

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF SECURITIES
COLUMBUS, OHIO 43215-6131

IN THE MATTER OF:

ORDER NO. 13-015

ERIC M. DOUGLAS
CRD NO. 4653684

**FINAL ORDER SUSPENDING INVESTMENT ADVISER REPRESENTATIVE
LICENSE AND SECURITIES SALESPERSON LICENSE OF RESPONDENT
ERIC M. DOUGLAS**

WHEREAS, the Ohio Division of Securities ("Division") is charged with the responsibility of protecting investors and finds that this Order is necessary or appropriate in the public interest or for the protection of investors, and that it is consistent with the purposes fairly intended by the policy and provisions of the Ohio Securities Act, Ohio Revised Code Chapter 1707; and

WHEREAS, on April 4, 2012, the Division issued Division Order No. 12-007 ("Order") against Respondent Eric M. Douglas (CRD Number 4653684) ("Respondent"), giving Respondent notice of the Division's intent to suspend or revoke the Respondent's securities salesperson and investment adviser representative licenses pursuant to R.C. 1707.19;

WHEREAS, subsequent to issuing the Order the following events occurred:

1. Order No. 12-007 was sent to Respondent by certified mail, return receipt requested, on April 4, 2012, with service perfected on April 7, 2012;
2. The Order informed Respondent of his opportunity for an adjudicative hearing within 30 days from the mailing of Order No. 12-007;
3. Respondent timely requested a hearing from the Division, which hearing was granted on April 30, 2012 at 9:30 a.m.;
4. On May 15, 2012 the attorney for the Respondent contacted the Administrative Hearing Officer, Rebecca L. Egelhoff, Esq., to advise that a key witness for the Respondent would not be available to testify at the hearing due to a scheduling conflict and, therefore, requested a continuance of the hearing;
5. On June 7, 2012, Administrative Hearing Examiner, issued an order granting the continuance and continuing the hearing to June 27, 2012;
6. On or about June 5, 2012, Respondent filed a Motion to Designate Lucas County, Ohio as the Place of Adjudication Hearing pursuant to Ohio Revised Code §119.08. Lucas

County is the county of residence for the Respondent as well as the county of residence for a majority of the witnesses that Respondent intended to call on his behalf;

7. The Hearing Officer denied Respondent's motion to designate Lucas County, Ohio as the place of the adjudication hearing so the hearing took place at the location identified in the June 7, 2012 Order;
8. On or about June 14, 2012, the Respondent filed a request with the Division to issue subpoenas to witnesses for attendance at the hearing scheduled for June 27. The Division issued the requested subpoenas on June 15 to the attention of the Lucas County Sheriff in accordance with Ohio Revised Code §119.09;
9. On or about June 26, 2012 the Bank of Maumee filed a Motion to Quash one of the subpoenas served on its employee, Kerri Adams, indicating Ms. Adams did not receive service of the subpoena until June 26, 2012. Ms. Adams did not appear to testify at the June 27, 2012 hearing;
10. A few other witnesses that Respondent subpoenaed to testify on his behalf failed to appear at the June 27, 2012 hearing. Unlike Ms. Adams, those witnesses did not file motions to quash their subpoenas, they simply did not appear;
11. Respondent did not ask the Division to apply for judicial enforcement of Ms. Adams' subpoena pursuant to Ohio Rev. Code §119.09 nor did Respondent move to enforce the subpoenas issued to other witnesses who also failed to appear at the June 27, 2012 hearing;
12. An Administrative hearing convened on June 27, 2012 with all parties in attendance;
13. After reviewing the record, transcript, and exhibits of the hearing as well as counsel's written closing arguments, the Hearing Officer issued a Report and Recommendation on December 16, 2012;
14. On December 19, 2012, the Division sent a copy of the Hearing Examiner's Report and Recommendation via certified mail to Respondent and Respondent's counsel;
15. Respondent filed Objections to Hearing Officer Rebecca L. Egelhoff, Esq.'s Report and Recommendation and such Objections were received by the Division on January 4, 2013;

WHEREAS, pursuant to R.C. 119.09, the Division may approve, modify or disapprove the recommendation of the Hearing Officer based upon the report, recommendation, transcript of testimony and evidence, and objections of the parties and any additional testimony and evidence permitted; and

WHEREAS, the Division has considered the applicable provisions of the Ohio Revised Code and the Ohio Administrative Code, the report, recommendation, transcript of testimony, the exhibits, post-hearing briefs, the objections submitted on behalf of the Respondent; and

WHEREAS, the Division approves and adopts all of the Findings of Facts and Conclusions of Law set forth in the December 16, 2012 Report and Recommendation except for one finding set forth on page 2 of the Report and Recommendation, for reasons set forth in the attached Memorandum of Law in Support of the Final Order; and

WHEREAS, the Division modifies and supplements the Hearing Officer's Findings of Fact and Conclusions of Law as set forth in the attached Memorandum in Support of the Final Order; and

WHEREAS, the Division approves the Hearing Officer's finding and conclusion that Respondent engaged in manipulative and deceptive acts in violation of R.C. 1707.44 (M); and

WHEREAS, based on Respondent's manipulative and deceptive conduct while serving as a salesperson and an investment adviser representative, the Division also approves the Hearing Officer's additional finding and conclusion that Respondent is "not of good business repute" and, therefore, is subject to suspension or revocation of his securities salesperson and investment adviser representative licenses pursuant to R.C. 1707.19(A)(1) and (A)(4) as well as O.A.C. 1301:6-3-19 (D)(8) and (D)(9); and

WHEREAS, the Division approves and adopts the Hearing Officer's recommendation that the Division suspend or revoke Respondent's investment adviser representative license and salesperson license based on the foregoing violations of the Ohio Securities Act and associated rules; and

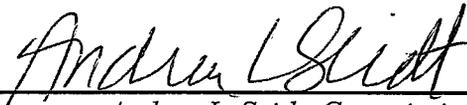
WHEREAS, the Division has concluded that a suspension in the amount of ninety days is the appropriate sanction for the misconduct charged and proven in this matter;

THEREFORE, IT IS ORDERED THAT, the investment adviser representative license and salesperson license of Respondent Eric M. Douglas (CRD 4653684) are hereby **SUSPENDED FOR A PERIOD OF NINETY DAYS** from the date of this Final Order.

TIME AND METHOD TO FILE AN APPEAL: Any party desiring to appeal shall file a Notice of Appeal with the Ohio Division of Securities, 77 South High Street, 22nd Floor, Columbus, Ohio 43215, setting forth the order appealed from and stating that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice of appeal may, but need not, set forth the specific grounds of the party's appeal beyond the statement that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The Notice of Appeal shall also be filed by the appellant with the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident. If any party appealing from the order is not a resident of and has no place of business in this state, the party may appeal to the court of common pleas of Franklin County. Such notices of appeal shall be filed within

fifteen (15) days after the mailing of the notice of the Ohio Division of Securities' Order as provided in Section 119.12 of the Ohio Revised Code.

WITNESS MY HAND AND THE OFFICIAL SEAL OF THIS DIVISION at
Columbus, Ohio this 29th day of April, 2013.



Andrea L. Seidt, Commissioner of Securities

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF SECURITIES
COLUMBUS, OHIO 43215-6131

IN THE MATTER OF:

ERIC M. DOUGLAS
CRD NO. 4653684

MEMORANDUM IN SUPPORT OF THE FINAL ORDER

I. FINDINGS OF FACT

The Division hereby accepts all of the factual findings set forth in the Nature of Case, The Issue, Summary of Evidence, and Findings of Fact set forth in the Hearing Officer's Report and Recommendation (hereinafter cited as "R&R") issued December 16, 2012. Based on a review of the transcripts and exhibits admitted into the record in this case, the parties' post-hearing briefs, and the January 4, 2013 Objections of Respondent Eric M. Douglas ("Respondent") to the R&R (hereinafter "Respondent's Objections"), the Division hereby supplements the Hearing Officer's Findings of Fact as follows:

Nature of Case

1. The Division supplements the finding regarding a continuance on page 2 of the R&R by noting that the administrative hearing in this case was continued from the original hearing date of June 7, 2012 to June 27, 2012, upon Respondent's request. Respondent requested the continuance to allow the testimony of one of his fact witnesses, Kathryn Perrier, who was not available to testify on June 7. Notwithstanding the continuance, Kathryn Perrier did not appear at the rescheduled June 27, 2012 hearing date to testify on Respondent's behalf.

Summary of Evidence

2. The Division supplements the Summary of Evidence findings set forth on pages 4-7 by noting that Respondent's own contemporaneous notes from multiple client meetings recorded in the firm's client management database affirm that the investors were directed and came to him to invest in MAS stock:
 - a. Notes of Skolmowski Meeting, Respondent's Exh. 11 (09/04/08 entry by Respondent, stating: that "Client signed NQ account form and brought a cashier's check for \$16,000 for MAS stock.") (emphasis added);
 - b. Notes of McNamara Meeting, Respondent's Exh. 12 (09/11/08 entry by Respondent, stating: "Client signed NQ application for purchase of MAS stock.") (emphasis added);

- c. Notes of Beach Meeting, Respondent's Exh. 13 (08/27/08 entry by Respondent, stating: "Client signed NQ application, and wrote personal check for one share of MAS stock.") (emphasis added); and
 - d. Notes of Shroyer Meeting, Respondent's Exh. 15 (10/06/08 entry by Respondent, stating: "Client signed NQ application for purchase of MAS stock.") (emphasis added).
3. Respondent himself was circulating copies of the MAS Subscription Agreement, MAS Business Plan, and MAS Projected Financials to LPL's Compliance Department as early as September 16, 2008 in an effort to get the MAS deal approved for sale to the clients that he and other Sandru Financial Group ("SFG") professionals were meeting with and already accepting payment from. LPL Business Records, State's Exh. D at LPL_OH_00011-00041.
4. Respondent's argument that he could not have discussed MAS stock with the aggrieved investors because such stock did not yet exist at that time or because he did not have the necessary credentials at that time, (Respondent Tr. 36), is refuted by his own contemporaneous business records documenting such discussions.
5. The Division also rejects Respondent's argument (and Objections premised thereon) that he was not acting as an investment adviser representative when he met with investors in 2008, maintaining he did not obtain that particular license until he joined the Cambridge firm in June of 2009. *E.g.*, Respondent's Objections at 16-17.
6. Division licensing records are clear that Respondent was in fact licensed as an investment adviser representative (depicted in CRD records as an "RA") of the SFG branch office of LPL when he met with investors in 2008. "Registrations with Prior Employers – LPL Financial LLC," State's Exh. W at 2.
7. The Division supplements the findings set forth on page 6 of the R&R by noting that:
 - a. Respondent was listed in letters and promotional materials handed out to prospective MAS investors as one of two SFG professionals that investors should contact if they were interested in investing in MAS. 08/12/08 Email from Richard Sandru, State's Exh. D, at LPL_OH_00001-00004 (attaching sample letter to prospective MAS investors that directed them to contact Rick Sandru or Respondent, stating: "They will be expecting your call."); 08/12/08 Email to Beach, State's Exh. M at 4 (also identifying Sandru and Respondent);
 - b. All six of the Division's MAS investor witnesses testified at the hearing that they were directed to Respondent at SFG to make a \$16,000 investment with MAS if they wanted a job. Shroyer Tr. 43-45; Beach Tr. 83; McNamara Tr. 118; Vasill Tr. 140-41; Dec Tr. 159-60; and Skolmowski Tr. 175; and
 - c. Respondent attended at least one promotional meeting that SFG hosted at the Belmont Country Club to pitch the MAS investment to prospective clients. (Culver Tr. 266-67).

Findings of Fact

8. At the hearing, the parties offered conflicting descriptions of the MAS investor meetings Respondent held in SFG offices in the fall of 2008. Respondent and his supporting fact witnesses testified that Respondent met briefly with investors to complete the initial account paperwork but did not discuss any details regarding the terms or merits of the MAS investment. R&R at 5-7, 18-20. Notably, none of Respondent's fact witnesses lost any of their investments because their funds were never transferred to MAS through the Bank of Maumee. *Id.* at 18-20.
9. The Division's witnesses, whose funds were transferred to MAS and never recovered, all testified that Respondent did discuss the MAS investment with them, including the employment feature as well as the right to cancel the investment at any time prior to MAS procuring contracts. R&R at 7-15; *id.* at Findings of Fact ¶¶ 8-12, 15-16. The Division's witnesses also testified that Respondent personally recommended the investment as a good and safe opportunity prior to accepting their money. *See id.*
10. One of the Division's witnesses testified that Respondent even touted the investment as one he had his own father invest in. Shroyer Tr. 45. Respondent's own witness testified that Respondent's father did invest in MAS, (Culver Tr. 268), but that is not something the investor would have had reason to know absent the promotional disclosure by the Respondent.
11. The Hearing Officer found the Division's investor witnesses credible regarding their interactions with the Respondent and based numerous factual findings upon their testimony. Findings of Fact at ¶¶ 8, 10, 15-20. Respondent objected to these credibility determinations and resulting findings, arguing the investors were not truthful in their accounts. Respondent's Objections at 10-25.
12. The Division accepts the Hearing Officer's assessment of the witnesses' credibility and resulting findings based on her independent and objective observations at the hearing and the apparent inconsistencies and gaps in Respondent's memory, including inconsistencies between his testimony at the hearing and his own contemporaneous notes and recordkeeping. Respondent's objections regarding witness credibility findings and resulting findings are hereby overruled.
13. Respondent also objected to the Hearing Officer's failure to accord more weight to his supporting witnesses' testimony. Respondent's Objections at 6, 21. While the Hearing Officer accurately recounted the testimony of Respondent's witnesses in the Summary of Evidence, it appears that testimony had little or no bearing on her findings regarding Respondent's interactions with the Division's witnesses.
14. The Division finds no error in the Hearing Officer's weighing of the evidence as none of Respondent's witnesses were present for Respondent's direct meetings with and conduct toward the Division's witnesses. As such, none of Respondent's witnesses were in a position to testify about that specific conduct and whether that conduct was

manipulative or deceptive as set forth in the Division's charges.¹ Respondent's objections regarding the credibility and weight of witness testimony are also overruled.

15. Respondent admits that all due diligence on the MAS investment was being done by LPL's Compliance Department, not him personally, and that he never saw the results of their research. Respondent Tr. 38. As such, Respondent had no independent basis on which to assess the suitability of the investment for the aggrieved investors to justify his recommendation to purchase.
16. Notwithstanding his lack of knowledge regarding the investment, including whether the MAS investment would render the investors the full-time employment they had been promised and whether investors could get their money back if MAS did not procure contracts, Respondent assumed the role of these investors' SFG Financial Advisor and recommended they invest in MAS. R&R at Findings of Fact ¶¶ 8-18; *see also* various LPL Account Statements and LPL Wire Confirmation Forms, State's Exhs. I, J, L, Q, O and U (identifying Respondent as "Financial Advisor" for Shroyer, Beach, McNamara, Vasill, and Dec); *see also* LPL Business Records, Respondent's Exhs. 11-14, 16 (Respondent's contemporaneous notes of client meetings or calls he had with Skolmowski, McNamara, Beach, and Shroyer specifically referencing "MAS stock").
17. While Respondent denies and, therefore, objects to findings that he actually recommended or otherwise influenced the MAS investment by the investors, (Respondent's Objections at 6-16, 20-24), his contemporaneous notes buttress the testimony of the Division's investor witnesses who all consistently reported Respondent's efforts to sell the MAS deal:
 - a. Shroyer Tr. 44-46 (testifying that Respondent informed her that she needed to make the investment to become an employee and that Respondent recommended the MAS investment as "beneficial" and a "very good investment").
 - b. Beach Tr. 83-85 (testifying that Respondent recommended the MAS investment as a "great opportunity . . . to get into the ground floor" and touted that MAS "was going to just take off like crazy").
 - c. McNamara Tr. 120 (testifying that Respondent promised her that she would make so much money from the MAS investment that she would not have time to spend it).
 - d. Vasill Tr. 143 (testifying that Respondent told him that the MAS investment was a "good opportunity" that would meet his conservative, low-risk profile);
 - e. Dec Tr. 161-62 (testifying that Respondent recommended the MAS investment as "suitable," "safe," and a "good investment opportunity").

¹ The same can be said for the witnesses that Respondent subpoenaed but never appeared to testify. There is no evidence in the record to suggest that any of those witnesses sat in on or otherwise participated in Respondent's meetings with the Division witnesses.

- f. Skolmowski Tr. 174-76 (testifying that Respondent recommended the MAS investment as a “good opportunity,” a “no-brainer”).
18. The record is also clear that several investors believed, based on Respondent’s recommendation and associated statements, that their money would be safe and would be returned to them if MAS did not produce viable parts contracts:
- a. Shroyer Tr. 48-49 (testifying that she trusted Respondent and thought he was honest; thought her money was “secure” because Respondent promised her that she would get her money back if she did not get a job with MAS);
 - b. Beach Tr. 86 (testifying that Respondent promised him that his investment money would not be touched until MAS procured signed parts contracts); and
 - c. Vasill Tr. 143 (testifying that Respondent promised him that he would get his money back if he was not hired).
19. It is not clear from the record how each investor’s funds were ultimately transferred from LPL to the Bank of Maumee, but as the financial adviser fiduciary to each of them, Respondent should have been knowledgeable regarding his clients’ funds and should have kept each of them adequately apprised of any transfers or other activity in their accounts. While some of the investors did obtain temporary employment at MAS, none received their money back.
20. Knowing that the MAS subscription agreement did not offer investors the rights and benefits they were seeking when they came to his office, i.e., full-time employment and some form of money-back guarantee, Respondent could have alerted each of them to these facts to allow each to make an informed investment decision. Respondent also could have returned the investors’ money when he first learned that LPL would not proceed with the investment. There is no evidence in the record to suggest that Respondent attempted to do either of those things.

II. CONCLUSIONS OF LAW

21. The Division accepts all of the conclusions of law set forth in the Nature of Case, The Issue, Summary of Evidence, and Conclusions of Law set forth in the R&R except for the conclusions set forth on page 2 of the R&R, which the Division rejects in whole or in part, and, based on applicable law and a review of the transcripts, exhibits, closing arguments admitted into the record as well as Respondent’s Objections to the R&R, the Division hereby supplements and modifies as follows:

Nature of the Case

22. The Division rejects the legal conclusion set forth on page 2 of the R&R that the Hearing Officer lacked authority to change the location of the administrative adjudication hearing from Franklin County to Lucas County, Ohio as there is no indication that the agency excluded this authority in its delegation of hearing responsibilities in this case. Chapter 119 of the Ohio Revised Code generally gives

hearing officers “the same powers and authority in conducting the hearing as is granted to the agency.” R.C. 119.09.

23. The error is harmless, however, as the Division agrees with the Hearing Officer’s ultimate decision to hold the hearing at the original location identified in the June 7, 2012 continuance of hearing notice. R&R at 2. As noted in the R&R, changing the location of the hearing from the agency’s normal hearing site to the county seat of the Respondent’s home county or a place within (50) miles of such residence is permissive, not mandatory. *Id.* (citing *Giovanetti v. Ohio State Dental Bd.*, 63 Ohio App.3d 262, 269 (Ohio Ct. App. 1991).
24. The Division also rejects Respondent’s request for dismissal of the Division’s charges (as well as numerous related objections) based on the argument that the Division denied him the opportunity to present witness testimony on the date of the hearing. *E.g.*, Respondent’s Objections at 4-6. As noted above, the Division granted Respondent a continuance in this case for the very purpose of giving him sufficient time to arrange for the attendance of his witnesses.
25. The Division cannot be faulted for Respondent’s failure to notify his fact witnesses of the rescheduled hearing date or Respondent’s failure to issue timely subpoenas to those witnesses. As noted in the R&R, the Division issued Respondent’s requested subpoenas within twenty-four hours of his request. R&R at 3 n.1.
26. Moreover, if Respondent believed those witnesses were critical to his defense, the proper recourse would have been for Respondent to request enforcement of those subpoenas as well as a continuance of the hearing until said witnesses could appear. Both the Hearing Officer and Counsel for the Division encouraged Respondent to consider this possible path for relief, (Hearing Officer Tr. 229; Counsel Showalter Tr. 15, 229-31), but Respondent made no such motion or request. Rather, Respondent chose to close his case based on the evidence admitted into the record.

Summary of Evidence

A. Bases of the Division’s Charges – R.C. 1707.19 and R. C. 1707.44 (M)

27. As set forth in the Division’s order and charging document providing Respondent with notice of opportunity for hearing in this matter, this administrative action is based on two statutory provisions set forth in the Ohio Securities Act, R.C. 1707.19 and R.C. 1707.44 (M), and one administrative rule, O.A.C. 1301:6-3-19. *See* April 4, 2012 Order No. 12-007 (“NOH”), State’s Exh. A.
28. Pursuant to R.C. 1707.19, the Division may deny, suspend or revoke an original license of a securities salesperson or an investment adviser representative if the Division determines the licensee meets any of the ten criteria set forth in the statute. R.C. 1707.19.
29. In this case, the Division determined that two criteria applied, namely those set forth in subsections (A)(1) and (A)(4), which refer to situations where the licensee “is not of good business repute” or “has knowingly violated any provision of 1707.01 to

1707.45 of the Revised Code, or any regulation or order thereunder.” NOH, State’s Exh. A. at ¶ 10.

30. The Division considers the factors set forth in O.A.C. 1301:6-3-19 to determine whether a licensee is “of good business repute.” In this case, the Division cited the two factors set forth in subsections (D)(8) and (D)(9) of the rule as applicable to Respondent’s business repute. *Id.* at ¶ 11.
31. Subsection (D)(8) of O.A.C. 1301:6-3-19 directs the Division to consider whether the licensee has violated any provision of Chapter 1707; whereas Section (D)(9) directs the Division to consider whether the licensee has engaged in any conduct which would reflect on the licensee’s reputation for integrity and competence in business and personal dealings, including any manipulative or deceptive practices. O.A.C. 1301:6-3-19 (D)(8) and (9).
32. The Division also considered whether Respondent introduced any mitigating evidence that would establish a good reputation for honesty, integrity, and competence in business and personal dealings in accordance with subsection (D)(12) of O.A.C. 1301:6-3-19. Respondent called a few clients that testified in support of his reputation at the hearing.
33. Pursuant to R.C. 107.44 (M), investment adviser representatives are prohibited from engaging in any act, practice, or course of business that is deceptive or manipulative.
34. Ohio has an expansive view of the relationship between a broker and a client that is regarded by the courts as a fiduciary one that implies trust and confidence. *Burns v. Prudential Secs., Inc.*, 167 Ohio App. 3d 809, 828 (Ohio Ct. App. 2006) (citing 10 Ohio Jurisprudence 3d 96, Brokers at ¶ 116 (1995)); *see also Ed Schory & Sons, Inc. v. Society Natl. Bank*, 75 Ohio St. 3d 433, 442 (1994) (a fiduciary relationship is a relationship in which one party places a special confidence and trust in the integrity and fidelity of the other party to the relationship, resulting in a position of superiority or influence).
35. There is a general agreement in Ohio that the relationship between a financial advisor and his or clients, in particular, is fiduciary in nature. *Mathias v. Rosser*, 2002-Ohio-2772, No. 01AP-768 at ¶ 28 (Ohio Ct. App., 10th Jud. Dist., May 30, 2002) (citing *Byrley v. Nationwide Life Ins.*, 94 Ohio App.3d 1, 18 (1994); *Silverberg v. Thomson, McKinnon Secs., Inc.*, Cuyahoga App. No. 48545 (1985); *Mansbach v. Prescott, Ball & Turben*, 598 F.2d 1017, 1026 (6th Cir. 1979)).
36. While financial advisors generally have increased duties when managing discretionary accounts, even a broker handling a nondiscretionary account owes its client basic fiduciary duties, including but not limited to: (1) the duty to recommend an investment only after studying it sufficiently to become informed as to its nature, price, and financial prognosis; (2) the duty to inform clients of the material risks involved in the investment decision; (3) the duty to not misrepresent any fact material to the transaction; and (4) the duty to transact business only after receiving prior

authorization from the client. *Burns*, 167 Ohio App.3d at 828 (citing *Leib v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 461 F. Supp. 951, 953 (E.D. Mich. 1978)).

37. “[I]t is entirely within the province of the Division to evaluate its peers” and “Ohio courts accord due deference to the Division’s interpretation of the technical and ethical requirements of the securities profession.” *Connors v. Ohio Dept. of Commerce*, No. 99CVF08-6664, slip op. at 2-3 (Franklin County C.P. Aug. 29, 2000) (citing *Pons v. Ohio St. Med. Bd.*, 66 Ohio St. 3d 619 (1993)); accord *Atlantic Advisors v. Ohio Dept. of Commerce*, No. 01CVF04-3874, slip op. at 13-14 (Franklin County C.P. Mar. 18, 2001).

B. Conduct Reflecting on Respondent’s Reputation for Honesty, Integrity, and Competence in Business and Personal Dealings

38. Respondent engaged in manipulative and deceptive acts when he recommended the MAS investment to investors without performing or having access to proper due diligence on the terms of the deal. R&R at Conclusions of Law ¶¶ 9, 11-12. Respondent also engaged in manipulative and deceptive acts when he falsely assured investors they would receive benefits neither guaranteed nor even contemplated in the subscription agreement. *Id.* at ¶10, 12. Respondent’s deceptive conduct toward these investors negatively reflects on his reputation for honesty, integrity, and competence in business and personal dealings. *Id.* at ¶¶ 9-12.
39. As a trusted fiduciary and advisor to his clients, Respondent had a duty to protect his clients’ funds and inform their interest in the purchase of MAS stock. Respondent found out that the MAS investment did not pass his firm’s due diligence review, but never informed any of the Division’s witnesses of this fact or, more importantly, the reasons why. *Id.* at 9, 11. Rather, Respondent facilitated each investor’s purchase of the MAS investment without correcting their known misunderstandings of the MAS investment. *Id.* Respondent’s conduct in this regard was also deceptive and negatively reflects on his reputation for honesty, integrity, and competence in business and personal dealings. *Id.*

III. DISCUSSION

The Ohio Securities Act, also known as Ohio’s Blue Sky Law, was adopted in 1929 to prevent the fraudulent exploitation of the investing public through the sale of securities. *Holderman v. Columbus Skyline Sec.*, 74 Ohio St. 3d 495, 498 (1996) (citing *United States v. Tehan*, 365 F.2d 191, 194 (6th Cir. 1966)). Many parts of the Act are remedial in nature and are therefore broadly construed “to protect the investing public from its own imprudence as well as the chicanery of unscrupulous securities dealers.” *Id.* (citing *Bronaugh v. R. & E. Dredging Co.*, 16 Ohio St. 2d 35 (1968)).

The specific provisions of the Ohio Securities Act at issue in this matter are sections R.C. 1707.19 and R.C. 1707.44 (M). R.C. 1707.19 outlines the grounds and procedures for the Division’s refusal, suspension, or revocation of a securities license whereas R.C. 1707.44 (M) prohibits investment adviser representatives from engaging in manipulative and deceptive acts.

The Respondent's conduct as it relates to both sections is discussed in detail in the R&R and Findings of Fact and Conclusions of Law, as modified herein.

Under R.C. 1707.19, the record contains reliable, probative, and substantial evidence that Respondent engaged in conduct that negatively reflects on his reputation for honesty, integrity, and competence in business and personal dealings. Respondent's false assurances regarding the MAS investment's employment benefit, security, and cancellation rights in investor meetings were deceptive in nature and fall within the ambit of R.C. 1707.19 (A)(1) and O.A.C. 1301:6-3-19 (D)(9). Respondent's failure to correct the misinformation prior to effectuating the MAS investment was also deceptive and damaging to his business repute within the meaning of the statute and applicable rule.

Respondent's deceptive conduct occurred while he was licensed as a securities salesman and an investment adviser representative. Thus, the Division's charges under R.C. 1707.44 (M) and the corresponding charges set forth in R.C. 1707.19 (A)(4) and O.A.C. 1301:6-3-19 (D)(8) are also sustained.

Based on the findings set forth above, the Division has a sufficient evidentiary basis to suspend Respondent's securities salesperson and investment adviser representative licenses and has concluded that a ninety (90) day suspension is the appropriate sanction based on the evidence in this case.

IV. CONCLUSION

The Division concludes that, pursuant to R.C. 1707.19 (A)(1) & (A)(4), R.C. 1707.44 (M), and O.A.C. 1301:6-3-19 (D)(8) & (D)(9), the securities salesperson license and investment adviser representative license of Eric M. Douglas (CRD No. 4653684) should be and are hereby **SUSPENDED** for a period of ninety (90) days from the date of this Final Order.

WITNESS MY HAND AND THE OFFICIAL SEAL OF THIS DIVISION at
Columbus, Ohio this 29th day of April, 2013.



Andrea L. Seidt, Commissioner of Securities