

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 64220 / April 7, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14328

In the Matter of	:	ORDER INSTITUTING ADMINISTRATIVE
Marc A. Ellis,	:	AND CEASE-AND-DESIST PROCEEDINGS,
Respondent.	:	PURSUANT TO SECTIONS 15(b) AND 21C
	:	OF THE SECURITIES EXCHANGE
	:	ACT OF 1934, MAKING FINDINGS, AND
	:	IMPOSING REMEDIAL SANCTIONS AND
	:	A CEASE-AND-DESIST ORDER
	:	

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Marc A. Ellis (“Ellis” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that¹:

Summary

These proceedings arise out of violations by GunnAllen Financial, Inc. ("GunnAllen"), formerly a Tampa, Florida-based broker-dealer, of Rule 30(a) of Regulation S-P (17 C.F.R. § 248.30(a)) (the "Safeguard Rule"). The Safeguard Rule requires broker-dealers to, among other things, adopt written policies and procedures reasonably designed to protect customer information against unauthorized access and use. Although GunnAllen maintained written supervisory procedures for safeguarding customer information, they were inadequate and failed to instruct the firm's supervisors and registered representatives how to comply with the Safeguard Rule. As Chief Compliance Officer ("CCO"), Ellis was charged with the responsibility of maintaining and reviewing the adequacy of GunnAllen's procedures for protecting customer information. However, after the theft of three laptop computers and a registered representative's computer password credentials put customer information collected by GunnAllen at risk of unauthorized access and use, Ellis did not direct the firm to revise or supplement its policies and procedures for safeguarding customer information. As a result, Ellis aided and abetted and caused GunnAllen's violations of the Safeguard Rule.

Respondent

1. Ellis, 44, resides in Dix Hills, New York. From July 2005 through February 2009, Ellis served as CCO of GunnAllen.

GunnAllen Financial, Inc.

2. GunnAllen had a principal place of business in Tampa, Florida and was registered with the Commission as a broker-dealer from March 1986 to April 2010. The firm operated mostly under an independent contractor model and maintained franchise offices nationwide. In April 2010, GunnAllen discontinued its operations, filed for bankruptcy, and submitted a Broker-Dealer Withdrawal, or "BDW", Form with the Commission withdrawing its registration. The withdrawal became effective on June 11, 2010.

GunnAllen's Safeguard Procedures

3. Rule 30(a) of Regulation S-P, or the Safeguard Rule, requires every broker and dealer registered with the Commission to adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information, and that are reasonably designed to: (1) insure the security and confidentiality of

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

customer records and information; (2) protect against any anticipated threats or hazards to the security or integrity of customer records and information; and (3) protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.

4. Between July 2005 and February 2009, GunnAllen's policies and procedures addressing the protection of customer information were contained in its Written Supervisory Procedures Manual (the "Manual"). Specifically, the Manual included a provision, less than a page long, entitled "*Safeguarding Information.*" This provision was general and vague and, for several reasons, failed to set forth policies and procedures reasonably designed to protect customer information, as required by the Safeguard Rule. First, the provision simply recited the Safeguard Rule verbatim and provided examples of safeguards that "may be adopted" by GunnAllen, but did not specify any safeguards actually adopted by the firm, or otherwise require any of the listed safeguards be adopted. Second, the provision also failed to instruct GunnAllen's registered representatives how to protect customer information or enumerate the steps that they needed to take to ensure compliance with the Safeguard Rule. Moreover, the provision lacked procedures addressing the follow-up of breaches or potential breaches in customer information uncovered by GunnAllen and its registered representatives. Finally, the provision repeatedly referred to a "Designated Principal" charged with, among other things, monitoring and annually testing the firm's safeguards and identifying reasonably foreseeable risks warranting improvements or adjustments to the safeguards. However, the Manual failed to identify the "Designated Principal" by name or position and, in fact, GunnAllen did not appoint a "Designated Principal."

Breaches in GunnAllen's Customer Records

5. The inadequacy of GunnAllen's procedures for protecting customer information and the firm's failure to comply with the Safeguard Rule became apparent between August 2006 and February 2008. During that period, laptop computers belonging to three GunnAllen registered representatives and the computer password credentials belonging to a fourth were misappropriated from the firm. Although no reports of misuse of customer information as a result of any of the incidents subsequently arose, the thefts jeopardized the confidentiality and integrity of customer information maintained by the firm and placed some information at risk of unauthorized use that could have resulted in substantial harm or inconvenience to customers.

6. The first laptop computer was stolen in August 2006 from a GunnAllen franchise office in the Orlando, Florida area. The laptop contained contact records reflecting the names, addresses, and telephone numbers and, in many instances, spouses, dates of birth and social security numbers of approximately 1,120 of the firm's customers. GunnAllen filed a report of the theft with local police and considered, but did not send, a letter to the affected customers notifying them of the theft. The firm did not take any further steps concerning the matter and the laptop was never recovered.

7. In January 2007, a GunnAllen franchise office in the Scottsdale, Arizona area uncovered evidence that a registered representative who the firm had terminated almost a year earlier had misappropriated another employee's computer password credentials and was monitoring the employee's e-mails, including those exchanged with customers, from a remote location. GunnAllen's IT Department was notified about the compromised password and subsequently confirmed that the terminated representative had gained unauthorized access to the firm's e-mail system and had been accessing the employee's e-mail for at least three months and, possibly, as much as a year. GunnAllen directed its employees in the franchise office to change their computer password credentials and planned to implement an automated program, already under development, requiring employees on a firm-wide basis to periodically change their computer password credentials. The firm did not take any additional steps concerning the matter and did not contact criminal authorities although recommended by its IT Department.

8. Further, in February 2008, laptop computers were misappropriated from two GunnAllen registered representatives in separate incidences. The representatives reported the thefts to GunnAllen and informed the firm's IT Department that the laptops did not hold any customer information. GunnAllen did not take any further steps concerning the thefts and the laptop computers were never recovered.

9. GunnAllen's senior managers, including Ellis and the firm's General Counsel, learned of the aforementioned thefts, but no single person or department directed or coordinated the firm's responses to the thefts. As a consequence, GunnAllen failed to assess what, if any, risks the thefts posed to its customers and failed to take follow-up and remedial steps recommended by its employees. For example, after the theft of the first laptop computer, a dispute arose between GunnAllen's General Counsel and its IT Department, as to which department was responsible for sending a letter to the affected customers notifying them of the theft. A senior GunnAllen officer subsequently sent an e-mail to the General Counsel and Ellis, who was serving as the firm's CCO, stating that the letter should be sent to the affected customers, but it was never mailed.

**Ellis Failed to Address GunnAllen's
Inadequate Procedures for Safeguarding Customer information**

10. While serving as CCO of GunnAllen from July 2005 to February 2009, Ellis was responsible for implementing and maintaining policies and procedures ensuring the firm's compliance with Regulation S-P, including the Safeguard Rule mandating broker-dealers to adopt written policies and procedures reasonably designed to protect customer records and information. Ellis was also responsible for reviewing the adequacy of GunnAllen's written supervisory procedures contained in the Manual, including those concerning the Safeguard Rule. Ellis, with the assistance of the firm's Assistant Chief Compliance Officer, directed and oversaw GunnAllen's annual reviews of its written supervisory procedures in 2007 and 2008.

11. Ellis was notified of the laptop computer theft which occurred in August 2006 and the discovery of the misappropriated computer password credentials in January 2007 by e-mail after the events occurred. He was also orally informed of at least one of the two laptop computer thefts shortly after the event occurred in February 2008. These thefts and GunnAllen's limited response or follow-up repeatedly revealed the firm's policies and procedures for safeguarding customer information to be inadequate. Nevertheless, and despite supervising two annual reviews of GunnAllen's written supervisory procedures, Ellis failed to direct the firm to supplement the *Safeguarding Information* provision in the Manual or to adopt additional written policies and procedures to protect customer information and ensure GunnAllen's compliance with the Safeguard Rule.

12. As a result of the conduct described above, Ellis willfully² aided and abetted and caused GunnAllen's violations of Rule 30(a) of Regulation S-P under the Exchange Act, which requires written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer information that were reasonably designed to: (1) insure the security and confidentiality of customer records and information; (2) protect against any anticipated threats or hazards to the security or integrity of customer records and information; and (3) protect against unauthorized access to or use of customer records and information that could result in substantial harm or inconvenience to any customer.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Ellis cease and desist from committing or causing any violations and any future violations of Rule 30(a) of Regulation S-P under the Exchange Act.

B. Respondent Ellis is censured.

C. Respondent Ellis shall, within ten days of the entry of this Order, pay a civil money penalty of \$15,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check, or bank money order; (B) payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, VA 22312-0003; and (D) submitted under cover letter that identifies Ellis as a Respondent in these proceedings, the file number of these

² A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Huges v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949).

proceedings, a copy of which cover letter and wire transfer, money order or check shall be sent to Teresa J. Verges, Assistant Regional Director, Miami Regional Office, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, FL 33131.

By the Commission.

Elizabeth M. Murphy
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order") on the Respondent and his legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray
Chief Administrative Law Judge
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