

STATE OF NEBRASKA
Department of Banking & Finance

In the Matter of:)	
)	
Mitchell Spiels,)	FINDINGS OF FACT
115 North Webb Road,)	CONCLUSIONS OF LAW
Grand Island, Nebraska)	AND
)	CONSENT ORDER
RESPONDENT.)	

THIS MATTER comes before the Nebraska Department of Banking and Finance (“DEPARTMENT”), by and through its Director, pursuant to its authority under the Securities Act of Nebraska, Neb. Rev. Stat. §§ 8-1101 to 8-1124 (Reissue 1997; Cum. Supp. 2006) (“Act”). Pursuant to Neb. Rev. Stat. § 8-1115 (Reissue 1997), the DEPARTMENT has investigated the acts of Mitchell Spiels, 115 North Webb Road, Grand Island, Nebraska. As a result of such investigation, and being fully advised and informed in the matter, the Director and Mitchell Spiels enter into the following Findings of Fact, Conclusions of Law and Consent Order (“Order”).

FINDINGS OF FACT

1. Mitchell Spiels (“SPIEHS”) is registered to sell securities in Nebraska as an agent of Synergy Investment Group, LLC (“Synergy”), a broker-dealer registered to transact business in Nebraska. SPIEHS operates out of a registered branch office for Synergy located at 115 North Webb Road, Grand Island, Nebraska.

2. According to a flyer furnished to the DEPARTMENT by a third party, SPIEHS was scheduled to make a presentation at seminars on July 22, 2008, and July 29, 2008, on ways to protect savings and retirement assets. The seminar was sponsored by

Axford Tax. The flyer for the seminar included a picture of SPIEHS, with the caption “Mitchell Spiehs, Registered Representative, Axford Tax.”

3. The flyer also contained the statement “Mitchell Spiehs is a Registered Representative with Synergy Investment Group LLC. Axford Tax and Synergy Investment Group are not affiliated companies.”

4. Axford Tax is not registered with the DEPARTMENT pursuant to the Act, and SPIEHS is not registered with the DEPARTMENT as an agent or representative of Axford Tax. According to its website, Axford Tax maintains an office at 115 North Webb Road, Suite 6, Grand Island, Nebraska. The Axford Tax website does not identify SPIEHS as an affiliate.

5. SPIEHS asserts that he provided the flyer, via email, to the Synergy compliance department and received oral approval from the Synergy compliance department, if certain changes were made. SPIEHS further asserts that he made the requested changes to the flyer but did not obtain written approval of the flyer from the Synergy compliance department before mailing the flyer to prospective attendees to the scheduled seminar.

6. Representatives of Synergy have informed the DEPARTMENT that they did not approve, in writing, the version of the flyer received by the DEPARTMENT.

CONCLUSIONS OF LAW

1. 48 NAC 12.003.06 provides that it is a dishonest and unethical business practice for an agent to fail to comply with any applicable provision of the Conduct Rules of the National Association of Securities Dealers, Inc., now known as FINRA (“NASD”),

or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC.

2. NASD Rule of Conduct 2210(d)(2)(C) states that all advertisements and sales literature must: (i) prominently disclose the name of the member and may also include a fictional name by which the member is commonly recognized or which is required by any state or jurisdiction; (ii) reflect any relationship between the member and any non-member or individual who is also named; and (iii) if it includes other names, reflect which products or services are being offered by the member.

3. The facts set forth in Findings of Fact Nos. 2 through 6, above, constitute a violation of NASD Rule of Conduct 2210(d)(2)(C) by SPIEHS in that the flyer did not identify which products and services were being offered through Synergy.

4. NASD Rule of Conduct 2210(b)(1)(A) states that a registered principal of the member must approve in writing each advertisement, item of sales literature and independently prepared reprint before its use.

5. The facts set forth in Findings of Fact Nos. 2 through 6, above, constitute a violation of NASD Rule of Conduct 2210(b)(1)(A) by SPIEHS in that the flyer, in the form sent to the public by SPIEHS, was not approved in writing by a registered principal of Synergy.

6. Under the Act's statutory framework, the Director has legal and equitable authority to fashion significant protective remedies.

7. It is in the best interest of SPIEHS, and it is in the public's best interest, for SPIEHS and the Director to resolve the issues included herein.

CONSENT ORDER

NOW THEREFORE, the parties to this Order agree as follows:

Stipulations: In connection with this Order, SPIEHS and the Director stipulate to the following:

- a. The DEPARTMENT has jurisdiction as to all matters herein.
- b. An Order should be entered in this matter, which shall be in lieu of all other proceedings by the DEPARTMENT, except as specifically referenced in this Order.

SPIEHS further represents as follows:

1. SPIEHS is aware of his right to a hearing on this Order at which he may be represented by counsel, present evidence, and cross-examine witnesses. The right to such a hearing and any related appeal on all matters covered by this Order, is irrevocably waived.

2. SPIEHS is acting free from any duress or coercion of any kind or nature.

3. Without admitting or denying the findings herein, SPIEHS acknowledges that this Order is executed to avoid further proceedings and any findings of violations of the Act are solely for purposes of this Order and for no other purposes.

FURTHER, SPIEHS agrees to take whatever action is necessary to ensure compliance with all provisions of the Act in the future. If, at any time, the DEPARTMENT determines that SPIEHS has committed any other violations of the Act, the DEPARTMENT may take any action available to it under the Act.

IT IS THEREFORE ORDERED that Mitchell Spiehs shall pay a fine in the amount of three thousand dollars (\$3,000.00). Such payment shall be made by a check or money order payable to the Nebraska Department of Banking and Finance within thirty (30) days from the effective date of this Order.

In the event that SPIEHS fails to comply with the provisions of this Order, the DEPARTMENT may commence such action as it deems necessary and appropriate in the public interest.

The effective date of this Order will be the date of the Director's signature.

DATED this 27 day of February, 2009.



Mitchell Spiels

DATED this 3rd day of March, 2009.

**STATE OF NEBRASKA
DEPARTMENT OF BANKING AND FINANCE**



By: 

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