

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING
Whether there has been a violation
of the Securities Act of the State
of Washington by:

Valerie D'Andrea,

Respondent.

Order Number S-09-022-10-FO01

ENTRY OF FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND FINAL ORDER
TO CEASE AND DESIST AND IMPOSE FINES
AND COSTS

THE STATE OF WASHINGTON TO:

Valerie D'Andrea

On March 24, 2010, the Securities Administrator of the State of Washington issued Statement of Charges and Notice of Intent to Enter Order to Cease and Desist, Impose Fines, and Charges Costs S-09-022-10-SC01, hereinafter referred to as "Statement of Charges," against Respondent Valerie D'Andrea.

The Statement of Charges, together with a Notice of Opportunity to Defend and Opportunity for Hearing, hereinafter referred to as "Notice of Opportunity for Hearing," and an Application for Adjudicative Hearing, hereinafter referred to as "Application for Hearing," were served on Valerie D'Andrea on or about March 25, 2010.

The Notice of Opportunity for Hearing advised Valerie D'Andrea that a written application for an administrative hearing on the Statement of Charges must be received within twenty days from the date of receipt of the notice. Valerie D'Andrea failed to request an administrative hearing within twenty days of receipt of the Statement of Charges and Notice of Opportunity for Hearing, either on the Application for Hearing provided or otherwise.

The Securities Administrator therefore will adopt as final the findings of fact and conclusions of law as set forth in the Statement of Charges.

ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW
AND FINAL ORDER TO CEASE AND DESIST AND IMPOSE FINES
AND COSTS

1

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FINDINGS OF FACT

Respondent

1. Valerie D’Andrea (“D’Andrea”) is a King County, Washington resident.

Nature of the Offering

2. In 1995, D’Andrea started trading futures and futures options through her own accounts with various trading companies. D’Andrea learned about futures and commodities through some college classes and a correspondence course. D’Andrea does not currently hold, and has never held, licenses to sell securities, commodities, or futures.

3. Beginning no later than 2004, D’Andrea began telling acquaintances that she was a futures trader and approached them about investing money with her. D’Andrea told these individuals that she would take the money they invested with her and invest it in the futures market. D’Andrea told at least one investor that she sought funds because her profits would be greater if she had larger amounts of money to invest.

4. Between January 2004 and September 2008, D’Andrea sold to thirteen individuals, including nine Washington residents, investments evidenced by 29 promissory notes from D’Andrea totaling approximately \$525,000 in principal. Those notes called for D’Andrea to make payments to investors totaling approximately \$1.5 million. D’Andrea met some of the investors through her softball team. Three relatives of D’Andrea also invested with her.

5. Term lengths of the notes lasted between 12 months and 120 months with most lasting 60 months. Most investors received monthly interest payments, but six notes deferred all payments until the end of the promissory note. Interest rates offered on the notes varied depending on the type of payment chosen. Investors who received monthly payments had annual percentage rates between 30% and 52.149%.

1 Investors who deferred payment until the end of the note received annual percentage rates between 12% and
2 15%.

3 6. Investors purchased their investments from D'Andrea by check or bank transfer. D'Andrea
4 deposited investor funds into her personal bank accounts and did not have a tracking system to account for
5 those funds.

6 7. Nineteen promissory notes D'Andrea issued to investors included a clause that stated that
7 proceeds from the note would be used "exclusively to engage in speculative investment activities for profit"
8 and that no portion of the funds would be used for "any consumer, personal, family, or household purpose."
9 Investors believed that their funds would be used by D'Andrea only for trading in financial markets.

10 8. In the years 2004 through 2008, D'Andrea lost approximately \$270,000 from her trading
11 activities. In 2004, D'Andrea lost approximately \$20,000. D'Andrea made almost \$39,000 in profit in
12 2005, but followed that with losses of approximately \$1,600, \$160,000, and \$126,000 in the next three
13 years.
14

15 9. Each year D'Andrea faced increasing debt obligations. Payments to investors increased from
16 approximately \$16,000 in 2005, to \$54,000 in 2006, \$97,000 in 2007, and \$98,000 in 2008. Investors
17 provided the majority of funds available to D'Andrea during this time period. In order to make these
18 increasing payments to investors, D'Andrea continually needed to borrow more money. D'Andrea entered
19 into more promissory notes with investors each year and borrowed from credit cards, home equity loans,
20 and other sources.

21 10. In November 2007, D'Andrea stopped making monthly payments on \$80,000 worth of notes
22 with her then husband's uncle. Then, in January 2008, D'Andrea negotiated dropping all interest on those
23

1 notes and resuming payments on the principal beginning in August 2008. D'Andrea states that her now ex-
2 husband's uncle eventually forgave the notes entirely.

3 11. In May 2008, D'Andrea continued to seek new investors. She sent an email to family
4 members seeking more funds to trade and told them that she made her income through the futures market
5 and had "managed to do pretty well" for herself. D'Andrea's sister sent funds to D'Andrea pursuant to this
6 email at the end of May 2008. The sister never received a promissory note and D'Andrea claimed that her
7 sister decided to gift those funds. D'Andrea also told another investor in May that she was doing well and
8 asked if this investor's friends might be interested in becoming clients.

9 12. A few weeks later, in June 2008, D'Andrea contacted one of her investors and told the
10 investor that D'Andrea was overwhelmed and would not be able to make payments on her note or anyone
11 else's. D'Andrea told the investor that she had made a bad trade in August of 2007 that had caused her
12 problems. D'Andrea lost over \$97,000 in August 2007. D'Andrea asked, and the investor agreed, to reduce
13 the monthly payments on her note to interest only payments. D'Andrea entered into six promissory notes
14 after August 2007 totaling \$207,000.
15

16 13. Despite admitting to one investor in June that she was in trouble and struggling to make
17 payments, D'Andrea entered into a promissory note with her girlfriend's brother in September 2008.

18 14. D'Andrea filed for chapter 7 bankruptcy on December 18, 2008 and all payments to investors
19 stopped.

20 15. In bankruptcy proceedings, D'Andrea admitted that she used funds from these promissory
21 notes to make payments for house payments, food, electricity and other living expenses. D'Andrea also
22 admitted using promissory note funds to make payments to other note holders.
23

24 *Misrepresentations and Omissions*

1 16. D'Andrea failed to provide material information regarding the promissory note investments,
2 including but not limited to: financial statements, information on her financial condition and her ability to
3 repay debts, and the general and specific risks of investing in futures trading.

4 17. D'Andrea misrepresented the risk of investing to some investors by telling them that she had
5 a life insurance policy to protect investors if she died. D'Andrea caused at least one investor to believe the
6 policy protected the investor if D'Andrea went bankrupt. D'Andrea did have a life insurance policy, but she
7 failed to disclose to investors that her husband was the beneficiary on the contract.

8 18. D'Andrea represented to at least two investors that she had worked for a brokerage firm in
9 the past. D'Andrea has never worked for a brokerage firm. D'Andrea told those investors that she felt that
10 brokerage firms were reckless with people's money and did not care about their clients. D'Andrea
11 explained that brokerage firms had no pressure to perform. She claimed that her use of promissory notes
12 put the risk on her and away from her clients.

13 19. D'Andrea failed to disclose material information regarding the number and dollar amount of
14 outstanding promissory notes between D'Andrea and other investors.

15 20. D'Andrea failed to disclose material information regarding other debt obligations. At the
16 time of her bankruptcy filing D'Andrea and her ex-husband owed approximately \$500,000 on their home
17 and car. D'Andrea and her ex-husband also had unsecured debts totaling approximately \$125,000; not
18 including the debts to investors.

19 21. D'Andrea misrepresented to investors the success of her trading activities. During the time
20 period D'Andrea issued promissory notes, she lost approximately \$270,000 from her trading activities.

21 22. D'Andrea misrepresented the use of investor funds. D'Andrea told investors their funds
22 would be used for trading. D'Andrea failed to disclose that she used investor funds to pay her debt
23

obligations including her mortgage, home equity line of credit, student loans, car payments, credit cards, other living expenses, and to make payments to other investors.

23. D'Andrea failed to disclose to investors that her ability to repay the notes was heavily dependent upon her ability to continue to bring in new funds from other investors.

Registration Status

24. D'Andrea is not currently registered to sell her securities in the state of Washington and has not previously been so registered, nor has she filed a claim of exemption from registration.

25. D'Andrea is not currently registered as a securities salesperson in the state of Washington and has not previously been so registered.

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

CONCLUSIONS OF LAW

1. The offer or sale of the promissory notes described above constitutes the offer and/or sale of a security as defined in RCW 21.20.005(10) and (12).

2. The offer or sale of said securities violated RCW 21.20.140 because no registration for such offer or sale was on file with the Securities Administrator.

3. Valerie D'Andrea violated RCW 21.20.040 by offering or selling said securities while not registered as a securities salesperson in the state of Washington.

4. The offer or sale of said securities was made in violation of RCW 21.20.010 because, as set forth in the Tentative Findings of Fact, D'Andrea made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of circumstances under which they were made, not misleading.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

FINAL ORDER

Based upon the foregoing and finding it in the public interest:

It is hereby ORDERED that the Respondent, Valerie D'Andrea, her agents, and employees each cease and desist from offering and/or selling securities in any manner in violation of RCW 21.20.140, the securities registration section of the Securities Act.

It is further ORDERED that Valerie D'Andrea, her agents, and employees each cease and desist from violation of RCW 21.20.010, the anti-fraud section of the Securities Act.

It is further ORDERED that Valerie D'Andrea, her agents, and employees each cease and desist from violation of RCW 21.20.040, the broker-dealer and securities salesperson registration section of the Securities Act.

It is further ORDERED that Valerie D'Andrea shall be liable for and pay a fine of \$30,000. Payment of the fine is to be deferred until the D'Andrea promissory note investors have been repaid in full.

It is further ORDERED that Valerie D'Andrea shall be liable for and pay costs in the amount of \$15,000. Payment of the costs is to be deferred until the D'Andrea promissory note investors have been repaid in full.

19
20
21
22
23
24

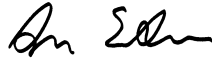
AUTHORITY AND PROCEDURE

This Final Order is entered pursuant to the provisions of RCW 21.20.390 and RCW 21.20.395 and is subject to the provisions of RCW 21.20.440 and Chapter 34.05 RCW. Respondent has the right to petition the superior court for judicial review of this agency action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition for Judicial Review, see RCW 34.050.510 and sections following. Pursuant to 21.20.395, a certified copy of this order may be filed in Superior Court. If so

1 filed, the clerk shall treat the order in the same manner as a Superior Court judgment as to the fine,
2 and the fine may be recorded, enforced, or satisfied in like manner.

3 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

4 DATED and ENTERED this 4th day of May, 2010.

5
6 

7 _____
8 SUZANNE SARASON
9 Chief of Enforcement

10 Presented by:

11 

12 _____
13 Jack McClellan
14 Financial Legal Examiner