

# State of Missouri Office of Secretary of State

Case No. AP-06-34

IN THE MATTER OF:

SHELDON JAY HARBER;  
MARVIN LEE HARBER;  
ROBERT WILLIAM WAUGH; and  
THE PLANNING GROUP, INCORPORATED  
D/B/A ASSET STRATEGIES, INC.,

*Respondents.*

Serve at:

Sheldon Jay Harber  
14319 Cobble Court  
Chesterfield, Missouri 63017

Marvin Lee Harber  
208 Ambridge Court #203  
Chesterfield, Missouri 63017

Robert William Waugh  
2148 Ballas View Drive  
St. Louis, Missouri 63122

The Planning Group, Incorporated  
d/b/a/ Asset Strategies, Inc.  
12312 Olive Boulevard  
Suite 160  
St. Louis, Missouri 63141-6448

## **CONSENT ORDER**

### **I. SUMMARY OF ALLEGATIONS**

1. The Missouri Securities Division has alleged that Respondents made unsuitable recommendations to Missouri investors by recommending an investment strategy that required that investors mortgage their homes to increase the amount of assets to invest with Respondents and that this constitutes grounds to revoke Respondents' registrations under §409.4-412, RSMo Supp. 2005. In addition, the Division alleges that Asset Strategies, Inc. failed to reasonably supervise the individual Respondents and that this constitutes grounds to revoke the registration of Asset Strategies pursuant to §409.4-412, RSMo Supp. 2005.
2. Respondents and the Securities Division desire to settle the allegations and the matters raised by the Securities Division relating to Respondent's alleged unsuitable

recommendations in the sale of securities.

## **II. CONSENT TO JURISDICTION**

3. Respondents and the Securities Division stipulate and agree that the Commissioner has jurisdiction over these Respondents and these matters pursuant to the Missouri Securities Act, Chapter 409, et seq.
4. Respondents and the Securities Division stipulate and agree that the Commissioner has authority to enter this Consent Order pursuant to §409.6-604(h), RSMo Supp. 2005, which provides:

The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act.

## **III. WAIVER AND EXCEPTION**

5. Respondents waive their rights 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 release and hold harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner of Securities and their respective representatives and agents from any and all liability and claims arising out of, pertaining to or relating to this matter.

## **IV. CONSENT TO COMMISSIONER'S ORDER**

7. Respondents and the Securities Division stipulate and 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.
8. Respondents neither admit nor deny the allegations made by the Securities Division in their Petition for Administrative Relief (Attachment A ) but consent to the Commissioner's Findings of Fact or Conclusions of Law as set forth below solely for the purposes of this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.
9. 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 paragraph 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 of Securities is not a party, including, but not limited to, positions inconsistent with the Findings or Conclusions set forth below.
10. Respondents agree that Respondents are not the prevailing parties in this action since the parties have reached a good faith settlement.

## **V. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

11. Sheldon Jay Harber ("S. Harber") is a registered investment advisor representative

- with an address of 14319 Cobble Court, Chesterfield, Missouri 63017. S. Harber has been registered in Missouri as an investment advisor representative with The Planning Group, Incorporated, d/b/a Asset Strategies, Inc. ("Asset Strategies") from October 25, 1995 to the present. S. Harber is currently registered as a registered representative of Cambridge Investment Research, Inc. ("Cambridge"). S. Harber was registered in Missouri as a registered representative of FSC Securities Corporation ("FSC") from May 17, 1993 to November 1, 2002. S. Harber has Central Registration Depository Number ("CRD") of 8673403
12. Marvin Lee Harber ("M. Harber") is a former registered investment advisor representative with an address of 208 Ambridge Court #203, Chesterfield, Missouri 63017. M. Harber was registered in Missouri as an investment advisor representative of Asset Strategies from May 6, 2005 until his retirement on December 31, 2005. M. Harber was registered in Missouri as a registered representative of FSC from May 17, 1993 to November 1, 2002. M. Harber has a CRD number of 236647.
  13. Robert William Waugh ("Waugh") is a registered investment advisor representative with an address of 2148 Ballas View Drive, St. Louis, Missouri 63122. Waugh is currently registered in Missouri as an investment advisor representative of Cambridge. Waugh was registered in Missouri as an investment advisor representative with Asset Strategies from May 6, 2002 until November 3, 2005. Waugh was registered in Missouri as a registered representative of FSC from May 17, 1993 to November 1, 2002. Waugh has a CRD number of 1490815.
  14. Asset Strategies is a registered investment advisor firm with an address of 12312 Olive Boulevard, Suite 160, St. Louis, Missouri 63141-6448. Asset Strategies has a CRD number of 115323 and has been registered as an investment advisor firm in Missouri from August 15, 1986 to the present.
  15. FSC is a registered broker-dealer firm with an address of 2300 Windy Ridge Parkway, Suite 1100, Atlanta, Georgia 30339. FSC has CRD number 7461 and has been registered as a broker-dealer in Missouri from July 15, 1983 to the present.
  16. Cambridge is a Missouri-registered broker-dealer and is located at 1776 Pleasant Plain Road, Fairfield, Iowa 52556 and has a CRD number of 39543. Cambridge has been registered in Missouri from March 21, 1997 to the present.
  17. In 1997, Missouri residents ("MR1" and "MR2") became customers of Asset Strategies and in 2000 they attended a class taught by S. Harber relating to retirement planning. After this class MR1 and MR2 met with S. Harber, M. Harber and Waugh regarding their retirement planning. To increase the amount of funds available for investment, Respondents suggested that MR1 and MR2 take out a mortgage on their home. MR1 and MR2 took out a 15 year mortgage on their home with Strategic Lending, Inc. in the amount of \$97,600. The interest rate at the time was 8.25% and the monthly principal and interest payment was \$946. Asset Strategies facilitated two refinancing of the mortgage on two occasions in order to reduce the mortgage payments.
  18. In July 2000, on the recommendation of Respondents and FSC, MR1 and MR2, invested \$95,414.34. The investment amount was allocated in the following manner: 56% was placed into domestic equities, 24% was placed into international equities,

19% was placed into fixed income and 1% was placed into cash.

19. Each month, MR1 and MR2 withdrew enough money from their investment account to cover their monthly mortgage payment. By December 2002, the entire account had been reallocated into cash.
20. By December 2003, S. Harber, M. Harber and Waugh had severed their relationships with FSC and had become registered representatives of Cambridge. At Cambridge the funds were reinvested in the market with the following allocations: 43% was placed in domestic equities, 36% was placed in fixed income, 20% was placed in international equities and 1% was placed in cash. There were virtually no changes made to the investment account asset allocation from December 2003 to June 2005.
21. During the period July 2000 to June 2005, MR1 and MR2 withdrew \$59,301.30 from the investment account to cover their monthly mortgage payments.
22. As of June 2005, the total market loss on the account was \$9,557.07. MR1 and MR2 owed \$82,063 on their home mortgage and the account value was \$28,741.63.
23. Because of the recommendations of Respondents, MR1 and MR2 were unable to liquidate the investment account to pay their mortgage, jeopardizing their ability to stay in their home.
24. Respondents recommended the mortgage equity investment strategy to two other Missouri residents who were contacted by an investigator with the Division.
25. Respondent Asset Strategies, failed to supervise the individual Respondents by failing to have measures to reasonably detect violations of the securities laws by:
  - a. Failing to have adequate procedures in place to determine the source of investment funds;
  - b. Failing to have adequate procedures in place to review teaching materials and strategies; and
  - c. Failing to have adequate procedures in place to approve investment strategies utilized by the registered advisors.
26. This failure to supervise constitutes grounds to revoke Asset Strategies' registration under §409.412, RSMo Supp. 2005.
27. Respondents made unsuitable recommendations in the offer and sale of securities to MR1 and MR2. Making unsuitable recommendations constitutes grounds to revoke the registration of Respondents under §409.412, RSMo Supp. 2005.
28. The Commissioner has jurisdiction over these Respondents and these matters pursuant to the Missouri Securities Act, Chapter 409, et seq.

## **VI. ORDER**

The Commissioner, after consideration of the consent of Respondents and the Securities Division, finds the following Order to be in the public interest, necessary for the protection

of public investors and consistent with the provisions of Chapter 409, et seq.

**NOW, THEREFORE**, it is hereby Ordered that:

1. Respondents are prohibited from making any investment recommendations that involve obtaining investment assets from mortgaging the investors' home;
2. Respondents shall jointly and severally pay to the Missouri Secretary of State's Investor Restitution Fund the sum of fifty-six thousand dollars (\$56,000) immediately upon the effective date of this Order. This amount shall be sent to the Securities Division and the Division will send the money to the Missouri Secretary of State's Investor Restitution Fund for payment to MR1 and MR2;
3. Respondents S. Harber and Waugh will not serve in a supervisory capacity with a broker-dealer or investment adviser for a period of two (2) years from the effective date of this Order;
4. Respondent Asset Strategies will develop procedures not unacceptable to the Commissioner that will enable the firm to reasonably supervise its employees specifically requiring registered representatives to supply information to the firm regarding the source of investor funds, investment strategies to be used or recommended, and copies of materials used in seminars and/or classes. These procedures will be sent to the Division within 45 days of this Order;
5. Respondent S. Harber is Ordered to pay a civil penalty of ten thousand dollars (\$10,000) made payable to the State of Missouri, and delivered to the Securities Division, and the Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. This payment shall be due upon the effective date of this Order;
6. Respondent M. Harber is Ordered to pay a civil penalty of ten thousand dollars (\$10,000) made payable to the State of Missouri, and delivered to the Securities Division, and the Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. This payment shall be due upon the effective date of this Order;
7. Respondent Waugh is Ordered to pay a civil penalty of ten thousand dollars (\$10,000) made payable to the State of Missouri, and delivered to the Securities Division, and the Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. This payment shall be due upon the effective date of this Order;
8. Respondents are ordered to jointly and severally pay eight hundred fifty dollars (\$850) as the cost of this investigation. This amount shall be payable to the Missouri Secretary of State's Investor Education and Protection Fund. This amount shall be immediately due and payable, and shall be submitted to the Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101; and
9. Respondents shall pay their own costs and attorneys fees with respect to this matter.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,  
MISSOURI THIS 12<sup>TH</sup> DAY OF OCTOBER, 2006.

ROBIN CARNAHAN  
SECRETARY OF STATE

(Signed/Sealed)  
MATTHEW D. KITZI  
COMMISSIONER OF SECURITIES

Consented to by:

Mary S. Hosmer  
Assistant Commissioner  
Missouri Securities Division

Sheldon Jay Harber

Marvin Lee Harber

Robert William Waugh

The Planning Group, Incorporated, d/b/a/  
Asset Strategies, Inc.

Approved as to Form

Daniel Estes, Counsel for Respondents