

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

STATE OF IDAHO, Department of)	
Finance, Securities Bureau,)	Docket No. 2003-7-45
)	
Complainant,)	AGREEMENT AND ORDER
)	
vs.)	
)	
RICHARD M. BUDWEE, JR., and)	
BUDWEE FINANCIAL PLANNING)	
SERVICES, INC.,)	
)	
Respondents.)	
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The Director of the Department of Finance has investigated the conduct of Richard M. Budwee (Budwee), and Budwee Financial Planning Services, Inc. (BFPS) (Respondents) in the securities business. Pursuant to said investigation, it appears to the Director that violations of the Idaho Securities Act, Idaho Code § 30-1401, *et seq.*, have occurred. The Director and Respondents 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. Respondents consent to the entry of this Agreement and Order.

BACKGROUND

1. Budwee has been registered as a securities salesman with the Idaho Department of Finance (Department) since February 10, 1994. Budwee was a registered securities salesman for SunAmerica Securities, Inc. (SunAmerica) from October 1, 1999 to December 14, 2001. Beginning December 18, 2001 and continuing to the present date, Budwee has been a registered securities salesman for American Wealth Management, Inc. Budwee is currently president of Budwee Financial Planning Securities, Inc., which has been registered as an investment adviser with the Department since February 25, 2002.

2. On November 20, 2001, Budwee and the Department entered into an Agreement and Order (Docket No. 2001-7-28), by which Budwee was sanctioned by the Department: a) for transacting business as an investment adviser without being registered as an investment adviser, in violation of Idaho Code § 30-1406(2); b) for knowingly providing the Department with the false written representation that he had not engaged in investment advisory services while he was not registered in that capacity, in violation of Idaho Code § 30-1438 and, c) for failing to disclose to a client the correct deferred sales charge assessed in connection with a mutual fund change for a client's account.

3. The sanctions against Budwee included in the Agreement and Order referenced in paragraph 2 above included: (a) that Budwee pay to the Department a \$3,500 administrative penalty; (b) that Budwee return \$600 in advisor fees he received in violation of the Act; and (c) that Budwee's Idaho broker-dealer representative registration be suspended for one day.

4. The violations underlying Docket No. 2001-7-28 occurred between June and November of 2000, while Budwee was a securities salesman for SunAmerica. SunAmerica terminated Budwee's employment on December 14, 2001.

5. The Central Registration Depository (CRD) maintained by the National Association of Securities Dealer (NASD) reports a customer complaint against Budwee in 1999, another customer complaint against Budwee in 2000, and two civil judgments against Budwee in 1999, both of which were apparently paid in full.

FINDINGS OF VIOLATIONS

COUNT ONE

6. On January 3, 2002, Budwee requested and was granted an extension to pay the \$3,500 civil penalty stipulated in the Agreement and Order referenced in paragraph 2 above.

7. On or about January 14, 2002, Budwee borrowed \$5,000 from his investment clients Mr. and Mrs. D.O. (Investor D.O.). Investor D.O. is not a broker-dealer, an affiliate, a financial institution engaged in the business of loaning funds or securities, or an immediate family member of Budwee's.

8. Shortly after obtaining the loan from Investor D.O., Budwee issued a check in the amount of \$3,500 to the Department as the administrative penalty required by the November 20, 2001 Agreement and Order. Also, on January 31, 2002, Budwee issued a check in the amount of \$600 to Investors D.V. and L.V. as the restitution payment required by the November 20, 2001 Agreement and Order. It is the Department's finding that Budwee borrowed money from Investor D.O. to fund his obligations under the November 20, 2001 Agreement and Order.

9. Idaho Code § 30-1413(7) provides that the Director may by order deny, suspend, or revoke the registration of any of broker-dealer, salesman, investment adviser or investment adviser representative or may impose an administrative penalty in an amount not to exceed ten thousand dollars (\$10,000) for each violation if he finds that the order is in the public interest and that the registrant, or in the case of a broker-dealer or investment adviser, any partner, control person, officer of director, has engaged in dishonest or unethical practices in the securities business. Rule 110 pursuant to the Idaho Securities Act, IDAPA 12.01.08.110, defines “dishonest or unethical practices”, as that term is used in Idaho Code §30-1413(7), to include, but not be limited to, those acts or practices defined in such Rules as “deceptive or manipulative.” Rule 117.20, IDAPA 12.01.08.117.20, provides that borrowing money from a customer, unless the customer is a broker-dealer, an affiliate, or a financial institution engaged in the business of loaning funds or securities, or immediate family, is a “deceptive or manipulative act or practice.”

10. Budwee’s act of borrowing money from Investor D.O. is a dishonest and unethical practice in the securities business within the meaning of Rule 110. Idaho Code § 30-1413(7) provides grounds for the suspension or revocation of Budwee’s registration or the imposition of an administrative penalty not to exceed ten thousand dollars (\$10,000) for such violation.

COUNT TWO

11. On March 22, 2002, Budwee sent a letter to several investment clients, soliciting referral business. Budwee included the following closing in such letter:

Richard M. Budwee
Financial Advisor
Raymond James & Associates

12. Raymond James & Associates is registered with the Department as a broker-dealer. According to the CRD, Budwee has never been employed by Raymond James & Associates. At the time Budwee's March 22, 2002 letter was sent to current and prospective investment clients, Budwee was employed by American Wealth Management, a registered broker dealer.

13. Budwee's misrepresentation to his investment clients that he was a financial adviser with Raymond James & Associates, when in fact he was not, constitutes a violation of § 30-1403 of the Idaho Securities Act and is a dishonest and unethical practice in the securities business within the meaning of Rule 110 promulgated under the Idaho Securities Act. Idaho Code § 30-1413(7) provides grounds for the suspension or revocation of Budwee's registration or the imposition of an administrative penalty not to exceed ten thousand dollars (\$10,000) for such violation.

COUNT THREE

14. In January of 2002, Budwee transferred Investor D.O.'s investment account from SunAmerica to American Wealth Management, Inc., the broker-dealer with whom Budwee began employment on December 18, 2001.

15. To effect the transfer of Investor D.O.'s account, in January 2002, Budwee filled out a new account agreement for Investor D.O. On the new account agreement Budwee listed Investor D.O.'s net worth as \$3,000,000. In reality, Investor D.O.'s net worth was approximately \$300,000. This fact was known to Budwee. The inflated figure as to Investor D.O.'s net worth qualified Investor D.O. for higher investment exposure and larger insurance contracts, and diminished the level of suitability review of Investor D.O.'s account by American Wealth Management, Inc., Budwee's employer.

16. Budwee's misrepresentation of Investor D.O's net worth in the new account agreement submitted to American Wealth Management, Inc. constitutes a violation of § 30-1403 of the Idaho Securities Act and is a dishonest and unethical practice in the securities business within the meaning of Rule 110 promulgated under the Idaho Securities Act. Idaho Code § 30-1413(7) provides grounds for the suspension or revocation of Budwee's registration or the imposition of an administrative penalty not to exceed ten thousand dollars (\$10,000) for such violation.

COUNT FOUR

17. In the spring of 2002, Budwee contacted Investor S.E. and recommended that she surrender an annuity that she owned and invest such funds in a real estate investment trust. Budwee represented to Investor S.E. that an investment in the real estate investment trust would pay a "guaranteed" 8% return. Based upon Budwee's recommendation, Investor S.E. agreed to this transaction. Budwee failed to inform Investor S.E. that she would incur a significant penalty of approximately \$6,000.00 for surrendering her annuity. Budwee also did not inform her of the investment risk associated with a real estate investment trust. Before the transaction was completed, Investor S.E. learned of the surrender penalty and instructed Budwee not to effect such transaction.

18. Rule 118 pursuant to the Idaho Securities Act includes unsuitable recommendations within the meaning of a deceptive or manipulative practice. Rule 110 of the Idaho Securities Act identifies deceptive and manipulative practices as being dishonest and unethical practices, and Idaho Code § 30-1413(7) provides grounds for the

suspension or revocation of Budwee's registration or the imposition of an administrative penalty not to exceed ten thousand dollars (\$10,000) for such violation.

19. Budwee's recommendation to Investor S.E. that she surrender an annuity and invest the proceeds in a real estate investment trust, without 1) informing Investor S.E. that she would incur a significant surrender charge and, 2) disclosing the risk factors of an investment in a real estate investment trust constitutes an unsuitable recommendation and a violation of Idaho Code §§ 30-1403, 30-1404, and 30-1413(7).

COUNT FIVE

20. In or about November of 2000, T.A. and her husband (Investor T.A.) became new investment clients of Budwee. Investor T.A. instructed Budwee to transfer funds from mutual funds held in Investor T.A.'s account with another brokerage company, into a new investment account with SunAmerica. Investor T.A. instructed Budwee to transfer such funds into a cash money market account until further notice. Budwee told Investor T.A. that he would do so and would later call to set up a meeting to discuss how Investor T.A. wanted the funds invested.

21. ~~Approximately ten (10) days~~ later, and prior to any meeting with Budwee, Investor T.A. received a statement from SunAmerica showing that mutual funds had been purchased with investor T.A.'s funds in the new account. Due to market declines during that time period, the SunAmerica statement showed that the mutual funds purchased for Investor T.A.'s account had lost value.

22. Rule 117.08 pursuant to the Idaho Securities Act includes unauthorized transactions within the meaning of a deceptive or manipulative practice. Rule 110 of the Idaho Securities Act identifies deceptive and manipulative practices as being dishonest

and unethical practices. Idaho Code § 30-1413(7) provides grounds for the suspension or revocation of Budwee's registration or the imposition of an administrative penalty not to exceed ten thousand dollars (\$10,000) for such violation.

23. Budwee's act of conducting unauthorized transactions in Investor T.A.'s investment account constitutes a violation of Idaho Code §§ 30-1403, 30-1404, and Idaho Code § 30-1413(7) provides grounds for the suspension or revocation of Budwee's registration or the imposition of an administrative penalty not to exceed ten thousand dollars (\$10,000) for such violation.

COUNT SIX

24. When Investor T.A. learned that Budwee had made unauthorized purchases for the new SunAmerica investment account as referenced in paragraphs 20 through 23 above, Investor T.A. contacted Budwee and instructed him to sell the mutual funds and leave the proceeds in cash, as originally instructed. Budwee represented to Investor T.A. that he would do so.

25. Approximately one month later, Investor T.A. received an account statement from SunAmerica showing that the mutual funds had not been sold. Because the market had continued to decline, Investor T.A. experienced further losses of investment funds.

26. Budwee's act of falsely representing to Investor T.A. that he would sell the mutual funds held in the SunAmerica investment account constitutes an untrue statement of a material fact, in connection with the offer, sale or purchase of any security, directly or indirectly, in violation of Idaho Code § 30-1403(2).

27. Budwee's false representation in paragraph 26 above constitutes a violation of § 30-1403 of the Idaho Securities Act, and is a dishonest and unethical practice in the securities business within the meaning of Rule 110 promulgated under the Idaho Securities Act. Idaho Code § 30-1413(7) provides grounds for the suspension or revocation of Budwee's registration or the imposition of an administrative penalty not to exceed ten thousand dollars (\$10,000) for such violation.

REMEDIES

28. Respondents neither admit nor deny the findings of violations contained in this Agreement and Order.

29. Respondents agree to maintain at all times on the premises of Respondent BFPS copies of all personal and business records, which shall be available for examination by the Department's staff for a period of five (5) years from the date of this Agreement and Order.

30. Respondent Budwee consents to a three (3) day suspension of his broker dealer representative registration in Idaho. The three day suspension will be served from May 29-31, 2004.

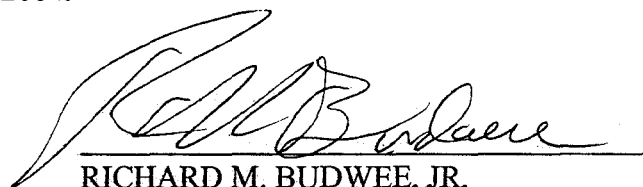
31. Respondent Budwee agrees to pay the Department a \$5,000 administrative penalty by no later than December 31, 2004.

32. Respondents agree to comply with the provisions of the Idaho Securities Act and rules promulgated under the Act in all future securities transactions. Respondents further agree that, should the Director find in the future that Respondents have committed any additional violations of the Act, the Department may use all

allegations contained in the Agreement and Order, and any other allegations concerning violations of the Act by Respondents, in any subsequent proceeding.

33. If the Respondents fail to timely meet all terms and conditions set forth in this Agreement and Order, this Agreement and Order shall be null and void, and the Department may seek all remedies allowed by law that arise from the violations referenced in paragraphs 6 through 27 above.

DATED this 28 day of May 2004.



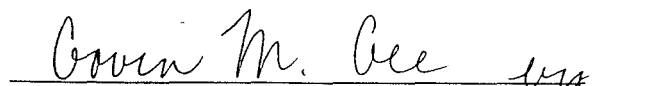
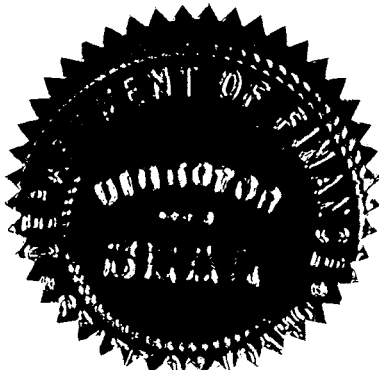
RICHARD M. BUDWEE, JR.
Individually, and as President of
Budwee Financial Planning Services, Inc.

DATED this 28th day of May 2004.



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

IT IS SO ORDERED this 28th day of May 2004.


GAVIN M. GEE
Director
Department of Finance, State of Idaho