

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

**MARY FRANCES SPEARS
(CRD No. 4297575),**

Respondent.

**Disciplinary Proceeding
No. E3B20040231-02**

Hearing Officer _____

COMPLAINT

Upon information and belief, the Department of Enforcement ("Complainant") alleges as follows:

JURISDICTION

1. On or about October 11, 2001, Respondent Mary Frances Spears ("Respondent") first became registered with member firm American Express Financial Advisors, Inc. (BD No. 6363) ("AEFA"). Respondent remained registered with AEFA until on or about April 30, 2003, when she voluntarily left AEFA and terminated her registration with the firm.
2. On or about May 12, 2003, Respondent first became registered with member firm Lincoln Financial Advisors Corporation (BD No. 3978) ("LFAC"). Respondent remained registered with LFAC until on or about March 12, 2004, when she voluntarily left LFAC and terminated her registration with the firm.
3. On or about March 1, 2004, Respondent first became registered with member firm Private Consulting Group, Inc. (BD No. 45053) ("PCG"). Respondent remained

registered with PCG until on or about June 6, 2005, when she voluntarily left PCG and terminated her registration with the firm.

4. NASD retains jurisdiction over Respondent through June 5, 2007 (two years from June 6, 2005), pursuant to Article V, Section 4 of its By-Laws.

FIRST CAUSE OF COMPLAINT

(Private Securities Transaction) Violation of NASD Conduct Rules 3040 and 2110

5. Paragraphs one through four above are realleged and incorporated herein by reference.
6. On or about April 12, 2002, Respondent Mary Frances Spears participated in the sales of 12,800 shares of preferred stock of Ultimate Ventures, Inc., which cost \$10 per share, to CK and NK, husband and wife, for whom she was the account executive at AEFA. Ultimate Ventures, Inc. was a private securities investment that was not available through AEFA, but through an outside third party.
7. Respondent did not provide AEFA with prior written notification describing in detail the proposed transaction, her proposed role therein, and stating whether she had received or might receive selling compensation in connection with the transaction. Nor did Respondent receive written permission from AEFA to participate in the private securities transaction.
8. The foregoing acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 3040 and 2110 by Respondent Spears.

SECOND CAUSE OF COMPLAINT

(Unsuitable Recommendation) Violation of NASD Conduct Rules 2310 and 2110

9. Paragraphs one through four and six through seven above are realleged and incorporated herein by reference.
10. In early 2002 CK and NK met with Respondent to review their assets, cash flow analysis, and their goals and objectives. CK and NK were retired, although CK had recently taken a part-time job to make ends meet, and had all of their liquid assets, which were approximately \$128,000 at that time, invested in mutual funds through their account at AEFA.
11. In early 2002, CK and NK were unhappy with the performance of the mutual funds in their AEFA account. During the meeting, NK asked Respondent whether they should keep all of their liquid assets in the mutual funds. Respondent replied with something to the effect that "only a fool would stay in" the mutual funds. CK and NK were surprised by Respondent's response, advising Spears that they could not afford to lose any money and that they wanted to invest in something with no risk. Respondent advised CK and NK that although they could certainly find a "safe" investment through AEFA, such an investment would not provide a meaningful return.
12. Respondent then recommended CK and NK liquidate their entire portfolio then held in mutual funds at AEFA valued at \$128,000 and invest the proceeds in the preferred stock of Ultimate Ventures, Inc. Spears represented to CK and NK that Ultimate Ventures, Inc. was an "insurance pool" that offered a five-year "investment contract." This investment contract would pay them a guaranteed

minimum of 16% annually and possibly more. Respondent further represented to CK and NK that she owned a similar type of investment, herself. She assured the Ks that she was both licensed and “insured” and that if anything happened to the Ultimate Ventures, Inc. investment, CK and NK could recover their money through her.

13. Based upon Respondent’s representations and recommendation, CK and NK liquidated their portfolio of mutual funds at AEFA and invested the entire proceeds of \$128,000 in preferred shares of Ultimate Ventures, Inc.
14. The purchase of Ultimate Ventures, Inc. preferred stock was not suitable for CK and NK based upon the facts disclosed by them as to their other securities holdings, financial situation, financial needs, and based upon the fact that the purchase required the investment of CK and NK’s entire liquid net worth.
15. Ultimate Ventures, Inc. subsequently collapsed. CK and NK lost their entire investment of \$128,000; minus approximately \$30,700 they received in dividend payments before the company collapsed.
16. The foregoing acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 2310 and 2110 by Respondent Spears.

THIRD CAUSE OF COMPLAINT

(Outside Business Activity) Violation of NASD Conduct Rules 3030 and 2110

17. Paragraphs one through four above are realleged and incorporated herein by reference.
18. On or about June 16, 2003, Respondent Mary Frances Spears engaged in an outside business activity in that she recommended and referred CK and NK,

husband and wife, to Assurance Financial for the purpose of purchasing viatical investments.

19. Based upon Respondent Spears' recommendation, CK and NK made three viatical investments through Assurance Financial, which totaled \$76,257.96: one for \$13,600; one for \$47,457.96; and one for \$15,200.
20. According to the three viatical agreements ("Agreements"), CK and NK became a substitute beneficiary and/or assignee of a beneficial interest in certain life insurance policies that were set forth in each of the three Agreements. Lifetime Capital, Inc. or US Bank NA owned the policies. US Bank NA acted as the escrow agent of the life insurance policies, in regard to the payment of the insurance policy premiums and maintenance of the insurance policies.
21. CK and NK's return on the three viatical investments depended upon the timing of the insureds' deaths.
22. Respondent received compensation of \$1,806 from Assurance Financial for the referrals.
23. Respondent failed to provide prompt written notice to her member firm in connection with her participation in these three transactions.
24. In or around February 2004, eight individuals associated with Lifetime Capital, Inc. were indicted in Pensacola, Florida on charges of money laundering and mail fraud. The court appointed a receiver over Lifetime Capital, Inc. The receiver's report indicated that companies like Lifetime Capital Inc. are to establish and fund an insurance premium escrow account in order to make payments on the policies until the insured dies. Lifetime Capital Inc., however, apparently failed to make

many of the insurance policy premium payments it was supposed to be making on the insurance policies it had sold to investors. Also, in conjunction with the “matching” of policies for sale, a medical evaluation was to be performed by an independent underwriter of the insured to establish the anticipated life expectancy and possible “yield” of the investments. According to the receiver’s report, however, Lifetime Capital Inc. controlled the underwriting arm and as such, evaluations of the insurance policies it sold to investors may have been fabricated. There are also allegations of misappropriation of funds by Lifetime Capital Inc.’s principals. The receiver’s report stated that approximately 4,000 investors made over 6,000 investments, which totaled \$100 million in Lifetime Capital, Inc.

25. CK and NK subsequently lost all of the funds that they had used to purchase the three viatical investments, which totaled \$76,257.96.
26. The foregoing acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 3030 and 2110 by Respondent Spears.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. An order imposing sanctions upon the Respondent in accordance with NASD Procedural Rule 8310;
- C. An order requiring Respondent Spears to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;

- D. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Procedural Rule 8330; and
- E. An order imposing any other fitting sanction.

NASD DEPARTMENT OF ENFORCEMENT

Dated: January 4, 2006



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