

**COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE SECRETARY OF THE COMMONWEALTH  
SECURITIES DIVISION  
ONE ASHBURTON PLACE, ROOM 1701  
BOSTON, MASSACHUSETTS 02108**

IN THE MATTER OF:	)	
	)	
SECURITIES AMERICA, INC.,	)	Docket No. 2014-0106
	)	
Respondent.	)	
	)	

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 SECURITIES DIVISION



**ADMINISTRATIVE COMPLAINT**

**I. PRELIMINARY STATEMENT**

The Enforcement Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (the “Enforcement Section” and the “Division,” respectively) files this Administrative Complaint (the “Complaint”) to commence an adjudicatory proceeding against Securities America, Inc. (“Respondent”) for violations of MASS. GEN. LAWS ch. 110A, the Massachusetts Uniform Securities Act (the “Act”), and 950 MASS. CODE REGS. 10.00-14.413 (the “Regulations”). The Enforcement Section alleges that Respondent participated in, and failed to supervise its agent in conducting, a dishonest and misleading advertising campaign in violation of the Act and Regulations.

The Enforcement Section seeks an order: 1) finding as fact the allegations contained in the Complaint; 2) requiring Respondent to permanently cease and desist from further conduct in violation of MASS. GEN. LAWS ch. 110A, §§ 204(a)(2)(G) and 204(a)(2)(J) in the Commonwealth; 3) finding that all sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors; 4) censuring Respondent; 5) imposing an administrative fine on Respondent for each violation of the Act; and 6) taking any such further

actions which may be necessary or appropriate in the public interest for the protection of Massachusetts investors, including requiring Respondent to engage an independent compliance consultant for the purpose of improving its review of advertising materials distributed in the Commonwealth by and through its agents.

## II. SUMMARY

In the summer of 2014, an agent of Securities America, Inc. (the “Agent”) ran a deceptive AM radio advertising campaign targeted at vulnerable Massachusetts senior citizens. The Agent’s radio ads trumpeted the looming dangers of Alzheimer’s disease, while implying that the Agent is an individual with special access to medical information and support. The Agent is not – he is a financial professional looking to grow his business with senior clients. The radio ads combined the format of a public service announcement with alarmist language designed to pull in senior citizens with concerns about Alzheimer’s disease, meanwhile failing to adequately disclose the nature of the services that Armstrong actually offers, the identity of the speaker in the ads, that speaker’s access to information, and that speaker’s telephone number and use of caller’s contact information.

While the advertisements instructed listeners to call the speaker’s telephone number to receive free information on Alzheimer’s disease, the Agent’s business (the “Advisory Group”) had actually hired a third-party telephone service to receive phone calls at the provided number. After listeners called the number, their contact information was taken down by the answering service and relayed to the Advisory Group, which then employed telemarketers to phone the callers and advertise the services of the Advisory Group. In addition, the Advisory Group mailed sets of materials to each caller, including a cover letter offering the Advisory Group’s advisory

services. The Agent pulled a “bait and switch,” falsely advertising one service to obtain contact information, and switching it out for another – financial services.

The Agent is a broker-dealer agent of Securities America Inc. (“Securities America”), and an investment adviser representative of Securities America Advisers, Inc. (“Securities America Advisers”). Securities America is a national-scale broker-dealer of an international investment bank. Yet, astoundingly, Securities America approved the content of each of the advertisements that the Agent submitted for review, *without substantive comment or follow up of any kind*. Securities America’s failure to raise a single question about the content of the Alzheimer’s ads and the attendant mailing materials represents an utter failure that goes to the very purpose of a compliance function; Securities America failed to prevent or even flag glaringly unethical conduct.

### **III. JURISDICTION AND AUTHORITY**

1. As provided for by the Act, the Division has jurisdiction over matters relating to securities pursuant to chapter 110A of Massachusetts General Laws.
2. The Enforcement Section brings this action pursuant to the authority conferred upon the Division by Section 407A of the Act, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and the Regulations.
3. The Enforcement Section brings this action pursuant to the authority conferred upon the Division by Section 204 of the Act, wherein the Division has the authority to impose an administrative fine, censure, or deny, suspend, or revoke the registration of an applicant or registrant.
4. This proceeding is brought in accordance with Sections 204 and 407A of the Act and its Regulations.

5. The Enforcement Section reserves the right to amend this Complaint and/or bring additional administrative complaints to reflect information developed during the current and ongoing investigation.

#### **IV. RELEVANT TIME PERIOD**

6. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of June 1, 2012 to present (the “Relevant Time Period”).

#### **V. RESPONDENT**

7. Securities America, Inc. (“Securities America”) is a broker-dealer subsidiary of Ladenburg Thalmann Financial Services Inc., with headquarters in Nevada. Securities America has a Financial Industry Regulatory Authority (“FINRA”) Central Registration Depository (“CRD”) number of 10205, and has been registered with the Commonwealth of Massachusetts since January 7, 1985.

#### **VI. OTHER RELEVANT INDIVIDUALS AND ENTITIES**

8. Barry Graham Armstrong (the “Agent”) is a resident of Massachusetts. Armstrong has a FINRA CRD number of 1305112. Armstrong’s applications in Massachusetts for registration as an investment adviser representative for Securities America Advisors and broker-dealer agent for Securities America were allowed in January 2007. Armstrong is the owner, manager, and resident agent of Armstrong Advisory Group. Armstrong holds licenses in Series 6, 7, 24, 26, 63, and 65.
9. Armstrong Advisory Group (the “Advisory Group”) is a business organization with a FINRA CRD number of 164380 and a business address of 144 Gould Street #210, Needham Heights, Massachusetts 02494. Although the Advisory Group has been assigned a CRD number, the

Advisory Group is not separately registered with any regulator. The Agent is the owner, manager, and resident agent of the Advisory Group.

10. Telephone Answering Service is a call center operator and live telephone answering service.

## VII. STATEMENT OF FACTS

### A. The Advisory Group advertises over AM radio.

11. The Agent is the host of a radio show called "The Financial Exchange."
12. According to the Advisory Group's website, at [www.the-armstrongadvisorygroup.com](http://www.the-armstrongadvisorygroup.com), The Financial Exchange "combines Barry's knowledge of personal finance with some of the best industry experts."
13. The Agent has been the host of The Financial Exchange on numerous AM radio stations since 2011.
14. The Agent and the Advisory Group also advertise extensively over the radio. The Advisory Group advertisements have aired on numerous Massachusetts AM radio stations.
15. The Advisory Group has an annual advertising budget of between \$300,000 and \$500,000.
16. The Advisory Group advertises primarily on a talk radio station that is the largest Massachusetts AM station in terms of listenership, and has an annual budget for radio advertising on this station of approximately \$80,000 to \$120,000 (or sixteen to forty percent of the Advisory Group's total advertising budget).
17. The Agent personally writes the Advisory Group's radio advertisements.
18. The Agent voices the Advisory Group's radio advertisements.
19. The Advisory Group employed a telemarketing and call center service starting in 2013.
20. As of December 2014, the Advisory Group paid Telephone Answering Service \$3,000 to \$5,000 per month.

21. The Advisory Group radio advertisements provided a telephone number for listeners to call during the Relevant Time Period.

22. The telephone number provided for listeners to call was used by the answering service to take calls resulting from the Agent's radio advertisements and collect caller information *en mass* for telemarketing and mailing purposes.

**B. The Advisory Group and Securities America ran a misleading advertising campaign.**

23. The Agent testified before the Enforcement Section that the Advisory Group manages about one thousand households, each containing one or more accounts.

24. The Agent testified before the Enforcement Section that the majority of the Advisory Group's clients are senior citizens from Massachusetts.

25. The Advisory Group ran a radio campaign in July 2014 called "Alzheimer's Campaign."

26. The Advisory Group submitted three different radio advertisements to Securities America for review as part of its Alzheimer's radio campaign (the "Alzheimer's Advertisements").

27. The Advisory Group submits all its radio advertisements to Securities America for review.

28. The Compliance Communications Review team of Securities America and Securities America Advisors ("Compliance Review") reviewed the Alzheimer's Advertisements.

29. Compliance Review uses a record keeping system that enables members of Compliance Review to leave comments on reviewed items.

30. Compliance Review reviewed the Alzheimer's Advertisements for content and disclosures to ensure compliance with FINRA Member Conduct Rules and with Securities America and Securities America Advisors policies.

31. Members of Compliance Review are instructed to and purport to listen to recordings of any radio advertisements as part of their final review and approval.

32. Compliance Review approved all three the Alzheimer's Advertisements.<sup>1</sup>
33. The Advisory Group Employee No. 1 submitted Alzheimer's Advertisement No. 1 on behalf of the Advisory Group to Compliance Review on May 15, 2014.
34. A member of Compliance Review reviewed Alzheimer's Advertisement No. 1 on May 16, 2014 and only commented, "Re: Alzheimers Radio Ad –Full Broker/Dealer disclosure needs to be added. Thank you."
35. A member of Compliance Review reviewed and approved Alzheimer's Advertisement No. 1 on May 16, 2014 and only commented, "There is no issue with the ad content; however, please add your broker dealer disclosures. Thanks!" (Emphasis added.)
36. Members of Compliance Review failed to make any other comments about Alzheimer's Advertisement No. 1.
37. A member of Compliance Review approved the advertisement again on June 30, 2014.
38. Alzheimer's Advertisement No. 1 first aired on June 30, 2014.
39. Alzheimer's Advertisement No. 1 aired Monday to Friday numerous times per day in July 2014.
40. The text of Alzheimer's Advertisement No. 1 is reproduced below as provided to the Enforcement Section by Securities America:

Alzheimer's disease is the most common cause of dementia among older people and it is estimated that as many as 5.1 million Americans may already have Alzheimer's. What are the chances that you may be among them? Damage to the brain can start a decade or more before symptoms become evident, including memory loss, trouble handling money and paying bills, repeating questions, taking longer to complete normal daily tasks, poor judgment and having some mood and personality changes. Caring for a person with Alzheimer's disease can have high physical, emotional and financial costs. Becoming well informed about the disease is one important long-term strategy and it's important that you also learn how to protect your assets in the event you, your spouse or a loved one is

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<sup>1</sup> Securities America did not produce to the Enforcement Section documentation or information showing that Alzheimer's Advertisements Nos. 2 and 3, despite being approved, ultimately aired on the radio.

faced with extended nursing home care. We have made available a detailed 8-page Alzheimer's fact sheet, along with important information on providing care and positioning yourself and your assets legally to help protect each other. This free guide is yours by calling our office at [phone number redacted]. Don't leave your future to chance. [Phone number redacted]. Securities offered through Securities America, Inc. and advisory services offered through Securities America Advisors, Inc. Member FINRA/SIPC. Barry Armstrong Representative. Armstrong Advisory Group and the Securities America Companies are Unaffiliated.

(Emphasis added.)

41. An Advisory Group employee submitted Alzheimer's Advertisement Nos. 2 and 3 on behalf of the Advisory Group to Compliance Review on May 27, 2014.
42. The text of Alzheimer's Advertisement No. 2 is reproduced below as provided to the Division by Securities America:

Did you know that Alzheimer's disease is THE MOST COMMON CAUSE OF Dementia? And due to the growth of Alzheimer's disease, dementia is taking an enormous toll on our society, our spouses, our children and other family members. Alzheimer's is not a normal part of aging however the greatest known risk factor is increasing age. Get the facts about Alzheimer's disease with our free fact sheet available now. Call us today at [phone number redacted] to learn more about Alzheimer's disease and dementia. Alzheimer's has no current cure, but treatments for symptoms are available. If you or a loved one has been diagnosed with Alzheimer's or a related dementia, you're not alone. Learn what resources there are to support those affected by the disease. THAT NUMBER AGAIN IS [phone number redacted]. Securities offered through Securities America, Inc. Member FINRA/SIPC and advisory services offered through Securities America Advisors, Inc., Barry Armstrong Representative. Armstrong Advisory Group and the Securities America Companies are Unaffiliated.

(Emphasis added.)

43. Compliance Review approved Alzheimer's Advertisement No. 2 on May 28, 2014.
44. The text of Alzheimer's Advertisement No. 3 is reproduced below as provided to the Division by Securities America.

Have you or a loved one been diagnosed with Alzheimer's disease? You're not alone! Every 67 seconds SOMEONE IN THE UNITED STATES DEVELOPES [sic] ALZHEIMER'S and an estimated 5.2 million Americans will have the disease in 2014. That number will continue to escalate rapidly in the coming years



as the baby boom generation ages. Get the facts about Alzheimer's disease with our free information sheet available now. Call us today at [*phone number redacted*] to learn more about Alzheimer's disease and dementia. Research has revealed a great deal, but there is still much more to be discovered. Alzheimer's is officially the 6th leading cause of death in the U.S. Educate yourself about the impact of this disease and what resources there are available to support those affected. THAT NUMBER AGAIN IS [*phone number redacted*]. Securities offered through Securities America, Inc. Member FINRA/SIPC and advisory services offered through Securities America Advisors, Inc., Barry Armstrong Representative. Armstrong Advisory Group and the Securities America Companies are Unaffiliated.

(Emphasis added.)

45. Compliance Review approved Alzheimer's Advertisement No. 3 on May 28, 2014.
46. Members of Compliance Review failed to make any comments about Alzheimer's Advertisement No. 2 other than "approved."
47. Members of Compliance Review made only the following comment about Alzheimer's Advertisement No. 3 before approving it for distribution: "the content of the material appears to be within standards at this time." (Emphasis added.)
48. The disclaimer at the end of the Alzheimer's Advertisements is a standardized disclaimer required to follow every radio advertisement submitted to Securities America and Securities America Advisors by the Advisory Group.
49. Securities America and Securities America Advisers provided the standardized disclaimer to the Advisory Group.
50. Other than the standardized disclaimer, the Alzheimer's Advertisements do not name or otherwise refer to Securities America, Securities America Advisors, the Agent, or the Advisory Group.

51. Other than the standardized disclaimer, the Alzheimer's Advertisements do not refer to the investment advisory or broker-dealer services actually rendered by Securities America, Securities America Advisors, the Agent, or the Advisory Group.

52. Other than the standardized disclaimer, a telephone number is the only identifying information provided in the Alzheimer's Advertisements as provided to the Division by Securities America.

**C. The Advisory Group, Securities America, and Securities America Advisors attempt to obtain clients by misleading Massachusetts investors.**

53. Individuals who called the number provided in the Alzheimer's Advertisements were not connected to the Agent or the Advisory Group, but rather to the Telephone Answering Service.

54. The answering service obtained the contact information of the individuals calling the number included in the Alzheimer's Advertisements.

55. The answering service then communicated the contact information obtained from the callers to the Advisory Group.

56. Telemarketers employed by the Advisory Group then used the contact information to call the individuals who had called the answering service, and to send out marketing materials from the Advisory Group to those individuals.

57. The Agent personally trained the telemarketers employed by the Advisory Group.

58. The Advisory Group mailed the following materials to the individuals who called the answering service:

- A marketing letter from the Advisory Group advertising the Advisory Group's services (the "Letter").
- A fact sheet with information about Alzheimer's disease (the "Fact Sheet").

- An article on personal care contracts written by a law firm.

59. The Fact Sheet with information about Alzheimer's disease (the "Fact Sheet") is published by the National Institute on Aging.

60. The Fact Sheet is part of the public domain and is freely and publicly available.

61. The Advisory Group did not pay to obtain the Fact Sheet.

62. The Advisory Group has no access to the Fact Sheet different from that of the general public.

63. The Letter is a generic cover letter that the Advisory Group sends out as part of all of its advertising campaigns.

64. The Letter makes no reference to Alzheimer's disease.

65. The Alzheimer's Advertisements were intended to generate business for the Advisory Group.

66. In his testimony before the Enforcement Section, the Agent stated with respect to the Alzheimer's Advertisements:

Well, if somebody calls in for an article, we make an effort to reach out to all of them that called in because that's part of our business development, that's how we gain clients. So we engage them in a favorable conversation, find out if they're qualified to be a client of ours, and offer to meet with them on a private basis.

(Emphasis added.)

67. In his testimony to the Enforcement Section, the Agent stated that he did not keep track of which of the Advisory Group's clients became clients as a result of the Alzheimer's Advertisements.

68. However, in his testimony to the Enforcement Section, the Agent estimated that, in general, the Advisory Group's radio advertisements generate most of its new clients.

69. In his testimony before the Enforcement Section, the Agent estimated that the Alzheimer's Radio Advertisements resulted in calls from more than 100 individuals.

70. The Agent, Securities America, and Securities America Advisors attempted to generate clientele by purporting to provide information on Alzheimer's disease in order to obtain client contact information, and then exploiting that information to market the Agent and Securities America's services.

### VIII. VIOLATIONS OF LAW

#### A. Securities America's Violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G)

71. Section 204(a)(2)(G) of the Act provides:

The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:—

(G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business.

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

72. Section 12.204(1)(a)(18) of the Regulations provides:

Each broker-dealer shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. Acts and practices, including, but not limited to the following, are considered contrary to such standards and constitute dishonest or unethical practices which are grounds for imposition of an administrative fine, censure, denial, suspension or revocation of a registration, or such other appropriate action:

(18) Making any advertising or sales presentation, either in written or oral form, in such a fashion as to be deceptive or misleading...

950 MASS. CODE REGS. 12.204(1)(a)(18).

73. The conduct of Respondent Securities America, as described in Section VII above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

#### B. Securities America's Violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J)

74. Section 204(a)(2)(J) of the Act provides:

The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:—

(J) has failed reasonably to supervise agents, investment adviser representatives or other employees to assure compliance with this chapter.

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

75. The conduct of Respondent Securities America, described in Section VII above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

## **IX. STATUTORY BASIS FOR RELIEF**

76. Section 204(a)(2)(G) of the Act provides, in pertinent part:

The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:—

(G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business.

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

77. Section 407A of the Act provides, in pertinent part:

(a) If the secretary determines, after notice and opportunity for hearing, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take such affirmative action, including the imposition of an administrative fine, the issuance of an order for an accounting, disgorgement or rescission or any other such relief as in his judgment may be necessary to carry out the purposes of [the Act].

MASS. GEN. LAWS ch. 110A, § 407A.

## **X. PUBLIC INTEREST**

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors for the Director to enter an order finding that such “action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter [MASS. GEN. LAWS ch. 110A].”

#### **XI. RELIEF REQUESTED**

The Enforcement Section of the Division requests that the Director enter an order:

- A. Finding as fact all allegations set forth in Sections V to VII, inclusive, of the Complaint;
- B. Finding that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors;
- C. Requiring Respondent to permanently cease and desist from violation of MASS. GEN. LAWS ch. 110A §§ 204(a)(2)(G) and 204(a)(2)(J) and the Regulations in the Commonwealth;
- D. Censuring Respondent;
- N. Imposing an administrative fine on Respondent in an amount and upon such terms and conditions as the Director or Presiding Officer may determine; and
- O. Taking any such further action which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors, including requiring Respondent to engage an independent compliance consultant for the purpose of improving its review of advertising materials distributed in the Commonwealth by and through its agents.

**MASSACHUSETTS SECURITIES DIVISION  
ENFORCEMENTSECTION**

By its attorneys,



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