BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE

OF THE STATE OF IDAHO

STATE OF IDAHO, Department of Finance, Securities Bureau,	)	Docket No. 2005-7-01
Complainant,	)	**AGREEMENT AND ORDER**
vs.	)	
MARY F. SPEARS,	)	
Respondent.	)	

The Director of the Department of Finance ("Department") has conducted an inquiry into the securities activities of Respondent Mary F. Spears ("Spears"). Pursuant to said inquiry, it appears to the Director that violations of the Idaho Securities Act, Idaho Code §30-1401, *et seq.*, have occurred. The Director and Respondent have agreed to resolve this matter without a public hearing or other adjudication. Therefore, the Director deems it appropriate and in the public interest that this Agreement and Order be entered. Respondent consents to the entry of this Agreement and Order.

I. RESPONDENT

1. Respondent Spears is an Idaho resident. Spears became associated with the securities industry as a securities salesperson in October of 2000 and, but for brief periods between employers, she has been regularly engaged in the securities business in Idaho.

2. Spears was registered with the Department as a securities salesperson for American Express Financial Advisors, Inc. (AXP) from November 28, 2001 until April 30, 2003.

Spears was also registered with the Department of Finance as an investment advisor representative for AXP from April 2, 2002 until April 30, 2003.

3. Spears was registered with the Department as a securities salesperson for Lincoln Financial Advisors Corporation (LFA) from May 30, 2003 until March 12, 2004. Spears was also registered with the Department of Finance as an investment advisor representative of LFA From May 16, 2003 until March 12, 2004.

II. BACKGROUND & ACTIONS WHILE AT AXP

4. In 2001, C&N Kessler (Kesslers) were securities and investment advisory clients of AXP and AXP agent, B. Moore (Moore). Moore left the employment of AXP during early 2002 and Mary Spears began to service a majority of Moore's AXP clients during early February 2002.

5. Spears met with the Kesslers in early 2002 and was apprised of their dissatisfaction with the service and investment results experienced by them during their association with AXP and agent Moore. The Kesslers were very concerned about the gravity of their investment losses and they stated their desire to minimize risk, preserve principal, to leave AXP and to consider investments not directly associated with AXP.

6. During April 2002, the Kesslers agreed to have Spears and AXP produce a comprehensive financial plan for them. At or near that time, Spears recommended that the Kesslers meet with her and K. Barth Williams ("Williams") in order to discuss investments that were then being offered through Williams. Based on Spears' recommendation, the Kesslers agreed to meet with Williams.

7. Spears and Williams visited the Kesslers at their home during early April 2002. At that meeting, Williams introduced a purportedly "low risk" investment that was supposedly

paying a 16% return. Thereafter, Spears and Williams met with the Kesslers on at least one other occasion prior to the Kesslers' decision to invest.

8. At their meeting on April 12, 2002, the Kesslers executed subscription documents to purchase $128,000.00 in Ultimate Ventures, Inc. (UVI) preferred stock. Spears executed the subscription documents as a witness to the Kesslers' signatures. The $128,000.00 check issued by the Kesslers in association with this investment were funds that had previously been withdrawn from the Kessler's AXP securities account. In connection with the recommendation, offer and sale of the UVI preferred shares, omissions and misrepresentations of material information occurred.

9. After their investment in UVI, Spears continued to provide advisory services to the Kesslers and met with them quarterly to discuss, review and act on their investment and financial planning needs.

10. At their quarterly meeting in February 2003, Spears approached the Kessler's with a "leveraging" investment strategy that she had learned of through Williams. That is, the Kesslers might consider borrowing on their home at low, single-digit interest rates and thereafter investing the proceeds at 14% in investments then being offered through Williams. At that time, the Kesslers owned their home outright and were retired.

11. The Kesslers initially dismissed the idea presented by Spears and cited their inability to make any type of mortgage payment if a loan were obtained for investment purposes. However, additional discussions and meetings regarding the leveraging concept and available investment products occurred between the Kesslers, Williams and Spears. Thereafter, the Kesslers did obtain a loan on their primary residence for the purpose of making additional investments.

12. Spears left the employment of AXP on May 15, 2003 and affiliated with Lincoln Financial Advisors Corporation (LFA).

III. BACKGROUND & ACTIONS WHILE AT LFA

13. Spears affiliated with LFA during May 2003 and continued to act as the Kesslers' securities representative and as their financial advisor.

14. Discussions regarding the leveraging investment strategy continued with the Kesslers, although the UVI preferred share offering had ceased. Thereafter, Spears and Williams met with the Kesslers and it was suggested by Williams, and not objected to by Spears, that the Kesslers invest in another purportedly, "extremely safe" investment medium, commonly known as a "viatical".

15. On June 2, 2003, the Kesslers paid LFA $2,000 to have Spears continue in her role as their financial advisor and to obtain a new financial plan.

16. Based on the prior and continuing meetings and discussions with Williams and Spears, the Kesslers agreed to use their home loan proceeds to invest in viatical investment contracts. On June 16, 2003, the Kesslers executed documents to purchase $75,257.96 in viatical instruments. On that same date, the Kesslers paid William's company, Assurance Financial, Inc., $3,815.00 as compensation for the viatical investments. In connection with the offer and sale of the viatical investment contracts, omissions and misrepresentations of material information occurred.

17. On June 20, 2003, Assurance Financial paid Spears $1,806.00 as compensation for her assistance in the placement of the viatical investment contracts (VICs). At the direction of Spears, the compensation was paid to Integrity First, Inc., a company owned and

controlled by Spears. Spears' compensation for the placement of the viatical instruments was not disclosed to the Kesslers.

IV. FINDINGS OF VIOLATIONS

18. In conjunction with its investigation, the Complainant has developed evidence sufficient to find the following violations of the Idaho Securities Act and the rules promulgated under the Act. The Respondent Neither neither admits nor denies the Department's Findings.

FAILURE TO REGISTER SECURITIES

19. Respondent aided and abetted in the offer or sale of securities in the form of preferred stock in Ultimate Ventures, Inc. to Idaho residents. Such securities were not registered with the Department as required by Idaho Code § 30-1416.

20. Respondent has violated Idaho Code §30-1416.

DECEPTIVE OR MANIPULATIVE ACTS OR PRACTICES: UVI TRANSACTIONS

21. In connection with the recommendation, offer and sale of securities to Idaho investors, Respondent Spears engaged in deceptive or manipulative acts or practices as defined under Rule 111(01) and (02) of the Rules Pursuant to the Idaho Securities Act (IDAPA 12.01.08.111). Deceptive or manipulative acts or practices are further defined as dishonest or unethical acts or practices which may operate as a fraud or deceit as enumerated in Idaho Code §30-1403(3).

22. Spears' deceptive or manipulative acts or practices in connection with the recommendation and sale of UVI preferred shares include, but are not limited to:

A) Failing to disclose to UVI preferred share purchasers that the securities were not registered with the Idaho Department of Finance as required under Idaho Code §30-1416.

B) Failing to disclose to UVI preferred share purchasers that Williams was not registered as a broker-dealer or securities salesperson with the Idaho Department of Finance as required under Idaho Code §30-1406.

C) Failing to disclose that in making the UVI referral, recommendation and sale that Spears was engaging in an outside business activity that was neither disclosed to, nor approved by, her employing broker-dealer.

D) Failing to disclose Spear's knowledge of the then ongoing investigation of UVI and Barth Williams by the Idaho Department of Finance.

E) Misrepresenting that the UVI preferred shares were a safe and secure investment that was suitable for investment by the Kesslers in light of the Kessler's financial condition, investment sophistication and investment objectives.

F) Failing to provide those disclosures alleged as omissions of material fact in State of Idaho vs. Ultimate Ventures, et al; Ada County Case No. CV OC-0309967D.

23. Respondent has violated Idaho Code §30-1403(3).

DECEPTIVE OR MANIPULATIVE ACTS OR PRACTICES: VIATICAL TRANSACTIONS

24. In connection with the recommendation, offer and sale of viatical investment contracts to Idaho investors, Spears engaged in deceptive or manipulative acts or practices as defined under Rule 111(01) and (02) of the Rules Pursuant to the Idaho Securities Act (Idaho

IDAPA 12.01.08.111). Deceptive or manipulative acts or practices are further defined as dishonest or unethical acts or practices which may operate as a fraud or deceit as enumerated in Idaho Code §30-1403(3).

25. Spears' deceptive or manipulative acts or practices in connection with the recommendation and sale of viatical investment contracts (VICs) include, but are not limited to:

A) Failing to disclose to VIC purchasers that the securities were not registered with the Idaho Department of Finance as required under §30-1416.

B) Failing to disclose to VIC purchasers that Williams was not registered as a broker-dealer or securities salesperson with the Idaho Department of Finance as required under §30-1406.

C) Failing to disclose that in making the VIC referral, recommendation and sale that Respondent Spears was engaging in an outside business activity that was neither disclosed to, nor approved by, her employing broker-dealer.

D) Misrepresenting that the VICs were a safe and secure investment that was suitable for investment by the Kesslers in light of the Kessler's financial condition, investment sophistication and investment objectives.

E) Failing to inform the VIC purchasers that Spears would receive direct compensation for the recommendation and sale of the VIC.

26. The Respondent has violated Idaho Code §30-1403(3).

UNLAWFUL ACTS OF PERSONS ADVISING ANOTHER

27. Pursuant to Idaho Code §30-1404, it is unlawful for any person who receives, directly or indirectly, consideration from another person primarily for advising the other person as to

the value of securities or their purchase or sale, to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon such other person.

28. In her capacity as their financial planner and investment advisor representative, Spears engaged in acts, practices or courses of business, which operated or would operate as a fraud or deceit upon such other person, thereby violating Idaho Code §30-1404(2).

29. Spears' acts, practices, or courses of business that operated or would operate as a fraud or deceit upon the advisory client include, but are not limited to those actions described in Paragraphs 19 through 25 above.

30. Respondent has violated Idaho Code §30-1404(2).

V. REMEDIES

1. Respondent represents that the information provided to Complainant is accurate and complete.

2. Respondent neither admits nor denies the findings of violations contained in this Agreement and Order, and enters into this agreement solely to resolve the matter, avoid further proceedings and compromise with the Department.

3. Respondent agrees to repay the compensation received in connection with the identified transactions to the Kesslers. Said compensation was one thousand eight hundred six dollars ($1,806.00) and Respondent agrees to make monthly payments to the Kesslers in the amount of two hundred dollars ($200.00) per month beginning July 1, 2005, with the final payment amount being two hundred six dollars ($206.00).

4. Respondent agrees to pay a fine to Complainant in the amount of five thousand dollars ($5,000.00). Said fine will be waived by Complainant on a dollar-for-dollar basis as Respondent complies with the terms of Item 3 above. The balance of the fine shall

waived until such time as Respondent again applies for any form of registration or license with the Department of Finance.

5. Respondent agrees to comply with the provisions of the Idaho Securities Act, and any successor law, in all future securities transactions.

6. Respondent further agree that, should the Director find in the future that Respondent has committed any additional violations of the Idaho Securities Act, or any successor law, the Complainant may use all allegations contained in this Agreement and Order, and any other allegations concerning violations of the Idaho Securities Act, or any successor law, by Respondent, in any subsequent proceeding.

7. Respondent agrees to cooperate with the Department or any other regulatory or law enforcement authorities in connection with any existing investigation or other proceedings against UVI, Cameron Kuipers or Barth Williams that are associated with the activities described herein.

8. Respondent agrees to immediately terminate her employment in the securities industry and to not reapply for any form of securities registration or license for a period of two years from the date of this Order.

9. Should Respondent again seek employment in the securities industry and to be registered with the Complainant, Respondent agrees to obtain employment with a securities broker-dealer that will provide on-site supervision of Respondent through a designated on-site principle of the broker-dealer. Respondent will obtain a written acknowledgement of this requirement from the broker-dealer and from her designated supervisor and provide such to the Complainant.

DONE AND DATED at Boise, Idaho, this 14th day of June 2005.

MARY F. SPEARS

MARILYN T. CHASTAIN
Bureau Chief, Securities Bureau
Department of Finance, State of Idaho

IT IS SO ORDERED This 14th day of June 2005.

GAVIN M. GEE, Director
Department of Finance, State of Idaho