

1 PRESTON DuFAUCHARD
California Corporations Commissioner
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Deputy Commissioner
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7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA

11	In the Matter of)	CASE NO.
12	THE CALIFORNIA CORPORATIONS)	FILE NO. 923-6045
13	COMMISSIONER,)	ACCUSATION TO BAR BRIAN D. GIBBS
14	Complainant,)	(CORPORATIONS CODE SECTION 25232.1)
15	v.)	
16	BRIAN D GIBBS,)	
17	Respondent.)	
18)	
19)	

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21 Preston DuFauchard, the California Corporations Commissioner ("Commissioner") of the
22 Department of Corporations ("Department") alleges and charges as follows:

23 **I. JURISDICTION AND VENUE**

- 24 1. The Commissioner brings this action pursuant to the provisions of California
- 25 Corporations Code ("CC") section 25232.1 and the rules and regulations promulgated thereunder.
- 26 2. The Commissioner is authorized to administer and enforce the provisions of the
- 27 Corporate Securities Law of 1968, Corporations Code section 25000 et seq. ("CSL") and the
- 28 regulations thereunder at Title 10, California Code of Regulations ("CCR").

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II. STATEMENT OF FACTS

3. This action is brought in order to issue an order barring Brian D. Gibbs (referenced hereinafter as "Gibbs" or "Respondent") from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser pursuant to Corporations Code section 25232.1.

4. On June 25, 2010, Heritage Wealth Management, Inc. ("HWM") filed its investment adviser application with the Commissioner. On July 15, 2010, HWM submitted Brian D. Gibbs ("Gibbs") Uniform Application for Securities Industry Registration and Transfer Form seeking to have Gibbs as an investment adviser representative. HWM is located at 11440 W. Bernardo Court, Ste. 106, San Diego, California 92127.

5. On October 2, 2002, the Department issued Desist and Refrain Orders ("Orders") against Gibbs and Gibbs Financial Services, Inc. ("GFS"), for violations of CC sections 25110, 25210 and 25401. Gibbs and GFS violated CC section 25110 by selling unqualified, non-exempt securities, violated CC section 25210 by engaging in unlicensed activity, and violated CC section 25401 by making material misrepresentations and omissions regarding securities solicited. On January 29, 2003, a Department investigator served the Orders on Gibbs, as an individual and also as President on behalf of GFS. The investigator informed counsel shortly after serving the Orders on Gibbs that Gibbs said that he does not plan to contest the Orders and wants to put this behind him. Furthermore, Gibbs and GFS had one year from receipt of the Orders to ask for a hearing to contest the Orders. Gibbs and GFS never requested a hearing and therefore the Orders are final.

III. RESPONDENT GIBBS SHOULD BE BARRED FROM ANY POSITION OF EMPLOYMENT, MANAGEMENT OR CONTROL OF ANY INVESTMENT ADVISER, BROKER-DEALER OR COMMODITY ADVISER

6. Corporations Code Section 25232.1 provides, in pertinent part:

The commissioner may, after appropriate notice and opportunity for hearing, by order censure, or suspend for a period not exceeding 12 months, or bar from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser, any officer, director, partner, employee of, or person performing similar functions for, an investment

1 adviser, or any other person, if he or she finds that the censure, suspension or
2 bar is in the public interest and that the person has committed any act or
3 omission enumerated in subdivision (a), (e), (f), or (g) of Section 25232 ... or
 is subject to any order specified in subdivision (d) of Section 25232

4 7. Corporations Code section 25232 provides, in pertinent part:

5 The commissioner may, after appropriate notice and opportunity for hearing,
6 by order censure, deny a certificate to, or suspend for a period not exceeding
7 12 months or revoke the certificate of, an investment adviser, if the
8 commissioner finds that the censure, denial, suspension, or revocation is in the
9 public interest and that the investment adviser, whether prior or subsequent to
10 becoming such, or any partner, officer or director thereof or any person
11 performing similar functions or any person directly or indirectly controlling
12 the investment adviser, whether prior or subsequent to becoming such, or any
13 employee of the investment adviser while so employed:

14 (d) Is or has been subject to... (3) any other order of the commission or any
15 administrator, association, or exchange referred to in this subdivision which is
16 or has been necessary for the protection of any investor.

17 (e) Has willfully violated any provision of . . . Title 4 (commencing with
18 Section 25000)... or of any rule or regulation under any of those statutes, or
19 any order of the commissioner which is or has been necessary for the
20 protection of any investor.

21 8. On October 2, 2002, the Department issued Orders against Gibbs and GFS for violations
22 of CC sections 25110, 25210 and 25401. These Orders were necessary, in the public interest, for the
23 protection of investors and consistent with the purposes, policies, and provisions of the CSL. Gibbs
24 and GFS violated CC section 25110 by selling unqualified, non-exempt securities, violated CC
25 section 25210 by engaging in unlicensed activity, and violated CC section 25401 by making material
26 misrepresentations and omissions regarding securities solicited. On January 29, 2003, Investigator
27 Rochester served the Orders on Gibbs, as an individual and also as President on behalf of GFS.
28 Attached hereto as **Exhibit 1** are true and correct copies of the Orders issued against Gibbs and GFS
 with the Proofs of Service.

 9. Gibbs, an employee of HWM, previously willfully violated CC sections
 25110, 25210, and 25401 while President of GFS by knowingly engaging in: 1) broker-dealer
 activities without a license; 2) offering and selling unqualified, non-exempt securities without a

1 license; and 3) by making material misrepresentations and omissions in the solicitation of securities.
2 The Department does not have to prove the underlying allegations of the past Orders. Gibbs did not
3 request a hearing to contest the Orders even though he received notice of the Orders and was given a
4 year to contest them. Therefore, the Orders are final including all factual findings contained within.

5 10. Because Gibbs has been subject to uncontested Orders that were necessary for the
6 protection of investors and Gibbs willfully violated CC sections 25110, 25210 and 25401 while
7 President of GFS, Gibbs should be barred from any position of employment, management or control
8 of any investment adviser, broker-dealer or commodity adviser pursuant to CC section 25232.1 for
9 orders and acts enumerated in subdivisions 25232 (d) and (e).
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11 **IV. RELIEF REQUESTED**

12 WHEREFORE, based upon the foregoing, the Commissioner finds it is in the public interest
13 to bar Brian D. Gibbs from any position of employment, management or control of any investment
14 adviser, broker-dealer or commodity adviser pursuant to CC section 25232.1 for orders listed under
15 CC section 25232(d) and for willful acts committed as specified in CC section 25232(e).

16 WHEREFORE, IT IS PRAYED that Respondent Brian D. Gibbs be barred from any position
17 of employment, management or control of any investment adviser, broker-dealer or commodity
18 adviser pursuant to CC section 25232.1

19 Dated: September 23, 2010

PRESTON DuFAUCHARD
California Corporations Commissioner

21 By: _____

MICHELLE LIPTON
Sr. Corporations Counsel
Enforcement Division

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