

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF STATE  
BUREAU OF SECURITIES REGULATION**

IN THE MATTER OF:

Securities America, Inc.,  
Barry Armstrong, and  
~~David Panzeri~~  
Lawrence Panzeri  
(CRD #356004)

)  
) ORDER TO CEASE AND DESIST  
) ORDER TO SHOW CAUSE  
)  
) INV10-019  
)

**NOTICE OF ORDER**

This Order commences an adjudicative proceeding under the provisions of RSA 421-B:26-a.

**LEGAL AUTHORITY AND JURISDICTION**

Pursuant to RSA 421-B:23, I (a), whenever it appears to the Secretary of State that any person has engaged or is about to engage in any act or practice constituting a violation of RSA 421-B or any rule, he shall have the power to issue and cause to be served upon such person or order requiring the person to cease and desist from violation said chapter.

Pursuant to RSA 421-B:24, I, any person who willfully violates a cease and desist order issued pursuant to RSA 421-B:23 shall be guilty of a class B felony.

Pursuant to RSA 421-B:10, I(a) and RSA 421-B:10, I (b)(7), the Secretary of State has the authority to deny, suspend, or revoke any license or application of a broker-dealer or investment adviser if he finds that it is in the public interest and that the broker-dealer or investment adviser has engaged in dishonest or unethical practices in the securities business.

Pursuant to RSA 421-B:10, I(a) and RSA 421-B:10, I (b)(10), the Secretary of State has the authority to deny, suspend, or revoke any license or application of a broker-dealer or investment adviser if he finds that it is in the public interest and that the broker-dealer has failed to reasonably supervise its agents.

Pursuant to RSA 421-B:10, I(a) and (b)(14), the Secretary of State may deny, suspend, or revoke any license or application if he finds that it is in the public interest and that there is good cause shown.

Pursuant to RSA 421-B:10, III, the Secretary of State may issue an order requiring the person to whom any license has been granted to show cause why its license should not be revoked.

Pursuant to RSA 421-B:10, VI, the Secretary of State may, upon hearing and in lieu of, or in addition to any order to suspend or revoke any license, assess an administrative fine up to \$2,500.00 for each violation of the New Hampshire Securities Act.

Pursuant to RSA 421-B:26, III, any person who, either knowingly or negligently, violates any provisions of this chapter may, upon hearing, and in addition to any other penalty proved for by law, be subject to such suspension, revocation or denial of any registration or license or an administrative fine not to exceed \$2,500 or both.

Pursuant to RSA 421-B:26, III-a, every person who directly or indirectly controls a person liable under paragraph I or III, every partner, principal executive officer, or director of such person, every person occupying a similar status or performing a similar function, every

employee of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the acts or transactions constituting the violation, either knowingly or negligently, may, upon hearing, and in addition to any other penalty provided for by law, be subject to suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or an administrative fine not to exceed \$2,500, or both.

Pursuant to RSA 421-B:26, V, the Secretary of State may, in addition to any other penalty provided by RSA 421-B, upon notice and hearing, enter an order of rescission, restitution, or disgorgement directed to a person who has violated RSA 421-B.

Pursuant to RSA 421-B:26, VI, the Secretary of State may order any person who violates RSA 421-B:3, upon hearing, and in addition to any other penalty provided by law, to make a written offer to the purchaser of the security to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid for the security together with interest at the legal rate, less the amount of any income received by the purchaser on the security, or if the purchaser no longer owns the security, an offer to pay an amount in cash equal to consideration paid for the security together with any interest at the legal rate, less any amount the purchaser received on disposition of the security and less the amount of any income received by the purchaser on the security.

### **NOTICE OF RIGHT TO REQUEST A HEARING**

The above Respondents have the right to request a hearing on this order to cease and desist, and order to show cause, as well as the right to be represented by counsel. Any such request for a hearing shall be in writing, shall be signed by the Respondents, or by the duly

authorized agent of the above named Respondents, and shall be delivered either by hand or certified mail, return receipt requested, to the Bureau of Securities Regulation, Department of State, 25 Capitol Street, Concord, New Hampshire 03301.

Under the provisions of RSA 421-B:23, I, if Respondents fail to request a hearing relative to this order within thirty calendar days of receipt of this order, respondents shall be deemed in default, and this order shall, on the thirty-first day, become permanent.

Upon request for a hearing being received by the Bureau of Securities Regulation, in the manner and form indicated above, a hearing shall be held not later than ten days after such request is received by the Bureau, and within a reasonable time after such hearing, the Secretary of State, or such other person authorized by statute, shall issue a further order vacating or modifying this order, or making it permanent, as the circumstances require.

### **STATEMENT OF ALLEGATIONS**

The allegations contained in the Staff Petition for Relief dated February 13, 2012 (a copy of which is attached hereto) are incorporated by reference hereto.

### **ORDER**

WHEREAS, finding it necessary and appropriate and in the public interest, and for the protection of investors and consistent with the intent and purposes of the New Hampshire securities laws, and

WHEREAS, finding that the allegations contained in the Staff Petition, if proved true and correct, form the legal basis of the relief requested,

It is hereby ORDERED that:

1. Respondents are hereby ordered to immediately cease and desist from further violations of RSA 421-B;
2. Respondents shall show cause why its New Hampshire broker-dealer license and broker-dealer agents licenses should not be suspended or revoked;
3. Respondents shall show cause why they should not be assessed administrative fines and penalties of \$2,500 per violation of the Act as provided by RSA 421-B:10, 421-B:26,III, and 421-B:26,III-a;
4. Respondents shall show cause why the hearings officer should not enter an order requiring ~~restitution~~, rescission or disgorgement.
5. Respondents shall pay the Bureau of Securities for costs associated with its investigation.

Failure on the part of the Respondents to request a hearing within thirty days of the date of receipt of this Order shall result in a default judgment being rendered, including imposition of fines and penalties upon the defaulting Respondents.

SIGNED,  
WILLIAM M. GARDNER  
SECRETARY OF STATE  
BY HIS DESIGNEE:

Date: 2/13/12

  
JOSEPH C. LONG, DIRECTOR  
N.H. BUREAU OF SECURITIES

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF STATE  
BUREAU OF SECURITIES REGULATION  
CONCORD, NEW HAMPSHIRE

STAFF PETITION FOR RELIEF )  
IN THE MATTER OF: )

Securities America, Inc. )

Barry Armstrong )

~~David Panzeri~~ )

Lawrence Panzeri )

(Respondents) )

Case No. INV10-019

STATEMENTS OF FACT

- I. The State of New Hampshire, Department of State, Bureau of Securities Regulation (hereinafter referred to as "the Bureau"), hereby petitions the Director, and makes the following statements of fact:

1. Securities America, Inc. (hereinafter "SA"), CRD# 10205 is a broker-dealer located at 12325 Port Grace Blvd., Lavista, Nebraska 68128. SA was, during the relevant time period, owned by Ameriprise Financial, Inc., but as of November 2011, SA has been sold to a series of owners including Ladenburg Thalmann Financial Services, Inc.

(CRD #356004) ~~XXXXXX~~ Respondents Barry Armstrong ("BA") CRD# 1305112 and ~~XXXXXX~~ ("DP") ~~XXXX~~ Lawrence Panzeri are agents of SA and have been during the relevant time period. The relevant time period of this action is from January 1<sup>st</sup>, 2003 to December 31<sup>st</sup>, 2008. Respondent SA is a registered broker-dealer in New Hampshire (NH), and BA and DP are registered agents.

2. SA was one of the placement agents for Medical Capital Notes ("MC Notes"). MC Notes were issued by Special Purpose Corporations ("SPC") named Medical Provider Funding Corporation I, II, III (series 1 and 2), IV (series 1 and 2) and V, all owned by the parent company Medical Capital Holdings, Inc. ("MCH"), and offered in a series of private placements through private placement memorandums ("PPM") during the relevant time period. The SPC business model was to use investor money to buy medical accounts receivable. Then in 2005 the model changed to allow for investor money to be used as venture capital for new businesses, and for lending. All of these SPC's were formed by MCH to issue the MC Notes and engage investors to participate in private placements under Regulation D, Rule 506.

3. Regulation D, Rule 506 offers are meant for sophisticated investors that are accredited meaning having a net worth greater than one million dollars. The SPCs issued well over a billion dollars worth of MC Notes and five of the numerous investors resided in New Hampshire (NH) and purchased approximately \$500,00.00 worth of the notes and paid commissions of 5% to SA or about \$25,000.00. As of August of 2008, the SPCs defaulted on the notes and MCH is currently in receivership.
4. NH investors that purchased the MC Notes relied on recommendations of SA agents including BA and DP when making their buying decision. Many of the NH investors had long standing financial relationships with BA and DP and trusted their judgment emphatically and without reservation. Many of the NH investors are unsophisticated and did not typically invest in private placements and would not have done so but for the recommendations of BA and DP.
5. Regulation D, Rule 506 notice filings were timely made in NH for the MC Notes sold in NH.
6. On 12/22/2010, a complaint was received by the Bureau from NH investor #1 against SA. Investor #1, a retired couple, purchased a MC Note on or about May 2008 for \$50,000.00. At the time the complaint was filed, a hearing was being held in the State of Massachusetts involving these same Respondents, which resulted in a Consent Order dated 5/23/2011. Following the Massachusetts Consent Order, four more complaints were received by the Bureau involving the sale of MC Notes occurring during the relevant time period. Investor #2 purchased a MC Note for \$100,000.00 on or about May 2008. Investor #3 purchased a MC Note for \$120,000.00 on or about May 2008. Investor #4, a widow, purchased two MC Notes on or about August and March 2008 for \$25,000.00 and \$50,000.00. Investor #5, a married couple, purchased two MC Notes on or about April and September 2007 for \$75,000.00 and \$50,000.00.
7. The Respondents sold these notes to New Hampshire investors without conducting proper due diligence and respondents misrepresented the degree of risk that the sale of the MC notes posed to the New Hampshire investors. SA had a due diligence committee that reviewed due diligence reports from a third party, Byran Mick, however, SA did not take reasonable steps to address risks identified in the reports and simply accepted explanations provided by the SPCs.
8. The seven MC Note sales were not suitable for the New Hampshire investors both in terms of product suitability and customer specific suitability. The PPMs characterized the MC Notes as secured which gave the appearance of safety, but the MC Notes were extremely risky. SA ignored certain red flags in the offering that were not fully investigated and resolved. These red flags and due diligence failures included, but were not limited to, the lack of audited financial statements, the lack of a proper valuation of the accounts receivable, the ability to move the accounts receivable among the SPCs, the lack of a sinking fund, the lack of independent directors, and the ability to invest proceeds in equity securities of all types of businesses and make risky mortgage loans to receivable sellers or other parties in the health care industry.

9. BA and DP recommended these investments to their NH customers. The MC Notes were characterized as sound and good investments that would pay high interest. The recommendations were misleading and inaccurate. The NH customers trusted and valued the recommendations of BA and DP on the soundness and quality of the MC Notes when in actuality, SA failed to perform adequate due diligence and failed to adequately investigate and resolve known red flags. In several instances, Bryan Mick told SA to augment the disclosure to make investors aware of these risks, however, SA failed to do so. Therefore, SA, BA and DP failed to provide to their customers with a complete and accurate assessment of the material risks of the MC Notes. Further, SA failed to ensure that BA and DP were properly trained to sell the MC Notes, and failed to ensure that BA and DP had complete and accurate information to pass on to the NH customers regarding the risks.

### STATEMENTS OF LAW

- II. The Bureau hereby petitions the Director and makes the following statements of law under the New Hampshire Revised Statutes Annotated, RSA 421-B, and regulations thereunder (hereinafter referred to as the Act):
  1. SA, BA and DP, are "Persons" within the meaning of RSA 421-B:2.
  2. The SPCs are "issuers" within the meaning of RSA 421-B:2,XIII.
  3. The filings received by the Bureau from the SPCs, were made on Federal Form D and designates Rule 506 as the basis of the exemption (See 17 CFR sec. 230.506).
  4. RSA 421-B:3 makes it unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading. SA, BA and DP are in violation of this section for omitting the disclosure of material risks of the MC Notes, and for misrepresenting the quality and soundness of the investments.
  5. Pursuant to RSA 421-B:3-a, in recommending to a customer the purchase, sale, or exchange of a security, a broker-dealer or broker-dealer agent must have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer after reasonable inquiry as to his or her other security holdings and as to his or her financial situation and needs. Respondents violated this section.
  6. Pursuant to RSA 421-B:8, X, persons licensed under this chapter to conduct securities business shall abide by the rules of the Securities and Exchange Commission, National Association of Securities Dealers, national and regional stock exchanges, and other self-regulating organizations which have jurisdiction over the licensee, which set forth

standards of conduct in the securities industry. The Financial Industry Regulatory Industry, Inc. ("FINRA") is a self-regulating organization that oversees all brokerage firms doing securities business in the United States and was formally known as the National Association of Securities Dealers. SA is a member of FINRA, and since BA and DP are associated with SA as broker-dealer agents, BA and DP are required to abide by FINRA rules (also known as NASD rules). SA, BA and DP are in violation of RSA 421-B:8, X, for violating the following FINRA and NASD rules:

- a. NASD 2210: Communications with the Public;
  - b. NASD 2310: Recommendations to Customers (Suitability);
  - c. NASD 3010: Supervision;
  - d. FINRA 2010: Standards of Commercial Honor and Principles of Trade; and
  - e. FINRA 2020: Use of Manipulative, Deceptive or Other Fraudulent Devices.
7. Pursuant to RSA 421-B:10, the secretary of state may by order deny, suspend, or revoke any license if he finds that the order is in the public interest, and that the broker-dealer, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer, has willfully violated or failed to comply with any provision of this title or a predecessor law, has failed reasonably to supervise his agents if he is a broker-dealer, has engaged in dishonest or unethical practice in the securities business, or for good cause shown. Respondents violated these requirements.
8. Pursuant to RSA 421-B:23, whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule under this chapter, he shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. All Respondents are subject to this section.
9. Pursuant to RSA 421-B:26,III, any person who, either knowingly or negligently, violates any provisions of this chapter may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation or denial of any registration or license, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation. All Respondents are subject to this section.
10. Pursuant to RSA 421-B:26,III-a, every person who directly or indirectly controls a person liable under paragraph III, every employee of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the act or transaction constituting the violation, every principal executive officer, or director of such person, either negligently or knowingly, may, upon hearing, and in addition to any other penalty provided by law, be subject to such suspension, revocation,

or denial of any registration or license, or administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties imposed pursuant to RSA 421-B:24 or civil liabilities imposed pursuant to RSA 421-B:25. All Respondents are subject to this section.

11. Pursuant to RSA 421-B:26,V, after notice and hearing, the secretary of state may enter an order of rescission, restitution, or disgorgement directed to a person who has violated RSA 421-B. All Respondents are subject to this section.
12. Pursuant to RSA 421-B:26,VI, the secretary of state may order any person who violates RSA 421-B:3 upon hearing, and in addition to any other penalty provided by law, to make a written offer to the purchaser of the security to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid for the security together with interest at the legal rate, less the amount of any income received by the purchaser on the security, or if the purchaser no longer owns the security, an offer to pay an amount in cash equal to consideration paid for the security together with any interest at the legal rate, less any amount the purchaser received on disposition of the security and less the amount of any income received by the purchaser on the security. Respondents are subject to this section.

#### RELIEF REQUESTED

- III. The Bureau makes the following requests for relief in the above-referenced matter as permitted under the Act.
  1. Find as fact the allegations contained in section I of the Statements of Fact.
  2. Make conclusions of law relative to the allegations contained in section II of the Statements of Law.
  3. Pursuant to RSA 421-B:23, issue an Order to Cease and Desist against SA, BA and DP, for violations under the Act.
  4. Assess administrative fines and penalties of \$2,500 per violation against SA, BA and DP, as permitted under RSA 421-B:10, RSA 421-B:26,III, and RSA 421-B:26,III-a, for the above-referenced violations under the Act.
  5. Pursuant to RSA 421-B:10, issue an order to show cause why the broker-dealer and broker-dealer agents licenses should be suspended or revoked.
  6. Order the recovery of costs of this investigation, in accordance with RSA 421-B:22, IV.
  7. Take any other just and equitable relief as permitted under the Act such as rescission, ~~restitution~~ or disgorgement.

RIGHT TO AMEND

The Bureau's staff reserves the right to amend this Petition for Relief and requests that the Director of Securities Regulation take further enforcement action.

Respectfully submitted by:

  
\_\_\_\_\_  
Jeffrey D. Spill  
Deputy Director

2/13/12  
Date

  
\_\_\_\_\_  
Eric Forcier  
Staff Attorney

2/13/12  
Date