

ADMINISTRATIVE PROCEEDING

BEFORE THE
SECURITIES COMMISSIONER OF SOUTH CAROLINA

IN THE MATTER OF:)
)
John W. Elkins)
)
and)
)
Asset Protection Systems, Inc.,)
)
)
Respondents.)

ORDER TO CEASE AND DESIST
File Number 08009

WHEREAS, the South Carolina Uniform Securities Act of 2005 (the "Act"), S.C. Code
Ann. §§ 35-1-101 to 35-1-702 (Supp. 2008) governs all actions or proceedings initiated based

on conduct concerning securities that occurred on or after January 1, 2006; and

WHEREAS, the Securities Division of the Office of the Attorney General of the State of
South Carolina (the "Division"), pursuant to authority granted in the Act, S.C. Code Ann § 35-1-

FACTUAL HISTORY

1. Respondent APS is a domestic corporation registered with the South Carolina Secretary of State's office. Respondent Elkins is listed as the registered agent for Respondent APS.

The address for the registered agent is listed as 100 South Parkland #601 West

Columbia, South Carolina, 29169.

On 01/11/11, Respondent APS filed a petition for relief from the automatic stay.

a. He sold the following insurance products: life insurance, single-premium life insurance, equity indexed life insurance, fixed annuities, indexed annuities, and

b. Some of the persons who attend Respondents' free dinner workshops make appointments to meet with Respondent Elkins, and some of these people purchase insurance or annuity products from Respondents.

c. Obtaining the designation of CSA required attending a "weekend course," but it does not require any educational experience.

d. The pre-printed RSVP card was addressed to Asset Protection Systems Inc, Attn John W. Elkins, 1055-B Sunset Boulevard, West Columbia SC 29169.

e. In advertising material distributed in connection with the dinner workshops, Respondent Elkins, acting on behalf of himself and Respondent APS, represented the following to retirees:

i. "John W. Elkins of Asset Protection Systems is a well-known financial educator in the Richland and Lexington area. He presents in a fun

oriented and informative style and thousands of investors and retirees

have achieved their personal financial goals due to his informative

- iv. "GET FACTS, GET ANSWERS, GET EDUCATED AND GET THE HONEST TRUTH ON WHAT IS HAPPENING RIGHT NOW WITH YOUR SAVINGS AND INVESTMENTS"
 - v. "INFLATION...WAR...DOLLAR DECLINE... HOUSING DEFLATION...STOCK MARKET ROLLER COASTER ...SHRINKING INTERST EARNINGS...it's more important than ever to understand the facts so you can make informed decisions and avoid disastrous financial mistakes. You'll learn: . . . The ideal place for your retirement funds (what is 'ideal' anyway)."
 - vi. "A FRESH LOOK AT YOUR SAVINGS AND INVESTMENTS MAY YIELD AT LEAST ONE NEW OPPORTUNITY AND OFFER YOU PEACE OF MIND."
 - vii. In two places on the advertisement, Respondents stated that this seminar contains "time-sensitive information."
- f. Respondent Elkins did not disclose in the mailed advertisement his profession and what insurance or other licenses he holds.

14 Respondent Elkins on behalf of himself and Respondent APS invited investors to a

"FREE DINNER PRESENTATION," specifically on October 30, 2007, or November 1 or 6, 2007, at the New Orleans Riverfront restaurant, 121 Alexander Street, West Columbia, South Carolina, 29169.

- a. The name and address on the bottom of the invitation was Asset Protection Systems, Inc., 1055-B, Sunset Boulevard, West Columbia, South Carolina, 29169.

b. In advertising material distributed in connection with the dinner workshops, Respondent Elkins, acting on behalf of himself and Respondent APS, represented the following to retirees:

i. "John has a degree in Business Finance, has been a C.L.U. for over 30 years, and is a Certified Senior Advisor. Having given workshops to thousands of Midland seniors over the past few years, John knows most people do not plan very well (or at all) for retirement, so he has developed strategies to help seniors get past the major pitfalls and to uncomplicate the process."

ii. The title of the presentation was "DON'T LOSE MONEY! 'How to Survive and Prosper in the Current Stock Market Roller Coaster Ride'"

iii. "PROTECT YOUR MONEY

1. Alternatives to the stock market (reasonable returns without risk)

b. The return address on the mailed invitations was 1055-B Sunset Boulevard, West

Columbia, South Carolina, 29169.

- c. The name and address on the bottom of the invitation was Asset Protection Systems, Inc., 1055-B, Sunset Boulevard, West Columbia, South Carolina, 29169.
- d. In advertising material distributed in connection with the dinner workshops, Respondent Elkins, acting on behalf of himself and Respondent APS, represented the following to retirees:
 - i. "John has a degree in Business Finance, has been a C.L.U. for over 30 years, and is a Certified Senior Advisor who specializes in advising persons like you. Having given workshops to thousands of Midland

16. Respondent Elkins, on behalf of himself and Respondent APS, invited investors to a "FREE DINNER PRESENTATION," specifically on August 22, 24, 29, or 31, 2006 at the New Orleans Riverfront restaurant, 121 Alexander Street, West Columbia, South Carolina.

- a. Respondents sent these invitations via the United States mail.
- b. The return address on the mailed invitations was 1055-B Sunset Boulevard, West Columbia, South Carolina, 29169 and that is the address of Respondent APS.
- c. The name and address on the bottom of the invitation was Asset Protection Systems, Inc., 1055-B, Sunset Boulevard, West Columbia, South Carolina, 29169.
- d. In advertising material distributed in connection with the dinner workshops, Respondent Elkins, acting on behalf of himself and Respondent APS, represented the following to retirees:

- i. "John has a degree in Business Finance, has been a C.L.U. for over 30

~~years and is a Certified Senior Advisor who specializes in advising~~

1. How to achieve a sense of true financial security. . . .
2. How to choose the ideal legacy advisor (not simply financial advisor). . . .
3. How to secure a reasonable return on your investments AND NEVER LOSE MONEY AGAIN. . . .
4. Ideas you can use TODAY to better manage your assets. . . .”

e. Respondent Elkins did not disclose in the mailed advertisement his profession and what insurance or other licenses he holds.

17. In sales material provided by Elkins from one of the providers of fixed index annuities sold by ADS and Elkins, it is stated, “Compare a stock mutual fund which (where the

investor bears the market risk) with a fixed index annuity. You will note that a North American fixed index annuity insulates you from the risk of market downturn.” This sales material also included a chart comparing the benefits of a fixed index annuity to the benefits of a mutual fund.

the commissions from the sale of insurance products, including fixed annuities, but Elkins reported as income on his individual income tax return some commissions from the sale of insurance products, including fixed annuities.

21. In 2007, Elkins received a salary of \$28,000 from APS.
22. In 2008, APS and Elkins sold fixed annuities to at least three persons who attended one of APS' and Elkins' free dinner seminars and received commissions from these sales.

26. Respondents have included the "CSA" designation on the front door of their office but have excluded from the front door the more rigorous Chartered Life Underwriter ("CLU") designation.

- c. The highest closing balance of the S&P 500 in 2007 was 1565.15 on October 9, 2007; the lowest closing balance of the S&P 500 in 2007 was 1374.12 on March 5, 2007.
- d. The S&P 500's highest closing balance was 1565.15 on October 9, 2007.

APPLICABLE LAW

Definitions

29. Pursuant to S.C. Code Ann. § 35-1-102(15) of the Act, an IA is a person that, for

reports or analyses regarding securities (2) is in the business of providing such services and

(3) provides such services for compensation.

a. Pursuant to 52 Fed. Reg. 38,400 (1987), a person satisfies the first element, providing advice regarding securities, of the definition of being an IA when:

i. That person provides advice, or issues or promulgates reports or analyses,

regarding securities, even when the advice does not relate to specific

benefit from providing a variety of services to a client, including investment advisory services. Such economic benefit may include receipt of a single fee or

commission upon the sale to the client of insurance products or investments.

20. Pursuant to S.C. Code Ann. § 25-1-102(16) of the Act on IAD is an individual employed

transacts business in South Carolina on behalf of the IA unless the individual is registered under Section 35-1-404(a) or is exempt from registration under Section 35-1-404(b).

transact business in South Carolina as an IAR unless the individual is registered as an IAR under the Act or is exempt from registration as an IAR under Section 35-1-404(b).

38. Pursuant to S.C. Code Ann. § 35-1-502(a) of the Act, it is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling

securities:

~~To employ a device, scheme, or artifice to defraud another person or~~

an act, practice, or course of business constituting a violation of this Act or a rule adopted or order issued under this Act, the Securities Commissioner may issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with the Act

41. Pursuant to S.C. Code Ann. § 35-1-604(b) of the Act, an order issued under Section 35-1-604(a) is effective on the date of issuance and must include a statement of any civil penalty or costs of investigation the Division will seek, a statement of the reasons for the order, and

DIVISION'S DETERMINATION

42. WHEREAS, based on the foregoing, the Division has determined that Respondents

- d. Respondent APS received compensation for providing investment advice by receiving commissions on the sale of fixed annuities.
- e. Respondent APS is an IA pursuant to S.C. Code Ann. § 35-1-102(15) and is not exempt from registration in South Carolina under S.C. Code Ann. § 35-1-403(b).
- f. Elkins is an individual employed by or associated with an IA and made

~~as a representative of the service, some investment advice regarding securities or~~

m. Respondents have violated S.C. Code Ann. § 35-1-502(a) and S.C. Regulation 13-502(A) by employing a device, scheme, or artifice to defraud another person and by engaging in an act, practice, or course of business that operates and would operate as a fraud or deceit upon another person. Such violations include, but are not limited to, the following:

- i. Using advertising materials to get retirees to attend free-dinner workshops with the intent to sell insurance or annuity products without fully and

fully disclosing all material facts to the retirees who received the

advertising materials;

- ii. Misrepresenting the qualifications of Respondents and omitting to state a material fact about Respondents' qualifications, that Respondents are not registered as an IA or an IAR in South Carolina or with the United States Securities and Exchange Commission;
- iii. Stating in the advertising material that retirees could invest without risk

the Division make an arrest not to exceed \$10,000 for each violation of the Act by

the Respondent(s) and the actual cost of the investigation.

ORDER CEASE AND DESIST

44. NOW THEREFORE, pursuant to S.C. Code Ann. § 35-1-604(a)(1) of the Act, IT IS
HEREBY **ORDERED** that Asset Protection Systems, Inc.:

- a. Cease and desist from violating S.C. Code Ann. § 35-1-403(d) of the Act;
- b. ~~Cease and desist from violating S.C. Code Ann. § 35-1-403(a) of the Act;~~

this Order to Cease and Desist a written Answer specifically requesting a hearing therein. If a

Respondent requests a hearing, the Division, within fifteen (15) days after receipt of a request in a record from a Respondent, will schedule the hearing.

In the written Answer, Respondent(s), in addition to requesting a hearing, shall admit or

Respondent(s) relies, and shall set forth concisely the matters of law and affirmative defenses

upon which the Respondent(s) relies. A Respondent without knowledge or information sufficient