

1 PRESTON DUFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Deputy Commissioner
3 MIRANDA L. MAISON (CA BAR NO. 210082)
Senior Corporations Counsel
4 DEPARTMENT OF CORPORATIONS
1515 K Street, Suite 200
5 Sacramento, California 95814
Telephone: (916) 322-8730
6

7 Attorneys for Complainant

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

11	In the Matter of	)	FILE NO. 927-7646
12	THE CALIFORNIA CORPORATIONS	)	STATEMENT OF ISSUES AND
13	COMMISSIONER,	)	ACCUSATION IN SUPPORT OF NOTICE OF
14	Complainant,	)	INTENTION TO ISSUE ORDERS:
15	v.	)	1. DENYING THE INVESTMENT
16	WANDA PITTMAN SEARS, as an individual,	)	ADVISER CERTIFICATE
17	Respondent.	)	APPLICATION OF
18		)	WANDA PITTMAN SEARS
19		)	2. BARRING WANDA PITTMAN SEARS
20		)	FROM ANY POSITION OF
21		)	EMPLOYMENT, MANAGMENT
		)	OR CONTROL OF ANY
		)	INVESTMENT ADVISER, BROKER-
		)	DEALER OR COMMODITY ADVISER
		)	(Corporations Code §§ 25232 & 25232.1)

22 Preston DuFauchard, in his capacity as the Commissioner ("Commissioner") of the
23 California Department of Corporations ("Department"), alleges and charges as follows:

24 **I. INTRODUCTION**

25 1. This action is brought to deny the investment adviser application of Wanda Pittman
26 Sears¹ ("Sears" or "Respondent") pursuant to Corporations Code section 25232 and to bar
27

28 ¹ CRD #2214419, Registered Representative, Roanoke, VA; IARD #147698

1 Respondent from any position of employment, management, or control of any investment adviser,
2 broker-dealer, or commodity adviser pursuant to Corporations Code section 25232.1.²

3 2. Corporations Code section 25600 authorizes the Commissioner to administer and
4 enforce the provisions of the California Corporate Securities Law of 1968 (Corp. Code § 25000 *et*
5 *seq.*) and the regulations promulgated thereunder (Cal. Code Regs., tit. 10, § 260.000 *et seq.*).

6 **II. STATEMENT OF FACTS**

7 3. On or about March 15, 2010, Respondent electronically filed an application on the
8 Form ADV for investment adviser registration in the State of California.³ The application stated that
9 Respondent had been licensed as an investment adviser in the State of Virginia since September 11,
10 2008.

11 4. Upon receipt of Respondent's application, a departmental review of the Central
12 Registration Depository ("CRD") system⁴ showed that Respondent was subject to two six-month
13 regulatory suspensions imposed by the Financial Industry Regulatory Authority, Inc. ("FINRA"),⁵
14 which were to be served concurrently beginning December 7, 2009 and ending June 6, 2010.

15 5. The Commissioner's investigation of the Form ADV disclosures revealed that
16 Respondent's suspensions were a result of disciplinary action initiated by FINRA on September 21,
17 2007. FINRA had alleged that while Respondent was employed as a registered general securities
18 representative with NASD-member firm American Express Financial Advisers, Inc. ("AMEX")
19 during the period of approximately 1998 through 2002, she engaged in unauthorized trading activity
20 and failed to provide written notice of outside business activities.⁶

21
22
23 ² All code references are to the California Corporations Code unless otherwise indicated.

24 ³ The investment adviser application in issue is a "Form ADV (Paper Version) Uniform Application for Investment
25 Adviser Registration" promulgated by the Securities Exchange Commission ("SEC") pursuant to 17 Code of Federal
26 Regulations 279.1 as amended by the SEC Release No. IA-1916, 34-43758 (*see* Corp. Code § 260.231.2).

27 ⁴ The CRD system contains the qualification, employment, and disclosure histories of securities professionals.

28 ⁵ FINRA, formerly known as the National Association of Securities Dealers ("NASD"), is the largest independent
regulator of all securities firms doing business in the United States.

⁶ Respondent's CRD report indicates that AMEX terminated her association on April 5, 2002, for violating several
company policies (see case number C0720050042).

1 6. On July 1, 2008, the SEC issued an opinion based on its independent review of the
2 hearing record of the FINRA disciplinary action brought against Respondent. The SEC concluded
3 that the hearing evidence supported the finding that Respondent had engaged in 18 to 20
4 unauthorized trades and failed to disclose that she had engaged in outside business activities
5 involving the preparation of tax returns for AMEX clients. The SEC upheld the six-month
6 suspensions imposed by FINRA for the outside business activities violation. On remand, a
7 concurrent six-month suspension was imposed upon Respondent for the unauthorized trading
8 violations.

9 7. Additionally, the CRD report revealed that on June 25, 2008, Respondent entered into
10 a settlement agreement with the Securities and Retail Franchise division of the Virginia State
11 Corporation Commission (hereafter referred to as “the Virginia securities regulator”) to resolve an
12 enforcement action brought against her for multiple violations of the state securities laws.

13 8. As a condition of the June 25, 2008 settlement agreement with the Virginia securities
14 regulator, Respondent was barred from any association or employment with any registered broker-
15 dealer or investment adviser, or any federally covered investment adviser for a five-year period.
16 Further, Respondent was required to make restitution to seven Virginia investors and pay
17 investigation costs to the state.

18 **III. FIRST CAUSE FOR DENIAL OF APPLICATION: RESPONDENT HAS**
19 **BEEN SUBJECT TO ORDERS WHICH HAVE BEEN NECESSARY FOR THE**
20 **PROTECTION OF INVESTORS WITHIN THE MEANING OF CORPORATIONS**
21 **CODE SECTION 25232, SUBDIVISION (d)(3).**

22 9. Corporations Code section 25232 provides, in pertinent part:

23 The commissioner may, after appropriate notice and opportunity for hearing, by order
24 censure, deny a certificate to, or suspend for a period not exceeding 12 months or
25 revoke the certificate of, an investment adviser, if the commissioner finds that the
26 censure, denial, suspension, or revocation is in the public interest and that the
27 investment adviser, whether prior or subsequent to becoming such, or any partner,
28 officer or director thereof or any person performing similar functions or any person
directly or indirectly controlling the investment adviser, whether prior or subsequent
to becoming such, or any employee of the investment adviser while so employed has
done any of the following:

(d) Is or has been subject to . . . (3) any other order of the commission or any administrator, association, or exchange referred to in this subdivision⁷ which is or has been necessary for the protection of any investor.

10. The Commissioner’s investigation of the disclosures made by Respondent on Form ADV revealed that, on or about September 21, 2007, FINRA had initiated disciplinary action against Respondent, finding that she had engaged in unauthorized trading activity and failed to provide written notice of outside business activities while employed as a registered general securities representative with AMEX during the period of approximately 1998 through 2002.

11. On July 1, 2008, the SEC issued an opinion upholding the FINRA disciplinary action taken against Respondent, concluding that the hearing evidence supported the finding that Respondent had engaged in 18 to 20 unauthorized trades and failed to disclose that she had engaged in outside business activities involving the preparation of tax returns for AMEX clients. On remand, the two six-month suspensions imposed by FINRA were ordered to be concurrently served during the period beginning December 7, 2009 and ending June 6, 2010.

12. Additionally, on or about June 25, 2008, the Virginia securities regulator had issued an order barring Respondent from any association or employment with any registered broker-dealer or investment adviser, or any federal covered investment adviser under Virginia's securities laws, for a five-year period.

13. In connection with the aforementioned Virginia disciplinary action, Respondent admitted, that she had engaged in numerous violations of Virginia’s securities laws, including: (1) holding herself out in an advertisement as a registered investment adviser while only registered as a broker-dealer agent; (2) making discretionary payments through the use of pre-signed withdrawal forms; (3) acquiring power of attorney over two clients without authorization of the broker-dealer; (4) acquiring custody of a client’s account; (5) holding herself out as a registered investment adviser and registered investment adviser representative; (6) making misleading statements; (7) engaging in

⁷ Subdivision (d)(1) of Corporations Code section 25232 refers in pertinent part to “any order of the [SEC] or the securities administrator of any other state”

1 dishonest and unethical acts; and, (8) continuing to act as an investment adviser after the State of
2 Virginia entered a temporary injunction.⁸

3 14. Based on the FINRA suspension order and the Virginia bar order, the Commissioner
4 finds that Respondent has been subject to the order of an “administrator, association, or exchange . . .
5 which is or has been necessary for the protection of any investor” within the meaning of
6 Corporations Code section 25232, subdivision (d)(3), and it is in the public interest to deny
7 Respondent’s application for an investment adviser certificate.

8 **IV. SECOND CAUSE FOR DENIAL OF APPLICATION: RESPONDENT**
9 **WILLFULLY OMITTED TO STATE MATERIAL FACTS REQUIRED TO BE**
10 **DISCLOSED IN THE APPLICATION TO THE COMMISSIONER WITHIN THE**
11 **MEANING OF CORPORATIONS CODE SECTION 25232, SUBDIVISION (a).**

12 15. Corporations Code section 25232, subdivision (a) authorizes the Commissioner to
13 deny an application for investment adviser registration when it is in the public interest and where the
14 applicant:

15 . . . (a) Has willfully made or caused to be made in any application for a certificate . . . any
16 statement which was at the time and in the light of the circumstances under which it was
17 made false or misleading with respect to any material fact, or has willfully omitted to state in
the application or report any material fact which is required to be stated therein.

18 16. On or about March 15, 2010, Respondent electronically filed with the Commissioner
19 an application on the Form ADV for investment adviser registration in the State of California.

20 17. Respondent answered “no” to questions (4) and (5) of section 11D of Form ADV,
21 entitled “Item 11-Disclosure Information,” which ask the following:

- 22 D. Has any other federal regulatory agency, any state regulatory agency, or any
23 foreign financial regulatory authority:
- 24 ... (4) in the past ten years, entered an order against you or any advisory affiliate in
connection with an investment-related activity?
- 25 (5) ever denied, suspended, or revoked your or any advisory affiliate’s
26 registration or license, or otherwise prevented you or any advisory affiliate, by
order, from associating with an investment-related business or restricted your
27 or any advisory affiliate's activity?

28 ⁸ See case number SEC-2007-00048.

1 18. The Commissioner finds that by answering “no” to questions (4) and (5) of Item 11D
2 on the Form ADV, Respondent willfully omitted to state in the application the material fact that she
3 was suspended by FINRA for a six-month period in 2010 and barred by the Virginia securities
4 regulator from any association or employment with any registered broker-dealer or investment
5 adviser, or any federal covered investment adviser under Virginia's securities laws for a five-year
6 period.

7 19. Based on the foregoing, the Commissioner finds that Respondent failed to disclose
8 required material facts in an application filed with the Commissioner within the meaning of
9 Corporations Code section 25232, subdivision (a), and it is in the public interest to deny
10 Respondent’s application for an investment adviser certificate.

11 **V. THIRD CAUSE FOR DENIAL OF APPLICATION: RESPONDENT**
12 **VIOLATED A SIMILAR REGULATORY SCHEME OF A FOREIGN**
13 **JURISDICTION WITHIN THE MEANING OF CORPORATIONS CODE**
14 **SECTION 25232, SUBDIVISION (h).**

15 20. Corporations Code section 25232, subdivision (h) authorizes the Commissioner to
16 deny an application for investment adviser registration when it is in the public interest and the
17 applicant:

18 . . . (h) Has violated any provision of this division or the rules thereunder or, in the case of
19 an applicant only, any similar regulatory scheme of the State of California or a foreign
20 jurisdiction.

21 21. A search of the CRD discloses that Respondent violated a similar regulatory scheme
22 of the State of California, or a foreign jurisdiction, namely the State of Virginia, as evidenced by the
23 bar order issued by the Virginia securities regulator on June 25, 2008.

24 22. Due to the 2008 bar order issued against Respondent for violations of the securities
25 regulations of the State of Virginia, the Commissioner finds that Respondent, an applicant for an
26 investor adviser certificate, has violated the provisions of a similar regulatory scheme of a foreign
27 jurisdiction within the meaning of Corporations Code section 25232, subdivision (h), and it is in the
28 public interest to deny Respondent’s application.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VI. RESPONDENT SHOULD BE BARRED FROM ANY POSITION OF EMPLOYMENT, MANAGEMENT, OR CONTROL OF ANY INVESTMENT ADVISER, BROKER-DEALER, OR COMMODITY ADVISER PURSUANT TO CORPORATIONS CODE SECTION 25232.1.

23. Corporations Code Section 25232.1 provides in relevant 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 adviser, or any other person, if he or she finds that the censure, suspension or bar is in the public interest and that the person has committed any act or 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.

24. The Commissioner finds that Respondent “committed an act or omission enumerated in subdivision (a) . . . of [s]ection 25232” when she failed to disclose required material facts in the Form ADV application for investment adviser registration that she filed with the Commissioner on March 15, 2010.⁹

25. Further, the Commissioner finds that Respondent is subject to “an order specified in subdivision (d) of [s]ection 25232” by virtue of the June 2008 order issued by the Virginia securities regulator barring Respondent from any association or employment with any registered broker-dealer or investment adviser, or any federally covered investment adviser for a five-year period.¹⁰

26. Based on the foregoing, the Commissioner finds it is in the public interest to bar 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.

VII. RELIEF REQUESTED

WHEREFORE, IT IS PRAYED that: (1) the investment adviser application of Respondent Wanda Sears Pittman be denied pursuant to Corporations Code section 25232, subdivisions (a),

⁹ See Paragraph IV, *infra*.

¹⁰ See Paragraph III, *infra*.

1 (d)(3) and (h); and, (2) Respondent be barred from any position of employment, management, or
2 control of any investment adviser, broker-dealer, or commodity adviser pursuant to Corporations
3 Code section 25232.1.

4 Dated: December 29, 2010

5 PRESTON DUFAUCHARD
6 California Corporations Commissioner

7
8 By: _____
9 MIRANDA L. MAISON
10 Senior Corporations Counsel
11 Enforcement Division
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28