

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

IN THE MATTER OF:

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Michael G. Block

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Case No. 2005-0574

RESPONDENT.

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FINAL ORDER

WHEREAS, the Securities Division of the Office of the Maryland Attorney General (the “Securities Division”), pursuant to the authority granted in section 11-701 of the Maryland Securities Act, Md. Code Ann., Corps. & Ass’ns Section 11-101 et seq. (1999 Repl Vol.) (the “Act”), initiated an investigation into the securities related activities of Michael G. Block a/k/a Michael G. Block, CFP (“Respondent”); and

WHEREAS, based on information presented by the Securities Division, the Maryland Securities Commissioner (the “Commissioner”) found grounds to allege that Respondent engaged in acts or practices constituting violations of the securities, agent registration and antifraud provisions of the Act in relation to Respondent’s managing of the Joanne Eliff Revocable Trust (the “Trust”); and

WHEREAS, on October 12, 2006, the Commissioner issued an Order to Show Cause (the “Order”) requiring that Respondent show cause why a final order should not be entered ordering Respondent to cease and desist from violating Sections 11-302 and 11-401 of the Act and the Code of Maryland Regulations 02.02.05.03 and 02.02.05.04 (“COMAR”), imposing on Respondent a civil monetary penalty for such violations, and barring Respondent from engaging in the securities or investment advisory business in Maryland for or on behalf of others or acting

as a principal in a company engaged in such activities; and

WHEREAS, on October 31, 2006, Respondent filed an Answer to the Order and requested a hearing; and

WHEREAS, on November 20, 2006, the Commissioner referred this matter to the Office of Administrative Hearings for a hearing and proposed decision; and

WHEREAS, on March 12, 2007, the Securities Division filed a Motion for Summary Decision; and

WHEREAS, on March 27, 2007, Respondent filed an Opposition to the Securities Division's Motion for Summary Decision; and

WHEREAS, on April 9, 2007, a hearing was held on the Securities Division's Motion for Summary Decision; and

WHEREAS, on May 9, 2007, Administrative Law Judge M. Teresa Garland issued a Proposed Order granting the Securities Division's Motion for Summary Decision with respect to Counts II, IV and V of its Order to Show Cause; and

WHEREAS, on June 13, 14, 15 and 19, 2007, a hearing was held on the merits of the remaining issues; and

WHEREAS, on December 4, 2007, Judge Garland issued a Proposed Decision finding the Securities Division had not sustained its burden as to Counts I and III of the Order and proposed that those counts be dismissed and ordering that a sanctions hearing be held as to Counts II, IV and V of the Order; and

WHEREAS, on January 23, 2008, a sanctions hearing was held; and

WHEREAS, on February 25, 2008, Judge Garland issued a Proposed Sanctions Decision

that proposed barring Respondent permanently from engaging in the offer and sale of securities and investment advisory business in the State of Maryland and imposing a monetary penalty of \$195,000 against Respondent for Counts II, IV, and V, while finding that the Securities Division had not sustained its burden on Counts I and III to warrant any sanction; and

WHEREAS, on March 12, 2008, the Securities Division submitted to the Commissioner a Request for Exceptions to the Proposed Order; and

WHEREAS, on March 24, 2008, Respondent submitted to the Commissioner his Opposition to the Securities Division's Request for Exceptions; and

WHEREAS, on December 2, 2008, a hearing on the exceptions was held; and

WHEREAS, the Commissioner has determined that it is in the public interest and appropriate for the protection of investors to issue this Final Order;

NOW THEREFORE, the Commissioner finds the following as the basis for this Final Order:

I. JURISDICTION

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

II. FINDINGS OF FACT

2. The Commissioner adopts, in substantial part, the Findings of Fact in the ALJ's Proposed Decision, with the exception to ¶ 3, and the Findings of Facts in the ALJ's Proposed Sanctions. The summary of the factual findings are the following:

3. Joanne Eliff ("Ms. Eliff") was born on January 14, 1934. She was a Maryland resident, never married, and had no children.

4. On March 6, 1989, Respondent became a Certified Financial Planner (“CFP”). In June 2006, Respondent failed to renew his CFP designation and was no longer a CFP.

5. At relevant times, Respondent had been employed by Capital Financial, Inc., located at 10268 Baltimore National Pike, Ellicott City, Maryland. He held himself out as a CFP in correspondence using Capital Financial, Inc. letterhead by employing the title CFP on his signature line as well as on his business card. Before Capital Financial, Inc., Respondent was employed as an insurance agent for The Principal Financial Group and in the trust department of Crestar Bank.

6. Respondent met Ms. Eliff in the early to mid 1990's. The relationship between Ms. Eliff and Respondent was both a personal, quasi-familial relationship as well as a professional relationship.

7. On July 9, 1990, Ms. Eliff established the “Joanne Eliff Revocable Trust” (“Trust”).

8. Respondent has never registered as an investment adviser or an investment adviser representative.

9. Respondent had no written investment advisory agreement with Ms. Eliff.

10. On February 6, 1996, Respondent, working for the Principal Financial Group in Rockville, Maryland, prepared a “Confidential Analysis” for Ms. Eliff.

11. Respondent held himself out as Ms. Eliff’s Financial Adviser and was described by others as Ms. Eliff’s Financial Adviser.

12. On August 6, 1998, Ms. Eliff executed a Power of Attorney (“POA”) naming Respondent as her attorney-in-fact. She also amended the Trust, naming Respondent as her co-

trustee. The Trust provided for the distribution of some tangible items to Respondent, the remainder of the tangible items to a niece, and the balance of the Trust to the grandchildren of Ms. Eliff's friends, Bruce and Joan Carlson.

13. In 1999, Respondent charged Ms. Eliff \$13,075 in fees for his services to her. In a letter dated March 29, 2000 to J. Michael Broullire, CPA, Respondent instructed Mr. Broullire to deduct his fees from Ms. Eliff's 1999 income. The correspondence was signed "Michael G. Block, CFP."

14. On December 20, 1999, Respondent was paid a \$12,375 commission on the sale of Ms. Eliff's \$75,000 annuity with USG Fidelity and Life Co.

15. On October 9, 2003, Ms. Eliff amended the Trust, naming Respondent as the residual beneficiary of the Trust.

16. The Trust had a checking account at Sandy Spring Bank (the "Checking Account"). Between May 1999 and September 2003, Respondent withdrew \$135,150 from the Checking Account through checks made out to himself and cash withdrawals. These withdrawals were made through a series of 88 transactions.

17. Between October 2003 and August 2005, Respondent withdrew \$24,500 from the Checking Account through checks made out to himself and cash withdrawals. These transfers were made through a series of 31 transactions.

18. Respondent deposited \$133,400 of the Checking Account withdrawals into his personal bank account. Respondent withdrew an additional \$9,200 through a series of 15 transactions. He deposited this amount into a Charles Schwab Account in the name of Michael G. Block and Whitney Block, his daughter.

19. The Trust had a savings account at Sandy Spring Bank (the “Savings Account”). Between November 1999 and September 2003, Respondent withdrew \$194,006 from the Savings Account through cash withdrawals. These withdrawals were made through a series of 67 transactions.

20. Between October 2003 and August 2005, Respondent withdrew \$88,725 from the Savings Account through cash withdrawals. These withdrawals were made through a series of 71 transactions. Respondent deposited \$148,750 of these withdrawals into his personal bank account.

21. The Trust had an administrative account at Sandy Spring Bank (the “Administrative Account”). Between July 1999 and June 2001, Respondent withdrew \$198,557.23 from the Administrative Account through checks made out to him or for his benefit and cash withdrawals. These withdrawals were made through a series of 45 transactions. Respondent deposited \$160,500 of these withdrawals into his personal bank and brokerage accounts. In addition, \$1,000 was deposited into his daughter, Kathryn Block’s, account.

22. Ms. Eliff and Respondent had a joint checking account at Sandy Spring Bank (the “Joint Account”). This account was initially called the Top View account and then was called the River Oaks account. Top View is the name of the condominium in Ocean City where Ms. Eliff purchased an investment property. River Oaks is the name of the townhouse community where Ms. Eliff purchased two investment properties. This account received the rental income from these investment properties.

23. The statements for the Joint Account were sent to Respondent’s work address at 10268 Baltimore National Pike, Ellicott City, Maryland 21042.

24. Ms. Eliff was unaware of either the location of the Joint Account, its account number, or the balance in the account at any given time.

25. Between March 2001 and September 2003, Respondent withdrew \$45,678.82 from the Joint Account through checks made out to himself, Top View Enterprises (\$2,000 check which he endorsed and deposited into his personal bank account), Auburn University (\$1,040.82), and some cash withdrawals. These withdrawals were made through a series of 17 transactions.

26. Between October 2003 and August 2005, Respondent withdrew \$14,976.82 from the account through checks made out to himself, Katie Block (\$1,166), Radford University (\$11,360.57), First Horizon HL (\$8,382.57) and cash deposited to his personal account. These withdrawals were made through a series of 16 transactions. Respondent deposited \$35,738 of these withdrawals into his personal bank account number 2056593906.

27. There also was an ATM and Visa card for the Joint Account. Between March 2001 and October 2005, there were 186 ATM transactions in the account totaling \$11,763.22. During the same period, there were 348 Visa charges in the account totaling \$33,044.13.

28. Respondent also had a personal Capital One credit card. He made some monthly payments for the credit card with checks from the Checking Account (\$2,800) and from the Joint Account (\$902). These payments were made through a series of 21 transactions.

29. There was a Carrollton Bank line of equity secured by one of Ms. Eliff's River Oaks townhouses. Respondent wrote himself 3 checks totaling \$9,000 drawn on the Carrollton Bank line of credit that were deposited into his personal bank account. Respondent made out a fourth Carrollton Bank check to himself for \$13,000 which he deposited in his personal checking

account. It was signed “Joanne Eliff.”

30. Respondent concealed the Joint Account from Ms. Eliff and surreptitiously withdrew and transferred funds from the account for his own use without Ms. Eliff’s knowledge or consent.

31. Respondent had custody of four separate bank accounts belonging to Ms. Eliff, but did not comply with the requirements of COMAR 02.02.05.04.

III. ADDITIONAL FINDINGS OF FACT

32. Respondent had exclusive control over the Joint Account, thereby having exclusive control over all of the transactions in the account.

_____33. Respondent did not disclose to Ms. Eliff that he had a conflict of interest each time he withdrew funds from the Joint Account.

34. Respondent did not disclose to Ms. Eliff, James Oliver, Karen Daniels, Kristine and Jerry DeWitt, David Stambaugh and Judith Goodyear that he was not registered as an investment adviser, nor did he have an investment advisory contract with any of them.

35. Respondent provided financial planning services to Kristine and Jerry DeWitt, David Stambaugh and Judith Goodyear for compensation.

36. From March 2001 until September 2005, funds of Ms. Eliff were deposited into the Joint Account on 96 occasions.

IV. CONCLUSIONS OF LAW

The Commissioner adopts the following Conclusions of Law:

COUNT I

(Investment Adviser Registration Violation; Section 11-401)

37. Respondent held himself out to be an investment adviser by using letterhead and distributing his business cards advertising himself as a Certified Financial Planner, and by, among other things, conducting business meetings with Ms. Eliff, Kristine DeWitt, Jerry DeWitt, David Stambaugh, and Judith Goodyear for compensation in the State of Maryland as an investment adviser.

38. Respondent is not registered as an investment adviser or an investment adviser representative.

COUNT II

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

39. The Commissioner adopts the ALJ's finding that Respondent is in violation of section 11-302(a) of the Act and COMAR 02.02.05.03B(11).

40. The Commissioner adopts the ALJ's finding that a sanction should be imposed for each withdrawal from the Joint Account by Respondent for his benefit.

41. The Commissioner adopts the ALJ's finding that Respondent was in complete control of the Joint Account.

42. The Commissioner finds that the Visa/ATM transactions in the Joint Account were attributable to Respondent and each such transaction constitutes a withdrawal.

43. The Commissioner adopts the ALJ's finding that from March 2001 and October 2005, there were 186 ATM transactions and 348 Visa charges from the Joint Account.

44. The Commissioner adopts the ALJ's finding that, excluding the ATM/Visa card transactions, there were 33 withdrawals from the Joint Account.

45. The Commissioner finds that including the ATM/Visa card transactions and the withdrawals noted by the ALJ, there were a total of 567 withdrawals from the Joint Account.

COUNT III

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

46. Respondent made an omission of material fact by failing to disclose that he was not registered as an investment adviser in the State of Maryland when he conducted business as an investment adviser with Ms. Eliff, Kristine DeWitt, Jerry DeWitt, David Stambaugh, and Judith Goodyear.

47. Respondent made omissions of material fact by failing to disclose to Ms. Eliff that he was utilizing her funds for his own personal benefit.

COUNT IV

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

02.02.05.03)

48. The Commissioner adopts the ALJ's finding that Respondent was in violation of section 11-302(e) of the Act and COMAR 02.02.05.03B(16) by not having a written investment advisory contract with Ms. Eliff.

49. The Commissioner also finds that Respondent was in violation of section 11-302(e) of the Act and COMAR 02.02.05.03B(16) by not having a written investment advisory contract with Kristine and Jerry DeWitt.

50. The Commissioner also finds that Respondent was in violation of section 11-302(e) of the Act and COMAR 02.02.05.03B(16) by not having a written investment advisory contract with David Stambaugh and Judith Goodyear.

COUNT V

(Custody Prohibited; Section 11-302(f) and COMAR 02.02.0.04)

51. The Commissioner adopts the ALJ's finding that Respondent was in complete control of the Joint Account.

52. The Commissioner adopts the ALJ's finding that Respondent was in violation of the custody rules as prescribed in COMAR 02.02.05.04A.

53. The Commissioner finds that every deposit of Ms. Eliff's funds into the Joint Account constituted a separate violation of the custody rules.

54. The Commissioner finds that Respondent was responsible for a total of 96 deposits of Ms. Eliff's funds into the Joint Account.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. For Count I, Respondent shall pay civil penalties of \$5,000 for each of the three (3) clients with whom he conducted business as an investment adviser while he was not registered with the State of Maryland, totaling \$15,000.

2. For Count II, Respondent shall pay civil penalties of \$5,000 for each of the 567 withdrawals made from the Joint Account, totaling \$2,835,000.

3. For Count III, Respondent shall pay civil penalties of \$5,000 for each the three (3) clients he misrepresented in not informing them that he was not registered as an investment adviser in the State of Maryland and shall pay a civil statutory penalty of \$5,000 for misrepresenting to Ms. Eliff by not informing her that he was utilizing her funds for his own personal benefit, totaling \$20,000.

4. For Count IV, Respondent shall pay civil statutory penalties in the amount of

\$30,000.

5. For Count V, Respondent shall pay civil penalties of \$5,000 for each of the 96 deposits of Ms. Eliff's funds that were made into the Joint Account, totaling \$480,000.

6. Respondent is barred from engaging in the securities or investment advisory business in Maryland for or on behalf of others or acting as a principal in a company engaged in such activities.

VI. NOTICE OF APPEAL RIGHTS

Pursuant to COMAR 02.02.06.24, Respondent has the right to file an appeal of this Order with the circuit court. Any appeal must be filed within 30 days from the later of the date this Final Order is mailed by the Securities Division or the date of any Order issued by the Commissioner regarding a request for modification of the civil penalty.

SO ORDERED:

**Commissioner's Signature is
on File with Original Document**

June 14, 2010

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER