STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION

IN THE MATTER OF DETERMINING whether there has been a violation of the Securities Act of Washington by: GARY LEN WELLS (CRD 1142058), Respondent.	Order Number: S-20-2852-20-SC01 STATEMENT OF CHARGES AND NOTICE OF INTENT TO ENTER AN ORDER TO CEASE AND DESIST, DENY APPLICATIONS, DENY FUTURE REGISTRATION, IMPOSE A FINE, AND CHARGE COSTS

THE STATE OF WASHINGTON TO: GARY LEN WELLS, CRD 1142058

STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the state of Washington Department of Financial Institutions has reason to believe that Respondent, Gary Len Wells, violated the Securities Act of Washington. The Securities Administrator believes these violations justify the entry of an order (1) to cease and desist from such violations; (2) to deny Respondent's current applications as an investment adviser representative and a securities salesperson for American Wealth Management, Inc.; (3) to deny any future application for investment adviser representative or securities salesperson registration by Respondent for a period of five years; (4) to impose a fine; and (5) to charge costs. The Securities Administrator finds as follows:

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

TENTATIVE FINDINGS OF FACT

Respondent

1. Respondent is a Washington resident and former investment adviser representative and securities salesperson at various firms in the Tacoma area. From January 2008 to February 2015, Respondent was registered as a securities salesperson and investment adviser representative of Wells Fargo Clearing Services, LLC formerly known as Wells Fargo Advisors, LLC ("WFA"). In February 2015, Respondent became registered as a securities salesperson and investment adviser representative of Wells Fargo Advisors Financial Network, LLC ("WFAFN"). He has pending applications for registration as an investment adviser representative and a securities salesperson, both for American Wealth Management, Inc. Respondent's Central Registration Depository (CRD) number is 1142058.

Nature of the Conduct

2. On December 16, 2019, Respondent was terminated by WFAFN after WFAFN found that he accepted a bequest from the estate of a client in violation of firm policy after being notified of the policy prohibiting it. The amount of the bequest exceeded $600,000. WFAFN additionally found that Respondent, in his interactions with another client, violated firm policies on conflicts of interest, asset movement, and vulnerable adults and older investors. Respondent's dealings with the two clients, hereinafter referred to as Investor A and Investor B, demonstrate a pattern of unethical practices concerning vulnerable adults.

Investor A

3. For almost 11 years, from on or around July 7, 2003 to her death on April 3, 2014 at age 92, Investor A was a brokerage client of Respondent. Respondent testified that he and Investor A were "pretty

good friends". Investor A was widowed. Her death certificate states that her cause of death was dementia and that she had suffered from dementia for "years".

4. In a complaint to WFA dated June 22, 2012, Investor A's brother reported to WFA that Respondent was listed as a beneficiary in Investor A's will. The complaint stated, regarding Investor A, "Over the last couple of years, she has changed her will, her executors and beneficiaries numerous times. She says that Gary Wells is now not only a large beneficiary, but also her executor."

5. Throughout the relevant time period, WFA and WFAFN policies prohibited an investment adviser representative from accepting a designation of beneficiary or a bequest from a client who is not a family member. Throughout the relevant time period, the Associates Guides applicable to Respondent stated, "The Firm prohibits Associates from accepting from any client … [a]ny designation as beneficiary, including under a will, annuity, life insurance or trust." Throughout the relevant time period, WFA and WFAFN policies on Personal Investments stated in part, "The Firm prohibits Associates from accepting any bequest from any client. This prohibition does not apply to family members."

6. Two years before Investor A's death, in a June 28, 2012 email, a WFA representative informed Respondent of the complaint received from Investor A's brother, and included the complaint as an attachment to the email. In the email, the WFA representative stated, "It is really important that [Investor A] takes the necessary steps to have you removed as executor and beneficiary as it is a violation of company policy. If she does not take any action, you may want to send a letter to her and to her attorney declining the appointments." The email also stated the prohibition on WFA associates accepting a designation as beneficiary from a client unless the client is a family member.

7. In a letter to WFA dated July 10, 2012, Investor A stated that Respondent had been removed as her power of attorney. The letter did not reference Respondent's status as a beneficiary to her estate.

8. Investor A died on April 3, 2014. On December 5, 2014, $45,527.67 was transferred from a WFA account belonging Investor A's estate to a WFA account belonging to Respondent. Upon discovering the transfer, WFA reversed the transaction.

9. On December 11, 2014, WFA notified Respondent that an associate's acceptance of an inheritance from a non-family member or relative was not permitted and that an exception would not be made in this instance. The email stated, "Without the exception approval, assets cannot be received as an inheritance by an associate from a non-family member/ relative."

10. After receiving notice that assets cannot be received as an inheritance, Respondent received a check dated December 31, 2014 from Investor A's estate in the amount of $93,968.18. Respondent deposited the check in his personal savings account with Chase Bank.

11. Respondent received another check from Investor A's estate dated August 12, 2015 in the amount of $521,805. Respondent deposited the check in his personal savings account with Chase Bank.

12. Respondent received a third check from Investor A's estate dated January 22, 2016 in the amount of $5,864.49. Respondent deposited the check in his personal savings account with Chase Bank.

13. In total, Respondent received $621,637.67 from the estate of Investor A. By depositing the funds into his Chase Bank account, Respondent was able to avoid WFAFN detection of his acceptance of the bequest from his client's estate.

14. In the Registered Associate Compliance Questionnaire dated July 13, 2016, which Respondent completed pursuant to his employment at WFAFN, in response to the question, "During the

last 12 months, have you received an inheritance from the Will or Trust of any client who is NOT a family member?" Respondent selected the response, "No". This statement was false, as Respondent received $521,805 from Investor A's estate on or after August 12, 2015 and received $5,864.49 from Investor A's estate on or after January 22, 2016.

15. Each year from 2013 through 2016, Respondent completed and submitted to WFA or WFAFN an Associate Annual Attestation. Pursuant to these submissions, Respondent attested that he had access to the firm's associates guide and, "I am in compliance with the policies and procedures contained in that Guide". Throughout the relevant time period, the associates guide contained a prohibition on acceptance of a beneficiary designation or a bequest from a non-family member. As a result, Respondent submitted a false attestation to his employer each year from 2013 through 2016.

16. In its review in 2019, WFAFN found that Respondent's receipt of the proceeds from Investor A's estate violated its Outside Activities and Outside Investments policy.

Investor B

17. Investor B is a 93 year old widow. Her husband passed away in 1994. She suffers from dementia and hearing loss, among other medical conditions. She lives at home, by herself, and needs 24-hour in-home care. On June 12, 2020, in a guardianship proceeding in Washington state court, Investor B was found to be legally incapacitated and a full guardian was appointed for her. The order appointing the guardian included in its findings of fact, "[Investor B] is at significant risk of personal harm based on a demonstrated inability to provide adequately for nutrition, health, housing and physical safety, and is at significant risk of financial harm based on a demonstrated inability to manage adequately property and financial affairs."

18. Respondent handled Investor B's investment account from on or before November 2, 2004, to December 2019, when Respondent's affiliation with WFAFN was terminated. Respondent testified of Investor B, "I'm her best friend," and further described Investor B as "a friend first and a client later".

Activities Outside the Scope of Investment Advisory Services

19. In his interactions with Investor B, Respondent acted outside of the scope of his role as an investment adviser representative in violation of WFAFN's internal policies. Such activities included ongoing involvement with Investor B's care and finances, as well as assisting with the sale of her car and breaking into her safe at her request.

20. Investor B started receiving 24-hour in-home care in 2015, necessitated by her diminished mental capacity. As one care provider explained in an email to Respondent sent in February of 2015, "The clinical term for [Investor B]'s condition is Alzheimer with Sundowning effect."

21. Respondent was a point of contact for Investor B's care. Respondent testified of Investor B, "She always put me down as her point of contact…" On numerous occasions, home care providers contacted Respondent regarding Investor B's care. In several emails to Respondent, home care providers indicated that Respondent would be taking action relating to Investor B's care, including speaking with Investor B's doctor and looking into a long term care policy.

22. In-home care providers contacted Respondent for payments due for services provided to Investor B. Mail received by Investor B was routinely passed on by care providers to Respondent. Respondent facilitated payment of Investor B's bills by obtaining her signature authorizing the transfer of funds from her Wells Fargo account to the payee.

23. Care providers expressed the belief that Respondent had power of attorney or medical power of attorney for Investor B. In May of 2016, one such care provider sent an email to Respondent,

stating, in regard to Investor B's doctor, "He would like a copy of your DPOA. So if you could send that to me I will take a copy for my records and send one to him." In October of 2016, another care provider sent an email, which Respondent was cc'd on, that stated in part, "I just spoke with Gary Wells who is the Power of Attorney for [Investor B]'s estate…" In May of 2019, yet another care provider wrote in an email to Respondent, "I set up the new pharmacy account for [Investor B], but I need you to call in and finalize it since you have POA."

24. Respondent denied he ever had medical power of attorney or any other power of attorney for Investor B. He testified that Investor B signed a document granting medical power of attorney to Respondent. However, Respondent testified that this document was never notarized, that it has been destroyed, and that, to his knowledge, it was never provided to a third party.

25. Respondent was also involved in locating in-home care for Investor B. In 2014 or 2015, Respondent referred Investor B to another client of Respondent for the purpose of finding an in-home care provider. Respondent testified that the other client was an "adviser" who "dealt with in-home care" and "knew all of the home cares and the people who would come out and the assisted living places." As a result of this referral, Investor B entered into a contract for services with a home care company.

26. Respondent assisted Investor B with selling her car to a car dealership in 2016, accompanying her to the dealership. The proceeds from sale, $13,000, were deposited into Investor B's Wells Fargo investment account.

27. In 2016, with Investor B present and at her request, Respondent used a saw to open a safe belonging to Investor B at her residence. Cash in the safe totaling $800 was deposited into Investor B's Wells Fargo investment account.

28. Throughout the relevant time period WFAFN prohibited associates from accepting a grant of power of attorney from a client. In addition, WFAFN required associates to submit to its supervisory department for review any power of attorney obtained from a client. Respondent did not submit any power of attorney for WFAFN review. Had Respondent submitted the power of attorney to WFAFN for review as required, WFAFN would have discovered the policy violation.

29. Respondent's prior employer, WFA, also prohibited an associate from accepting a grant of power of attorney from a client. In 2012, WFA notified Respondent of the policy by email. The email stated in part, "The Firm prohibits Associates from accepting from any client: … A grant of a power of attorney (POA)…"

30. WFAFN conducted an investigation into Respondent's actions in relation to Investor B and found that Respondent violated WFAFN's Conflicts of Interest policy by "engaging in personal activities with an elderly client that creates a perception of impropriety or undue influence with respect to the Firm or Wells Fargo Advisors".

31. WFAFN found that Respondent violated its Asset Movement policy by taking possession of the cash in Investor B's safe and depositing it into her account without receiving approval from WFAFN.

32. WFAFN additionally found that Respondent violated its Vulnerable Adults and Older Investors policy by failing to report to his supervisor certain information concerning Investor B, including "several notifications of [Investor B]'s potentially diminished mental capacity".

Account Conversion Recommendation

33. From on or before November 2004 to December 2014, Respondent managed a brokerage account for Investor B. In December of 2014, Respondent recommended that Investor B switch from a brokerage account that charged a commission on each trade to an advisory account that charged an assets

under management fee of a percentage of the value of the assets in the account. Based on Respondent's recommendation, Investor B switched from a brokerage account to an advisory account. From December 2014 to December 2019, Respondent managed the investment advisory account for Investor B.

34. Due to the difference in fee structure between the brokerage account and the advisory account, the amount Investor B paid in fees increased substantially after Investor B's account was converted. From 2011 through 2014, during which time Investor B was a brokerage customer, she paid an average of $7,683.05 per year in broker commissions. From 2015 through 2019, during which time Investor B was an advisory client, she paid an average of $12,467.37 per year in advisory fees.

35. In connection with the opening of the advisory account, Respondent completed a form entitled "For Investment Advisory Programs." In the Advisory Suitability section, in response to the question, "What factors were considered in recommending the Program," Respondent selected "Client's objectives, investment experience and financial circumstances," "Client's desire for ongoing advice," and "Investment choices."

36. During testimony in front of the Securities Division, Respondent testified that the brokerage account and advisory account offered the same investment choices and ongoing advice services. Respondent further indicated that that main difference between the brokerage account and the advisory account was the way in which the fees were calculated. He did not identify any other difference between the two accounts in his testimony.

Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

CONCLUSIONS OF LAW

1. Accepting a bequest from a brokerage client in violation of firm policy after being informed of firm's policy prohibiting it and taking steps that concealed the bequest from the firm constituted an

unethical practice in violation of FINRA Rule 2010 and WAC 460-22B-090(19). Pursuant to RCW 21.20.110(1)(b) and RCW 21.20.110(1)(g), such a violation is a basis to enter an order (i) to impose a fine, (ii) to deny an investment adviser representative application, (iii) to deny a securities salesperson application; and (iv) to deny future investment adviser representative and securities salesperson registration applications. Pursuant to RCW 21.20.110(7), such a violation is a basis to enter an order to charge costs. Pursuant to RCW 21.20.390, such a violation is a basis to enter an order to cease and desist.

2. Acting outside of the scope of the role of an investment adviser representative regarding a client's care and finances in violation of firm policies and procedures constituted an unethical practice in violation of WAC 460-24A-220(20) and RCW 21.20.020(1)(c). Pursuant to RCW 21.20.110(1)(b) and RCW 21.20.110(1)(g), such a violation is a basis to enter an order (i) to impose a fine, (ii) to deny an investment adviser representative application, (iii) to deny a securities salesperson application; and (iv) to deny future investment adviser representative and securities salesperson registration applications. Pursuant to RCW 21.20.110(7), such a violation is a basis to enter an order to charge costs. Pursuant to RCW 21.20.390, such a violation is a basis to enter an order to cease and desist.

3. Recommending to a client the conversion of a brokerage account to an advisory account without a reasonable basis for the recommendation constituted an unethical practice in violation of WAC 460-24A-220(20) and RCW 21.20.020(1)(c). Pursuant to RCW 21.20.110(1)(b) and RCW 21.20.110(1)(g), such a violation is a basis to enter an order (i) to impose a fine, (ii) to deny an investment adviser representative application, (iii) to deny a securities salesperson application; and (iv) to deny future investment adviser representative and securities salesperson registration applications. Pursuant to RCW 21.20.110(7), such a violation is a basis to enter an order to charge costs. Pursuant to RCW 21.20.390, such a violation is a basis to enter an order to cease and desist.

NOTICE OF INTENT TO ORDER THE RESPONDENT TO CEASE AND DESIST

Pursuant to RCW 21.20.390(1) and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondent cease and desist from violations of the Securities Act of Washington, Chapter 21.20 RCW and the rules promulgated thereunder.

NOTICE OF INTENT TO DENY APPLICATIONS

Pursuant to RCW 21.20.110(1), and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to deny Respondent's investment adviser representative application.

Pursuant to RCW 21.20.110(1), and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to deny Respondent's securities salesperson application.

NOTICE OF INTENT TO DENY FUTURE REGISTRATION

Pursuant to RCW 21.20.110(1), and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that any future application for investment adviser representative or securities salesperson registration by Respondent be denied for a period of five years.

NOTICE OF INTENT TO IMPOSE A FINE

Pursuant to RCW 21.20.110(1), and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondent shall be liable for and shall pay a fine of at least $100,000.

NOTICE OF INTENT TO CHARGE COSTS

Pursuant to RCW 21.20.110(7), and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intend to order that Respondent shall be liable for and shall pay costs of at least $1,000.

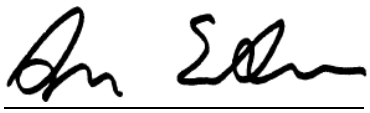
AUTHORITY AND PROCEDURE

This Statement of Charges is entered pursuant to the provisions of Chapter 21.20 RCW and is subject to the provisions of Chapter 34.05 RCW. Respondent may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Order. If a respondent does not make a hearing request in the time allowed, the Securities Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final and to enter an order denying pending applications of that respondent, to enter an order denying future registration of that respondent, to enter a permanent order to cease and desist as to that respondent, to impose any fines sought against that respondent, and to charge any costs sought against that respondent.

SIGNED and ENTERED this 30th day of December, 2020.

WILLIAM M. BEATTY
Securities Administrator

Approved by:



Suzanne Sarason
Chief of Enforcement

Presented by:

Brook Kellerman
Compliance Legal Examiner