

1 **STATE OF WASHINGTON**  
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**  
3 **SECURITIES DIVISION**

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

7 Fran Austin dba  
8 Austin & Associates,

9 Respondent.

Order Number S-06-021-06-FO01

ENTRY OF FINDINGS OF FACT AND  
CONCLUSIONS OF LAW AND FINAL  
ORDER TO CEASE AND DESIST AND  
IMPOSE FINES

10 THE STATE OF WASHINGTON TO:

Fran Austin dba  
Austin & Associates

11 **STATEMENT OF CHARGES**

12 On July 11, 2006, the Securities Administrator of the State of Washington issued Summary Order to  
13 Cease and Desist, and Notice of Intent to Impose Fines and Charge Costs, number S-06-021-TO01, herein  
14 after referred to as the "Summary Order" against Fran Austin dba Austin & Associates.

15 The Summary Order, together with a Notice of Opportunity to Defend and Opportunity for Hearing,  
16 hereinafter referred to as "Notice of Opportunity for Hearing" and an Application for Adjudicative  
17 Hearing, hereinafter referred to as the "Application for Hearing" were served on Fran Austin dba Austin &  
18 Associates on July 14, 2006 via certified mail. Fran Austin dba Austin & Associates returned the  
19 Application for Hearing on August 2, 2006, and declined to request a hearing.

20 In lieu of requesting a hearing, Fran Austin submitted a statement for consideration by the Securities  
21 Administrator. In the statement, Fran Austin stated that it was not his intention to violate the Securities  
22 Act and requested a reduction in the fine.

23 Finding no grounds for amendment of the Summary Order, the Securities Administrator therefore  
24 adopts as final the findings of fact and conclusions of law as set forth in the Summary Order.

ENTRY OF FINDINGS OF FACT AND  
CONCLUSIONS OF LAW AND FINAL ORDER  
TO CEASE AND DESIST AND IMPOSE FINES

1 The Securities Administrator makes the following findings of fact and conclusions of law:

2  
3 **FINDINGS OF FACT**

4 Respondent

5 1. Fran Austin (“Austin”) is a resident of Spokane, Washington. Austin & Associates is a  
6 Washington company with its principal place of business at Austin’s residence. Austin & Associates is  
7 not registered with the Washington Secretary of State.

8 Background Information

9 2. Austin is currently licensed to sell life and disability insurance in Washington State with  
10 the Office of Insurance Commissioner. He has held an insurance license since 1969.

11 3. Rosenberry Austin & Associates was a Washington corporation incorporated in 1980 by  
12 Austin and Bruce Rosenberry (“Rosenberry”) for the purpose of selling insurance.

13 4. Rosenberry was a licensed insurance agent with the Washington State Office of Insurance  
14 Commissioner. Rosenberry died in 2003, at which time Rosenberry Austin & Associates’ corporate  
15 license with the Washington Secretary of State expired. Austin continued to sell insurance after the  
16 corporation was dissolved.

17 Nature of the Offering

18 5. Austin offered and sold investments to at least three Washington residents between  
19 March 2004 and August 2004. The investments made by the three residents totaled approximately  
20 \$96,000. All three of the investors purchased insurance products through Rosenberry Austin &  
21 Associates or Austin prior to investing with Austin.

22 *Investor A*

1           6.     Washington Investor A<sup>1</sup> was an 86-year-old widow and retired homemaker, with little  
2 or no investing experience. She resided alone in Spokane, Washington. Investor A has three sons, but  
3 none reside in the Spokane area.

4           7.     Investor A purchased a long term care policy and an annuity from Austin sometime in  
5 the 1990's. The annuity held most of Investor A's life savings and was worth approximately \$60,000  
6 in early 2004.

7           8.     In the winter of 2004, Austin approached Investor A with an investment opportunity.  
8 Austin purportedly told Investor A he would invest funds on her behalf by conducting online options  
9 trading. On February 17, 2004, Austin provided Investor A a contract that he had drafted entitled  
10 "Investment with Austin & Assoc." The terms of the contract specified that Austin & Associates  
11 would guarantee a 10% return on the \$60,000 investment within one year, at which time Investor A  
12 would receive her funds plus interest from Austin & Associates. If Investor A was to die within the  
13 one year term, the funds, plus interest would be distributed to her three sons.

14          9.     Investor A liquidated her annuity to invest in Austin & Associates. By doing so she  
15 incurred a penalty of approximately \$6000-\$7000 because she withdrew funds before the surrender  
16 period had expired.

17          10.    On March 5, 2004, Investor A entered into an investment contract with Austin &  
18 Associates. The terms were identical those provided to her on February 17, 2004 contract. That same  
19 day Austin wrote out Investor A's personal check #2519 to Austin & Associates for \$60,000. The  
20 memo portion of the check stated "investment". Investor A signed the check that Austin filled out.

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23 <sup>1</sup> The names of the investors have been omitted to protect their privacy.



1 18. In the summer of 2004, Austin approached Investor B with an investment opportunity.  
2 Austin told Investor B he would guarantee Investor B a monthly return if he invested with Austin &  
3 Associates.

4 19. On July 5, 2004, Investor B entered into an investment contract with Austin &  
5 Associates. The terms of the contract specified that Austin & Associates would guarantee an 8.75%  
6 return on a \$5000 investment. The interest was to be paid monthly at the rate of \$36.50. The  
7 investment term was for one year. At the end of the term Investor B could elect to reinvest for one or  
8 two additional years with an interest rate named at the time of the reinvestment.

9 20. Also on July 5, 2004, Austin wrote out Investor B's personal check #6071 to Austin &  
10 Associates for the amount of \$5000. The memo portion of the check stated "investment". Investor B  
11 signed the check that Austin filled out.

12 21. Austin deposited the \$5000 check into the Austin & Associates bank account,  
13 transferred the funds to his personal bank account, and used all of the funds for personal expenses.  
14 Within one month of receiving the funds, the funds were depleted.

15 22. Investor B died on August 8, 2004, one month after entering into the investment contract.  
16 Austin failed to make repayment of the principal in accordance with the terms of the investment  
17 contract since the contract matured on July 5, 2005.

18  
19  
20 *Investor C*

21 23. Washington Investor C is an 84-year-old widow, retired waitress and homemaker, with  
22 little or no investing experience. She lives alone in Spokane, Washington.

1           24. Investor C was an insurance client of Rosenberry, Austin & Associates and purchased an  
2 annuity from Austin sometime in the 1990's.

3           25. According to Investor C, Austin often visited her in her home in 2004 to discuss his  
4 business, Austin & Associates, and to offer her an opportunity to invest in the business.

5           26. In July of 2004, Austin approached Investor C with an investment opportunity. Austin  
6 told Investor C Austin & Associates offered a guaranteed return on investments. Investor C believed  
7 that she would be investing in Austin & Associates, but she was not sure what Austin & Associates  
8 did. Investor C was not given any further information about the investment.

9           27. On July 30, 2004, Investor C wrote personal check #3436 to Austin & Associates for the  
10 amount of \$25,000. The memo on the check stated "investment". That same day Austin went to  
11 Investor C's bank and exchanged the personal check for a cashiers check. Austin deposited the funds  
12 into his Austin & Associates bank account that same day.

13           28. On August 1, 2004, Investor C signed the investment contract with Austin & Associates.  
14 The terms of the contract specified that Austin & Associates would guarantee an 11.25% return on a  
15 \$31,000 investment. The investment term was for two years. At the end of the term Investor C could  
16 elect to collect the investment amount plus interest or reinvest for one or two additional years with an  
17 interest rate named at the time of the reinvestment.

18           29. After depositing the \$25,000 cashiers check into the Austin & Associates account,  
19 Austin transferred the funds to his personal bank account. He then transferred \$20,000 of the funds to  
20 conduct options trades on behalf of Investor C to a brokerage account in Austin's name. Austin and  
21 his wife used the remaining \$5,000 for personal expenses.







1 NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent, Fran Austin dba Austin &  
2 Associates, shall cease and desist from violation of RCW 21.20.140, the section of the Securities Act that  
3 requires registration of securities.

4 IT IS FURTHER ORDERED that Respondent, Fran Austin dba Austin & Associates, shall cease  
5 and desist from violation of RCW 21.20.010, the anti-fraud section of the Securities Act.

6 IT IS FURTHER ORDERED that Respondent, Fran Austin, shall cease and desist from violation of  
7 RCW 21.20.040, the section of the Securities Act that requires registration of securities salespersons and  
8 broker-dealers.

9 IT IS FURTHER ORDERED that Respondent, Fran Austin dba Austin & Associates shall be liable  
10 for and pay a fine of \$30,000.

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12 **AUTHORITY AND PROCEDURE**

13 This Final Order is entered pursuant to the provisions of RCW 21.20.390 and RCW 21.20.395 and is  
14 subject to the provisions of Chapter 34.05 RCW. The Respondent has the right to petition the Superior  
15 Court for judicial review of this agency action under the provisions of Chapter 34.05 RCW. For the  
16 requirements for filing a Petition for Judicial Review see RCW 34.050.510 and sections following.  
17 Pursuant to RCW 21.20.395, a certified copy of this order may be filed in Superior Court. If so filed, the  
18 clerk shall treat the order in the same manner as a Superior Court Judgment as to the fine, and the fine may  
19 be recorded, enforced, or satisfied in like manner.

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21 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

1 DATED AND ENTERED this 25<sup>th</sup> day of August, 2006.

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4 \_\_\_\_\_  
5 MICHAEL E. STEVENSON  
6 Securities Administrator

7 Approved by:

8 Presented by:

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11 \_\_\_\_\_  
12 Martin Cordell  
13 Chief of Enforcement

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15 Angela R. Vogel  
16 Enforcement Attorney