

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

IN THE MATTER OF:

*

MICHAEL G. BLOCK

*

Case No. 2005-0574

Respondent.

*

* * * * *

ORDER TO SHOW CAUSE

WHEREAS, the Maryland Securities Commissioner (the “Securities Commissioner”), pursuant to the authority granted in Section 11-701 of the Maryland Securities Act, Md. Ann. Code, Corps. & Ass’ns (1999 Repl. Vol. & Supp. 2005) (the “Securities Act”), initiated an investigation into the investment advisory activities of Respondent, Michael G. Block a/k/a Michael G. Block, CFP (“Block”); and

WHEREAS, on the basis of that investigation the Securities Commissioner has found that grounds exist to allege that Respondent violated the Securities Act by engaging in an act or practice constituting violations of Sections 11-302 and 11-401 of the Securities Act and the Code of Maryland Regulations 02.02.05.03 and .02.02.05.04 (“COMAR”); and

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

NOW, THEREFORE, pursuant to Section 11-701.1 of the Securities Act, it is hereby

ORDERED, that Respondent show cause why he should not be barred permanently from engaging in the securities and investment advisory business in Maryland for or on behalf of others,

or from acting as principal or consultant for any such business, why a monetary penalty of \$5,000 per violation should not be entered against Respondent, and why any other sanction or combination of sanctions against Respondent as permitted under Section 11-701.1 should not be entered.

The Commissioner alleges the following as a basis for this Order to Show Cause:

I. **JURISDICTION**

1. The Securities Commissioner has jurisdiction in this proceeding pursuant to Section 11-701.1 and 11-801 of the Securities Act.

II. **RESPONDENT**

2. Respondent Block resides in Olney, Maryland. His place of business is in Ellicott City, Maryland. Block has never been registered with the Maryland Securities Division (“Division”) as an investment adviser, investment adviser representative, broker-dealer or broker-dealer agent.

3. On March 6, 1989, Block became a Certified Financial Planner (“CFP”). He holds himself out to the public as a CFP, using business cards that identify him as a CFP and signing correspondence “Michael G. Block, CFP.” *See*, Exhibit A, attached hereto.

III. **STATEMENT OF FACTS**

Joanne Eliff’s Revocable Trust

4. In July 1990, Joanne Eliff (“Ms. Eliff”) established the Joanne Eliff Revocable Trust (the “Trust”). Ms. Eliff was a resident of Maryland and was born on January 14, 1934. She had never married and had no children.

5. Between approximately July 1998 and December 2002, Ms. Eliff’s brother, John,

transferred to his sister over \$1,600,000 from family partnerships. Until that time, John Eliff had always managed his sister's property.

6. After Ms. Eliff began to receive distributions from the family partnerships, Block took her to see a new trust attorney. On August 6, 1998, Ms. Eliff executed a power of attorney, naming Block as her attorney-in-fact. She also amended the Trust to name Block as her co-trustee.

7. Under the terms of the 1998 Trust document, Michael Carlson, Steven Carlson and Karen Daniels (collectively "the Carlson children") were the residual beneficiaries of the Trust after Ms. Eliff's death. The Carlson children are adult children of Ms. Eliff's lifetime friends. Ms. Eliff was like an aunt to the Carlson children and accompanied the Carlsons on many family vacations.

8. In August 2003, Block arranged an appointment with Ms. Eliff's trust attorney to change her Trust beneficiary. On October 9, 2003, Ms. Eliff amended her Trust to name Block the residual beneficiary of her Trust.

9. Ms. Eliff died in August 2005 at the age of 71.

Block's Advisory Relationship with Ms. Eliff

10. Block held himself out to Ms. Eliff, her friends, relatives and business associates as a Certified Financial Planner. For example, in March of 2005, Block described himself in an e-mail as "Ms. Eliff's financial adviser of 7 years." Ms. Eliff, her friends, relatives, and business associates refer to Block as her financial planner, CFP, or financial adviser.

11. Block served as Ms. Eliff's investment adviser in numerous ways. He acted as a solicitor when he referred Ms. Eliff to Quintus Asset Management, an investment adviser based out of Birmingham, Alabama, where his brother, Thomas Block, was an investment adviser representative and owner. Block attended meetings with Ms. Eliff's other investment advisers at the

trust department of the Sandy Spring Bank, where Ms. Eliff relied “on input from her CFP, Michael Block.” Block also placed trades in Ms. Eliff’s Charles Schwab brokerage account. Block worked with Ms. Eliff’s other professional advisers, including her brother John Eliff, her accountant, and her attorney.

12. Block also advised Ms. Eliff on the purchase of three real estate investment properties that were held not in the name of the trust but by her personally.

13. Block was compensated for his advisory services. Between 1998 and August 2005, Block used his signatory authority and power-of-attorney to withdraw from Ms. Eliff’s accounts over \$1,000,000 for his personal use. He used these funds for such things as family vacations, his daughters’ college educations and the purchase of two Rehoboth, Delaware beach properties.

14. Ms. Eliff had several accounts from which Block took money. Ms. Eliff had three trust bank accounts at Sandy Spring Bank, using her home address as the address of record. In addition to those accounts, she had a checking and savings account called “Top View” and later “River Oaks¹” (collectively the “real estate accounts”). Block’s work address is the address of record for these two accounts. Block had a debit visa card issued in his name for these two accounts. Block had signatory authority on all of the bank accounts.

15. Block had exclusive control over the real estate account where rental proceeds were deposited. He did not disclose to Ms. Eliff in writing where the real estate accounts were held, how the funds were used, or that he had conflicts of interest including the one he creating by converting the funds in the real estate accounts to his personal use. He did not disclose to Ms. Eliff in writing

¹ These accounts are named for an Ocean City condominium she bought in the Top View development and for two townhouses she later bought in the River Oaks development.

how much money he took or invoice her for any of the funds that he took from her any of her accounts.

16. Ms. Eliff also had brokerage accounts at Charles Schwab and through Sandy Spring Bank's trust department. Block had signatory authority on these accounts. Block used his authority to liquidate securities and authorize cash transfers to accounts that he used to pay his personal expenses. He did not disclose to Ms. Eliff in writing that he had a conflict of interest when he liquidated her securities so that he could use the proceeds to pay his personal expenses.

17. Block was not registered as an investment adviser or investment adviser representative and had no written investment advisory agreement with Ms. Eliff.

18. Block was in a position of trust and was a fiduciary to Ms. Eliff. Block did not act in Ms. Eliff's best interest when, between 1999 and 2005, he transferred over \$1,000,000 dollars from her accounts to his own, nor did he disclose to Ms. Eliff in writing that he had a conflict of interest when he transferred over \$1,000,000 to himself.

19. Block is not authorized by the power-of-attorney or the Trust document to make gifts to himself.

20. Block has claimed that the transfers from Ms. Eliff were, in part, for fees for his trustee services. Block, however, did not have a written agreement with Ms. Eliff describing the trustee services he would provide or the fees he would charge. Block took far more than the amount allowed by Section 14-103 of Md. Ann. Code, Estates and Trusts (2001 Repl. Vol. & Supp. 2005), which limits commissions for trustees.

21. Shortly before Ms. Eliff's death, she complained to friends that Block had stolen money from her and that he had physically threatened her. Ms. Eliff was so afraid of Block that she

had the lock to her apartment, to which Block had a key, changed.

22. After her death, Ms. Eliff's friends discovered notes in her apartment stating "Mike Block got hungry and took 40,000 out of my money market acct and 10,000 out of my checking acct." *See* Exhibit B, attached hereto. Another note to "Mike" asked "Where is the acct for the townhouse rent – may I have the acct # just to know?" *See* Exhibit C, attached hereto. A third note says "Mike what is going on w/ my checking & market acct - please. If this my dear friend had been the Godfather I would be upset but w/ my financial planner & Power of Attorney. I just don't know what's going on." *See* Exhibit D, attached hereto.

23. On July 9, 2005, Ms. Eliff wrote her doctor, Robert Lloyd, "During April thru Oct. of 2004, Mike Block took \$40,000 out of my Market Acct. and also depleted my checking Acct....He said he would rectify my problems after the first of the year - 2006." *See* Exhibit E, attached hereto.

24. Before her death, Ms. Eliff sought counsel to change her will and Trust. According to the Carlsons, she intended to remove Block as a beneficiary and co-trustee. She died before she was able to execute her plans.

25. Block also provided unregistered financial planning services to other clients, including Karen Daniels, Kristine and Jerry DeWitt, David Stambaugh and Judith Goodyear.

COUNT I
(Investment Adviser Registration Violation; Section 11-401)

WHEREAS, Section 11-101(h)(1)(i) of the Securities Act defines "investment adviser" to mean a person who, for compensation, engages in the business of advising others, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities; and

WHEREAS, Section 11-101(h)(1)(ii)(2) of the Securities Act further defines "investment

adviser” to mean a person who, for compensation, gathers information relating to investments, establishes financial goals and objectives, processes and analyzes the information gathered, and recommends a financial plan; and

WHEREAS, Section 11-101(h)(1)(ii)(3) of the Securities Act further defines “investment adviser” to mean a person who, for compensation, holds out as an investment adviser in any way, including indicating by advertisement, card, or letterhead, or in any other manner indicates that the person is, a financial or investment "planner", "counselor", "consultant", or any other similar type of adviser or consultant; and

WHEREAS, Section 11-101(i) of the Securities Act defines an “investment adviser representative” as any one who solicits, offers or negotiates for the sale of or sells investment advisory services; and

WHEREAS, Section 11-401 of the Securities Act makes it unlawful for any person to transact business in this State as an investment adviser or investment adviser representative unless that person is registered as such; and

WHEREAS, Respondent transacted business as an investment adviser in this State by advising clients regarding securities and by providing financial and investment planning advice for compensation; and

WHEREAS, Respondent held out to the public and advisory clients that he was a Certified Financial Planner and received advisory related compensation; and

WHEREAS, Respondent is not registered with the Division as an investment adviser or investment adviser representative in violation of Section 11-401 of the Securities Act; and

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondent show cause why a

final order should not be issued against him that orders him to cease and desist from further violation of Section 11-401 of the Securities Act, assesses Respondent the statutory penalty of \$5,000 per violation of Section 11-401 of the Securities Act, permanently bars Respondent from the securities and investment advisory business in Maryland and orders any other sanction or combination of sanctions against Respondent as permitted under Section 11-701.1.

COUNT II

(Fraud in Investment Advisory Activities; Section 11-302(a) and COMAR 02.02.05.03)

WHEREAS, Section 11-302(a) of the Securities Act makes it unlawful for any person who acts as an investment adviser under Section 11-101(h) of the Securities Act 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 the other person;
- (3) engage in dishonest or unethical practices as the Commissioner may define by rule;

WHEREAS, COMAR 02.02.05.03B provides that an investment adviser is a fiduciary and has a duty to act primarily for the benefit of its clients; and

WHEREAS, COMAR 02.02.05.03B(11) requires an investment adviser to disclose to clients in writing before any advice is rendered a material conflict of interest relating to the investment adviser that could reasonably be expected to impair the rendering of unbiased and objective advice; and

WHEREAS, Respondent employed a device, scheme or artifice to defraud by advising Ms. Eliff to sell securities through her Charles Schwab account and purchase investment properties without disclosing that the proceeds would be used for Respondent's personal

expenses; and

WHEREAS, Respondent engaged in a course of conduct that operated as a fraud or deceit upon Ms. Eliff by converting her assets to his own use; and

WHEREAS, Respondent engaged in a dishonest and unethical practice by breaching his fiduciary duty as an investment adviser to act in the best interest of Ms. Eliff by transferring over \$1,000,000 from her trust accounts to himself between 1999 and 2005 and by failing to disclose a conflict of interest to Ms. Eliff in writing; and

WHEREAS, Respondent engaged in fraud in his investment advisory activities in violation of Section 11-302(a) of the Securities Act and COMAR .02.02.05.03; and

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondent show cause why a final order should not be issued against him that orders him to cease and desist violating Section 11-302 of the Securities Act and the prohibited practices set forth in COMAR 02.02.05.03B, assesses Respondent the statutory penalty of \$5,000 per violation of Section 11-302, permanently bars Respondent from the securities and investment advisory business in Maryland and orders any other sanction or combination of sanctions against Respondent as permitted under Section 11-701.1.

COUNT III
(Fraud in Investment Advisory Activities; Section 11-302(c))

WHEREAS, Section 11-302(c) of the Securities Act makes it unlawful for any person who acts as an investment adviser under Section 11-101(h) of the Securities Act in dealings with advisory clients to knowingly make an untrue statement of 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, Respondent made omissions of material fact by failing to disclose conflicts of interest in writing and his lack of registration as an investment adviser to clients while he was acting as an investment adviser; and

WHEREAS, Respondent engaged in fraud in his investment advisory activities in violation of Section 11-302(c) of the Securities Act; and

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondent show cause why a final order should not be issued against him that orders him to cease and desist violating Section 11-302 of the Securities Act, assesses Respondent the statutory penalty of \$5,000 per violation of Section 11-302, permanently bars Respondent from the securities and investment advisory business in Maryland and orders any other sanction or combination of sanctions against Respondent as permitted under Section 11-701.1.

COUNT IV

(Written Investment Advisory Contract Required; Section 11-302(e) and COMAR 02.02.05.03)

WHEREAS, Section 11-302(e) of the Securities Act make it unlawful for any investment adviser to enter into an investment advisory contract unless it is in writing; and

WHEREAS, COMAR 02.02.05.03B(16) prohibits an investment adviser from entering into, extending, or renewing an investment advisory contract unless the contract is in writing and discloses, in substance: (a) the services to be provided; (b) the term of the contract; (c) the advisory fee or the formula for computing the fee; (d) the amount of prepaid fee to be returned in the event of contract termination or nonperformance; (e) whether the contract grants discretionary power to the investment adviser; and (f) that an assignment of the contract may not

be made by the investment adviser without the consent of the other party to the contract; and

WHEREAS, Respondent entered into agreements to provide investment advisory services that were not in writing with Ms. Eliff, Karen Daniels, Kristine and Jerry DeWitt, David Stambaugh and Judith Goodyear; and

WHEREAS, Respondent violated Section 11-302(e) of the Securities Act and COMAR .02.02.05.03; and

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondent show cause why a final order should not be issued against him that orders him to cease and desist from violating Section 11-302 of the Securities Act and the prohibited practices set forth in COMAR 02.02.05.03B, assesses Respondent the statutory penalty of \$5,000 per violation of Section 11-302, permanently bars Respondent from the securities and investment advisory business in Maryland and orders any other sanction or combination of sanctions against Respondent as permitted under Section 11-701.1.

COUNT V
(Custody Prohibited; Section 11-302(f) and COMAR 02.02.05.04)

WHEREAS, Section 11-302(f) of the Securities Act makes it unlawful for any investment adviser to take or have custody of any securities or funds of any client if the Commissioner by rule prohibits custody; and

WHEREAS, COMAR .02.02.05.04 provides that it is unlawful for an investment adviser to take or have custody of securities or funds of any client unless (1) the investment adviser notifies the Commissioner in writing that the investment adviser has or may have custody, (2) at least once every 3 months, the investment adviser sends to each client an itemized statement

showing the client's funds and securities in the investment adviser's custody at the end of the period, and all debits, credits, and transactions in the client's account during that period, (3) at least once each calendar year, an independent certified public accountant or public accountant ("Accountant") verifies all client funds and securities by an actual examination, which shall be made at a time chosen by the accountant without prior notice to the investment adviser and (4) a report stating that the accountant has made an examination of the client funds and securities in the custody of the investment adviser, and describing the nature and extent of the examination, shall be filed with the Commissioner within 30 days after each examination; and

WHEREAS, Respondent had custody of Ms. Eliff's funds and securities by virtue of the power-of-attorney and his position as co-trustee; and

WHEREAS, Respondent did not comply with any of the requirements of COMAR .02.02.05.04; and

WHEREAS, Respondent used that power of attorney and his position as co-trustee to transfer over \$1,000,000 from Ms. Eliff's trust accounts to himself between 1999 and 2005; and

WHEREAS, Respondent violated Section 11-302(f) of the Securities Act and COMAR .02.02.05.04; and

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondent show cause why a final order should not be issued against him that orders him to cease and desist from violating Section 11-302 of the Securities Act and the custody rules set forth in COMAR 02.02.05.04, assesses Respondent the statutory penalty of \$5,000 per violation of Section 11-302, permanently bars Respondent from the securities and investment advisory business in Maryland and orders any other sanction or combination of sanctions against Respondent as permitted under Section 11-701.1.

REQUIREMENT OF ANSWER AND
NOTICE OF OPPORTUNITY FOR HEARING

_____ IT IS FURTHER **ORDERED**, pursuant to Section 11-701.1 of the Securities Act and COMAR 02.02.06.06, that Respondent shall file with the Securities Commissioner a written Answer to this Order within fifteen days of service of the Order. The Answer shall admit or deny each factual allegation in the Order and shall set forth affirmative defenses, if any. If Respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation he shall so state.

The Answer also shall indicate whether Respondent requests a hearing. A hearing to determine whether the Order should be vacated, modified, or entered as final will be scheduled in this matter if one is requested in writing. Failure by Respondent to file a request for a hearing in this matter within fifteen days of receipt of the Order shall be deemed a waiver by Respondent of the right to such a hearing.

Failure to file an Answer, including a request for a hearing, shall result in entry of a final order:

- (a) directing Respondent to permanently cease and desist from violation of the Securities Act; and
- (b) imposing a monetary penalty of up to \$5,000 per violation of the Securities Act; and
- (c) barring Respondent from engaging in the securities or investment advisory business in Maryland for or on behalf of others, or from acting as principal or consultant in any entity so engaged.

SO ORDERED:

DATED: _____, 2006

Melanie Senter Lubin
Securities Commissioner

