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**MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY**

MONICA J. LINDEEN, Montana)
State Auditor and Montana)
Securities Commissioner,)
)
Petitioner,)
)
v.)
)
CATHERINE ANN FINBERG,)
A/K/A CATHY FINBERG)
)
Respondent.)

No.: DV-16- 346 D

**PETITION FOR INJUNCTIVE
RELIEF AND SHOW CAUSE
HEARING**

DAVID M ORTLEY

The Commissioner of Securities and Insurance, Montana State Auditor (Commissioner), by and through counsel, petitions this Court to grant injunctive relief in the form of a temporary restraining order preventing Catherine Ann Finberg (Finberg or Respondent) from engaging in securities business practices in the state of Montana; from engaging in further violations of the Securities Act of Montana (Act); and from transferring, encumbering, or disposing of, or attempting to transfer, encumber, or dispose of, certain assets, monies, and property interests.

The Commissioner additionally petitions this Court to set a hearing for the Respondent to Show Cause why a preliminary injunction should not be granted preventing the Respondent from taking such actions. In support of this Petition, the Commissioner states as follows:

1. This Court has jurisdiction to hear this matter pursuant to Mont. Code Ann. §§ 30-10-201, -301, -305 and -325.

2. The Commissioner is authorized to administer the Act, Mont. Code Ann. § 30-10-101 et seq. Mont. Code Ann. § 30-10-107(1). The Act is to be construed to protect the investor, persons engaged in securities transactions, and the public interest. Mont. Code Ann. § 30-10-102(1). If it appears that any person has engaged in or is about to engage in a violation of the Act, the Commissioner may bring an action in a court of competent jurisdiction in order to enjoin activity and to enforce compliance with the Act. Mont. Code Ann. § 30-10-305(1)(b). The Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI) is a criminal justice agency. Mont. Code Ann. § 30-10-304(5).

3. Pursuant to Mont. Code Ann. § 27-19-315, the Commissioner has not, and is not required to, give notice to Finberg of this Petition. The facts alleged above demonstrate that providing Finberg notice of the Petition prior to its filing would enable Finberg to liquidate assets and property interests obtained using investor funds, would cause investors immediate and irreparable injury by

depriving them of sources from which to recover their investment funds, and would allow Finberg to engage in further violations of the Act, which violations the Commissioner is obligated to prevent.

4. Investigation by the CSI is outlined in the affidavit of Lynne Egan, attached hereto as Exhibit A. The facts of the investigation, as well as the facts of the current situation involving Finberg establish the necessity of injunctive relief to avoid the immediate and irreparable harm to victims if notice is given and/or delay of injunctive relief beyond immediate Court consideration. The current allegations of violation of Montana law include, but are not limited to: (1) violation of Mont. Code Ann. §30-10-201(1), which prohibits anyone from transacting business in the state of Montana as a securities broker-dealer or salesperson if she is not registered under the Act (Mont. Code Ann. § 30-10-306 provides criminal penalties for violations of this statute); (2) violation of Mont. Code Ann. § 30-10-301(1), which prohibits any person, in connection with a securities transaction, to employ any devise, scheme, or artifice to defraud any person (Mont. Code Ann. § 30-10-306 provides criminal penalties for violations of this statute); (3) violation of Mont. Code Ann. § 30-10-325, which prohibits any person from conducting or promoting a pyramid promotional scheme¹ (Mont. Code Ann. § 30-10-306 provides criminal

¹ A pyramid promotional scheme includes a Ponzi scheme, in which a person pays investors using money obtained from later investors rather than from any profits earned.

penalties for violations of this statute); and violation of Mont. Code Ann. § 45-6-301(7)(b), which prohibits a person from obtaining or exerting control over property entrusted to her, with the purpose of depriving the victim of the property.

5. Finberg continues to engage in the above violations and any notice to her would or could result in additional violations or destruction of evidence or assets. Further, the Commissioner has reason to believe that Finberg may attempt to transfer, encumber, dispose of, or alienate those monies, assets, and property interests obtained using investor funds. These actions would result in immediate and irreparable injury to the investors by depriving them of sources from which to recover their investment funds.

WHEREFORE, the Commissioner seeks the following relief:

1. That this Court issue a temporary restraining order pursuant to Mont. Code Ann. §§ 27-19-314 and 30-10-305(1)(b) restraining Finberg from engaging in securities business practices in the state of Montana;

2. That this Court issue a temporary restraining order pursuant to Mont. Code Ann. §§ 27-19-314 and 30-10-305(1)(b) restraining Finberg from committing further violations of the Act;

3. That this Court issue a temporary restraining order pursuant to Mont. Code Ann. §§ 27-19-314 and 30-10-305(1)(b) restraining Finberg from transferring, encumbering, or disposing of, or attempting to transfer, encumber, or

dispose of any monies, assets, and property interests which may have been obtained, in whole or in part, using investor funds;

4. That this Court issue a temporary restraining order pursuant to Mont. Code Ann. §§ 27-19-314 and 30-10-305(1)(b) restraining Finberg from transferring, encumbering, or disposing of, or attempting to transfer, encumber, or dispose of any monies held in any of the bank accounts or securities brokerage accounts owned or controlled by Finberg at the following entities:

**Glacier Bank
202 Main Street
Kalispell, Montana 59901**

**Vanguard
P.O. Box 2600
Valley Forge, PA 19482-2600**

**Interactive Brokers
One Pickwick Plaza, 2nd Floor
Greenwich, CT 06830;**

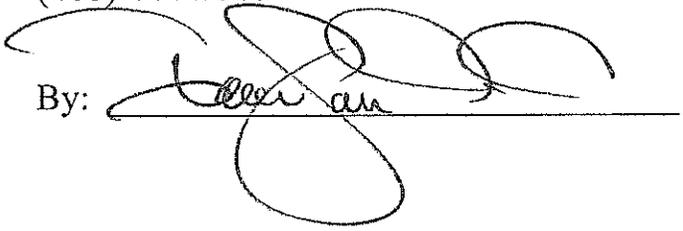
5. That this Court issue a temporary restraining order pursuant to Mont. Code Ann. §§ 27-19-314 and 30-10-305(1)(b) restraining Finberg from transferring, encumbering, or disposing of, or attempting to transfer, encumber, or dispose of any monies held in any other accounts, not listed above, owned or controlled by Finberg because the monies may not belong to Finberg and may have been obtained through fraud; and

6. That this Court set a hearing for Finberg to Show Cause pursuant to Mont. Code Ann. §§ 27-19-201(1) and 30-10-305 why Finberg should not be

enjoined from the activities for which a temporary restraining order has been requested.

DATED this 15th day of April, 2016.

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(406) 444-2040

By: 

**MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY**

MONICA J. LINDEEN, Montana State)
Auditor and Montana Securities)
Commissioner,)

) Petitioner,)
v.)
))
CATHERINE ANN FINBERG,)
A/K/A CATHY FINBERG,)

) Respondent.)

Cause No.: BDV-16-346D

AFFIDAVIT OF LYNNE EGAN

LYNNE EGAN, being first duly sworn, deposes and says:

1. I am employed by the state of Montana as the Deputy Securities Commissioner for the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI). I am a forensics accountant who has worked for the CSI for over 22 years as a Securities Examiner and Deputy Securities Commissioner. Prior to my work at the CSI, I was an income tax compliance officer for the Montana Department of Revenue for 2 years and worked for D.A. Davidson for 10 years as an operations manager. I have served as an expert



witness in many securities-related cases and have extensive training and experience relating to securities regulation.

2. My investigation of this matter started in February 2016 with contact by Federal Bureau of Investigation Agent Shawn Hall. Hall reviewed a notice filed by Glacier Bank employees regarding the possibility of illegal activity by Catherine Ann Finberg (A/K/A Cathy Finberg). Finberg, a Columbia Falls, Montana, resident, has accounts at Glacier Bank in Kalispell, Montana, and has some financial responsibility for a disabled person (J.K.). Another investigation had been started by the Columbia Falls, Montana, police department regarding an allegation that Finberg was improperly handling J.K.'s finances. During Agent Hall's investigation, he discovered that Finberg is acting as a securities broker-dealer, receiving money from people who believe she is investing the money to their benefit.

3. Any person acting as a broker-dealer or securities in Montana must be registered as such. Mont. Code Ann. §§ 30-10-103(1), -103(22), -103(24), 30-10-201. My review of the Financial Industry Regulatory Authority's (FINRA) Central Registration Depository (CRD), which maintains registration filings for all broker-dealer firms and individuals associated with the firms, showed that Finberg is not now, nor has she ever been, registered in any capacity with the CSI or FINRA. My review of the Securities and Exchange Commission's EDGAR database indicates

that Finberg is not now, nor has she ever been, registered with the Securities and Exchange Commission. None of the exemptions from the registration requirement apply to Finberg. Mont. Code Ann. § 30-10-105.

4. Agent Hall reported to me that Finberg has an account at Interactive Brokers, LLC, a brokerage firm that allows individual investors access to securities trading technology and comprehensive reporting. It facilitates "day trading" for individual investors. I obtained information pursuant to CSI's regulatory authority (Mont. Code Ann. § 30-10-304) from Interactive Brokers. Interactive Brokers provided account brokerage records, including new account information, documentation of wired funds, and account statements. Finberg has controlled this account since 2002.

Finberg deposited approximately \$1,002,000 into her Interactive Brokers personal account during the period January 2010 through January 2016. During this same time period, Finberg withdrew \$741,000.00 of these proceeds from this account and placed the funds in her personal account at Glacier Bank in Montana. During the same time period, Finberg incurred a market loss of over \$275,000 on her trading activities in her Interactive Brokers account. She executed dozens of stock trades each day.

5. J.K. has lived with physical and mental disabilities since childhood and his grandparents cared for him. This included financial assistance. At the

CSI's request, Vanguard, a broker-dealer registered to do business in Montana, provided documentation to me regarding the accounts of J.K.'s grandparents and the beneficiary account of J.K. My review of Vanguard's records revealed that following J.K.'s grandmother's death on March 11, 2009, J.K.'s grandfather designated J.K. as the 100% primary beneficiary of this IRA. J.K.'s grandfather designated his children as 50% secondary beneficiaries. In 2010, the IRA had a value of over \$140,611.31.

6. In February 2010, J.K.'s grandfather and Finberg signed an Agent Authorization giving Finberg full power of an agent regarding the IRA held at Vanguard.

7. J.K.'s grandfather passed away on February 28, 2011. Vanguard's records reveal that Vanguard received an Agent Authorization in October 2011 giving Finberg full agent authority. This was immediately following J.K.'s taking possession of the IRA pursuant to his grandfather's designation. J.K.'s grandfather's Last Will and Testament also shows clear intention on his part that J.K. be provided for by J.K.'s grandfather's remaining assets. Despite this, Finberg used her Agent Authorization and appointed herself the owner of J.K.'s grandfather's IRA. On December 31, 2012, she received a distribution from the account in the amount of \$3,688.17; on July 17, 2013, she received a distribution from the account in the amount of \$2,536.05; on July 17, 2014, she received a

distribution from the account in the amount of \$2,536.05; and on July 17, 2015, she received a distribution from the account of \$2,536.61. The proceeds from these distributions went into her personal account at Glacier Bank. The current value of this account is approximately \$122,244.84.

8. Analysis of Glacier Bank records received pursuant to an investigative subpoena issued April 1, 2016, by a state district court include virtual copies of checks written to Finberg and deposited into her account, as well as bank statements. Records of account 50069729, a checking account in Finberg's name only, show numerous checks deposited with handwritten notations in the memo line of the check including "investment," "day trading investment," and "day trading." From January 2008 through March 24, 2016, Finberg obtained money from at least 18 persons where the documentation indicates the money given to Finberg was investment proceeds. The aggregate amount of money received by Finberg for this purpose is approximately \$1,294,300.00.

9. These 18 investors include J.K. and/or J.K.'s grandfather. For example, \$50,000 was withdrawn by Finberg from the Vanguard account in September 2010, deposited in Finberg's Glacier Bank account, and \$25,000 was transferred from J.K.'s account at Glacier Bank into Finberg's account at Glacier Bank. Of the \$75,000 transferred, Finberg sent \$44,000 to her account at

Interactive Brokers, and Finberg used the remaining \$31,000 for her own personal use and to pay other investors in Finberg's investment scheme.

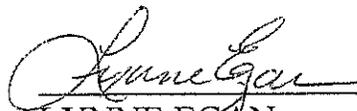
10. Upon receipt of investment proceeds from these investors, Finberg typically wired a portion of the proceeds to her personal account at Interactive Brokers, located at Two Pickwick Plaza, Greenwich, CT 06830. Finberg also usually retained a portion of the investors' proceeds for her own personal use and to make monthly payments to previous investors. Each month during the time period analyzed, I found that Finberg did the following:

- (1) wrote checks of an average amount of \$3,805.00 aggregate to the investors;
- (2) wired funds via the Automated Clearing House(ACH) to pay her personal credit card at Bank of America (monthly average payment of \$1,950);
- (3) wired funds via ACH to pay her personal credit card at Chase (monthly average payment of \$500); and
- (4) paid her mortgage with Bank of America (monthly average payment of \$1,730).

These payments were paid primarily with the investment proceeds of individual investors. A comparison of money from investors with money repaid to other investors revealed that Finberg owes the 18 individual investors at least \$997,302.00.

11. Finberg's access to her Glacier Bank, Vanguard, and Interactive Broker accounts cannot be stopped at this time without a Court Order. Given Finberg's recent and continual activities involving these accounts, failure to freeze them could result in continuing, immediate, and irreparable injury to the investors by depriving them of sources from which to recover their investment funds. Similarly, notice of this action by the Commissioner would or could result in additional violations or destruction of evidence or assets. Finberg may attempt to transfer, encumber, dispose of, or alienate their interest in those monies, assets, and property interests obtained using investor funds. Based on these facts, a temporary restraining order must be granted to avoid this immediate and irreparable harm to specific victims, as well as persons engaged in securities transactions and the public generally.

DATED this 14th day of April, 2016.



LYNNE EGAN
Deputy Securities Commissioner

Subscribed and sworn to before me this 14th day of April, 2016, by

Lynne Egan.

