

STATE OF NEW HAMPSHIRE
BUREAU OF SECURITIES REGULATION
DEPARTMENT OF STATE
25 CAPITOL STREET
CONCORD, NH 03301

RECEIVED

JAN 26 2011

NEW HAMPSHIRE BUREAU
OF SECURITIES REGULATION

CONSENT ORDER
FOR CENSURE

Margaret Tully, CRD # 2226615
Tully & Co. Investments, LLC, CRD # 119862

COM07-004

- I. For purposes of settling the above-referenced matter and in lieu of further administrative proceedings, Margaret Tully and Tully & Co. Investments, LLC have submitted an offer of settlement, which the Bureau of Securities Regulation, Department of State, State of New Hampshire (hereinafter referred to as the "Bureau") has determined to accept. Accordingly, without Margaret Tully and Tully & Co. Investments, LLC admitting the Statement of Facts, Statement of Law, or any other allegations herein, Margaret Tully, Tully & Co. Investments, LLC, and the Bureau do hereby agree as follows:

STATEMENT OF FACTS

1. Margaret Tully (hereinafter referred to as "Tully"), has been a licensed investment advisor with and owner of Tully & Co. Investments, LLC (hereinafter referred to as "Tully & Co."), since October 1, 1998. Tully & Co. has been a registered investment advisory firm since October 1, 1998, and the sole office is currently located at 481 Hanover Street, Manchester, NH 03104.
2. The complainants, Investor #1 and Investor #2 (hereinafter collectively referenced to as the "Investors"), are husband and wife and former clients of Tully. Investor #1, prior to marriage to Investor #2 in 1997, had been Tully's client with Tully's prior employers since 1994. By 1997, Tully was managing the Investors' two IRA accounts and a third joint account. The nature of the relationship between the Investors and Tully was that of an advising relationship, where the Investors paid Tully for her investment advice.

3. In April 2004, the Investors decided to sell their home in Windham, New Hampshire and move to Dracut, Massachusetts where they planned to purchase a new home for \$400,000. Their original plan was to pay cash for the new house and not have a mortgage.
4. Prior to the move to Dracut, MA, in response to the Investors' need for money to fund their retirement and to make their desired improvements to the Dracut, MA home, Tully advised the Investors, that one of their alternative strategies, given their current financial situation, moderate risk tolerance, and investment objectives, was to mortgage half the value of their new home purchase and free up \$200,000 in order to open a fourth account and invest in stocks. The account was to be opened through Tully & Co. with Fidelity Investments as the custodian.
5. Tully expressed to the Investors that the goal of the account funded with the mortgage proceeds would be to generate enough of a return to cover the cost of the planned \$1,500 monthly withdrawal for the equity loan payment while still inflating the principal balance in excess of the original \$200,000 investment.
6. The Investors purchased the home in Dracut, MA for \$400,000 with the cash proceeds of the sale of their Windham, NH home. The Investors then applied for and acquired a home equity loan for \$200,000 on this new home.
7. Instead of giving Tully \$200,000 as she originally had advised, they kept \$20,000 for themselves and gave Tully \$180,000 for investment. Although it would be more difficult to attain the financial objectives and returns discussed above with only receiving \$180,000 instead of the planned \$200,000, Tully opened the account for the Investors.
8. In June 2004, Tully began to invest the proceeds of the home equity loan. From June 2004 through February 2005, the account did fairly well by nearly preserving its original balance while maintaining the withdrawal rate, though the principal was not appreciating as planned. In March of 2005, the Investors withdrew an unplanned \$15,000 from the

account with the home equity loan proceeds. At that time, Tully explained to the Investors that such a withdrawal would destroy the financial objectives of the account and warned that the strategy was not working. The Investors chose to maintain the account.

9. For another seventeen months after the unplanned withdrawal in March of 2005, up until August 2006, the account with the home equity loan proceeds never appreciated beyond its initial investment of \$180,000.
10. In August of 2006, the Investors met with Tully at her office to discuss their entire portfolio's performance. At that time, Tully presented a Portfolio Review to the Investors. Due to an administrative error, this Portfolio Review indicated that the Investors were attaining 10.12% return on investment for their entire portfolio. Upon further review, the Investors discovered that these figures were flawed, and the actual portfolio's return was much lower. Upon realizing this, they filed a complaint with the Bureau.
11. The Bureau determined that the rate of return for the Investors' portfolio at the time of the August 2006 meeting was actually 2.53%, not the 10.12% that was presented to the Investors. This 2.53% return on investment for the portfolio does not factor in the money paid in interest for the home equity loan, which would put the Investors in a position of a negative return.
12. The account with the home equity proceeds never exceeded the initial \$180,000 investment as was the original objective. When Tully met with the Investors to discuss the portfolio, Tully presented inaccurate numbers because of the administrative error.
13. Upon investigation of the Investors' complaint, it was further discovered that from June 2004 through March 2005, the Fidelity Investments' logo was absent from monthly account statements that were mailed to the Investors. It is Tully's position that she contacted Fidelity Investments regarding replacing the Fidelity Investments' logo with the Tully & Co. logo on the monthly account statements that Fidelity Investments mailed

to the Investors. For unknown reasons, this process was only partially undertaken, whereby the Fidelity Investments' logo was removed but the Tully & Co. logo was never affixed to the monthly account statements. Essentially, this caused the statements to be mailed to the Investors with blank headings.

STATEMENT OF LAW

1. Margaret Tully is an 'investment advisor' within the meaning of RSA 421-B:IX.
2. Pursuant to RSA 421-B:4, V(a), an investment advisor, when making a recommendation to a client for the purchase, sale, or exchange of a security, the investment advisor must have reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs. The Bureau asserts that Tully violated this provision by recommending to the Investors, whose risk tolerance was known to be moderate, to mortgage half of their home and use the proceeds to invest in securities, a highly risky recommendation.
3. Pursuant to RSA 421-B:4, V(i), an investment advisor is a fiduciary and has a duty to act primarily for the benefit of the person's clients. It is considered unethical and a violation of this section to provide a report to any advisory client prepared by someone else other than the investment advisor and not disclosing that fact. The Bureau asserts that Tully was in violation of this provision by causing the Fidelity Investments' monthly statements to be mailed to the Investors without the Fidelity Investments' logo. Tully had a duty to disclose that the report being mailed to the Investors was the product of Fidelity Investments, not her own.
4. Pursuant to RSA 421-B:8, XII(c)(4), an investment advisor is required to make and maintain true, accurate and current records, including accurate bank statements. The Bureau asserts that Tully was in violation of this provision for failing to keep accurate bank statements by

causing the Fidelity Investments' bank statements to be mailed to the Investors with missing headers, making it difficult to accurately ascertain Fidelity Investments' custody of the account.

5. Pursuant to FINRA's Notice To Members: December 2004, the use of home mortgage or equity loan proceeds for investment should require heightened analysis and supervision as the clients risk losing their home. Tully was subject to this notice and should have been aware of the highly risky nature of her advice.
6. Pursuant to RSA 421-B:21, the Bureau can issue a censure.
7. Pursuant to RSA 421-B:22, IV, the Bureau can assess the cost of this investigation.
8. Pursuant to RSA 421- B:26, V, the Bureau can order restitution be paid in this matter.

II. In view of the foregoing, Tully and Tully & Co. agree to the following sanctions:

1. Tully and Tully & Co. agree that they have voluntarily consented to the entry of this Order and represent and aver that no employee or representative of the Bureau has made any promise, representation, or threat to induce their execution.
2. Tully and Tully & Co. agree to waive their right to an administrative hearing and any appeal therein under this chapter.
3. Tully and Tully & Co. agree that this Order is entered into for the purpose of resolving only the matter as described herein. This Order shall have no collateral estoppel, res judicata or evidentiary effect in any other lawsuit, proceeding, or action, not described herein. Likewise, this Order shall not be construed to restrict the Bureau's right to initiate an administrative investigation or proceeding relative to conduct by Respondents which the Bureau has no knowledge at the time of the date of the final entry of this Order.

4. Tully and Tully & Co. may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in this Consent Order or create the impression that the Consent Order is without factual basis. Nothing in this provision affects Respondent's testimonial obligations or right to take legal positions in litigation in which the State of New Hampshire is not a party.
5. Upon execution of this Consent, Tully and Tully & Co. shall pay costs to the Bureau of Securities Regulation in the amount of \$4,900.00 (Four Thousand Nine-Hundred Dollars). A certified check or mail order funds shall be made out to the State of New Hampshire.
6. Upon execution of this Consent, Tully and Tully & Co. shall pay restitution to the Investors in the amount of \$10,000.00 (Ten Thousand Dollars). A certified check or mail order funds shall be made out to the Investors.
7. Upon execution of this Consent, half of the amount agreed upon above shall be paid within 10 days of execution of and the other half within 30 days.
8. Upon Execution of this Consent, Tully and Tully & Co. agree to an absolute prohibition against the use of home equity or mortgage proceeds for the purpose of investment for a period of three years.
9. If Tully and Tully & Co. do not meet the conditions of this Consent Order for Censure, this Censure shall be voidable by the Bureau and the Bureau may continue its enforcement action related to the claims discussed above.

III. Based on the foregoing, the Bureau deems it appropriate and in the public interest to accept and enter into this Order. **THEREFORE, IT IS HEREBY ORDERED THAT:**

1. Margaret Tully and Tully & Co. Investments, LLC are hereby censured.
2. Margaret Tully and Tully & Co. Investments, LLC pay costs to the Bureau in the amount of \$4,900.00.

3. Margaret Tully and Tully & Co. Investments, LLC pay restitution to the Investors in the amount of \$10,000.00.
4. Margaret Tully and Tully & Co. Investments, LLC complied with the above-referenced undertakings.

Executed this 28th day of December, 2010

Margaret Tully

Margaret Tully

(Please print name below)

Margaret Tully

Executed this 28th day of December, 2010

Tully & Co. Investments LLC

Tully & Co. Investments, LLC

Executed this 7th day of February, 2010

Joseph Long

Bureau of Securities Regulation

Joseph Long, Director