

OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
SECURITIES DIVISION

In the Matter of:)	
)	
Gina H. Palasini a/k/a Tammi Henderson)	
Palasini d/b/a Medicaid Planning)	Administrative Hearing
Specialists, Inc.)	Number: LS-13-0730-13-330
2033 Highway 82E)	
Leland, MS 38156-3032)	
)	
RESPONDENT)	

**FINAL CEASE AND DESIST ORDER AND
ORDER IMPOSING ADMINISTRATIVE PENALTY**

I. JURISDICTION

COMES NOW, Cheryn Netz, Assistant Secretary of State for the Securities Division of the Mississippi Secretary of State's Office (hereinafter "Division"), on behalf of C. Delbert Hosemann, Jr., Secretary of State for the State of Mississippi, after having served by certified mail a Summary Cease and Desist Order and Notice of Intent to Impose Administrative Penalty on Ms. Gina H. Palasini, also known as Tammi Henderson Palasini, d/b/a Medicaid Planning Specialists, Inc. ("Respondent"), and Respondent having wholly failed to request a hearing within the time allowed by the applicable rules, hereby issues this Final Cease and Desist Order and Order Imposing Administrative Penalty ("Final Order") regarding Respondent's violations of the Mississippi Securities Act (hereinafter "Act") Miss. Code Ann. Sections 75-71-101 *et seq.* In support thereof, the Division respectfully submits as follows:

Section 75-71-107(a) of the Act gives authority to the Secretary of State to administer and enforce the Act and regulate the offer and sale of securities in Mississippi including the firms and persons who offer or sell securities or who provide investment advice regarding securities.

From July 2007 to February 2009, Respondent was residing in Mississippi and made an offer to sell securities and obtained money from at least one Mississippi resident. For these reasons, the Secretary of State has jurisdiction in this matter.

II. FINDINGS OF FACT

1. During 2007, Mr. Joe P. Babb ("Babb"), born in 1932, was a 75- year old retired gentlemen residing in Marks, Mississippi.
2. During the period from 2004 to 2007, Respondent had multiple conversations over numerous occasions with Babb during which she provided investment advice to Babb on how Babb could qualify for Medicaid in order for Medicaid benefits to cover his future nursing home care and still protect his assets. Babb's sons Joey Babb and Ken Babb (the "Babb Sons") were present at several of these meetings.
3. In September 2007 Respondent advised Babb of an asset protection plan that detailed cashing in his life savings which consisted of primarily an investment portfolio of CD's in Citizens Bank and Trust in Marks, Mississippi ("Citizens' Bank") in order to reinvest the proceeds into another investment recommended by Respondent. During this meeting with Babb, Respondent provided Babb with a copy of brochure that appeared to be from the OM Financial Life Insurance Company ("OMFLIC"). She stated that the investment she was selling him would be used to purchase an annuity with OMFLIC.

4. On September 5, 2007, in reliance on Respondent's frequent conversations over a four year period of Medicaid planning advice to "protect his assets," and on Respondent's statement that the funds were being invested into an annuity with OMFLIC, Babb entered into an agreement with Respondent, doing business as Medicaid Planning Specialists ("MPS"). Respondent referred to the investment as an "annuity contract" (referred to herein as the "MPS Contract"). Babb's son Ken Babb was present when documents were signed at Babb's home. On the same date, Respondent and Babb went together to the Citizens' Bank to withdraw funds from the CD's in order to purchase the investment from Respondent.
5. Using proceeds from the sale of the CD's, Babb gave Respondent a check for Two Hundred Fifty Thousand Three Hundred Ninety-Four dollars and Thirty-Nine Cents (\$250,394.39) for the purchase of the MPS Contract. The MPS Contract promised a *monthly* income from the annuity of Two Thousand Two Hundred Twenty-One Dollars and Eighty-Six Cents (\$2,221.86). The MPS Contract also named the "Babb Sons" as the primary beneficiaries.
6. On January 18, 2008, less than five months after Babb purchased the MPS Contract, Babb died.
7. On February 1, 2008, Joey Babb met with Respondent to go over the MPS Contract in order to file claim forms.
8. The first "interest payment" on the MPS Contract of \$3,110.75 came from the Respondent in the form of a BankPlus official check dated April 23, 2008. The payment did not come from OMFLIC or any other insurance company.

9. Respondent made four “*quarterly* interest payments” (not monthly as provided in the MPS Contract) by BankPlus official checks to Joey Babb from April 23, 2008, to February 17, 2009, and then ceased making any payments on the MPS Contract. The payments to Joey Babb totaled Thirteen Thousand Fifty-Four Dollars and Two Cents (\$13,054.02). The Respondent did not make any additional “interest payments” after this time period.
10. On September 14, 2011, the Babb Sons obtained a default judgment in Chancery Court in Rankin County, Mississippi against Respondent, individually, and MPS for non-payment on the MPS Contract (the “Default Judgment”). The judgment ordered payment of Seventy-Seven Thousand Two Hundred Three Dollars and Seventy-One Cents (\$77,203.71) to Joey Babb and Eighty-Six Thousand Ninety-Four Dollars and Sixty-Seven Cents (\$86,094.67) to Ken Babb.
11. On March 20, 2012, Respondent entered into a settlement agreement with the Babb Sons in satisfaction of the judgment (the “Settlement Agreement”). Respondent agreed to pay a reduced sum to the Babb Sons in exchange for the cessation of collection efforts.
12. In February 2013, the Division received a complaint from the Babb Sons (the “Investor Complaint”) regarding the Respondent and assigned Ms. Marla Breland, Investigator, to investigate the Investor Complaint. As part of the investigation, Investigator Breland:
 - A. Interviewed Ken Babb and Joey Babb
 - B. Ran a background report on the Respondent which revealed, among other information, personal background information, contact information, prior residences, and multiple aliases

- C. Reviewed the CRD records and determined that Respondent was not registered nor has ever been registered as an investment adviser or a broker-dealer in Mississippi or in any other state
 - D. Reviewed Mississippi Insurance Department records and determined that: (1) Respondent was not licensed in Mississippi to sell insurance at the time of the transaction; and (2) her insurance license with the Mississippi Department of Insurance under the name/alias of Tammi Henderson Palasini was revoked in December of 2006. The reason for the revocation was Respondent, while acting as an agent of American Equity Investment Life Insurance Company in March of 2006 -- which was less than eighteen (18) months prior to the date of the transaction at issue -- accepted \$39,000 in checks from and delivered a fraudulent annuity contract to a customer. The checks were intended to be premiums for an annuity contract with the life insurance company, but instead Respondent kept the money for her personal use. When the company discovered this conduct, Respondent's appointment with American Equity was terminated. See attached copy of Insurance Department Administrative Order dated December 4, 2006, attached hereto as Exhibit "A."
 - E. Obtained copies of and reviewed the MPS Contract and the check paid to Respondent to purchase the MPS Contract
 - F. Obtained copies of and reviewed emails sent by Respondent to the Babb Sons concerning the MPS Contract and the interest payments owed under it
 - G. Obtained and reviewed copies of checks of the interest payments issued to Joey Babb pursuant to the "MPS Contract"
 - H. Searched the Rankin County Chancery Court records and obtained and reviewed a copy of the Default Judgment
 - I. Obtained a copy of and reviewed the Settlement Agreement and copies of payments received from Respondent by Ken Babb under the Settlement Agreement
 - J. Determined that the MPS Contract was issued by the Respondent and not by OMFLIC or any other insurance company despite Respondent's statements to the Babb and to the Babb Sons to that effect.
 - K. Conducted an asset search of the Respondent which did not reveal any real property owned by Respondent
13. On July 31, 2013, the Division issued a Summary Cease and Desist Order and Notice of Intent to Impose Administrative Penalty (hereinafter "Initial Order") against Respondent based on the facts detailed in paragraphs 1 through 12

above. A copy of the Initial Order is affixed hereto as Exhibit "B." Respondent wholly failed to respond to the Initial Order and wholly failed to request a hearing in accordance with and within the time allowed by the applicable statutes and rules.

14. Since the date of this Order, the Babb Sons are still owed \$108,405 under the terms of the Settlement Agreement.
15. Respondent has not provided the Division with any evidence or information about her lack of financial resources or her ability or inability to pay a monetary penalty to the Division for violations of the Act. The Division did not discover any real property assets owned by Respondent.

III. APPLICABLE LAW

16. Miss. Code Ann. Section 75-71-701 provides:

(a) **Applicability of predecessor act to pending proceedings and existing rights.** The predecessor chapter exclusively governs all actions or proceedings that are pending on January 1, 2010, or may be instituted on the basis of conduct occurring before January 1, 2010...

(b) ***

(c) **Applicability of predecessor chapter to offers or sales.** The predecessor chapter exclusively applies to an offer or sale made within one (1) year after January 1, 2010, pursuant to an offering made in good faith before January 1, 2010, on the basis of an exemption available under the predecessor chapter.

(d) For the purposes of this chapter, "predecessor chapter" means Chapter 71 of Title 75, Mississippi Code of 1972, as it existed on December 31, 2009.

17. Miss. Code Ann. Section 75-71-501, of the Act in force during the relevant time period for Respondent's alleged actions, states:

It is unlawful for a person in connection with the offer, sale, or purchase of any security, directly or indirectly:

- (1) To employ any device, scheme, or artifice to defraud;
- (2) To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (3) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

18. The Act in force at the relevant time period for Respondent's alleged actions defined the term "security" in subsection (n) of Section 75-71-105 to include an investment contract. While the predecessor Act does not define the term "investment contract," the Securities Act currently in effect adopted general case law and defines "investment contract" as an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and further defines a "common enterprise" as an enterprise in which the fortunes of the investor are interwoven with those of the person offering the investment. In addition, the predecessor Act defines "security" to exclude an annuity contract under which *an insurance company* promises to pay a fixed or variable sum of money, or both, either in a lump sum or periodically for life or some other specified period.

19. Miss. Code Ann. Section 75-71-715 of the Act, in force during the relevant time period for Respondent's alleged actions, states that if the Secretary of State determines that a person has engaged, is engaging, or is about to engage in an act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, the Secretary of State may:

- (1) Issue a cease and desist order, with or without prior hearing against the person or persons engaged in the prohibited activities, directing them to cease and desist from further illegal activity;

(2)

(a) Issue an order in the case of an issuer of registered securities, broker-dealer, investment advisor, agent, investment adviser representative, or other person who violated this chapter, imposing an administrative penalty up to a maximum of Twenty-five Thousand Dollars (\$25,000.00) for each offense, and each violation shall be considered a separate offense in a single proceeding or a series of related proceedings to be paid to the Secretary of State and requiring reimbursement to the Secretary of State for all costs and expenses incurred in the investigation of the violation (s) and in the institution of administrative proceedings, if any, as a result thereof;

(b) For the purpose of determining the amount or extent of a sanction, if any, to be imposed under subparagraph (2) (a) of this section, the Secretary of State shall consider, among other factors, the frequency, persistence, and willfulness of the conduct constituting a violation of this chapter or a rule promulgated thereunder or an order of the Secretary of State, the number of persons adversely affected by the conduct, and the resources of the person committing the violation;

IV. CONCLUSIONS OF LAW

20. The previous paragraphs are incorporated herein by reference.
21. Respondent's alleged actions occurred before January 1, 2010. See Miss. Code Ann. Section 75-71-701.
22. The investigation as described in detail in Section 12 above has provided sufficient evidence to show that: (A) Respondent was not registered to sell securities or insurance products in the state; (B) the statements made by the Babb Sons in their interviews with Investigator Breland and in the Investor Complaint support the facts that over a four-year period Respondent made frequent and numerous false and misleading statements of material fact (§501(2)) concerning the investment she sold to Babb and that Babb relied on these statements when making the investment,

including that the funds would be invested in an annuity through an insurance company; (C) this alleged action was not an isolated incident -- Respondent has a history of similar fraudulent conduct which occurred less than eighteen (18) months prior to the date of the transaction at issue, as evidenced by the revocation of her insurance license in December 2006 for similar misconduct that occurred March of 2006; (D) the MPS Contract that Respondent sold to Babb was a "security" as defined by the Act in force during the relevant time period as it is constituted an investment contract of which Respondent was the issuer and "investment contracts" are included in the definition of securities under the Act; (E) the MPS Contract was not an "annuity" under the Act as it was not issued by an insurance company; and (F) Respondent's conduct and actions which persisted over a four-year period from 2004 to 2009 were intentional, willful, persistent, frequent, deliberate, and voluntary, and she was aware of what she was doing when she engaged in this conduct.

23. The investigation has provided sufficient evidence of conduct and facts to meet the Secretary's burden to support a finding that Respondent knowingly, willfully, and intentionally offered and sold securities by employing a scheme, device, or artifice designed to defraud Mississippi investors; and that Respondent obtained over Two Hundred and Fifty Thousand Dollars (\$250,000.00) in monies from Babb by a deceptive, manipulative and fraudulent device or scheme.

V. PUBLIC INTEREST AND OTHER FACTORS CONSIDERED

24. This Final Order is issued in the public interest and for the protection of investors consistent with the purposes of the Act.

25. The Division considered several factors in determination of sanction, as required by §75-71-715(2)(b) of the Act. Specifically, Respondent's willful, frequent, persistent, deliberate, intentional, knowing, and fraudulent conduct was a serious violation of Section 75-71-501 of the Act causing extensive financial harm to one of our state's most vulnerable citizens: a 75 year old gentleman in his retirement years. This conduct, which persisted over a four-year period, resulted in a significant financial benefit to the Respondent.

In addition to the factors described above, the Division considered that penalties imposed under the Act should be more severe for recidivists, especially ones who commit similar misconduct in a short timeframe after the previous misconduct. Respondent, who falls into this category, is a repeat offender who has a history of previous similar fraudulent activities that occurred less than eighteen (18) months prior to the alleged actions, as evidenced by such conduct that resulted in her Mississippi insurance license revocation in 2006.

Not only is this penalty in the maximum amount of \$25,000.00 imposed in Article VI of this Order is justified on the basis of these aggravating factors described above attributed to the Respondent and in her conduct she engaged in with the victim but this penalty is also justified based in part on a need for the Division to deter the Respondent and other persons who prey on our most vulnerable citizens from engaging in this type of fraudulent conduct in the future.

26. Pursuant to Section 75-71-715(2)(a) of the Act, the Division is not required to consider Respondent's resources or any other mitigating or other penalty factors in

the assessment of expenses and costs incurred in the investigation against the Respondent.

VI. ORDER

27. **IT IS THEREFORE ORDERED**, pursuant to the authority set out in the Act that Respondent shall permanently **CEASE AND DESIST** FROM ENGAGING IN THE FURTHER ILLEGAL ACTIVITY IN, OR ORIGINATING FROM, THE STATE OF MISSISSIPPI.

28. **IT IS FURTHER ORDERED**, pursuant to the authority set out in the Act, and after the Division's consideration of, among other factors (such as are described and considered above), the frequency, persistence, and willfulness of the conduct constituting the violations described herein and as a result thereof, the number of persons adversely affected by the conduct, and the resources of the Respondent as required by Section 75-71-715(2)(b) of the Act, an Administrative Penalty of Twenty-Five Thousand Dollars (\$25,000.00) is imposed against Respondent. Said penalty is to be paid within thirty (30) days from the date of this Order.

29. **IT IS FURTHER ORDERED** that the Costs of Investigation (Forty (40) hours of investigation time x \$30 an hour) in the amount of One Thousand Two Hundred Dollars (\$1,200.00) be assessed against Respondent. Said assessment is to be paid within thirty (30) days from the date of this Order.

30. BE ADVISED THAT a willful violation of this Final Order may be punishable upon conviction by a fine of not more than Twenty-Five Thousand Dollars (\$25,000.00.00) or five (5) years imprisonment, or both, in addition to civil and administrative remedies available to the Division.

SO ISSUED, this the 4th day of JULY, 2014.

C. DELBERT HOSEMANN, JR.
Secretary of State
State of Mississippi

BY:


CHERYN NETZ
Assistant Secretary of State
Securities Division

PREPARED AND SUBMITTED BY:

Cheryn Netz MSB #9008
State of Mississippi
Office of the Secretary of State
Post Office Box 136
Jackson, MS 39205
(601) 359-133

CERTIFICATE OF SERVICE

I, Cheryn Netz, Assistant Secretary of State to the Securities Division, hereby certify that I have this day mailed a true and correct copy of the foregoing Final Cease and Desist Order and Order Imposing Administrative Penalty via United States mail, certified, return receipt requested, to the following:

Gina Palasini
2033 Highway 82E
Leland, MS 38156-3032

And

1301 N. Palm Spg
Palm Springs, CA 92262

This the 4th day of August, 2014.

PREPARED AND SUBMITTED BY:

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(Bob)