ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF:	*	
Alms and Associates, Inc.	*	Document No. 2012-0283
and	*	
Steven P. Alms	*	
RESPONDENTS.	*	

* * * * * * * * * * * * * *

CONSENT ORDER

WHEREAS, the Securities Division of the Office of the Maryland Attorney General (the "Division"), pursuant to the authority granted in section 11-701 of the Maryland Securities Act, Title 11, Corporations and Associations Article, Annotated Code of Maryland (2007 Repl. Vol. and Supp. 2012) (the "Securities Act"), undertook an investigation into the securities-related activities of Alms and Associates, Inc. ("AAI" or "Respondent AAI") and Steven P. Alms ("Alms" or "Respondent Alms") (collectively, "Respondents"); and

WHEREAS, on the basis of that investigation the Maryland Securities Commissioner (the "Commissioner") determined that the Respondents may have engaged in acts or practices constituting violations of the registration and anti-fraud provisions of the Securities Act; and

WHEREAS, the Commissioner and Respondents have reached an agreement in this action whereby Respondents, without admitting or denying any findings of fact or conclusions of law except to admit to the jurisdiction of the Commissioner in this matter and over them in this matter, consent to the terms of this Consent Order;

WHEREAS, Respondents waive their right to a hearing and any rights they may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Consent Order; and

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

NOW, THEREFORE, THE COMMISSIONER FINDS, CONCLUDES, AND ORDERS:

I. JURISDICTION

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

II. RESPONDENTS

2. Steven P. Alms maintains a place of residence in Columbia, MD and a place of business at 9256 Bendix Road, Columbia, MD. Alms is the president and sole owner of Alms and Associates, Inc. Alms also has been registered as an investment adviser representative for Alms and Associates, Inc. since April 2003.

3. Alms and Associates, Inc. is a Maryland corporation with a place of business at 9256 Bendix Road, Columbia, MD. Alms and Associates, Inc. is currently registered, and has been registered, with the State of Maryland as an investment adviser since July 2, 2002.

III. STATEMENT OF FACTS

4. The Securities Division conducted a compliance examination of the advisory practice of Alms & Associates, Inc., and learned the following.

Promissory Note Transactions

5. Respondents offer their advisory services primarily to high net worth individuals and businesses.

6. Respondents provide a full range of advisory, wealth management, and business planning services to its advisory clients under its "CFO Advisory agreement." Those services range from business planning services such as Strategic Planning, Executive Planning, Executive Compensation, and Organizational Issues, to advisory services such as Financial and Wealth Planning, Investment Planning, and Financial Diagnostics.

7. For many of the high net worth clients, Respondents manage their assets much like a family-office adviser; taking care of all of their financial needs under one roof. In fact, Respondents use the phrase "family office" in referring to their services.

8. For their services, Respondents charge an annual fee ranging from $25,000 to as much as $500,000.

9. Respondents also offer their clients access to a wide variety of investment products, ranging from cash equivalents to fixed income and equity investments to alternative investments.

10. Beginning in or about 2003, Respondents began offering their advisory clients a new investment opportunity. Respondents began introducing their high net worth advisory clients to other advisory clients or non-clients who were seeking to borrow funds. In return for loaning funds, the advisory clients would receive a return of their principal plus interest.

11. Between 2003 and 2010, Respondents' introductions resulted in more than twenty-five (25) loan transactions.

12. The loan transactions were executed through the form of promissory notes. The notes generally ranged in length from twelve months to a little more than four years, and in amounts from $28,000 to $860,000. Interest paid under the notes ranged from 8% to 12%.

13. The majority of the promissory notes were backed by some form of collateral. Some of the notes were backed by commercial or residential real estate.[1] Other notes were backed by personal guarantees, interests in race horses, interests in a lawsuit settlement, and ownership interests in businesses.

14. Section 11-101(r) of the Securities Act defines "security" to include any note or evidence of indebtedness.

15. The notes were securities under the Securities Act.

16. Respondents represent that they neither negotiated the terms of the notes nor received any additional compensation other than the normal compensation paid to them under the CFO advisory agreement. However, Respondents, as part of their normal course of business and as part of the overall services provided to their high net worth clients, engaged in the business of introducing two parties together for the purpose of executing promissory notes or evidences of indebtedness.

17. Respondents AAI and Alms acted as a broker-dealer or agent in effecting the promissory note transactions. Respondent AAI employed Alms as an unregistered agent.

18. Neither AAI nor Alms are, or have ever been, registered as a broker-dealer or as an agent.

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[1] The borrowers on three of the notes totaling $350,000, have defaulted on the loans and filed bankruptcy. Despite being backed by real estate collateral, the notes are not expected to be repaid.

19. Respondents failed to disclose the loan arrangements, and the conflicts of interests associated with the loan arrangements, on their Form ADV.

20. Respondents have represented to the Division that, following the Division's examination, they ceased their practice of introducing advisory clients to other clients or third parties for purposes of entering into loan transactions.

Failure to Disclose Material Information

21. In 2004, Alms was introduced to D.D. through a mutual acquaintance.

22. Shortly after being introduced to Alms, D.D. formed New Dawn Assisted Living, Inc. ("New Dawn") and several New Dawn-affiliated entities. New Dawn and its affiliates were formed for the purpose of acquiring parcels of land on which to construct commercial assisted living facilities. D.D. raised funds for New Dawn's real-estate and assisted living projects by forming private placement investment vehicles through which investors could invest.

23. D.D. also expressed an interest in becoming an advisory client of AAI, but did not have the funds to pay AAI's advisory fees.

24. Respondents and D.D. worked out an arrangement whereby, in lieu of charging the normal advisory fee for providing advisory services to D.D., Alms would take a 6.5% ownership interest in New Dawn and its affiliated entities.

25. D.D. became an advisory client of AAI in July 2004.

26. Respondents also agreed to solicit investors on behalf of New Dawn and its affiliates.

27. Beginning in or about August 2004, Respondents began introducing investors, including advisory clients, to the investment vehicles offered by New Dawn and its affiliates.

28. At the time of the initial solicitations, and for almost four years thereafter, Respondents' Form ADV disclosure document failed to disclose the conflicts associated with advising clients to invest in the New Dawn-related companies, including the conflict relating to Alms' ownership interest in New Dawn.

29. In or about October 2005, Respondents first amended their Form ADV disclosure document to disclose that Alms may receive a "fee in the form of 6.5% carried interest for services rendered and introducing clients to New Dawn," but still failed to disclose Alms' ownership interest in New Dawn.

30. It wasn't until April 2008 that Respondents amended their Form ADV disclosure document to disclose Alms' investment in New Dawn and, it wasn't until May 2009, that Respondents amended Form ADV to disclose that New Dawn's managing member also was an advisory client of Respondents.

31. In or about 2005, Respondents also began introducing their advisory clients to other privately-owned companies seeking investment capital. Alms himself was an investor in several of these companies. Those advisory clients subsequently became investors in the companies.

32. Some of the privately-held companies were owned by other advisory clients of Respondents and, thus, Respondents received advisory fees from the owners of the companies.

33. As with the New Dawn investments, Respondents did not disclose in writing the conflicts of interest associated with recommending privately-owned companies in which Alms was invested or the conflicts associated with receiving advisory compensation from the owners of the privately-held companies.

34. It wasn't until May 2009 that Respondents amended their Form ADV disclosure document to disclose:

> Mr. Alms may be personally invested in private placements in which advisory clients may or may not be invested. Clients should be aware that participation in investments with Mr. Alms and/or other clients of the firm may present a potential conflict of interest, as Mr. Alms may have a personal interest. For example, Mr. Alms is an investor in New Dawn Assisted Living, LLC. The Managing Member of New Dawn Assisted Living, LLC is a client of AAI. **In such situations, AAI will fully disclose any perceived conflicts of interest prior to a client investing in such private placements.**

35. Despite the new disclosure added to their Form ADV disclosure document, Respondents still did not provide clients with written disclosures relating to the "perceived conflicts of interest prior to a client investing in" a particular investment.[2]

Borrowing from Advisory Clients

36. E.L. had been an advisory client of Alms since 2005. According to the advisory agreement signed by E.L., Alms provided E.L. with continuous financial planning and wealth planning services.

37. In early 2007, Respondents recommended to E.L. that he invest in a real estate-related investment opportunity offered by Monument Development, LLC.

38. E.L. was interested in investing in the investment opportunity, but informed Respondents that he would invest in Monument Development only if Alms himself personally invested in Monument Development.

[2] Respondents represent that they verbally informed clients of all conflicts of interest.

39. Alms agreed to invest in Monument Development, but told E.L. that he did not have the entire $200,000 needed for the Monument Development investment.

40. The two agreed that E.L. would loan Alms $60,000 so that Alms could invest in Monument Development.

41. The loan was memorialized in a promissory note prepared by Alms. The promissory note was for a term of 60 months and carried with it an interest rate of 8%. The note was executed by Alms on February 22, 2007.

42. This was not the first time that Alms had borrowed funds from E.L.

43. Alms had earlier borrowed $77,000 from E.L. under similar circumstances to those described above. E.L. was investing in a real estate investment opportunity that was introduced to him by Alms, E.L. requested that Alms invest alongside him, and E.L. lent the funds to Alms. This loan was not memorialized in writing.

44. Both the $77,000 loan and the $60,000 have been repaid; however, the $60,000 loan was not repaid until after the Securities Division's examination.

45. Alms also borrowed monies from New Dawn Assisted Living Development Company, LLC ("ND Development"). ND Development's managing member, D.D., had been an advisory client of Alms since 2004.

46. On or about May 1, 2009, Alms borrowed $25,000 from ND Development. The promissory note memorializing the loan was for a twenty four month term and carried an interest rate of 8%.

47. Alms repaid the $25,000 loan in October 2010, following the Division's examination.

48. Alms borrowed funds from at least two advisory clients on three different occasions.

49. Through Alms' borrowing of funds from advisory clients, Respondent AAI had custody of clients' funds.

50. Respondents did not engage an independent accountant to conduct a surprise verification of the funds that Respondent Alms borrowed from advisory clients.

51. Respondents maintained written supervisory guidelines, but the guidelines failed to address the prohibited practice of borrowing monies from clients and other prohibited unethical practices.

52. Following the Division's examination, Respondents amended their supervisory guidelines to address the prohibited practice of borrowing monies from clients and other prohibited practices.

Failure to Timely Amend Form U4 Application

53. Respondent Alms has been registered as an investment adviser representative for Alms and Associates since April 2003.

54. Form U4 requires a registrant to disclose all unsatisfied liens filed against the registrant.

55. During its examination, Division staff learned that Respondent Alms was the subject of an IRS tax lien. According to Respondent Alms, the tax lien was filed on July 22, 2010, but notice of the lien was not served on Alms until early August 2010.

56. Respondent Alms was required to amend his Form U4 to disclose the tax lien within 30 days of the lien being imposed but, to date, has not done so.

57. Following the Division's examination of Respondents' offices, Respondent Alms paid the taxes owed to the IRS.

58. On or about December 21, 2009, Respondents were sued in federal court by E.L. for, among other things, sales practice-related violations.

59. Although required to amend his Form U4 to disclose that he was named as a defendant in the civil litigation within 30 days of the filing of the litigation, Respondent Alms did not disclose the event on his Form U4 until April 30, 2010.

60. The civil litigation was later converted to an arbitration proceeding, and subsequently settled on or about March 26, 2012, with Alms paying $500,000 to E.L.

61. Respondent Alms, however, did not amend his Form U4 to disclose the settlement until June 8, 2012, after the Division inquired about the filing.

62. Respondent Alms failed to timely amend his Form U4 to disclose the initial lawsuit complaint, and failed to timely amend his Form U4 to disclose the settlement of the arbitration proceeding.

IV. CONCLUSIONS OF LAW

The Commissioner concludes that:

63. Respondents violated sections 11-302, 11-401, 11-402, and 11-411 of the Securities Act, and grounds exist to sanction Respondents and to revoke their investment adviser and investment adviser representative registrations.

V. SANCTIONS

NOW THEREFORE, IT IS HEREBY ORDERED, and Respondents expressly consent and agree:

64. Each Respondent shall permanently cease and desist from violating sections 11-302, 11-401, 11-402, and 11-411 of the Securities Act.

65. Respondents shall cease and desist from borrowing monies from advisory clients.

66. Respondents shall cease and desist from recommending or introducing investments to clients without fully disclosing all material conflicts of interests.

67. Respondents shall cease and desist from executing or facilitating the execution of promissory notes or any other securities, unless Respondents are registered as broker-dealers or agents.

68. Respondents shall cease and desist from failing to timely amend their Forms ADV and Forms U4 to disclose any material events.

69. Respondents, jointly and severally, are assessed a civil monetary penalty in the amount of $25,000 for the violations set forth in this Order.

70. For the two clients from whom Respondent Alms borrowed funds, no later than forty-five (45) days from the date of this Order, Respondents shall engage an independent CPA to conduct an examination of the clients' assets over which he had custody. The examination shall cover the calendar years during which Respondent Alms had custody of their funds. The independent CPA shall file with the Division, within thirty (30) days of the examination, a report describing the nature and extent of its examination and summarizing its findings.

71. Respondents shall retain an Independent Consultant approved by the Commissioner (the "Independent Consultant") to review and, if necessary, revise Respondent

AAI's supervisory guidelines to ensure compliance with the Securities Act. The Independent Consultant shall be retained no later than thirty (30) days from the date of this Order.

72. The Independent Consultant shall audit Respondent AAI's advisory practice, no later than ninety (90) days after the Independent Consultant establishes or amends Respondent AAI's supervisory guidelines, to verify that Respondent AAI is operating in compliance with the Securities Act. Subsequently, the Independent Consultant shall annually audit Respondent's advisory practice for six (6) consecutive calendar years.

73. The Independent Consultant shall promptly report to the Division any discrepancies or deficiencies found during the audits, and report to the Division plans for correction necessary to address the discrepancies and deficiencies.

74. Respondents shall implement any plans for correction recommended by the Independent Consultant to address any discrepancies or deficiencies.

75. For ten (10) years following the date of this Order, Respondents 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. Respondents shall provide to the Division a written summary of any oral complaint.

76. Each Respondent shall comply fully with the Securities Act and the regulations promulgated thereunder.

VI. JURISDICTION RETAINED

77. Jurisdiction shall be retained by the Commissioner for such further orders and directions as may be necessary or appropriate for the construction or enforcement of this Consent Order.

78. If a Respondent fails to comply with any term of this Consent Order, the Commissioner may institute administrative or judicial proceedings against that Respondent to enforce this Consent Order and/or to sanction that Respondent for violating an Order of the Commissioner, and may take any other action authorized under the Securities Act or under any other applicable law, including the issuance of fines or penalties as provided by the Securities Act. In any such proceeding, the Division may also seek other sanctions for the violations that initiated this matter. For the purpose of determining those sanctions, the Statement of Facts and violations of the Securities Act set forth in this Consent Order shall be deemed admitted, and may be introduced into evidence against that Respondent.

79. In the event that judicial intervention in this matter is sought by the Commissioner or Respondent, subject matter jurisdiction will lie in the Circuit Court for Baltimore City pursuant to section 11-702 of the Securities Act. The Circuit Court for Baltimore City will have personal jurisdiction over Respondent pursuant to section 6-103(b) of the Courts and Judicial Proceedings Article, Title 6, Annotated Code of Maryland (2006 Repl. Vol. and 2012 Supp.). Venue will be properly in that Court pursuant to Section 6-201(a) and 6-202(11) of that article.

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

SO ORDERED:

Commissioner's Signature is on File with Original Document

Date: May 23, 2013

Melanie Senter Lubin
Securities Commissioner

BY CONSENT:

/S/
Steven P. Alms

_____, 2013
Date

Subscribed and sworn to before me
this _____ day of _____, 2013.

_____
Notary Public
My Commission expires _____

/S/
Alms and Associates, Inc.

by: Steven P. Alms, President

_____, 2013
Date

Subscribed and sworn to before me
this _____ day of _____, 2013.

_____
Notary Public
My Commission expires _____