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

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

Order No. S-03-020-04-CO01

CONSENT ORDER

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JOYCE CHERRY,

Respondent.

INTRODUCTION

On August 4, 2003, the Securities Administrator of the State of Washington issued STATEMENT OF CHARGES AND NOTICE OF INTENT TO ENTER AN ORDER TO CEASE AND DESIST, SUSPEND SECURITIES SALESPERSON REGISTRATION, AND IMPOSE FINES S-03-020-003-SC01 (hereinafter referred to as the "Statement of Charges"), against the Respondent Joyce Cherry. The Securities Division and Respondent Joyce Cherry do hereby agree to this Consent Order in settlement of the above captioned matter. Respondent Joyce Cherry neither admits nor denies the Findings of Fact and Conclusions of Law as set forth below:

FINDINGS OF FACT

I. Respondent

1. Joyce Cherry ("Cherry") is a registered securities salesperson in the State of Washington. From March 1993 to January 2002, Cherry was a registered securities salesperson with WM Financial Services, Inc. ("WM Financial"). WM Financial is the broker-dealer affiliated with Washington Mutual Bank ("Washington Mutual"). Cherry was terminated by WM Financial on January 10, 2002 for failure to follow procedures, following an internal review by WM Financial that found inappropriate trading

1 activity in several accounts. In response to a subpoena from the Division, WM Financial provided
2 copies of four separate internal compliance department inquiries into Cherry's mutual fund switches,
3 variable annuity sales practices and mutual fund sales practices. Three of these inquiries involved
4 transactions executed between August 14, 2000 and October 12, 2000. WM Financial also provided
5 four customer complaints against Cherry, involving mutual fund sales practices, switches of mutual
6 funds and annuity purchases, two of which are detailed below. Cherry is currently a registered
7 securities salesperson with Allstate Financial Services, LLC.

8 **II. Nature of the Conduct**

9 *"Customer A"*

- 10 2. Customer A is a 52 year-old medically retired former police officer and mental health therapist.
11 Customer A worked for five years as a police officer, but in 1984, at age 33, she was forced to retire
12 due to a heart condition. She returned to graduate school and became a mental health therapist with
13 the Veteran's Administration. She was then forced to retire from the Veteran's Administration at age
14 47 due to her worsening medical condition, including severely deteriorating eyesight resulting from
15 glaucoma. In 2000, Customer A received approximately \$300 per month in income from her
16 investments and \$700 from her Veteran's Administration pension. Her husband earns approximately
17 \$70,000 per year.
- 18 3. Customer A does not have experience in investing in the securities markets. She does not have
19 experience in investing in fixed or variable annuities. Prior to 2000, her investment experience was
20 limited to savings accounts and mutual funds.
- 21 4. Customer A has two investments through WM Financial, a mutual fund and a unit investment trust
22 offered by John Nuveen & Co ("Nuveen"). Nuveen provides tax-free investments for conservative

1 investors. The unit investment trust is Nuveen's Premier Insured Municipal Income Fund and the
2 mutual fund is the Intermediate Duration Municipal Bond Fund (hereinafter the "Nuveen Funds").
3 Both are considered conservative, low risk investments.

4 5. In August 2000, Customer A sold a home she owned prior to her marriage. She received \$125,350.32
5 in profit from the sale of the home. The proceeds of the sale were wired to her bank account at
6 Washington Mutual.

7 6. On September 1, 2000, Customer A went to the Crown Hill branch of Washington Mutual in Seattle,
8 Washington (the "Crown Hill Washington Mutual"). The registered representative Customer A had
9 worked with in the past was no longer with WM Financial. Customer A was directed to speak with
10 Cherry.

11 7. Customer A told Cherry that she owned the Nuveen Funds and that she was satisfied with their
12 performance. She brought a copy of a recent statement to show Cherry. She told Cherry that she
13 wanted to invest the proceeds from the sale of her home in the Nuveen Funds.

14 8. Cherry told Customer A that WM Financial no longer carried Nuveen, but that she could recommend
15 alternative investments. Unbeknownst to Customer A, WM Financial did in fact offer Nuveen at that
16 time.

17 9. Customer A put her trust and confidence in Cherry to recommend a suitable investment. Customer A
18 confided to Cherry that she had no understanding of securities or the securities markets. She also
19 confided in Cherry about her medical conditions and the fact that she would never be able to re-enter
20 the workforce. Customer A informed Cherry that her husband was planning on retiring in the next two
21 years. In summary, she told Cherry that she needed a "safe" investment because she and her husband
22 could not afford to lose the money. Although Customer A did not need an investment that would earn

1 income in the short-term, she did need an investment vehicle that would preserve her capital and offer
2 liquidity in the event that her husband was no longer able to work due to his failing health.

3 10. Cherry recommended a variable annuity offered by American General (“AGL”). Cherry represented
4 that the AGL annuity was a safe investment. Cherry represented that even if the investment did not
5 increase in value that at the end of the “seven-year term,” Customer A was guaranteed to receive her
6 entire principal back from AGL. Customer A expressed concerns about seven years of illiquidity, but
7 Cherry represented that if she needed the money, she could withdraw 15% of investment per year
8 without penalty. However, Cherry did not disclose that this withdrawal would be from an underlying
9 investment whose market value would fluctuate as a result of variations in performance of the stock
10 market. Cherry also represented that AGL was doing very well and that because it was a balanced
11 portfolio, it was a safe investment. Cherry described the investment as operating similar to a bond, i.e.
12 that in seven years Customer A would receive her principal and any accrued interest.

13 11. Based on Cherry’s recommendation, that same day, Customer A authorized the purchase of a variable
14 annuity through American General Life for \$120,000. Customer A was named as the annuitant and
15 her husband was named as the beneficiary. The contract was allocated 100% of the funds into AGL’s
16 Balanced Portfolio. Cherry did not describe the composition of the “Balanced Portfolio” to Customer
17 A.

18 12. Cherry failed to explain the operation of a variable annuity to Customer A. Customer A did not learn
19 until almost one year after she made her investment that her principal was not guaranteed, except in the
20 case of her death. Cherry did not explain that the annuity would not begin to pay out until Customer A
21 reached age 85, on February 17, 2036. Cherry did not describe the surrender charges that would be
22 assessed by AGL if Customer A wished to withdraw all or part (in excess of 15% as described above)

1 of her investment prior to 2007. The annuity was subject to a surrender charge of 7% in year one, 6%
2 in year two, 5% in year three, 4% in year four, 3% in year five, 2% in year six and 0% in year seven.

3 13. Cherry completed a new account form for Customer A. Under past investment experience, Cherry
4 selected "cd's/bank accounts," "mutual funds" and "annuities." Customer A in fact had no previous
5 investment experience with annuities. Cherry selected a time horizon of "10+ years," despite the fact
6 that Customer A had explained her and her husband's medical problems, her inability to work, and her
7 husband's impending retirement. When instructed to initial the new account form, Customer A did so,
8 but due to her glaucoma she was unable to read what was printed on the form.

9 14. The \$120,000 invested in the AGL annuity represented approximately 42% of Customer A's liquid
10 assets and approximately 21% of the Customer A's total net worth.

11 15. On September 30, 2000, Cherry received a total gross commission of \$6,600 from Customer A's
12 purchase of the AGL annuity.

13 *"Customer B"*

14 16. Customer B is an 89 year-old widow who lives in a retirement home in Seattle, Washington. Her
15 husband passed away in 1994. She is a high-school graduate and worked as a secretary for
16 approximately twenty years while raising two children.

17 17. Customer B does not have experience in investing in the securities markets. Customer B's
18 investment experience is limited to certificates of deposit (CDs) and Treasury bills. Customer B has
19 banked with Washington Mutual for over 20 years.

20 18. On August 24, 2001, Customer B went to the Crown Hill Washington Mutual to renew a CD that was
21 close to expiration. She was interested in renewing her CD for a six-month to one-year term. She was
22

1 not interested in a long-term investment, due to her advanced age. She did not, however, require an
2 investment that would pay current income.

3 19. A bank representative told Customer B that CDs were paying very little interest at the time and she
4 was directed to speak with Mark Sigl (“Sigl”), Cherry’s assistant. Sigl offered Customer B an annuity
5 from Safeco and began to fill out the paperwork. After completing the paperwork, Sigl realized that
6 Customer B could not purchase the Safeco annuity due to her age. In order to purchase the Safeco
7 annuity in question, the annuitant had to be younger than 85 years of age. At the time, Customer B
8 was 87 years of age.

9 20. Sigl then introduced Customer B to Cherry. Cherry told Customer B that she had an investment
10 similar to a CD that would pay a rate of return of 7-10% and that was “guaranteed.” Cherry did not tell
11 Customer B that the investment was in a mutual fund that was subject to downside market risk. Had
12 Cherry disclosed that fact, Customer B would not have invested, since she limited her investments
13 primarily to CDs. Customer B believed that with the recommended investment her principal would
14 stay intact and only her interest rate would fluctuate.

15 21. On August 24, 2001, Cherry completed the paperwork for Customer B to invest \$11,205.05 in the
16 WM Equity Income Mutual Fund (the “WM Fund”). According to WM Financial, the goal of the WM
17 Fund is to provide high current income while achieving long-term growth of income and capital. The
18 WM Fund primarily invests in dividend-paying common and preferred stock. Other investments
19 include bonds, convertible securities, U.S. Government securities, American and European depository
20 receipts, mortgage-backed securities, repurchase agreements and real estate investment trusts. Unlike a
21 CD, the WM Fund is not bank insured and the value of an investor’s principal may fluctuate.

1 22. The WM Fund Cherry purchased for Customer B had an upfront sales fee of 5.5%. Upfront fees are
2 deducted before the customer's funds are invested. Thus, the amount actually invested is reduced by
3 the amount of the upfront fee. Customer B paid \$616.28 to WM Financial, which immediately
4 reduced her initial investment to \$10,588.77. Cherry failed to disclose both the actual amount, and the
5 effect, of the upfront fee.

6 23. Cherry completed a new account form for Customer B. Under past investment experience, Cherry
7 selected "cd's/bank accounts" and "mutual funds." Customer B in fact had no previous investment
8 experience with mutual funds. Cherry selected a time horizon of "5-10 years", despite the fact that
9 Customer B was 87 years old at the time. Cherry also selected a "moderate" risk tolerance for
10 Customer B, despite Customer B's desire for an investment that guaranteed the security of her
11 principal. When instructed to initial the new account form, Customer B did so, but was unable to
12 understand what she was signing.

13 24. On or about September 25, 2001, Customer B discussed the investment with her son. After he
14 reviewed the paperwork associated with the investment, he informed her that she had purchased a
15 mutual fund. When Customer B's son confronted Cherry about the purchase, Cherry again falsely
16 represented that the investment was "guaranteed."

17 25. As a result of written complaints to WM Financial by both Customer B and her son, on November
18 29, 2001, WM Financial refunded the amount of Customer B's investment.

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

20 **CONCLUSIONS OF LAW**

21 1. Joyce Cherry's recommendations of unsuitable securities, as set forth in the Findings of Fact above,
22 constitute a dishonest and unethical practice in the securities business. WAC 460-22B-090(7) defines

1 recommending the purchase or sale of a security without reasonable grounds to believe that such a
2 transaction is suitable for that customer as a “dishonest and unethical practice” as that term is used in
3 RCW 21.20.110(1)(g). Such practice is a ground for suspending or revoking Joyce Cherry’s securities
4 salesperson’s registration pursuant to RCW 21.20.110(1)(g).

5 2. Joyce Cherry has committed a dishonest and unethical practice under RCW 21.20.110(1)(g), as set
6 forth in the Findings of Fact above, by misrepresenting the investment time horizon and previous
7 investment experience of Customers A and B in order to make the recommended investments appear
8 suitable. WAC 460-22B-090(3) defines the maintenance of an account containing fictitious
9 information in order to execute transactions which would otherwise be prohibited as a “dishonest and
10 unethical practice” as that term is used in RCW 21.20.110(1)(g). Such practice is a ground for
11 suspending or revoking Cherry’s securities salesperson’s registration pursuant to RCW
12 21.20.110(1)(g).

13 3. Joyce Cherry, as set forth in the Findings of Fact above, in connection with the offer and sale of
14 securities, made untrue statements of material fact or omitted to state material facts necessary in order
15 to make the statements made, in light of the circumstances under which they were made, not
16 misleading, in violation of RCW 21.20.010. Such practice is a ground for suspending or revoking
17 Cherry’s securities salesperson’s registration pursuant to RCW 21.20.110(1)(b).

18 **CONSENT ORDER**

19 Based upon the foregoing,

20 IT IS AGREED AND ORDERED that Joyce Cherry shall cease and desist from engaging in acts
21 and practices in violation of the Securities Act of Washington, RCW 21.20.

1 IT IS FURTHER AGREED AND ORDERED that Joyce Cherry shall pay restitution in the amount
2 of Fourteen Thousand Three Hundred Fifty Four Dollars (\$14,354) to "Customer A" as referenced in the
3 Findings of Fact. Said payment constitutes restitution for a market loss of \$9,554 and a surrender fee of
4 \$4,800. Said payment is to be made to the Securities Division prior to the entry of this Consent Order.
5 The funds will be paid into a special account established by the Securities Division for reimbursement to
6 "Customer A." Upon receipt of the funds, the Securities Division will promptly issue a warrant from that
7 special account to "Customer A."

8 IT IS FURTHER AGREED AND ORDERED that Joyce Cherry shall reimburse the Securities
9 Division Six Hundred Forty Six Dollars (\$646) for its costs incurred in its investigation of this matter.
10 Said payment is to be made to the Securities Division prior to the entry of this Consent Order.

11 IT IS FURTHER AGREED AND ORDERED that the securities salesperson license of Joyce
12 Cherry shall be suspended for a period of thirty (30) days. Such suspension shall commence on the next
13 business day after entry of this Consent Order.

14 IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this Consent
15 Order.

16 IT IS FURTHER AGREED that in consideration of the foregoing, Joyce Cherry withdraws her
17 request for a hearing, waives her right to a hearing on this matter and waives her right to judicial review
18 of this matter pursuant to RCW 21.20.440.

19 DATED this 18th day of February, 2004.

20 Approved for entry by:

21 /s/ Diane K. Golbeck
22 Diane K. Golbeck, WSBA #20469
23 Golbeck, Roth & Colachis PLLC
24 Attorney for Joyce Cherry

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Signed by:

/s/ Joyce Cherry
Joyce Cherry

THIS ORDER ENTERED THIS 19th DAY OF February , 2004 BY:

Deborah R Bortner

DEBORAH R. BORTNER
Securities Administrator

Approved for entry by:

Michael E. Stevenson

Michael E. Stevenson
Chief of Enforcement

Presented by:

Andrea Y. Sato

Andrea Y. Sato
Enforcement Attorney