

ADMINISTRATIVE PROCEEDING
BEFORE THE
MARYLAND SECURITIES COMMISSIONER

IN THE MATTER OF: *

WILLIAM POINSETTE * File No. 2003-0289

and *

MY PLAN MANAGEMENT GROUP, LLC,*

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. and 2005 Supp.) (the “Act”), initiated an investigation into the securities and advisory-related activities of William Poinsette (“Poinsette”) and his company My Plan Management Group, LLC (“MPM”) (“respondents”); and

WHEREAS, Section 11-301 of the Act makes it unlawful for any person, in connection with the offer or sale, or purchase of any security, directly or indirectly to: (1) [e]mploy any device, scheme, or artifice to defraud; (2) [m]ake any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or (3) [e]ngage in any act, practice, or course of business which operates or would operate as a fraud or deceit on any person; and

WHEREAS, Section 11-302 (a) of the Act, makes it unlawful for any person who

receives directly or indirectly any consideration from any person for advising the other person as to the value of securities or their purchase or sale, or for acting as an investment adviser or representative under § 11-101 (h) and (i) of this title, . . . to:

- (1) employ any device, scheme or artifice to defraud;
- (2) engage in any act, practice or course of business which operates or would operate as a fraud or deceit on any person;
- (3) engage in dishonest or unethical practices as the Commissioner may define by rule; or
- (4) when acting as principal for the person's own account knowingly sell any security to or purchase any security from a client, . . . without disclosing to such client in writing before the completion of such transaction the capacity in which the person is acting and obtaining the consent of the client to such transaction; and

WHEREAS, Section 11-302 (c) of the Act, makes it unlawful for any person in dealings with advisory clients knowingly to make any untrue statement of a material fact, or omit 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; and

WHEREAS, COMAR 02.02.05.03B, makes it a dishonest and unethical practice to:

- (6) borrow money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds or securities;
- (11) fail to disclose to clients 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; and
- (15) take an action, directly or indirectly, with respect to those securities, instruments, or funds in which a client has any beneficial interest, when the investment adviser has custody or possession of the securities or funds when the investment adviser's action is subject to and does not comply with the safekeeping requirements of 17 CFR § 175.206 (4) -2 (SEC Rule 206 (40) -2 Custody or Possession of Funds or Securities of Clients); and

WHEREAS, the Maryland Securities Commissioner (the “Commissioner”) has concluded that grounds exist to find that both respondents violated Sections 11-301 and 11-302 of the Act and COMAR 02.02.05.03B, and that respondent Poinsette’s securities and investment advisory licenses should be revoked; and

WHEREAS, the Commissioner issued an Order to Show Cause on October 1, 2003; and

WHEREAS, respondent Poinsette has cooperated with the Division in its investigation of this matter and has provided a sworn affidavit to the Division that is incorporated by reference herein setting forth names of all American Express Financial Advisors, Inc. clients or former clients from whom he has taken or borrowed money, the amount of money taken, and the amount of money that he currently owes each; and

WHEREAS, respondent Poinsette has provided the Division a sworn financial statement and other supporting financial information that is incorporated by reference herein; and

WHEREAS, before respondents have answered the allegations in the Order to Show Cause, without trial or final adjudication of any issue of fact or law, and prior to the issuance of a final order in this proceeding, the Commissioner and respondents have reached an agreement whereby respondents consent to the terms of this Order; and

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

WHEREAS, respondents waive the right to a hearing and appeal under the Securities Act and the rules and regulations promulgated thereunder with respect to this Consent Order and the

Order to Show Cause initiating this proceeding; and

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

THE COMMISSIONER FINDS:

I. JURISDICTION

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

II. RESPONDENTS

2. William Poinsette maintains a place of business at 819 E. Baltimore Street, Baltimore, MD 21202.

3. Poinsette (CRD # 2926889) was registered with the NASD and with the Maryland Securities Division (“Division”) to sell securities through American Express Financial Advisors, Inc. (“AEFA”) (CRD #6363) from October 3, 1997 to May 14, 2003. He was registered with the Division as an investment adviser representative of AEFA from January 1, 1999 to May 14, 2003.

4. AEFA terminated Poinsette because he commingled client funds.

5. On November 13, 2003, the NASD barred Poinsette from association with any NASD member.

6. Poinsette is licensed to sell insurance in the State of Maryland.

7. Poinsette and his former wife, Cassandra L. Poinsette, formed My Plan Management Group, LLC, a Maryland limited liability company in April 2001 and were its initial members. Poinsette is the president, CEO and now the sole owner of MPM. MPM has a place

of business at 819 E. Baltimore Street, Baltimore, MD 21202. According to its web site, www.myplanmanagementgroup.com, MPM offers business consulting services to clients, including office leasing. It is the parent company of Maryland Business & Consumer Network, a firm that provides business and consumer advice.

III. FINDINGS OF FACT

Client Thelma Rogers

8. On about May 23, 2002, one of Poinsette's brokerage and investment advisory clients, Thelma Rogers, endorsed two checks made out to herself for a total of \$114,903.14 and gave the endorsed checks to Poinsette.

9. Instead of turning the two checks over to his brokerage firm, AEFA, Poinsette further endorsed the two checks "to the order of First Union Bank for deposit only, My Plan Management Group." The two checks cleared the MPM account on May 28, 2002. Poinsette has signatory authority on the MPM account.

10. On June 5, 2002, Poinsette purchased an official check from First Union Bank in the amount of \$49,143.32 made out to IDS Life Insurance Company for the benefit of Thelma Rogers. On June 28, 2002, one month after depositing Rogers' checks in his company's account, Poinsette purchased a second official check from First Union Bank in the amount of \$55,856.67 made out to IDS Life Insurance Company for the benefit of Thelma Rogers. The two official checks totaled \$104,999.99, almost \$10,000 short of the amount in the two checks endorsed by Rogers.

11. After the missing funds were identified by the client, Poinsette and AEFA

reimbursed Rogers for the missing funds.

Investments and Loans by Other AEFA Clients

12. Poinsette or My Plan Management has borrowed money from several other brokerage or advisory clients.

Novella Henry

13. Novella Henry opened an account with Poinsette in about October 2002. On Poinsette's recommendation, Henry invested all but about \$55,000 of her retirement funds in an illiquid fund.

14. Soon after Henry turned her retirement account over to Poinsette, he talked with her about making him a short term loan of \$55,000 for a real estate investment. Poinsette promised to pay her \$2,500 in interest and to return the money within 60 days to Henry's IRA account, so that Henry would suffer no adverse tax consequences. When Henry asked Poinsette if there was any problem with the transaction, Poinsette reassured her that this kind of transaction is done every day. He did not tell Henry that American Express specifically prohibited him from borrowing funds from a client, did not tell Henry who would buy the real estate from Poinsette and his partner, and did not provide Henry other disclosure about the real estate transaction that was material to her investment decision.

15. Henry wrote Poinsette a check for \$55,000 on November 18, 2002. Poinsette did not return the money within 60 days, with the result that Henry has been assessed taxes, penalties and interest on the funds taken from her IRA account. Because Henry was taxed at a 30% rate rather than at her current rate of 15% and was assessed penalties and interest, she incurred an

immediate unanticipated tax bill of \$14,291.

Rita Williams

16. When AEFA client Rita Williams expected to owe taxes on her 2002 earnings, Poinsette arranged for her to set aside sufficient funds by writing a check to My Plan Management for \$15,000 in August 2002. Poinsette did not return these funds or use them to pay Williams' taxes.

Pamela Butler

17. Pamela Butler sold Poinsette a house in Waldorf, Maryland. Poinsette persuaded Butler to invest \$10,000 from the sale proceeds in his company, My Plan Management. He gave her a private placement memorandum that failed to provide information on the use of proceeds and other financial disclosure on the company that was material to the investment. He has not returned the principal.

Other Clients

18. Poinsette has also borrowed money from at least five other securities or investment advisory clients, including Jacqueline Martin, Molton Turner, Regina Smith, Mary Davis and Marc Fuller.

19. Several of Poinsette's AEFA advisory clients, including Martha Brown and Tiersa Shields, paid Poinsette or My Plan Management directly for his advisory services, rather than paying AEFA as required by AEFA policy.

AEFA's Payments

20. AEFA has settled claims brought by Poinsette's clients Jacqueline Martin, Rita

Williams, Novella Henry, and Pamela Butler. Poinsette reimbursed Thelma Rogers.

Poinsette's Violation of Rules and Guidelines

21. AEFA's Compliance Resource Guide prohibits commingling client funds with those of its agents. The AEFA Compliance Resource Guide also prohibits its agents from borrowing money from or lending money to clients and prospective clients. Poinsette acknowledged receipt of the Compliance Resource Guide, stating that he understood that violation of the policies set forth in the Guide may result in disciplinary action, including termination. He violated the policies of his broker-dealer by borrowing money from clients.

22. NASD Rule 2110 requires its members to observe high standards of commercial honor and just and equitable principles of trade. In addition, the NASD has interpreted in IM-2310-2 its Rule 2310 governing a member's recommendations to customers, as prohibiting the unauthorized use or borrowing of customers' funds. Rule 2330 prohibits NASD members from making improper use of a customer's funds. Poinsette violated the standards of the securities and investment advisory industry by borrowing or otherwise misusing funds from his clients.

THE COMMISSIONER CONCLUDES:

IV. CONCLUSIONS OF LAW

23. Respondents violated Sections 11-301 and 11-302 of the Act and COMAR 02.02.05.03B by misusing client funds, by soliciting loans from clients, by investing client funds in his own company, and by taking advantage of Poinsette's clients in violation of his fiduciary duties when he induced them to give or lend money in disregard of the clients' best interests.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT, and respondents expressly consent to the terms of this Order which are as follows:

V. SANCTIONS

24. Respondents shall jointly and severally pay a civil monetary penalty of \$15,000. The penalty is waived in light of respondent Poinsette's sworn financial statement and demonstrated inability to pay. If, however, the sworn financial statement is shown to be false or misleading in material respect, the monetary penalty shall be immediately reinstated and payable.

25. Respondents are barred from engaging in the securities or investment advisory business in Maryland for or on behalf of others, or from acting as a principal or consultant in any entity so engaged.

26. Respondent Poinsette's registrations as a securities agent and investment adviser representative are revoked.

27. Respondents shall cease and desist from further activities in violation of the Act.

VI. CONSEQUENCES OF VIOLATION OF CONSENT ORDER

28. If either respondent engages in the securities or investment advisory business in Maryland or violates the Act or if the Division establishes that there are any material misrepresentations in Poinsette's affidavit and sworn financial statement incorporated herein, the Division may institute administrative or judicial proceedings against that respondent to enforce this Consent Order or to sanction 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 additional fines or penalties as provided by the Act for such violations subsequent to

the date of this Order. For the purpose of determining those sanctions, the Statement of Facts in the Order to Show Cause and this Consent Order shall be presumed true and accurate, and may be introduced into evidence against respondent.

29. 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

CONSENTED TO:

William Poinsette

On this ____ day of _____, 2005, personally appeared _____, 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:

My Plan Management
by: William Poinsette

On this _____ day of _____, 2005, personally appeared
_____, 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:

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Consent Order by causing a copy to be delivered by United States mail, certified/return receipt requested, postage prepaid, to:

William Poinsette
819 E. Baltimore Street
Baltimore, MD 21202;

My Plan Management
819 E. Baltimore Street
Baltimore, MD 21202

Dated: _____, 2005

Lucy A. Cardwell
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