

BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE  
OF THE STATE OF IDAHO

STATE OF IDAHO, Department of	)	
Finance, Securities Bureau,	)	Docket No. 2003-07-40
	)	
Complainant.	)	AGREEMENT AND ORDER
	)	
vs.	)	
	)	
TIMOTHY FRED PRESTON,	)	
	)	
Respondent.	)	

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The Director of the Department of Finance has instituted an investigation into the conduct of Timothy Fred Preston (“Preston”). Following said investigation, the Director concluded that violations of the Idaho Securities Act (“Act”), Idaho Code § 30-1401, had occurred. The Director and Respondent Timothy Fred Preston have agreed to resolve this matter without a public hearing. Therefore, the Director deems it appropriate and in the public interest that this Agreement and Order be entered, and the Respondent consents to the entry of this Agreement and Order.

**BACKGROUND**

1. Respondent has been employed by Mony Securities Corporation (“MONY”) since March 1989. MONY has been registered as a broker-dealer with the NASD since 1969 and Idaho since 1970.
  
2. Respondent Preston has been registered as a securities salesman with the State of Idaho and the NASD since April 1999 and has been registered as a licensed investment adviser agent since September 1994.

### DIRECTOR'S FINDINGS

3. Respondent Preston has been GR and JR's insurance agent since 1986.
4. In late 1999 or early 2000, GR and JR contacted Preston to obtain information needed to complete their wills. At that time, Preston represented to GR and JR that he could direct their investments into accounts that would maximize returns and provide lower risk than they had in their current IRA investment portfolios.

5. Based on Preston's representations of lower risk and higher returns, GR and JR opened individual MONY IRA accounts with Preston. GR and JR agreed to transfer approximately \$500,000 from their existing IRA accounts into Clark Capital Management ("Clark") accounts as advised by Preston. MONY new account information indicates that GR, age 67, and JR, age 65, were retired with a net worth of approximately one million dollars. Risk tolerance for GR and JR was reported as medium with investment objectives of growth/income for GR and tax deferred growth/safety of principal for JR. Their reported annual income of \$50,000 was derived from social security benefits and income realized from their various retirement accounts.
6. On September 14, 2000, Preston directed that Clark would deposit approximately \$500,000 from GR and JR's existing IRA accounts into various programs managed by Clark with the funds allocated into Rydex mutual funds.
7. GR and JR regularly contacted Preston regarding the rapid decline of their Rydex retirement accounts. Preston advised GR and JR to be patient and wait for their accounts to recover.
8. On or around October 4, 2002, GR and JR determined they could no longer tolerate the steep decline in their portfolio value and told Respondent Preston to liquidate their Rydex mutual

fund positions. From October 2000 until October 2002, the value of the Richardsons' IRA accounts dropped 71% from \$500,000 to \$143,000.

### VIOLATIONS

9. IDAPA 12.01.08.118 (Rule 118), promulgated pursuant to the Idaho Securities Act ("Act") addresses "Unsuitable Recommendations," as follows:

It shall constitute a "Deceptive or Manipulative Act or Practice", as used in these rules, for any broker-dealer, investment adviser, salesman, investment adviser representative, or associate to recommend to a customer the purchase, sale or exchange of any security, unless such broker-dealer, investment adviser, salesman, investment adviser representative, or associate shall have reasonable grounds to believe that the recommendation is not unsuitable for such customer on the basis of information furnished by such customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by such broker-dealer, investment adviser, salesman, investment adviser representative, or associate.

10. The Director alleges that Respondent violated Rule 118 in the following ways:

- a. Suitability – Risk Tolerance. GR and JR expressed a medium risk tolerance. Preston referred GR and JR to a money manager specializing in market timing of Rydex mutual funds. Rydex funds are generally risky and are suitable only for aggressive investors.
- b. Suitability – Concentration. Preston did not appropriately direct GR and JR's assets to be disbursed into a balanced portfolio. Preston referred GR and JR to a money manager who allocated their full \$500,000 into non-diversified Rydex sector funds and Rydex leveraged index funds.
- c. Suitability- Age. GR and JR were over sixty-five years old and retired when Preston opened their retirement accounts with MONY. GR was a retired floor superintendent at a food processing plant and

had little expertise in the investment arena. Preston recommended Clark knowing that GR and JR's money would be allocated into the Rydex mutual funds. These recommendations were not suitable given the Richardson's age.

- d. Suitability- Investment Objectives. GR and JR's MONY new account forms reflect investment objectives of growth/income and tax deferred growth/safety of principal, respectively. The Rydex mutual fund family is generally high risk and suitable for investors seeking aggressive growth and speculation. These funds were not suitable given the Richardson's investment objectives.

11. Idaho Code §30-1403 makes it unlawful for any 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 any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are 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.

12. The Director alleges that Respondent violated Idaho Code §30-1403(2) by:

- a. Misrepresenting to GR and JR that their investment return would be maximized and their risk would be minimized if they transferred their retirement account to Clark Capital.
- b. Omitting to advise GR and JR that their Rydex fund investments were suitable only for higher risk investors, and that investments in the Rydex family of funds should be limited to a small percentage of their assets.

**REMEDIES**

13. Respondent neither admits nor denies the allegations contained in this Agreement and Order.

14. Respondent agrees to pay to the Department a civil penalty in the amount of fifteen thousand dollars (\$15,000). Respondent shall pay this sum in three (3) monthly installments of \$5,000. These installments shall be paid to the Department on April 1, 2004, May 1, 2004, and June 1, 2004.

15. Respondent agrees to a five (5) day suspension of his Idaho securities license beginning April 1, 2004.

16. Respondent agrees to comply with all provisions of the Idaho Securities Act in the future. In the event the Respondent commits violations of the Idaho Securities Act within three (3) years of the date of the Order, Respondent acknowledges that Complainant can incorporate the allegations giving rise to this Order in any future proceeding.

17. If the Respondent fails to timely meet all terms and conditions set forth in this agreement, this agreement shall be null and void, and the Department may seek all remedies allowed by law that arise from the violations referenced in paragraphs 9 through 12 above.

DATED this 26 day of MARCH, 2004.

  
TIMOTHY FRED PRESTON

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DATED this 30<sup>th</sup> day of March, 2004.

*Marilyn T. Chastain*

MARILYN T. CHASTAIN  
Bureau Chief, Securities Bureau  
Department of Finance  
State of Idaho

IT IS SO ORDERED This 30<sup>th</sup> day of March, 2004



*Gavin M. GEE*

GAVIN M. GEE, Director  
Department of Finance

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2004, I served a true and correct copy of the foregoing fully-executed AGREEMENT AND ORDER upon the following by the designated means:

Michael J. McDonagh  
Eberle, Berlin, Kading, Turnbow, &  
McKlveen  
P.O. Box 1368  
Boise, ID 83701 1368

- U.S. mail, postage prepaid
- Certified Mail
- Overnight Mail
- Hand Delivery
- Facsimile

*Katherine Witt*

~~Neta Nichols~~ Katherine Witt