

STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION

IN THE MATTER OF:)	
)	
NATIONAL FOUNDATION OF AMERICA)	ADMINISTRATIVE ORDER
RICHARD K. OLIVE)	NO. CD-2007-0014
KENNY MARKS)	
HUNTER BROWN DANIEL JR)	
SUZANNE NANCE DANIEL)	
)	
<u>RESPONDENTS</u>)	

CEASE AND DESIST ORDER

The Alabama Securities Commission ("Commission"), having authority to administer and provide for the enforcement of all provisions of Title 8, Chapter 6, Code of Alabama 1975, the Alabama Securities Act ("Act"), upon due consideration of the subject matter hereof, and having confirmed information of the offers for sale and/or sale of securities, into, within or from the state of Alabama, has determined as follows:

RESPONDENTS

1. NATIONAL FOUNDATION OF AMERICA, ("NFOA") is a Tennessee Corporation with a commercial address of 1308 Buckingham Circle Franklin, TN. 37064.
2. RICHARD K. OLIVE, ("OLIVE") is an individual, the President of NFOA, with a commercial business address of 1308 Buckingham Circle Franklin, TN. 37064.
3. KENNY MARKS, ("MARKS") is an individual, Vice President and Securities Principal of NFOA, with a commercial business address of 1308 Buckingham Circle Franklin, TN. 37064.
4. HUNTER BROWN DANIEL JR., ("HDANIEL") is an individual, registered with the Alabama Department of Insurance to sell insurance, an Agent of NFOA, with a

residential address of 1705 Big Cove Road SE Huntsville, Alabama 35801.

5. SUZANNE NANCE DANIEL, ("SDANIEL") is an individual, an Agent of NFOA, with a residential address of 1705 Big Cove Road SE, Huntsville, Alabama 35801. She is also the wife of HDANIEL.

STATEMENT OF FACTS

6. NFOA was incorporated as a Tennessee nonprofit corporation on January 27, 2006. It promotes an "asset exchange program" to investors, including several elderly Alabama residents. According to the NFOA "Contract and Agreements", NFOA represents to be a Tennessee nonprofit corporation and a tax-exempt charitable organization listed in the Internal Revenue Code 501(c) (3).

7. A May 11, 2007 review of the Internal Revenue Service's on line charitable publication disclosed no record of NFOA as a nonprofit tax-exempt charitable organization.

8. In exchange for an annuity, a security, real estate, and/or cash ("the consideration") from the purchaser, NFOA issues an "Installment Plan Contract and Agreement" and/or an "Installment Plan Agreement" with a guaranteed fixed payout stream for a specified period of time, purporting to include a "generous tax deduction." The "generous tax deduction" can allegedly be used to lower the adjusted gross income reported to the IRS "by up to 50% for the first year and five years of carry forward, if applicable".

9. NFOA requires the purchaser to sign over all ownership interest in the consideration to NFOA prior to receipt of the "Installment Plan Contract and Agreement" issued by NFOA.

10. As of May 15, 2007, NFOA's website represented that "The various strategies of The National Foundation of America (NFOA) continue to help clients

nationwide in their estate planning. We offer the client the ability to exchange a variety of assets; including: annuities, real estate, securities, bonds and cash for a NFOA Tax Deductible Installment Plan with a guaranteed payout for a guaranteed period of time.”

11. On October 30, 2006, HDANIEL sold a NFOA Installment Plan Contract and Agreement, number 2006088, to a 71 year old Alabama resident. According to the NFOA Contract and Agreement number 2006088, RESPONDENT NFOA agreed to pay the Alabama resident \$1187.53 per month for 25 years with payments deferred for fifteen (15) years beginning in 2021, in exchange for consideration from the Alabama investor in the amount of \$115,765.27. The alleged total payout at the end of the contract will be \$356,258.11. HDANIEL, NFOA's agent, received a nine percent commission for the sale of the contract in an amount equal to \$8,451.42.

12. On February 23, 2007, HDANIEL sold a NFOA Installment Plan Contract and Agreement, number 2007031, to a 77 year old Alabama resident. According to the NFOA Contract and Agreement number 2007031, RESPONDENT NFOA agreed to pay the Alabama resident \$966.77 per month for 5 years with payments deferred for ten (10) years beginning in 2017, in exchange for consideration from the Alabama investor in the amount of \$33,966.85. The alleged total payout at the end of the contract will be \$58,006.20. SDANIEL, NFOA's agent, received a nine percent commission for the sale of the contract in an amount equal to \$3,057.01.

13. On March 30, 2007, HDANIEL sold a NFOA Installment Plan Contract and Agreement, number 2007877, to a 77 and 76 year old Alabama couple. According to the NFOA Contract and Agreement number 2007877, RESPONDENT NFOA agreed to pay the Alabama resident \$973.41 per month for 5 years with payments deferred for ten (10) years beginning in 2017, in exchange for consideration from the Alabama investor in the amount of \$37,338.00. The alleged total payout at the end of the contract will be \$58,404.00. SDANIEL, NFOA's agent, received a nine percent commission for the sale of the contract in an amount equal to \$3,069.73.

14. On May 10, 2007, a review of the Alabama Securities Commission files

disclosed no record of registration for the RESPONDENTS as a Dealer, Agent, Investment Advisor, or Investment Advisor Representative in the state of Alabama.

15. On May 10, 2007, a review of the Alabama Securities Commission registration files disclosed no record of registration or exemption from registration for the securities offered, sold and issued by RESPONDENTS.

16. On May 11, 2007, a review of the Alabama Department of Insurance files disclosed no record of registration by the RESPONDENTS as an Insurance Company licensed to conduct business in the state of Alabama.

17. In an interview with Commission staff on May 16, 2007, HDANIEL represented that the product is not an insurance product nor is it a security. He further stated that he is neither registered as a broker-dealer agent nor an investment adviser.

CONCLUSIONS OF LAW

18. In *Nationsbank v. Variable Annuity Life Insurance Company*, 513 U.S. 251, 115 S.Ct. 810, the United States Supreme Court defines annuities as:

“... contracts under which a purchaser makes one or more premium payments to issuer in exchange for a series of payments which continue either for a fixed period or for the life of the purchaser or designated beneficiary.”

NFOA, through its Installment Plan Contract and Agreement, offers a series of payments to be made to the purchaser, or such purchaser's designated beneficiary, for a fixed period of time, such payments to be based upon one or more premium payments by the purchaser. The Installment Plan Contract and Agreement as structured by NFOA and marketed by its agents is an annuity.

19. Pursuant to Section 8-6-2(10), Code of Alabama 1975, the definition of a security includes any “annuity contract unless issued by an insurance company.” NFOA

is not insurance company and the Installment Plan Contract and Agreement as structured by NFOA and marketed by its agents is an annuity. The Installment Plan Contract and Agreement is a security under the Act.

20. Pursuant to Section 8-6-2(2), Code of Alabama 1975, the definition of "agent" includes any individual who represents an issuer in effecting sales of securities. Respondents HDANIEL and SDANIEL offered and sold Installment Plan Contract and Agreements issued by Respondent NFOA to Alabama residents and were compensated in the form of commissions. HDANIEL and SDANIEL are agents of NFOA under the Act.

21. Pursuant to Section 8-6-3, Code of Alabama 1975, it is unlawful for any person to transact business in this state as a Dealer, Agent, Investment Advisor, or Investment Advisor Representative unless he is registered under the Act. RESPONDENTS are not registered as a Dealer, Agent, Investment Advisor, or Investment Advisor Representative in the State of Alabama and have effected securities transactions with Alabama residents in violation Section of 8-6-3 of the Act.

22. Pursuant to Section 8-6-3, Code of Alabama 1975, it is unlawful for any issuer to employ an agent unless such agent is registered under the Act. HDANIEL and SDANIEL acted as agents of NFOA by offering and selling securities issued by NFOA. NOFA directly compensated HDANIEL and SDANIEL through commissions on such sales. OLIVE and MARKS, as president and vice-president of NOFA, caused NOFA to employ HDANIEL and SDANIEL as agents in violation of Section 8-6-3 of the Act.

23. Pursuant to Section 8-6-4, Code of Alabama 1975, it is unlawful for any person to offer or sell any security in this state unless it is registered, exempt from registration, or the transaction under which it was sold is exempt under the Act. A review of the Alabama Securities Commission files disclosed no record of registration, nor any perfected exemption, for the securities offered and sold by RESPONDENTS. RESPONDENTS offer and sale of the unregistered securities to an Alabama resident is a violation of Section 8-6-4 of the Act.

24. Pursuant to Section 8-6-17(a)(2), Code of Alabama 1975, it is unlawful for any person, in connection with the offer, sale or purchase of a security to make any untrue statement of a material fact. The NOFA Installment Plan Contract and Agreement, NFOA's website and offering materials, and NFOA's agents all represented to the Alabama purchasers that NFOA is qualified as a tax-exempt 501(c)(3) corporation under the United States Internal Revenue Code. NFOA is not currently qualified as a 501(c)(3) corporation. Marketing representations to the contrary made to the Alabama purchasers constitute a material misrepresentation in violation of Section 8-6-17(a)(2) of the Act.

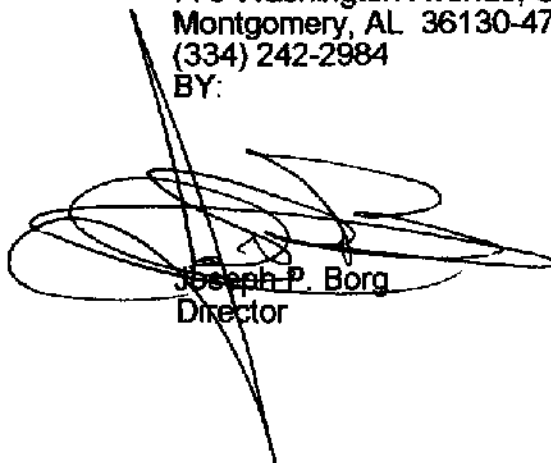
This Order does not prevent the Alabama Securities Commission from seeking such other administrative, civil or criminal remedies that are available to it under the Act.

This Order is appropriate in the public interest for the protection of investors and is consistent with the purposes of the Act.

ACCORDINGLY, IT IS HEREBY ORDERED that the RESPONDENTS immediately **CEASE AND DESIST** from further offers or sales of any security into, within or from the state of Alabama.

Entered at Montgomery, Alabama, this 21st day of May, 2007.

ALABAMA SECURITIES COMMISSION
770 Washington Avenue, Suite 570
Montgomery, AL 36130-4700
(334) 242-2984
BY:



Joseph P. Borg
Director

