STATE OF MICHIGAN

DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the Matter of:
KEITH EPSTEIN,

Enforcement Case No. 09-7165

CRD No.: 1422407
System ID No. 0077598

Respondent.

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ORDER OF SUMMARY SUSPENSION
AND
OPPORTUNITY FOR HEARING

Issued and entered
On *Oct. 9th* 2009
by Stephen R. Hilker
Chief Deputy Commissioner

BACKGROUND

The Staff of the Office of Financial and Insurance Regulation (OFIR) has petitioned the Chief Deputy Commissioner of the Office of Financial and Insurance Regulation for an Order of Summary Suspension. Based on the Staff's Petition for Summary Suspension, the Chief Deputy Commissioner finds and concludes that, if the facts set forth in Staff's Petition are true, then:

1. The alleged conduct of the Respondent is illegal and in violation of the Michigan Insurance Code as follows:

    a. Keith L. Epstein (herein "Respondent") became registered as an Investment Company and Variable Contracts Products Representative in November 1985 and worked in that capacity for certain FINRA Members, including Mutual Service Corporation (MSC), a FINRA Member, from approximately August 1991 until his termination in May 2007. CRD# 1422407. As of January 7, 2009, Epstein was not currently registered with a FINRA member.

    b. Respondent also holds a Michigan insurance resident producer license with qualifications to transact insurance business in accident, health, life and variable annuities. System ID No. 0077598.

c. Beginning in the last quarter of 2006, an elderly couple, ages 94 and 96, had invested with Respondent in mutual funds and other investment products. From January 2007 until March 2007, the couple withdrew a total of approximately $280,500 from their investments, which they paid to Epstein with instructions that Epstein hold the funds for distribution upon their death for the benefit of their daughter.

d. Respondent deposited the elderly couple's funds he received in an account for a business that he operated and distributed the funds to his father, his business partner, and a lawyer who was known to the couple.

e. Respondent knew or should have known that his acceptance, commingling and use of the couple's funds were activities prohibited by MSC, his sponsoring firm. Respondent's activities were a misuse of the couple's funds and constituted separate and distinct violation of NASD Conduct Rule 2110.

f. Consequently, on January 7, 2009, Keith Epstein entered in a Letter of Acceptance, Waiver and Consent with FINRA's National Adjudicatory Counsel based on the above-mentioned facts.

g. Respondent consented to the imposition of a two-year suspension from association with any member of FINRA in any capacity; and a $10,000 fine.

h. While Epstein was also registered with MSC, an elderly man, [redacted] became a client of the Respondent.

i. From August 2002 through March 2004, [redacted] wrote checks payable to "cash", "Keith Epstein" or "Epstein & Rich" which Respondent deposited into multiple accounts that he controlled for his own personal use and benefit. In total, Respondent received at least 30 checks for a total sum of $124,000.

j. In response to OFIR's inquiry, Respondent stated that [redacted] loaned him the money. Respondent stated that the money was not for investments and that he did not deposit the money into any business account. He admitted that [redacted] was a client and that he did, in fact, borrow money from him.

k. Subsequently, [redacted] died, and his estate inquired into the money that was transferred to Respondent. The estate filed a civil action entitled, [redacted] *v. Epstein*, Case No. [redacted] (6th Judicial Cir. Crt. Mich., March 20, 2009) to recoup the funds [redacted] transferred to Respondent. The matter was settled with Respondent having to repay $124,000 to the estate. OFIR has information that Respondent has not honored the terms of the settlement agreement.

l. In June 2009, OFIR received information that Respondent executed transactions on behalf of customers without their authority to do so and made unauthorized use of the funds.

m. More specifically, in 1999 Respondent and his business Epstein & Rich managed the investments of an elderly couple, [redacted] and [redacted] Respondent would visit the couple regularly and advise them of their investment account status and how much money was in each account.

n. During the course of their business relationship with Respondent, [redacted] and [redacted] referred several friends, [redacted] and [redacted] (a married couple), [redacted] and [redacted] (a married couple) and [redacted] (a single man) to Respondent to manage their investments as well (hereinafter collectively known as the "Customers").

o. At some point in their business relationship, Respondent told the Customers that they would receive a check from one or more of their investment companies and that they needed to deposit the checks in their checking account and contemporaneously write a check to Respondent in order for him to reinvest their money in a different investments. The Customers did as instructed even though they never requested the checks and did not give authorizations for most of the disbursements. Respondent did not reinvest their money, but deposited their money into accounts controlled by him for his personal use and benefit.

p. In late 2008, [redacted] daughter, [redacted] began investigating the status of her father's investments and discovered that [redacted] financial portfolio was not what Respondent represented it to be over the years he had control of and managed [redacted] investments. The other Customers checked on their own portfolios and discovered Respondent misrepresented their financial portfolios as well.

q. On June 5, 2009, in the 6th Judicial Circuit Court for Oakland County, the Customers filed a civil action naming Respondent and his business as Defendants. In a case entitled, [redacted], *et. al. v. Keith Epstein, et. al.*, Case No. [redacted], the Customers claimed monetary losses in excess of $1,900,000.00 (one-million and nine hundred thousand dollars) for Respondents' misconduct including negligence, breach of fiduciary duty, misrepresentation, fraud and conversion.

r. More recently, on August 28, 2009, in the 6th Judicial Circuit Court for Oakland County, a [redacted]nty couple, [redacted] and [redacted], (the "[redacted] Couple") filed a civil action naming Respondents as Defendants. In a case entitled, [redacted] *v. Keith Epstein, et. al.*, Case No. [redacted]he Plaintiff claimed monetary losses in excess of $636,000 (six hundred thirty six thousand dollars) for Respondent's misconduct including negligence, breach of fiduciary duty, misrepresentation, fraud and conversion.

s. In that matter, the [redacted] Couple became clients of Respondent and allowed him to manage their financial portfolios. At that time, the couple's retirement funds were being held in tax sheltered annuities. On Respondent's advice, the retirement fund was moved into a more traditional IRA investment. Respondent characterized this process as a traditional "rollover".

t. Subsequent to the "rollover", Respondent told the [redacted] Couple that they would receive a check from one of their investment companies and that they needed to deposit the check in their checking account and contemporaneously write a check to Respondent in order for him to reinvest their money in a different investment account. The couple did as instructed even though they never requested the checks and did not give authorizations for the disbursements.

u. The [redacted] Couple never gave permission to Respondent or to the investment companies for the withdrawals. Upon reviewing their investment accounts, the [redacted] Couple received multiple records of forged signatures showing that Respondent or someone at his direction forged their signature to obtain withdrawals.

v. Respondent did not reinvest their monies as he represented he would, but instead deposited their money into accounts controlled by him for his personal use.

w. To date, Respondent has not returned any of the funds belonging to his clients.

x. On October 6, 2009, the Michigan Office of Financial and Insurance Regulation entered and issued a Cease and Desist Order for violations of the Michigan Uniform Securities Act alleging unauthorized use of customer funds, unlawfully borrowing money from a customer, being subjected to an order of suspension from FINRA membership, and engaging in dishonest and unethical business practices.

y. The Respondent, as a licensed insurance producer agent with full knowledge of this State's insurance laws, knew or should have known that the use of fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere violates Section 1239(1)(h) of the Michigan Insurance Code, *as amended,* MCL 500.100 *et seq.* (Code). Section 1239(1)(h) is to be applied broadly and encompasses any business conduct (i.e., securities) and not just insurance related business.

2. The alleged activities of the Respondent present a serious and immediate threat to the public's health, safety and welfare, and emergency action is clearly required to protect the public's interest. Respondent has violated the public's trust by using customer funds without permission or authorization, borrowing funds from customers, misappropriated and converted customers' money for his own personal gain and benefit, misrepresented the status of investor accounts to continue to cheat and defraud customers, and consented to a two-year suspension from FINRA membership based on allegations of the same. This continued activity exposes the general public to financial risks and harm and the Commissioner needs to take emergency action to protect the public by issuing an Order of Summary Suspension.

3. The immediate harm to the public presented by the continuing operation of the Respondent, as alleged, is much greater than the potential harm to Respondent, which might be occasioned by summary action against Respondent's registration, license and authority. Specifically, individual insurance and securities consumers and both

industries as well are at risk of substantial financial loss due to Respondent's failure to conduct his business activities ethically and honestly.

4. Due process requirements of the Michigan Insurance Code and the Administrative Procedures Act require that a licensee subject to summary disciplinary action be provided with an opportunity for immediate hearing. A summary suspension of Respondent's insurance producer licenses and authority is authorized by Section 92 of the Administrative Procedures Act of 1969, as amended, being MCL 24.292 and in Section 1242(4) of the Code, MCL 500.1242(4).

ORDER

Therefore, it is **ORDERED** that:

1. The insurance producer licenses and authority of Respondent KEITH EPSTEIN is hereby **SUMMARILY SUSPENDED**, effective upon service of this Order on Respondent KEITH EPSTEIN.

2. If requested, a hearing on this matter shall be held within a reasonable time, but not later than 20 days after service of this Order, unless Respondents request a later date. The hearing shall address the following issues: a) the factual allegations set forth in the Staff's Petition for Summary Suspension, b) the continuation of this Order of Summary Suspension, c) the revocation of the insurance producer license of Keith Epstein, and d) the assessment of such fines and restitution as may be authorized under the Insurance Code provisions applicable to this matter.

3. An administrative law judge from the State Office of Administrative Hearings and Rules shall preside over the hearing, if a hearing is requested.

4. A copy of this Order shall be served upon the Respondent immediately. This Order of Summary Suspension is effective upon the date of such service.

The Commissioner specifically retains jurisdiction of the matters contained herein and the authority to issue such further Order(s) as he shall deem just, necessary and appropriate.

RIGHTS AND PROCEDURES IN DIVISION OF INSURANCE HEARING

If requested, the hearing will be held under the legal authority and jurisdiction granted the Commissioner of Financial and Insurance Regulation by the Michigan Insurance Code and Uniform Securities Act, and in accordance with provisions of the Administrative Procedures Act of 1969, as amended ("APA"), MCL 24.201 et seq., Procedure for Conducting Hearings Held by the Commissioner of Financial and Insurance Regulation, Administrative Code 1979, R 500.2101 et seq., and other procedural provisions of Michigan law that are appropriate.

COUNSEL: A party has the right to be represented by counsel. If a party is represented, counsel is directed to file an appearance promptly with the administrative law judge. Appearances shall contain the counsel's full name, address, and telephone number. The address provided will be the official address for service of documents regarding this matter. When a party chooses to proceed without counsel, he or she will be held to the same standards as an attorney, including a reasonable knowledge of the rules of evidence as applied in nonjury circuit court civil cases, applicable provisions of the APA, and other relevant laws and procedures.

FAILURE TO APPEAR: If a party fails to appear at the hearing, and the hearing, has not been adjourned, the party in attendance may be permitted to proceed with its case and the Commissioner may issue a decision without the participation of the absent party. Failure to appear may also result in a final decision entered against the Respondent by default. If so, the allegations in the Complaint will be taken as true. Substantial penalties for the alleged misconduct, including fines and license revocation, may be ordered.

ADJOURNMENTS: No hearing shall be adjourned or continued, except upon an order of the Commissioner or the administrative law judge. All motions and requests for an adjournment, or a continuance, shall be in writing and shall concisely state the reasons why an adjournment or continuance is necessary. No motion or request for an adjournment or a continuance will be considered unless it is filed at least 5 days prior to the hearing date, except upon order of the Commissioner or the administrative law judge. This exception will be granted only upon a showing, that for reasons not within the control of the party making, the motion or request, the motion or request could not be filed within the time limit.

DISCOVERY: The parties may wish to meet with each other to exchange information and materials relevant and materials relevant to the hearing. The offices of the Insurance Bureau are available for this purpose. All records of a party relating to the subject matter of this hearing, which are not exempt from discovery, shall be made immediately available to every other party for inspection and copying.

MOTIONS: A party may file a motion with the administrative law judge at any stage in the case. All prehearing motions shall be in writing, shall be sent to each party with proof of service, and shall include the specific action requested and reasons for the action. A party may file a response to the motion within 7 days after receiving the motion.

EXHIBITS AND WITNESSES: A party has the right to call witnesses and to introduce physical and documentary evidence. Each party may cross-examine the witnesses called by the opposite party. An opportunity for redirect and recross-examination will also be provided. A party may submit rebuttal evidence. Each party may question or contest the admissibility of any exhibit. When an objection is raised the admission or an exhibit, the grounds for the objection shall be stated.

DECISION AND APPEAL: Unless the Commissioner immediately proceeds to a final decision in accordance with Section 81 of the APA, MCL 24.281, the administrative law judge for a case will issue a Proposal for Decision when the hearing and transcripts are completed. The parties will usually be given 30 days to file exceptions to the Proposal for

Decision. However, in cases involving summary suspension or matters of significant social and economic impact, the time period for filing exceptions may be shortened to meet the circumstances of a particular case. After the 30 days have elapsed, the Commissioner will issue a Final Decision. A Final Decision issued by the Commissioner may be appealed as provided in the applicable provisions of Michigan law.

Stephen R. Hilker
Chief Deputy Commissioner

Department of Energy, Labor and Economic Growth
Office of General Counsel
I certify that this is a true and complete copy of the original document on file in this office.
Date: 10/7/09 Tracy Janousek