

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **SECURITIES DIVISION**

4 IN THE MATTER OF DETERMINING
5 whether there has been a violation
6 of the Securities Act of Washington by:

7 Fran Austin dba
8 Austin & Associates,

9 Respondent.

Order Number S-06-021-TO01

SUMMARY ORDER TO CEASE AND
DESIST, AND NOTICE OF INTENT TO
IMPOSE FINES, AND CHARGE COSTS

10 THE STATE OF WASHINGTON TO:

Fran Austin dba
Austin & Associates

11 **STATEMENT OF CHARGES**

12 Please take notice that the Securities Administrator of the State of Washington has reason to believe
13 that Respondent, Fran Austin dba Austin & Associates, has violated the Securities Act of Washington.
14 The Securities Administrator believes those violations justify the entry of an order of the Securities
15 Administrator against the Respondent to cease and desist from such violations pursuant to RCW
16 21.20.390. The Securities Administrator believes these are grounds for imposing fines pursuant to RCW
17 21.20.395, and charging costs pursuant to RCW 21.20.390(5). The Securities Administrator finds that
18 delay in ordering Respondent, Fran Austin dba Austin & Associates, to cease and desist from such
19 violations would be hazardous to investors and to the public and that a Summary Order to Cease and
20 Desist should be entered immediately.

21 The Securities Administrator finds as follows:

22 **TENTATIVE FINDINGS OF FACT**

23 SUMMARY ORDER TO CEASE AND DESIST,
24 AND NOTICE OF INTENT TO IMPOSE FINES,
AND CHARGE COSTS

1 Respondent

2 1. Fran Austin (“Austin”) is a resident of Spokane, Washington. Austin & Associates is a
3 Washington company with its principal place of business at Austin’s residence. Austin & Associates is
4 not registered with the Washington Secretary of State.

5 Background Information

6 2. Austin is currently licensed to sell life and disability insurance in Washington State with
7 the Office of Insurance Commissioner. He has held an insurance license since 1969.

8 3. Rosenberry Austin & Associates was a Washington corporation incorporated in 1980 by
9 Austin and Bruce Rosenberry (“Rosenberry”) for the purpose of selling insurance.

10 4. Rosenberry was a licensed insurance agent with the Washington State Office of Insurance
11 Commissioner. Rosenberry died in 2003, at which time Rosenberry Austin & Associates’ corporate
12 license with the Washington Secretary of State expired. Austin continued to sell insurance after the
13 corporation was dissolved.

14 Nature of the Offering

15 5. Austin offered and sold investments to at least three Washington residents between
16 March 2004 and August 2004. The investments made by the three residents totaled approximately
17 \$96,000. All three of the investors purchased insurance products through Rosenberry Austin &
18 Associates or Austin prior to investing with Austin.

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22 *Investor A*

1 6. Washington Investor A¹ was an 86-year-old widow and retired homemaker, with little
2 or no investing experience. She resided alone in Spokane, Washington. Investor A has three sons, but
3 none reside in the Spokane area.

4 7. Investor A purchased a long term care policy and an annuity from Austin sometime in
5 the 1990's. The annuity held most of Investor A's life savings and was worth approximately \$60,000
6 in early 2004.

7 8. In the winter of 2004, Austin approached Investor A with an investment opportunity.
8 Austin purportedly told Investor A he would invest funds on her behalf by conducting online options
9 trading. On February 17, 2004, Austin provided Investor A a contract that he had drafted entitled
10 "Investment with Austin & Assoc." The terms of the contract specified that Austin & Associates
11 would guarantee a 10% return on the \$60,000 investment within one year, at which time Investor A
12 would receive her funds plus interest from Austin & Associates. If Investor A was to die within the
13 one year term, the funds, plus interest would be distributed to her three sons.

14 9. Investor A liquidated her annuity to invest in Austin & Associates. By doing so she
15 incurred a penalty of approximately \$6000-\$7000 because she withdrew funds before the surrender
16 period had expired.

17 10. On March 5, 2004, Investor A entered into an investment contract with Austin &
18 Associates. The terms were identical those provided to her on February 17, 2004 contract. That same
19 day Austin wrote out Investor A's personal check #2519 to Austin & Associates for \$60,000. The
20 memo portion of the check stated "investment". Investor A signed the check that Austin filled out.

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23 ¹ The names of the investors have been omitted to protect their privacy.

1 18. In the summer of 2004, Austin approached Investor B with an investment opportunity.
2 Austin told Investor B he would guarantee Investor B a monthly return if he invested with Austin &
3 Associates.

4 19. On July 5, 2004, Investor B entered into an investment contract with Austin &
5 Associates. The terms of the contract specified that Austin & Associates would guarantee an 8.75%
6 return on a \$5000 investment. The interest was to be paid monthly at the rate of \$36.50. The
7 investment term was for one year. At the end of the term Investor B could elect to reinvest for one or
8 two additional years with an interest rate named at the time of the reinvestment.

9 20. Also on July 5, 2004, Austin wrote out Investor B's personal check #6071 to Austin &
10 Associates for the amount of \$5000. The memo portion of the check stated "investment". Investor B
11 signed the check that Austin filled out.

12 21. Austin deposited the \$5000 check into the Austin & Associates bank account,
13 transferred the funds to his personal bank account, and used all of the funds for personal expenses.
14 Within one month of receiving the funds, the funds were depleted.

15 22. Investor B died on August 8, 2004, one month after entering into the investment contract.
16 Austin failed to make repayment of the principal in accordance with the terms of the investment
17 contract since the contract matured on July 5, 2005.

18 *Investor C*

19 23. Washington Investor C is an 84-year-old widow, retired waitress and homemaker, with
20 little or no investing experience. She lives alone in Spokane, Washington.

21 24. Investor C was an insurance client of Rosenberry, Austin & Associates and purchased an
22 annuity from Austin sometime in the 1990's.

1 25. According to Investor C, Austin often visited her in her home in 2004 to discuss his
2 business, Austin & Associates, and to offer her an opportunity to invest in the business.

3 26. In July of 2004, Austin approached Investor C with an investment opportunity. Austin
4 told Investor C Austin & Associates offered a guaranteed return on investments. Investor C believed
5 that she would be investing in Austin & Associates, but she was not sure what Austin & Associates
6 did. Investor C was not given any further information about the investment.

7 27. On July 30, 2004, Investor C wrote personal check #3436 to Austin & Associates for the
8 amount of \$25,000. The memo on the check stated "investment". That same day Austin went to
9 Investor C's bank and exchanged the personal check for a cashiers check. Austin deposited the funds
10 into his Austin & Associates bank account that same day.

11 28. On August 1, 2004, Investor C signed the investment contract with Austin & Associates.
12 The terms of the contract specified that Austin & Associates would guarantee an 11.25% return on a
13 \$31,000 investment. The investment term was for two years. At the end of the term Investor C could
14 elect to collect the investment amount plus interest or reinvest for one or two additional years with an
15 interest rate named at the time of the reinvestment.

16 29. After depositing the \$25,000 cashiers check into the Austin & Associates account,
17 Austin transferred the funds to his personal bank account. He then transferred \$20,000 of the funds to
18 conduct options trades on behalf of Investor C to a brokerage account in Austin's name. Austin and
19 his wife used the remaining \$5,000 for personal expenses.

20 30. On August 17, 2004, Investor C wrote personal check #3440 to Austin & Associates for
21 the amount of \$6000. The memo on check stated "investment". That same day Austin went to
22

1 Investor C's bank and exchanged the personal check for a cashier's check. Austin deposited the funds
2 into his Austin & Associates bank account.

3 31. After depositing the \$6000 cashiers check into the Austin & Associates account, Austin
4 then transferred all of the funds to his personal bank account. Austin and his wife used all of the funds
5 for personal expenses. Austin did not make any investments on behalf of Investor C with the \$6000
6 investment.

7 32. By September 2004, Austin lost the remaining \$20,000 of Investor C's funds in options
8 trades. As of the date of this order, Investor C has not received any information regarding her
9 investment and has not received any repayment of the principal or interest from her investment.

10
11 Misrepresentations and Omissions

12 33. In the offer and sale of investments to Investors A, B and C, Austin failed to disclose
13 material information, including, but not limited to information relating to the use of investor's funds,
14 the risks involved with options trading, the basis for the guaranteed rates of return of 10%, 8.75% and
15 11.25%, and Austin's history of making similar investments.

16
17 Registration Status

18 34. Fran Austin dba Austin & Associates is currently not registered to sell its securities in
19 the State of Washington and has not previously been so registered.

20 35. Austin is not currently registered as a securities salesperson or broker-dealer in the State
21 of Washington and has not previously been so registered.

22 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

1 **CONCLUSIONS OF LAW**

2 1. The offer and/or sale of the investments described above constitute the offer and/or sale
3 of a security as defined in RCW 21.20.005(10) and (12).

4 2. Fran Austin violated RCW 21.20.040, by offering and selling said securities while not
5 registered as a securities salesperson or broker-dealer in the State of Washington.

6 3. Fran Austin dba Austin & Associates violated 21.20.140 by offering and selling
7 unregistered securities.

8 4. In connection with the offer or sale of the said securities Fran Austin dba Austin &
9 Associates, violated RCW 21.20.010 because, as set forth in the Tentative Findings of Fact,
10 Respondent made misstatements of material fact or omitted to state material facts necessary in order to
11 make the statements made, in light of circumstances under which they were made, not misleading
12 and/or engaged in acts and practices that operated as a fraud or deceit.

13 **EMERGENCY**

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15 The Securities Administrator finds that an emergency exists, that continued violations of RCW
16 21.20.040, RCW 21.20.140 and RCW 21.20.010 constitute a threat to the investing public, and that a
17 summary order to cease and desist from those violations are in the public interest and necessary for the
18 protection of the investing public.

1 **SUMMARY ORDER**

2 Based on the foregoing:

3 NOW, THEREFORE, IT IS SUMMARILY ORDERED that Respondent, Fran Austin dba Austin &
4 Associates, shall cease and desist from violation of RCW 21.20.140, the section of the Securities Act that
5 requires registration of securities.

6 IT IS FURTHER SUMMARILY ORDERED that Respondent, Fran Austin dba Austin &
7 Associates, shall cease and desist from violation of RCW 21.20.010, the anti-fraud section of the Securities
8 Act.

9 IT IS FURTHER SUMMARILY ORDERED that Respondent, Fran Austin, shall cease and desist
10 from violation of RCW 21.20.040, the section of the Securities Act that requires registration of securities
11 salespersons and broker-dealers.

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13 **NOTICE OF INTENT TO IMPOSE FINES**

14 Pursuant to RCW 21.20.395, and based upon the Tentative Findings of Fact and Conclusions of
15 Law, the Securities Administrator intends to order that Respondent, Fran Austin dba Austin & Associates,
16 shall be liable for and pay a fine of \$30,000.

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18 **NOTICE OF INTENT TO CHARGE COSTS**

19 Pursuant to RCW 21.20.390(5), and based upon the based upon the Tentative Findings of Fact and
20 Conclusions of Law, the Securities Administrator intends to order that the Respondent, Fran Austin dba
21 Austin & Associates, shall be liable for and pay the Securities Division the costs, fees and other expenses
22 incurred in the conduct of the administrative investigation and hearing of this matter.

1 **AUTHORITY AND PROCEDURE**

2 This Order is entered pursuant to the provisions of RCW 21.20.390 and RCW 21.20.395 and is
3 subject to the provisions of Chapter 34.05 RCW. The Respondent may make a written request for a
4 hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR
5 HEARING accompanying this Order. If the Respondent does not request a hearing, the Securities
6 Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final, enter
7 a permanent cease and desist order against the Respondent, and impose the fine and/or charge costs, as
8 sought in this Summary Order.

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10 DATED AND ENTERED this day 11th of July, 2006.

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14 MICHAEL E. STEVENSON
Securities Administrator

15 Approved by:

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18 Martin Cordell
Chief of Enforcement

Presented by:

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22 Angela R. Vogel
Enforcement Attorney