Hearing Examiner

AUG 2 0 2010

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE STATE AUDITOR
STATE OF MONTANA

IN THE MATTER OF:	)	Case No.: SEC-2009-73
	)	
KMS FINANCIAL SERVICES, INC.,	)	
a Broker-Dealer firm (CRD #3866),	)	**CONSENT AGREEMENT AND**
	)	**FINAL ORDER**
Respondent.	)	
	)	

This Consent Agreement and Final Order (Agreement) is entered into by the Montana Securities Department (Department), acting pursuant to the authority of the Securities Act of Montana, Mont. Code Ann. § 30-10-101, *et seq.*, (Act) and KMS Financial Services, Inc., (Respondent), with a principal place of business located at 2001 Sixth Avenue, Suite 2801, Seattle, WA 98121-9833.

RECITALS

WHEREAS, on January 8, 2010, the Department filed felony charges against Arthur Heffelfinger (Heffelfinger), a registered representative and investment adviser for the Respondent from February 20, 2001, until September 23, 2009, for Conducting or

Promoting a Ponzi Scheme, Theft, and Exploitation of an Older Person, collectively in an amount of over $2 million;

WHEREAS, due to Heffelfinger's actions, some of Respondent's investors suffered monetary losses;

WHEREAS, the Department alleges that the Respondent violated Mont. Code Ann. § 30-10-201(13)(k) by failing to reasonably supervise Heffelfinger to ensure his compliance with the Act;

WHEREAS, the Department and the Respondent agree that the best interests of the public would be served by entering into the Agreement.

NOW THEREFORE, in consideration of the mutual undertakings contained in this Agreement, the Department and the Respondent hereby agree to settle this matter pursuant to the following terms and conditions:

STIPULATIONS AND CONSENTS

I. Without admitting or denying any of the Department's allegations, the Respondent stipulates and consents to the following:

A. Pay a total of $975,722.76 in Restitution to the customers identified in **Exhibit A** attached hereto. The Restitution shall be distributed by the Respondent in accordance with the following terms and conditions:

1. By certified or registered mail within ten days after the date of this Agreement, the Department shall provide a notice to each customer identified in **Exhibit A**, specifying the final allocated amount available to the customer.

2. An identified customer seeking to claim funds as provided in **Exhibit A** shall execute a release and assignment of claims on a form acceptable to the Department. The form of document entitled Acknowledgment of Funds, Release, and Assignment shall acknowledge (i) acceptance of funds, (ii) that such funds constitute a release of any claims by the customer with respect to securities transactions conducted by Heffelfinger through Respondent, and (iii) assign any claims the customer may have against third parties. No funds shall be distributed to any customer without receipt of an executed form. The customer shall return the executed form to the Department and within five days of receipt, the Department shall forward the original executed form to the Respondent.

3. All Restitution claims and all documents required for distribution executed by the customers must be made within 30 days of receiving notice from the Department of their allocated amount.

4. Within ten days of receipt of the original executed form, the Respondent shall distribute the amount identified in **Exhibit A** to the customer.

5. The Respondent will either credit a customer's account held by Respondent with the allocated amount or issue a check payable to the customer.

B. Pay a fine and the Department's investigative costs in an amount not to exceed $50,000, collectively, which shall be paid within ten days of the date of this Agreement.

C. At least one week prior to each annual Montana branch office audit, the Respondent shall notify the Department. Within ten business days of completion of each branch office audit, the Respondent shall submit its report of findings to the Department. This paragraph is void one year from the date of this Agreement.

D. The Respondent shall continue to review, test, and verify supervisory policies and procedures to safeguard customer funds and securities. The Respondent shall submit these policies and procedures to the Department for final review and approval.

E. The Respondent shall continue to review, test, and verify supervisory policies and procedures in regard to maintaining books and records. The Respondent shall submit these policies and procedures to the Department for final review and approval.

F. Respondent shall continue to require its Montana branch offices to record and log all funds received and disbursed and maintain such records for a period of at least five years.

G. The Respondent fully and forever releases and discharges the Commissioner, the Department, and all Department employees and agents from any and all actions, claims, causes of action, demands, or expenses for damages or

injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of this Agreement.

H. This Agreement is entered without adjudication of any issue, law or fact. It is entered into solely for the purpose of resolving the Department's investigation and allegations, and is not intended to be used for any other purpose. For any person or entity not a party to this Agreement, this Agreement does not limit or create any private rights or remedies against the Respondent including, limit or create liability of Respondent, or limit or create defenses of Respondent, to any claims.

I. Upon execution of this Agreement, the Respondent acknowledges and waives its right to appeal the Commissioner's Order.

II. The Department and the Respondent to this Agreement agree and acknowledge:

A. This Agreement constitutes the entire agreement between the parties and that no other promises or agreements, either express or implied, have been made by the Department or by any member, officer, agent or representative of the Department to induce Respondent to enter into this Agreement.

B. This Agreement may not be modified orally and any subsequent modifications to this Agreement must be mutually agreed upon in writing to be effective.

C. This Agreement shall be incorporated into and made a part of the attached Final Order issued by the Commissioner herein.

D. Upon execution of this Agreement, the Department will not commence an administrative action against the Respondent based upon the activities giving rise to the Department's investigation that occurred prior to the execution of this Agreement.

E. This Agreement shall be effective upon signing of the Final Order.

F. This Agreement and Final Order are public records under Montana law and as such may not be sealed or otherwise withheld from the public.

DATED this 20th day of August, 2010.

SECURITIES DEPARTMENT

By: _____
JESSE LASLOVICH
Chief Legal Counsel

DATED this 18th day of August, 2010.

KMS FINANCIAL SERVICES, INC.

By: _____
Eric S. Westberg
Its: Managing Director / COO

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DATED this _____ day of August, 2010.

SECURITIES DEPARTMENT

By: _____
JESSE LASLOVICH
Chief Legal Counsel

DATED this 18th day of August, 2010.

KMS FINANCIAL SERVICES, INC.

By: _____
Eric S. Westberg
Its: Managing Director / COO

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE STATE AUDITOR
STATE OF MONTANA

IN THE MATTER OF:	)	Case No.: SEC-2009-73
	)	
KMS FINANCIAL SERVICES, INC., a Broker-Dealer firm (CRD #3866),	)	**EXHIBIT A**
	)	
	)	**CUSTOMER LIST AND**
Respondent.	)	**IDENTIFIED LOSSES**
	)	

Pursuant to the Consent Agreement Final Order (Agreement) dated August 20, 2010, between the Montana Securities Department (Department) and the Respondent, the following is a list of each customer who, upon execution of a release and assignment of claims, is entitled to payment as follows:

Est. of M.P.:	$ 312,727.23
P.F.:	$ 311,487.47
A. & J.G:	$ 146,292.63
L.S.:	$ 12,280.81
K.B.:	$ 136,175.85
J.S.:	$ 41,675.94
P.P.:	$ 13,949.90
R.V.M.:	$ 1,132.93

FINAL ORDER

Pursuant to the authority vested by Mont. Code Ann. § 2-4-603 and Mont. Code Ann. §§ 30-10-101, *et seq.*, and upon review of the foregoing Consent Agreement and good cause appearing therefore,

IT IS HEREBY ORDERED that the foregoing Consent Agreement between the Securities Department and the Respondent, KMS Financial Services, Inc., is adopted as if set forth fully herein.

DATED this 20th day of August, 2010.

MONICA J. LINDEEN
Commissioner of Securities and Insurance
Montana State Auditor

By: Lynne Egan
LYNNE EGAN
Deputy Securities Commissioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this 20th day of August, 2010, a true and correct copy of the foregoing Consent Agreement and Final Order was served upon the following by hand delivery or by depositing the same in the United States mail postage paid and addressed as follows:

VIA USPS:

KMS Financial Services, Inc.
Eric Westberg, COO
2001 Sixth Avenue, Suite 2801
Seattle, WA 98121-9833

VIA HAND DELIVERY:

Jesse Laslovich, CSI Chief Legal Counsel

Susan Paulson-Davis