BEFORE THE SECURITIES COMMISSIONER OF THE STATE OF KANSAS



In the Matter of:

BEACON FINANCIAL ADVISORY SERVICES, INC. (CRD 146292), Docket No. 13 E 010 KSC No. 2012-5928 MARC SCOTT SARNER

Respondents.

Pursuant to K.S.A. 17-12a604

CONSENT ORDER

SUMMARY OF ALLEGATIONS

- The Staff of the Office of the Kansas Securities Commissioner ("KSC Staff") alleges that Beacon Financial Advisory Services, Inc., and Marc Scott Sarner ("Respondents") engaged in conduct that constitute violations of the Kansas Uniform Securities Act and that grounds exist to impose administrative sanctions against the Respondents under the Kansas Uniform Securities Act.
- Respondents and the KSC Staff desire to settle the allegations and the matters raised by the KSC Staff relating to the alleged violations by Respondents.

CONSENT TO JURISDICTION

- Respondents and the KSC Staff stipulate and agree that the Securities Commissioner of Kansas (the "Commissioner") has jurisdiction over Respondents and these matters pursuant to the Kansas Uniform Securities Act, K.S.A. §§ 17-12a101 through 17-12a703.
- Respondents and the KSC Staff stipulate and agree that the Commissioner has authority
 to enter this Order pursuant to K.S.A. § 17-12a604.



WAIVER AND EXCEPTION

- 5. Respondents waive their right to a hearing with respect to this matter.
- 6. Respondents waive any rights that they may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondents specifically forever releases and holds harmless the Kansas Securities Commissioner, the KSC Staff and their respective representatives and agents from any and all liability and claims arising out of, pertaining to or relating to this matter.
- 7. Respondents stipulate and agree that, should the facts contained herein prove to be false or incomplete, the KSC Staff preserves the right to pursue any and all legal and administrative remedies at its disposal.

CONSENT TO COMMISSIONER'S ORDER

- 8. Respondents and the KSC Staff agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein. Respondents acknowledge that should they fail to comply with this Order, they are subject to further discipline, including but not limited to revocation of their registration and civil penalties.
- 9. Respondents neither admit nor deny the allegations made by the KSC Staff and agree to the issuance of this Consent Order solely for the purposes of this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.
- 10. Respondents agree not to take any action or to make or permit to be made any public statement creating the impression that this Order is without a factual basis. Nothing in this Order affects Respondents' (a) testimonial obligations; or (b) right to take legal or

factual position in defense of litigation or in defense of other legal proceedings in which the Commissioner is not a party.

FINDINGS OF FACT

- Respondent Beacon Financial Advisory Services, Inc. ("BFAS"), CRD 146292, was an investment adviser ("IA") with a principal place of business located at 41120 Elm Street, Suite H102, Murrieta, CA 92562.
- 12. Respondent BFAS has never been registered as an IA in the State of Kansas.
- 13. Respondent Marc Scott Sarner ("Sarner"), CRD 4567083, has a last known home address of Respondent Sarner was the majority owner, president, chief compliance officer and an investment adviser representative ("IAR") of Respondent BFAS.
- Respondent Sarner has never been registered as an IA, IAR, broker-dealer or agent in the
 State of Kansas.
- In March 2007, Respondent Sarner voluntarily surrendered his insurance license in Kansas.
- In 2005, Respondent Sarner contacted and advised her that he was assigned as her new insurance agent on her annuity accounts that her former insurance agents had sold to her.
- 17. In August 2008, following advice received from Respondent Sarner, opened a Scottrade brokerage account (the "Scottrade Account") that was funded from a 10% distribution from her annuity accounts and additional funds totaling \$38,000.

- 18. Respondent BFAS was listed as the investment adviser on the Scottrade account application form and was authorized to receive advisory fees directly from the Scottrade Account.
- In 2008 and 2009, Respondent BFAS was compensated \$414.86 in advisory fees from the Scottrade Account.
- 20. In September 2009, Respondent Sarner contacted and advised her to take another 10% distribution from her annuities.
- 21. Respondent Sarner also informed that he had a "conservative investment" in debentures issued by a "well-established and financially sound publicly traded company" known as Image Development, Inc., ("Image Development").
- 22. According to Respondent Sarner, principal would be safe and that the debentures would pay a guaranteed 6% annual return and that would be able take a "partial or full distribution" one year from the date of investment.
- On September 18, 2009, generated a \$30,000 personal check payable to Image Development and mailed it to Respondents Sarner and BFAS at 41120 Elm Street, Suite H102, Murrieta, CA 92562.
- 24. Prior to investing in Image Development, Respondent Sarner failed to provide with any written disclosures detailing the investment.
- 25. Respondent Sarner also failed to disclose to the following material facts:
 - a. that in April 2009, Image Development's corporate status was suspended by the
 State of California;
 - b. that Respondent Sarner was on the management team of Image Development;

- and that Respondent Sarner had an agreement with Image Development to receive
 a minimum 3% commission on sales of Image Development debentures.
- 26. Respondent Sarner received \$30,000 from the sales of Image Development securities.
- 27. After investing, received an Image Development debenture certificate that indicated that the interest rate would be the Prime Rate plus one-tenth of a percent, not the 6% guaranteed by Respondent Sarner.
- 28. Contrary to what Respondent Sarner told publicly traded company.
- 29. On the one year anniversary date of her investment, requested a full distribution on her Image Development investment. At that time, she was told by Respondent Sarner that the company was insolvent.
- 30. The Image Development debenture investment was not registered with the Office of the Kansas Securities Commissioner.

CONCLUSIONS OF LAW

- The Image Development debentures that Respondent Sarner sold is a security pursuant to K.S.A. 17-12a102(28).
- 32. Respondent Sarner, in connection with the offer and sale of a security, made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in violation of K.S.A. 17-12a501.
- 33. Respondent Sarner engaged in an act, practice, or course of business that operated as a fraud or deceit on another person in violation of K.S.A. 17-12a502 and K.A.R. 81-14-5.

34. Adequate grounds exist to invoke administrative sanctions against the Respondents, and such an order is in the public interest.

<u>ORDER</u>

IT IS, THEREFORE, ORDERED that:

- A. Respondents shall pay a total of \$30,000 in restitution to

 Respondents shall be jointly and severally liable for such restitution, which shall payable
 to the Office of the Kansas Securities Commissioner for the benefit of
- B. Within 10 days from the date of this Order, Respondents shall make an initial restitution payment of \$500 payable to the Office of the Kansas Securities Commissioner for the benefit of
- C. Respondents shall, on the first of every month, beginning on August 1, 2014, and continuing until the total restitution amount of \$30,000 is paid in full, but under no circumstances longer than 60 months, pay \$500.00 payable to the Office of the Kansas Securities Commissioner for the benefit of

IT IS SO ORDERED BY THE COMMISSIONER.

Entered at Topeka, Kansas this 15th day of 1-1, 2014.



Joshua A./Ney
Securities Commissioner of Kansas

ECONSENTED TO BY:

Nathan J. Soendker
Senior Staff Attorney
Office of the Kansas Securities Commissioner

Marc Scott Sarner
Respondent

Beacon Financial Advisory Services, Inc. Marc Scott Sarner, CEO

CERTIFICATE OF SERVICE

I hereby certify that on this 15^{th} day of July, 2014, a copy of the above <u>CONSENT</u> <u>ORDER</u> was sent via first class mail and email to the following:

Mark Sarner 35689 Rosedown Lane Wildomar, CA 92595 sarnermarc@yahoo.com

Nathan Soendker
OFFICE OF THE KANSAS
SECURITIES COMMISSIONER
109 SW 9th St., Suite 600
Topeka, KS 66612
nathan.soendker@ksc.ks.gov

Nickie Oathout Clerk of Administrative Hearings