None of this information was disclosed to investors in the offering material.

² The Falks are part owners in the general partner of the Partnership. The general partner later became Secondary Life Capital, LLC.

20. As of September 2, 2004, the IA Firm and SFS had effected sales of the Partnership interests to at least 28 investors. The sales totaled at least \$5,268,112. The IA Firm and SFS each received \$17,500 as their combined one-third (33%) share of the General Partner's Management Fee. The IA Firm and SFS would have continued to receive approximately \$17,500 per year for the life of the Partnership, had the payments not been voluntarily suspended by the General Partner and the Falks pending the outcome of the Division's investigation.

21. As a registered broker-dealer agent, Sean Falk was required to disclose all outside business activities to his broker-dealer. Sean Falk told NT that his outside business activities involving SFS were limited to the sale of insurance. He did not disclose that he was selling securities away from NT in the form of the Partnership interests. Sean Falk also did not tell his clients that he was not selling the Partnership interests through his broker-dealer and that the sale of Partnership interests had not been approved by his broker-dealer. Sean Falk did not disclose to clients that his failure to disclose his selling away activities was a violation of NASD rules that could result in his termination from his broker-dealer.³

Proffitt Trust - Custody

22. On December 21, 2001, Daniel Falk was named the trustee for the Revocable Trust Agreement of Claire B.M. Proffitt, William B.M. Proffitt and Cameron Proffitt Taylor (the "Proffitt Trust"). The Proffitt Trust agreement gave Daniel Falk control and custody of the assets in the Proffitt Trust.

23. Daniel Falk did not inform the Division that he had custody of client assets; nor did he have a surprise audit or maintain the bond required by the Division's investment adviser rules.

³ On November 10, 2004, Sean Falk was terminated for violation of the supervisory procedures with respect to his outside activities.

However, in response to the Division's inquiry, an independent certified public accountant conducted an audit of the Proffitt Trust and no other improprieties were found.

False Filing

24. On September 8, 2003, Sean Falk filed a Form U4 with the Division. In the section that requires disclosure of other business activities, Sean Falk disclosed that he worked for SFS, his insurance agency, but he did not disclose, as required, that his work with SFS was investment related.

25. On August 26, 2002, Daniel Falk filed a Form U4 with the Division. On September 19, 2002, Daniel Falk entered into an agreement with MBC to sell viaticals through the CPA firm. At that point, Daniel Falk was required to file an amendment to his Form U4 disclosing this information in the employment history and outside business activities sections of Form U4. He never filed the required amendment.

26. In Item 9 of Form ADV, Part 1A, investment advisers are required to disclose whether they have custody of client funds. The IA Firm had custody of client funds because of Daniel Falk's role as trustee of the Proffitt Trust. The IA Firm never disclosed in Item 9 of Form ADV, Part 1A that it had custody of client funds. In response to the Division's inquiry, Daniel Falk relinquished his role as Trustee.

27. In Schedule F of Form ADV, Part II, investment advisers are required to disclose the types of fees they charge and the services they provide. The IA Firm did not disclose that it was: (1) selling investments in the Partnership; (2) acting as a solicitor for the general partner of the Partnership; or (3) being compensated for soliciting investors in the Partnership.

Website

28. On August 27, 2004, the IA Firm's website stated that it "has beaten the S & P 500

Index on a cumulative basis over the past 4 years.” This was only true for the years 1998 through 2002. The IA Firm states that it cancelled the website subscription and stopped paying for it in 2003 and believed that the website had been take down. The IA Firm states that it did not update its performance figures because it was unaware that they were still posted.

IV. **CONCLUSIONS OF LAW**

THE COMMISSIONER, THEREFORE, CONCLUDES AS A MATTER OF LAW:

29. The MBC viatical settlement contracts described herein as offered and sold by the CPA Firm and the Falks constitute a “security” within the definition contained in Section 11-101(r) of the Securities Act.

30. The CPA Firm and the Falks offered and sold securities in violation of the registration requirements of Section 11-501 of the Securities Act.

31. SFS and Sean Falk violated Section 11-401 of the Securities Act by transacting business as an investment adviser or investment adviser representative in this State while they were not registered as such.

32. SFS, the CPA Firm, the IA Firm, and Daniel Falk violated Section 11-401 of the Securities Act by transacting business as a broker-dealer or broker-dealer agent in this State by effecting securities transactions in this State while they were not registered as such.

33. Respondents violated Section 11-301 of the Securities Act by directly or indirectly making untrue statements of a material fact or omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in connection with the offer, sale or purchase of any security.

34. Daniel Falk and the IA Firm violated Section 11-302(f) of the Securities Act by

failing to notify the Commissioner that they had custody of a client's assets and by failing to have an independent surprise examination of the client's assets.

35. The Falks, the IA Firm, and SFS violated Regulation .03B(8) of COMAR 02.02.05 by misrepresenting or omitting to fully disclose in writing to advisory clients the nature of the advisory fees to be charged for that service, or omitting to state a material fact necessary to make the statements made regarding fees, in light of the circumstances under which they are made, not misleading.

36. The IA Firm violated Regulation .03B(11) of COMAR 02.02.05 by failing to disclose to a client in writing before any advice is rendered a material conflict of interest relating to the investment adviser or any of its affiliates or employees that could reasonably be expected to impair the rendering of unbiased and objective advice, including conflicts of interest that may arise from charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to the advice will be received by any employee of the investment adviser.

37. The Falks, the IA Firm, and SFS violated Regulation .03B(16) of COMAR 02.02.05 by entering into advisory relationships without providing the required disclosures, including the disclosure of their advisory fee for the solicitation on behalf of the general partner.

38. The IA Firm and the Falks violated Sections 11-303 and 11-411 of the Securities Act by filing a document with the Commissioner that was at the time and in light of the circumstances under which it was made, false or misleading in a material respect and failing to promptly file a correcting amendment, when the information contained in the document filed with the Commissioner was or became inaccurate or incomplete in material respect.

V.
SANCTIONS

Respondents, on behalf of themselves, their successors, assigns and all persons acting or purporting to act on their behalf or by their authority, do consent and it is hereby **ORDERED**:

1. The Falks and the CPA Firm shall permanently cease and desist from offering or selling unregistered securities in violation of section 11-501 of the Securities Act.

2. SFS, the CPA Firm, the IA Firm, and Daniel Falk shall permanently cease and desist from violating Section 11-401 of the Securities Act by offering and selling securities while they are neither registered nor exempt from broker-dealer registration in Maryland.

3. SFS shall permanently cease and desist from violating Section 11-401(b) of the Securities Act by offering investment advice while it is neither registered as an investment adviser or investment adviser representative nor exempt from registration in Maryland.

4. Respondents shall permanently cease and desist from violating Section 11-301 of the Securities Act by directly or indirectly making untrue statements of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, in connection with the offer, sale or purchase of any security.

5. Daniel Falk and the IA Firm shall permanently cease and desist from violating Section 11-302(f) of the Securities Act.

6. Daniel Falk and the IA Firm shall permanently cease and desist from violating Regulation .03B(8) of COMAR 02.02.05 by misrepresenting to advisory clients the nature of the advisory fees to be charged for that service, or omitting to state a material fact necessary to make the statements made regarding fees, in light of the circumstances under which they are made, not

misleading.

7. The IA Firm shall permanently cease and desist from violating Regulation .03B(11) of COMAR 02.02.05 by failing to disclose to a client in writing before any advice is rendered a material conflict of interest relating to the investment adviser or any of its affiliates or employees that could reasonably be expected to impair the rendering of unbiased and objective advice, including conflicts of interest that may arise from charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to the advice will be received by any employee of the investment adviser.

8. The Falks, the IA Firm, and SFS shall permanently cease and desist from violating Regulation .03B(16) of COMAR 02.02.05 by entering into advisory relationships without providing the required disclosures, including the disclosure of their advisory fee.

9. Sean Falk shall permanently cease and desist from violating Section 11-303 of the Securities Act by making a document filed with the Commissioner at the time and in light of the circumstances under which it is made, false or misleading in any material respect.

10. The IA Firm and the Falks shall permanently cease and desist from violating Section 11-411 of the Securities Act by failing to promptly file a correcting amendment, if the information contained in any document filed with the Commissioner is or becomes inaccurate or incomplete in any material respect.

11. SFS and the CPA Firm are permanently barred from engaging in the securities or investment advisory business in Maryland for or on behalf of others.

12. Daniel Falk's investment adviser representative registration is revoked as of the date of this Consent Order. Daniel Falk further agrees not to apply for any securities or investment adviser registration for one year from the date of this Order.

13. Sean Falk's broker-dealer agent registration is revoked as of his last day of registration. Sean Falk further agrees to withdraw his pending broker-dealer agent application with the state of Maryland and not to apply for any securities or investment adviser registration for one year from the date of this Order.

14. Prior to any future registration, the Falks shall participate in a special training program acceptable to the Commissioner.

15. The Falks and personnel at the IA Firm shall not provide any investment advice concerning any rescission or buyout offer by SLC.

16. Daniel Falk, directly or indirectly, shall not receive any compensation from the IA Firm unless he is registered as an investment adviser representative.

17. The IA Firm retained an Independent Consultant approved by the Commissioner (the "Independent Consultant") to audit the books and records of the investment adviser activities to ensure compliance with the Securities Act. The audit took place in January 2005. The IA Firm has addressed the deficiencies found during the audit and shall continue to keep procedures in place to avoid recurrence of the deficiencies.

18. No later than eight (8) months from the date of this Order, the Independent Consultant shall again audit the IA Firm and promptly report thereafter to the Division any discrepancies or deficiencies found during the audit, and report to the Division plans for correction necessary to address the discrepancies and deficiencies.

19. The Independent Consultant shall review the IA Firm's investment advisory activities on an annual basis for two years following the date of this Order, to ensure compliance with the Securities Act. The Independent Consultant shall report to the Division any discrepancies or deficiencies found during each audit, and report to the Division plans for correction necessary to

address the discrepancies and deficiencies.

20. The IA Firm shall implement any plans for correction recommended by the Independent Consultant to address any discrepancies or deficiencies.

21. For two years following the date of this Order, the IA firm shall provide a written report to the Division of any customer complaints, whether written or oral, within fifteen (15) days of receipt of the complaint of receipt of the complaint. The IA Firm shall provide to the Division a written summary of any oral complaint.

22. The Respondents, jointly and severally, are subjected to a monetary penalty in the amount of \$100,000. Collection of which penalty is waived in light of the restitution being made by Respondents, as detailed below.

23. The CPA Firm shall make restitution of the viatical sales commissions earned in the amount of \$68,800. The payment shall be made contemporaneous with issuance of this Order. Payment shall be made to the "Office of the Attorney General." Restitution shall be distributed to MBC investors by the Office of the Attorney General pro rata in accordance with their original investments. Should some investors reject or otherwise fail to accept the payment of restitution, their share will be distributed to the other MBC investors or, at the discretion of the Office of the Attorney General, be retained as a monetary penalty.

24. The IA Firm shall make restitution of the management fees earned in the amount of \$17,500. The payment shall be made contemporaneous with issuance of this Order. Payment shall be made to the "Office of the Attorney General." The Office of the Attorney General shall return the management fees to the Partnership.

25. SFS shall make restitution of the management fees earned in the amount of \$17,500. The payment shall be made contemporaneous with issuance of this Order. Payment shall be made

to the "Office of the Attorney General." The Office of the Attorney General shall return the management fees to the Partnership.

26. Respondents shall in all future activities in Maryland comply fully with the Securities Act and regulations promulgated thereunder.

CONSEQUENCES OF VIOLATING CONSENT ORDER

20. If any Respondent fails to comply with any term of this Consent Order, the Division may institute administrative or judicial proceedings against that Respondent to enforce this Consent Order or to sanction that Respondent for violating an Order of the Commissioner, and may take any other action authorized under the Act or any other applicable law, including the issuance of fines or penalties as provided by the Act. For the purpose of determining those sanctions, the Findings of Fact and violations of the Act set forth in this Consent Order shall be deemed admitted and may be introduced into evidence against any Respondent.

MODIFICATION OF CONSENT ORDER

22. The terms of this Consent Order may only be modified by a subsequent order issued by the Commissioner.

DATE OF THIS ORDER:

SO ORDERED,

Melanie Senter Lubin
Securities Commissioner

Maryland Division of Securities
200 St. Paul Place - 16th Floor
Baltimore, Maryland 21202-2020
(410) 576-6360

CONSENTED TO:

Name: Daniel G. Falk

On this ____ day of _____, 2005, personally appeared Daniel G. Falk, signer of the foregoing Consent Order, who did duly acknowledge his signature to be his free act and deed.

Notary Public

My Commission Expires: _____

Seal:

Daniel G Falk & Associates, PC
Name: Daniel G. Falk
Title: President

On this ____ day of _____, 2005, personally appeared Daniel G. Falk, signer of the foregoing Consent Order, who did duly acknowledge his signature to be his free act and deed.

Notary Public

My Commission Expires: _____

Seal:

DGF Investments Advisors
Name: Daniel G. Falk
Title: President

On this ____ day of _____, 2005, personally appeared Daniel G. Falk, signer of the foregoing Consent Order, who did duly acknowledge his signature to be his free act and deed.

Notary Public

My Commission Expires: _____

Seal:

Sean Falk

On this ____ day of _____, 2005, personally appeared Sean Falk, signer of the foregoing Consent Order, who did duly acknowledge his signature to be his free act and deed.

Notary Public

My Commission Expires: _____

Seal:

Secured Financial Services, Inc.
Name: Sean Falk
Title: President

On this ____ day of _____, 2005, personally appeared Sean Falk, signer of the foregoing Consent Order, who did duly acknowledge his signature to be his free act and deed.

Notary Public

My Commission Expires: _____

Seal:

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