



Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

3 Respondent fully understands that this Agreed Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts or omissions not specifically addressed in this Agreed Order for facts and/or omissions that do not arise from the facts or transactions herein addressed, nor does it preclude additional proceedings by the Commissioner against the Respondent based upon these facts or transactions herein addressed by some other Division of the Commissioner.

4. Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreed Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Agreed Order by the Commissioner.

5. The Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. §§ 48-2-101, *et seq.* ("Act"), places the responsibility for the administration of the Act on the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility. Tenn Code Ann. § 48-2-115.

#### **FINDINGS OF FACT**

6 The Act assigns the responsibility for administration of the Act to the Commissioner. The Division is the lawful agent through which the Commissioner administers the Act, and is authorized to bring this action for the protection of investors and the public. The Division's official residence and place of business is in Nashville, Davidson County, Tennessee 37243

7 Southwest Trading Diversities, Inc. ("Southwest") is a business entity with its principal place of business at 12439 N. 32<sup>nd</sup> St., Suite 3A, Phoenix, Arizona 85032, to the best of the parties' knowledge. Southwest has never been registered with this Division as a broker-dealer.

8 Legacy Capital ("Legacy" is a business entity whose principal place of business is 225 W. 34<sup>th</sup> St., Suite 1408, New York, New York 10122, to the best of the parties' knowledge. Legacy is listed on the Central Registration Depository ("CRD") system as having identification number 70562. Legacy has never been registered with this Division as a broker-dealer.

9 Darrell Flanders ("Flanders") is a citizen and resident of the State of Arizona with his business residence being 12439 N. 32<sup>nd</sup> St., Suite 3A, Phoenix, Arizona. Flanders has never been registered with this Division as a broker-dealer or as an agent of a broker-dealer.

10. Ron Weems ("Weems") is a citizen and resident of the State of Arizona with his business residence being 12439 N. 32<sup>nd</sup> St. Suite 3A, Phoenix, Arizona 85032, to the best of the parties' knowledge. Weems has never been registered with this Division as a broker-dealer or as an agent of a broker-dealer.

On or around August 29, 2000, the Division received a Consumer Complaint referral ("Complaint") from the Division of Consumer Affairs that was submitted by Dale Walker Walker' a citizen and resident of the State of Tennessee, that Walker had been offered and had purchased a viatical settlement contract ("Contract") by Southwest through its agent, Weems, and that Walker had been promised a certain return rate of interest that was called for in the Contract

12. Walker stated in the Complaint that he had seen an advertisement for Southwest in late 1998 and that he had telephoned Southwest for more details on the advertisement. Weems responded to Walker's call to Southwest and explained to Walker that Southwest had a "great" viatical settlement policy contract in which Walker should invest.

13 Weems represented to Walker that the length of the Contract was for twelve (12) months. On or around March , 1999, Walker purchased the Contract for ten thousand dollars (\$10,000.00). However, Walker did not receive the contract until three (3) months later in or about June of 1999.

14 When Walker examined the Contract, he noticed that the doctor's statement therein provided that the life expectancy of the viaticator was from twelve (12) months to twenty-four (24) months, in contravention of the terms that Weems had represented to Walker during Walker's telephone call in late 1998. On or about October or November of 1999, Walker telephoned Southwest about the length of the Contract. Flanders, the owner of Southwest, answered Walker's call and responded to Walker's query by stating that the length of the Contract appeared "strange" but that Flanders could do nothing about it until March of 2000, when the Contract was due to mature.

15 During the telephone call of October or November 1999 referenced in ¶ 10, above, Walker then asked for his ten thousand dollar (\$10,000.00) initial investment to be returned to him but Flanders responded by advising Walker to call him back in March of 2000 when the Contract was supposed to mature. Flanders also stated to Walker that the "mix-up" in the Contract was the fault of Legacy, as Legacy was responsible for assembling the viatical contracts, and that Southwest was only the marketing agent for said contracts.

16. On or around the latter part of March 2000, Walker telephoned Flanders and asked for his ten thousand dollar (\$10,000.00) investment to be returned and for the twelve hundred dollars (\$1200.00) due in interest on his investment, as provided in the Contract. Walker also wrote an undated letter to Flanders which set forth his dissatisfaction with the Contract and which demanded the return of his investment.

7. Flanders responded to Walker's telephone call and stated that five thousand dollars (\$5000.00) would be returned to Walker by Southwest and that five thousand dollars (\$5000.00) would be returned to Walker by Legacy as a settlement for Walker's Contract. However, Flanders refused to pay Walker the twelve hundred dollars (\$1200.00) in interest due on the Contract.

18. Walker received a check for ten thousand dollars (\$10,000.00) from Southwest on or about March of 2000 but has not received the interest due as of the date of this filing.

19. Additionally, the Division is in possession of information that on or about April 12, 2000, the State of Indiana issued a Cease and Desist Order against Legacy for conducting a viatical sales business without a proper registration and for conducting said business with unregistered agents. In the Matter of Summit Financial Services, Tammy Preble, Nicholas J. Jarosz, Kevin S. Anthony, Herbert J. Frank, Legacy Capital Corp., and Randy K. Smith, Cause No. 00-0107 CD, 2000 WL 669152 (Ind.Div.Sec.

#### **CONCLUSIONS OF LAW**

20. Pursuant to Tennessee Code Annotated § 48-2- 5(a), the responsibility for the administration of the Act is upon the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility.

**21** Pursuant to Tennessee Code Annotated § 48-2-116, the Commissioner may make, promulgate, amend, and rescind such orders as are necessary to carry out the provisions of this Act and that such order is in the public interest, necessary for the protection of investors and consistent with the purposes fairly intended by the policy and provision of the Act.

**22** Tennessee Code Ann. § 48-2-104 states, in pertinent part, that it is unlawful for any person to sell any security in this state unless (1) it is registered under this part; (2) the security or transaction is exempted under § 48-2-103; or (3) the security is a covered security.

**23** Tenn. Code Ann. § 48-2-109 provides, in pertinent part, that it is unlawful for any person to transact business in this state as a broker-dealer or agent unless such person is registered as a broker-dealer or agent under this part.

**24.** Tenn. Code Ann. § 48-2-121(a) states, in pertinent part, that it is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, directly or indirectly, to employ any device, scheme, or artifice to defraud, make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

**25** Based upon the findings of fact cited above and the conclusions of law contained herein, the Commissioner considers the actions of the Respondent described herein to be in violation of Tenn. Code Ann. §§ 48-2-104 and to provide grounds for an order necessary to carry out the provisions of the Act.

26. Respondent admits the general stipulations, findings of fact and conclusions of law contained herein and hereby also acknowledges the Commissioner's authority to administer said statute and concedes that the Commissioner's interpretation of the statute is reasonable and enforceable. Therefore, Respondent, in order to avoid any further expenses or costs associated with litigating this matter, hereby desires to enter into this Agreed Order.

### **ORDER**

**NOW, THEREFORE**, on the basis of the foregoing, and the waiver by Respondent of his rights to a hearing and appeal under the Act and Tennessee's Uniform Administrative Procedures Act, Tennessee Code Ann. §§ 4-5-101 *et seq.*, and the admission by the Respondent of the jurisdiction of the Commissioner with regard to the above-styled matter, the Commissioner finds that the Respondent has agreed to the entry of this Order and that this Order is appropriate, in the public interest and necessary for the protection of investors.

**IT IS ORDERED**, pursuant to Tennessee Code Ann. § 48-2-116 of the Act that:

The Respondent and/or any person on behalf of the Respondent shall not offer or sell any securities from, to, or into Tennessee until such time as the securities are first appropriately registered, provided such securities are required to be registered under Tenn. Code Ann. § 48-2-104, with the Division to offer or sell same, as provided at Tenn. Code Ann. § 48-2-104 *et seq.*

2. The Respondent and/or any person on behalf of the Respondent shall not offer or sell any securities from, to, or into Tennessee until such time as the Respondent shall have first registered as a broker-dealer or agent of a broker-dealer with the Division

3 The Respondent and/or any person on behalf of the Respondent shall not offer or sell any securities from, to, or into this State without first having exercised due diligence that all statements, representations, prospectuses, and other communications, advertisements, or documents of any kind which are provided to prospective investor(s) are complete, accurate and true.

4. The Respondent agrees that should he or any person on behalf of the Respondent offer or sell any securities without complying with all registration requirements set forth by the Act that such offer(s) or sale(s) shall be considered a violation of this Agreed Order and will subject the Respondent to any and all statutory penalties for the offer(s) and/or sale(s) of such securities that are provided under the Act

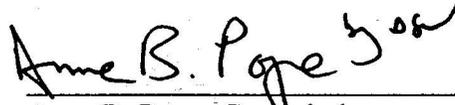
**IT IS FURTHER ORDERED** that this Agreed Order represents the complete and final resolution of and discharge of all administrative and civil, claims, demands, actions and causes of action by the Commissioner against the Respondent for violations of the Act which relate specifically to all actions and/or omissions by Respondent which are so described in this Agreed Order. This Agreed Order shall not be construed to apply to any other facts or circumstances other than to the actions and/or omissions of the Respondent as set forth herein.

This Agreed Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signatures affixed below, the Respondent affirmatively states that he has freely agreed to the entry of this Agreed Order, that he has been advised that he may consult legal counsel in this matter, and that he has had the opportunity to consult with legal counsel should he have desired to do so, that he waives his right to a hearing on the matters underlying this Agreed Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats

or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Agreed Order, affirmatively state their agreement to be bound by the terms of this Agreed Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Agreed Order, are binding upon them.

**SO ORDERED.**

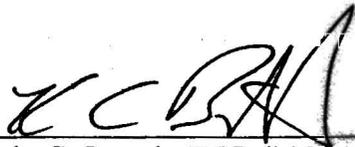
Entered this the 12<sup>th</sup> day of October, 2001

  
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Anne B. Pope, Commissioner  
Department of Commerce and Insurance

**APPROVED FOR ENTRY:**

  
\_\_\_\_\_  
Darrell Flanders  
Title:  
Southwest Trading Diversities  
12439 N. 32<sup>nd</sup> St., Suite 3A  
New York, New York 10122

  
\_\_\_\_\_  
Daphne D. Smith  
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(615) 252 6000

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that true and correct copies of the foregoing have been served upon Counsel for the Respondent listed below by delivering same or posting same in the United States Mail, First Class:

Daniel W. Small  
P. O. Box 190608  
Nashville, Tennessee 37219-0608

This the 15<sup>th</sup> day of October, 2001

  
\_\_\_\_\_  
Kevin C. Bartels  
Certifying Attorney