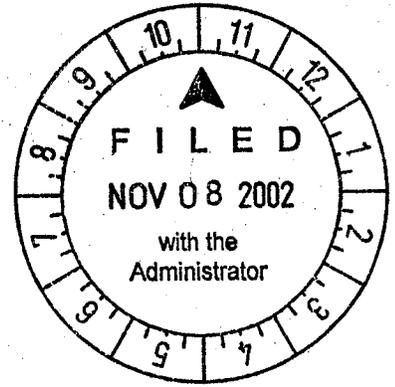


STATE OF OKLAHOMA
BEFORE THE
OKLAHOMA SECURITIES COMMISSION
FIRST NATIONAL CENTER
120 NORTH ROBINSON
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

Southmark of Tulsa, Inc.,
Wendell D. Belden, Gertrude M. Edwards,
Dieta Brown, and Cannen Ferrell,

Respondents.

File No. ODS 02-156

and

In the Matter of:

Southmark of Tulsa, Inc.,
Wendell D. Belden and Gertrude M. Edwards,

Respondents.

File No. ODS 01-150

Oklahoma Securities Commission
File No. OSC-2003-01

FINAL ORDER

Southmark of Tulsa, Inc. ("Southmark"), Wendell D. Belden ("Belden"), Gertrude M. Edwards ("Edwards"), Dieta Brown ("Brown") and Cannen Ferrell ("Ferrell") appealed an order (the "Consolidated Order") imposing sanctions against them entered by the Administrator ("Administrator") of the Oklahoma Department of Securities ("Department") on August 29, 2002. The Consolidated Order addresses two formal administrative proceedings.

On November 19, 2001, a formal administrative proceeding ("ODS File No. 01-150") was initiated by the Department involving Southmark, Belden and Edwards. Southmark, Belden and Edwards requested a hearing with respect to the administrative proceeding in ODS File No. 01-150. Pursuant to Section 405 of the Oklahoma Securities Act (the "Act"), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (2001), the Administrator appointed a hearing officer (the "Hearing Officer")

to conduct the hearing and make recommendations of findings of fact, conclusions of law and sanctions.

The hearing was held on March 26 and 27, 2002. On July 15, 2002, the Hearing Officer submitted a Report and Recommendation. In the Consolidated Order the Administrator incorporated and adopted the findings of fact and conclusions of law submitted by the Hearing Officer in ODS File No. 01-150.

The second administrative proceeding ("ODS File No. 02-156") was initiated by the Department on April 17, 2002. The administrative proceeding in ODS File No. 02-156 was, by agreement of the parties, submitted to the Administrator without a hearing on the record and included pleadings, motions, briefs, exhibits and final stipulations of fact.

The Consolidated Order sets forth findings of fact, conclusions law and sanctions with respect to the proceedings in both ODS File No. 01-150 and ODS File No. 02-156.

We base our findings on review of the record in both proceedings.

I.

Administrative Proceeding – ODS File No. 01-150

A. Findings of Fact

1. Southmark was registered under the Act as an investment adviser from August 5, 1991 through December 31, 2000. (T. 10/4-6).

2. Belden was at all times material hereto the Chairman of the Board and the sole shareholder of Southmark. (Stipulation No. 7; State's Exh. 5 Schedule A of Form ADV).

3. Belden was registered under the Act as an investment adviser representative of Southmark from August 5, 1991 through December 31, 2000. (T. 10/16-18).

4. Edwards is the Vice-President of Southmark and was registered under the Act as an investment adviser representative of Southmark from August 12, 1993 through December 31, 2000. (T. 10/22-25).

5. Southmark, Inc. has been registered under the Act as a broker-dealer since January 5, 1994. (T. 12/3-5).

6. Southmark, Inc. has the same principal business address as Southmark: 5110 South Yale, Suite 100, Tulsa, Oklahoma. (State's Exhs. 5 and 6).

7. Belden is the majority owner of Southmark, Inc. (State's Exh. 6).

8. Belden and Edwards are registered under the Act as broker-dealer agents of Southmark, Inc. (T. 12/22-24).

9. The officers of Southmark, Inc. are: Steven L. Hunt, the counsel for Southmark in this matter, President; Belden, Chairman; and Edwards, Chief Compliance Officer. (State's Exh. 6, T 12/18-21).

10. Southmark did not file an application for the renewal of its investment adviser registration in December of 2000 or in January, February, or March of 2001. (T. 10/7-11, 15/20-25, 16/1, 9-14).

11. In early February 2001, an employee of the Oklahoma Department of Securities ("Department") contacted Southmark to advise the firm that an application for renewal of its investment adviser registration for calendar year 2001 had not been received by the Department and that its registration had not been renewed. (T. 16/3-8).

12. On April 2, 2001, the Department received Southmark's application on Form ADV for initial registration as an investment adviser under the Act for calendar year 2001. (State's Exh. 5, 16/15-19).

13. On April 9, 2001, John Ulrey, Director of Licensing for the Department, went to Southmark's offices to determine the extent of business conducted by Southmark after December 31, 2000. (T. 7/4-9, 18/11-14).

14. The records of Southmark show that new investment advisory contracts were entered into by Southmark between January 8 and March 30, 2001 and that Southmark entered into a new consulting agreement with New Century Financial Group, LLC ("New Century") dated March 11, 2001. (State's Exhs. 7 and 8, T. 20/15-25, 21, 22/1-15).

15. In its agreement with New Century dated March 11, 2001 Southmark represented itself to be a duly registered investment adviser in good standing. (State's Exh. 8, Para. 10, T. 22/24-25, 23/1-5).

16. In its Client Agreement with Vincent and Nancy Wright entered into by Southmark and signed February 9, 2001, as well as with other clients, Southmark represented itself to be a registered investment advisory service. (State's Exh. 9, T. 23/10-25, 24/1-5, Stipulation No. 21).

17. In a letter dated April 19, 2001, the Department advised Southmark that its application would not be deemed complete until it provided information about its four percent annual fee and the Department's pending enforcement file ODS 01-150 was completed. (State's Exh. 10).

18. In a letter dated April 26, 2001, Southmark gave the Department information about its four percent annual fee. (State's Exh. 11, T. 26/8-23).

19. In a letter dated May 10, 2001, Southmark gave the Department information about its relationship with a previous timing service. (State's Exh. 12).

20. On April 2, 2001, the Department received applications for Belden's registration and for Edwards' registration for the calendar year 2001 as investment adviser representatives of Southmark. (State's Exhs. 43 and 44).

21. Southmark applied for registration as an investment adviser with the United States Securities and Exchange Commission ("SEC") for calendar year 2002 and made a notice filing with the Department on December 27, 2001. (T. 13/14-16, 14/18-19).

22. The SEC made effective Southmark's investment adviser registration on March 1, 2002, and Southmark's notice filing with the Department was also effective on that date. (T. 14/23-25).

23. On January 24, 2002, the Department received applications to register Belden and Edwards as investment adviser representatives under the Act, and the Department requested further information from the applicants. (T. 14/17-21, 15/1-11).

24. Between January 1, 2001 and September 30, 2001 Southmark received approximately \$654,000 in advisory fees. (Stipulation No. 24, T. 106/17-22).

25. Southmark, Belden, and Edwards provided investment advisory services in this state after December 31, 2000. (Stipulation No. 22).

26. Under the consulting agreement of March 11, 2001 ("New Century Agreement"), New Century agrees to provide market timing signals to Southmark for its use in managing clients' accounts. (State's Exh. 8, Para. 1).

27. The information provided by New Century under the New Century Agreement is generic and does not purport to consider the individual needs of each Southmark client. (T. 221/10-14).

28. Implementation of New Century's recommendations under the New Century Agreement is within the sole discretion of Southmark. (State's Exh. 8, Para. 1, T. 280/11-19).

29. Although New Century provides timing signals in connection with a number of mutual funds, the timing signals provided under the New Century Agreement are limited at Southmark's request to signals relating to American Skandia and the Small Cap Plus Fund of the Potomac Funds. (State's Exh. 8, Para. 1, T. 223/2-8, 19-25, 224/1-18).

30. Southmark offers a managed account program ("Program") utilizing timing signals provided by New Century in connection with investments in the Potomac Small Cap Plus Fund in which Southmark acts as the investment adviser for each participating client. (State's Exh. 24, Stipulation No. 25).

31. The sales literature ("Sales Literature") for the Program states that it is a "personalized management service" and that "the results of each client may differ due to the client's individual investment decisions." (State's Exh. 24, p.2).

32. The Sales Literature contains backtested performance results for a hypothetical \$100,000 investment in the Potomac Small Cap Plus Fund made on December 31, 1995. (Stipulation No. 27, State's Exh. 24).

33. The use of a backtested model to depict actual performance is not an acceptable practice in the industry, and the presentation in the Sales Literature is misleading to an unsophisticated investor. (T. 321/16-23, 323/16-25, 324/1-10).

34. The Sales Literature purportedly compares the performance results of an unmanaged investment account to the performance results of a managed investment account as of the end of calendar years 1996-2000. (Stipulation No. 26, State's Exh. 24, 319/8-11).

35. Southmark was advised by counsel for New Century to seek the advice of legal counsel regarding the presentation of performance figures in the Sales Literature. (T. 217/23-25, 218/1-2, 251/3-8, 252/11-13, 266/21-24).

36. Southmark does not disclose in the Sales Literature which class of shares of the Potomac Small Cap Plus Fund is portrayed by the performance figures in the Sales Literature or that the Broker Class shares in the Potomac Small Cap Plus fund were not in existence until the Fall of 1999. (State's Exh. 24, T. 254/24-25, 255/1-3, 256/14-22, 325/25, 326/1-3).

37. Southmark does not disclose in the Sales Literature that Southmark did not utilize the timing signals of New Century until March of 2001. (State's Exhs. 8 and 24, T. 254/12-18, 325/10-14).

38. Southmark does not disclose in the Sales Literature its relationship with Southmark, Inc. and that because of that relationship, Southmark's interests may be adverse to its clients. (State's Exh. 24, T. 239/25, 240/1-13, 253/12-23).

39. Southmark does not disclose in the Sales Literature that the management fee charged by Southmark exceeds that customarily charged in the investment advisory industry and that services similar to those provided by Southmark are available from other investment advisers at lower rates. (State's Exh. 24, T. 239/15-24, 252/20-25, 253/1, 309/18-25, 310/1-6).

40. The client agreement that Southmark clients are required to execute ("Client Agreement") is misleading and does not comply with industry standards in that it purports to obligate the clients to agree in advance that all investments chosen by Southmark are suitable for the client and it also purports to obligate the client to request all information necessary to keep informed about their investments. (State's Exh. 27, T. 247/10-15, 313/25, 314/1-24, 316/4-8).

41. The amount of Southmark's management fee exceeds that customarily charged in the industry, is unreasonable, and cannot be justified because Southmark does not provide any unusual or extraordinary services to its clients. (T. 28/21-25, 29/1-4, 235/12-18, 237/17-25, 238/1-8, 21-23, 305/9-13, 309/13-25, 310/1-3).

42. The Client Agreement does not disclose that Southmark's management fee exceeds the fee usually charged in the industry and that services substantially similar to those provided by Southmark are available from other investment advisers at lower rates. (State's Exh. 27).

43. The Client Agreement does not disclose Southmark's relationship with Southmark, Inc. or that Southmark, Inc. will receive compensation on the purchase of the securities recommended by Southmark. (State's Exh. 27, T. 239/25, 240/1-13, 305/24-25, 306/1-7, 312/23-25, 313/1-10).

44. The Client Agreement states that Southmark will reimburse clients for contingent deferred sales charges and incidental fees, but Southmark did not pay any incidental fees or charges imposed by any Funds, Custodian or Manager on behalf of its clients as represented in the Client Agreement. (State's Exh. 27, T. 28/7-15, 133/15-25, 134/1-3, 233/5-25, 234/1-19, 283/20-25, 284/1-5, 285/5-14).

45. In the Client Agreement clients routinely appointed Belden or the President of Southmark as their Attorney in Fact, and Southmark and Belden

misused the limited power of attorney by acknowledging receipt of a required disclosure document on behalf of the client. (Stipulation No. 33, State's Exhs. 1, 27 and 34, T. 155/4-9, 288/20-25, 317/1-25, 318/1).

46. The Potomac Small Cap Plus Fund and the Potomac Money Market Fund ("Potomac Funds") use aggressive investment techniques and are designed primarily for experienced investors who intend to follow an asset allocation strategy. (State's Exhs. 39, 40, and 41, T. 139/6-9, 23-25, 140/1-2, 310/16-21).

47. The investment strategy used by Southmark is not an asset allocation strategy. (Kadagian 27/10-12).

48. Shares of the Potomac Funds are offered and sold through three classes: the Broker Class, the Advisor Class, and the Investor Class. (State's Exhs. 39, 40, and 41).

49. Broker Class shares are available exclusively through a participating broker or dealer. The annual net operating expenses are 2.27% for the Potomac Small Cap Plus Fund and 2% for the Money Market Fund. (State's Exhs. 41 and 42, T. 142/5-6, 146/8-11, 228/5-8, 22-23).

50. No initial sales charge is imposed on Broker Class shares, but Broker Class shares are subject to a deferred sales charge if they are not held for six years. (State's Exhs. 41 and 42, T. 143/21-25, 144/1-5).

51. Advisor Class shares are available exclusively through an investment adviser, bank, trust company or other authorized representative. The annual net operating expenses are 2.35% for the Potomac Small Cap Plus Fund and 2% for the Potomac Money market fund. No initial or deferred sales charges are imposed on Advisor Class shares. (State's Exhs. 40 and 42, T. 142/13-16, 143/17-18, 145/17-25, 228/5-8, 22-23).

52. Investor Class shares are available directly from the Potomac Funds or through certain brokers or dealers. The annual net operating expenses are 1.5% for the Potomac Small Cap Plus Fund and 1% for the Potomac Money Market Fund. No initial or deferred sales charges are imposed on Investor Class shares. (State's Exhs. 39 and 42, T. 142/19-25, 143/6-7, 144/23-25, 145/1-3, 228/5-8, 22-23).

53. The disadvantage to the investor who purchases Broker Class shares rather than Advisor or Investor Class shares is the six year holding period required to avoid imposition and payment of a deferred sales charge. (T. 231/24-25, 232/1-6).

54. On February 24, 2000, Southmark, Inc. entered into an agreement ("Dealer Agreement") with Rafferty Capital Markets, Inc., the principal underwriter in connection with the distribution of the mutual fund shares of the Potomac Funds, authorizing Southmark, Inc. to offer and sell certain mutual fund shares of the Potomac Funds. (Stipulation Nos. 34 and 35, State's Exh. 37).

55. In its Form ADV, Southmark denied that any related person had an arrangement to receive an economic benefit from a non-client in connection with the giving of advice by Southmark to its clients, although in truth Southmark, Inc. receives commissions under the Dealer Agreement in connection with such advice. (State's Exh. 5, Form ADV Part II-p. 6, Question 13, T. 43/8-16).

56. Between January 2001 and September 2001, there were approximately 218 accounts managed by Southmark in which transactions in the Potomac Funds were effected ("Potomac Accounts"). (T. 183/21-25, 184/1-13).

57. The Southmark account representative on the Potomac Accounts was either Belden or Edwards. (T. 184/14-17).

58. Southmark, Belden and Edwards recommended and directed the purchase of the Broker Class shares for most of their investment advisory clients who invested in mutual funds. (Stipulation No. 43).

59. With the limited power of attorney, Respondents transferred their clients into the Broker Class shares of the Potomac Funds without disclosing to their clients the disadvantage of purchasing such shares due to the necessity to hold the shares for six years to avoid imposition of a deferred sales charge. (T. 122/4-15, 162/14-19, 163/4-6).

60. Respondents do not disclose to their clients the amount of the compensation Southmark, Inc will receive on the purchase of the recommended mutual fund shares. (State's Exhs. 24 and 27, T. 313/8-10).

61. Respondents could have initially recommended and placed their clients in the Investor Class shares, in which case the clients would not have been subject to a deferred sales charge and would have received slightly better performance from the investment. (T. 229/9-17).

62. If Respondents had recommended Investor Class shares, the transactions could have been effected directly through the Potomac Funds by Respondents, eliminating the need for the services of a broker-dealer such as Southmark, Inc. (T. 142/19-25, 143/1).

63. The only reason the services of a broker-dealer such as Southmark, Inc. are needed is because Respondents are recommending Broker

Class shares in order to maximize their total compensation. (T. 240/1-6, 253/24-25, 254/1-4, 313/11-17).

64. Prior to using the timing signals of New Century, Southmark used the timing signals of Four Seasons Asset Management ("Four Seasons"). (T. 22/11-15).

65. Representatives of Four Seasons attempted to dissuade Southmark from recommending Class B shares of mutual funds based on the risk to its clients of paying a deferred sales charge if the clients wanted to or were obliged to liquidate their Class B investments. (Kadagian 21/3-25, 22/1-15, 22/21-25).

66. The factors for determining the suitability of a managed account or market timing program and particular investments include age, current income, net worth, marital status, tax bracket, investment experience, investment portfolio, liquidity needs, and health condition. (T. 246/10-24, 326/16-25, 327/1-3, 330/21-25, 331/1-5, Kadagian 6/6-16).

67. A market timing program brings an additional risk to investors and is more appropriate for only a small portion of an investor's portfolio. (T. 222/14-16, 323/10-15, 327/9-12).

68. A large portion of the assets in any investment portfolio should not be invested in the Small Cap Plus Fund. (T. 310/7-25, 311/1-9).

69. Respondents do not make a determination of whether a market timing strategy is appropriate for each of their clients. (T. 204/18-22, 246/25, 247/1-4).

70. During the second quarter of 2001, Southmark followed every timing signal provided by New Century relating to the Potomac Funds. (State's Exhs. 25 and 26, T. 204/1-9).

71. During the second quarter of 2001, Respondents managed the Potomac Accounts in an identical manner without regard to their clients' investment objectives or suitability standards. (T. 205/14-24, 211/12-20).

72. By utilizing only one investment strategy, one timing signal, and one mutual fund with respect to all of their clients in the managed account program, Respondents do not exercise independent judgment or provide a personalized service to their clients. (T. 205/22-25, 206/1-10, 248/3-15, 328/10-25, 329/1-7).

73. Most of Respondents' clients are seniors and many are elderly. (State's Exh. 11, Belden letter p.2).

74. Most of Respondents' clients cannot make large investments. (State's Exh. 11, Belden letter p.2).

75. An investment in the Small Cap Plus Fund of a large portion of the assets in the portfolio of an elderly, unsophisticated person with limited income is not suitable. (T. 310/7-10, 311/5-9, 334/24-25, 335/1-2).

76. Gerald E. Robb ("Robb"), an Oklahoma resident, maintained a managed account with Southmark, and Belden was the Southmark representative for Robb's account. (State's Exh. 35).

77. On December 6, 2000, Belden opened a Potomac Funds individual retirement account ("IRA") on behalf of Robb without Robb's prior knowledge. (State's Exh. 35, T. 119/8-17, 120, 13-25, 121/1-6).

78. On December 6, 2000 Robb was 80 years old, and he had been in failing health since 1991. (State's Exh. 35, T. 117/2-23).

79. Robb's Potomac Funds account was liquidated by his daughter on June 15, 2001 so that she could take care of her father's financial affairs. (State's Exh. 35, T. 126/3-10).

80. Belden did not advise Robb's daughter in advance that a deferred sales charge would be imposed upon liquidation of the account. (T. 121/19-23, 124/19-22, 125/11-25, 126/1-2).

81. After the account was closed, Mr. Robb's daughter was advised by a Southmark employee that the deferred sales charge could not be recouped. (T. 125/18-24, 132/2-13, 21-23).

82. Contrary to the provisions in the Client Agreement, the Robb IRA distribution fee of \$15. and the deferred sales charge of \$4,386.77 paid in 2001 were not paid or reimbursed by Southmark. (State's Exhs. 27 and 35, T. 133/15-25, 134/1-3, 191/19-25, 192/4-25, 193/1, 8-12).

83. Southmark and Belden did not make inquiry to update their client information so as to know that Robb was in failing health at the time his Potomac Funds account was opened. (T. 117/2-10, 118/3-8, 123/12-20, 287/11-15).

84. The recommendations to purchase Broker Class shares of the Potomac Small Cap Plus Fund were not suitable for Gerald Robb. (T. 329/8-20, 330/4-7).

85. Southmark's market timing program was not suitable for Gerald Robb. (T. 329/8-25).

86. Ruth M. Adams and James W. Adams, Oklahoma residents, maintained a managed account with Southmark, and Belden was the Southmark representative for the Adams' account. (State's Exh. 34).

87. On August 7, 2000, Belden opened a Potomac Funds account on behalf of Ruth Adams with \$33,815.87, and James Adams, her son, was added as joint tenant on the account as a safeguard to have someone to take care of the account if something happened to Ruth Adams. (State's Exh. 34, T. 152/25, 153/1-6).

88. On August 7, 2000, Ruth Adams was 90 years old and in poor health. (State's Exh. 34, T. 159/5, 16-17, 23-25, 160/1).

89. Ruth Adams received no financial assistance from her family and needed the money in her Southmark managed account to pay her living expenses. (T. 161/21-25, 162/1).

90. James Adams was not told that the Broker Class shares in his mother's account were subject to a deferred sales charge if the shares were liquidated within six years of purchase. (T. 163/4-6).

91. James Adams liquidated Ruth Adams' Potomac Funds account on January 23, 2001 in order to have money available for her nursing home care. (State's Exh. 34, T. 164/18-21, 170/13-14).

92. Contrary to the provisions in the Client Agreement, the service charge of \$12. and the deferred sales charges of \$1,508.38 paid by Ruth Adams during the time her account was active were not paid or reimbursed by Southmark. (State's Exhs. 27 and 34, T. 189/21-25, 190/1-10, 285/5-14).

93. Southmark and Belden did not make inquiry to update their client information so as to know that Ruth Adams was in a nursing home with liquidity needs to pay her living expenses at the time her Potomac Funds account was opened. (T. 162/23-25, 163/1-3, 287/11-15).

94. The recommendations to purchase Broker Class shares of the Potomac Small Cap Plus fund were not suitable for Ruth Adams. (T. 244/11-25, 245/18-21, 248/1 6-20, 330/4-7, 21-25, 331/1-8, Kadagian 26/8-13).

95. Southmark's market timing program was not suitable for Ruth Adams. (T. 329/8-25, 340/3-6).

96. T. Juanita Christmas ("Christmas"), an Oklahoma resident, maintained a managed account with Southmark, and Belden was the Southmark representative for her account. (State's Exhs. 2 and 3).

97. On January 17, 2001, Belden opened a Potomac Funds account on behalf of Christmas with \$19,787.72. (State's Exh. 1).

98. On January 17, 2001, Christmas was 73 years old, had a modest income, and was in poor health. (State's Exhs. 1 and 2, Christmas Trial Deposition 5/18-20, 6/2-9, 7/3, 13/3-7, 12/18-20).

99. Christmas' Potomac Funds account was liquidated on September 21, 2001 because Christmas was concerned about the level of performance of her investment. (State's Exh. 2, Christmas Trial Deposition 20/4-16, 36/13-24).

100. Contrary to the provisions in the Client Agreement, the wire fee charge of \$27. and deferred sales charges of \$878.29 paid by Christmas during the time her account was active were not paid or reimbursed by Southmark. (State's Exh. 2, T. 194/9-25, 195/1-3, 283/20-25, 284/1-5).

101. The recommendations to purchase Broker Class shares of the Potomac Small Cap Plus Fund were not suitable for Juanita Christmas. (T. 245/1-21, 248/16-20, 329/8-11, 330/4-7, 21-25, 331/1-8).

102. Southmark's market timing program was not suitable for Juanita Christmas. (T. 245/1-17, 329/8-25, 340/3-6).

103. On January 9, 1983, the registration of Ingle & Company, Inc. ("Ingle") lapsed. Belden was the President of Ingle, and at his request no action was taken against Ingle for this violation of the Act. (State's Exhs. 13, 14, and 15).

104. In 1985, Ingle failed to satisfy the post-registration filing requirements, which was a violation of the Act. (State's Exh. 16, T. 32/15-25, 33/1-3).

105. In 1987, Affiliated Financial Services of Tulsa, Inc. and Belden failed to maintain certain books and records relating to their services that were required by the Rules of the Oklahoma Securities Commission and paid referral fees to persons not registered as investment adviser representatives. Formal action was not taken by the Department in this case. (State's Exh. 17, T. 33/4-16).

106. In 1989, Affiliated Financial Services of Tulsa, Inc., with whom Belden was affiliated, failed to designate and register an investment adviser representative of the company. This matter was resolved informally by the Department. (State's Exhs. 18 and 19, T. 33/17-25, 34/1-11).

107. On July 25, 1991, Southmark and Belden entered into a formal agreement with the Department, which addressed Southmark's failure to complete the renewal of its investment adviser registration, Belden's failure to complete the renewal of his investment adviser representative registration and certain misleading advertising issues. (State's Exh. 20, 34/12-25, 35/1-13).

108. On September 27, 1993, the National Association of Securities Dealers, Inc. ("NASD") entered an order of censure and imposed a \$25,000 fine against Belden. The district Business Conduct committee for District No. 5 ("Committee") found that Belden distributed sales literature that had not been approved by his employer member firms and had not been filed with the NASD's advertising department. (State's Exh. 46).

109. On February 20, 2001, the NASD Regulation Inc. ("NASDR") initiated an action against Belden. The hearing panel determined that Belden made unsuitable recommendations to a customer for the purpose of increasing his commissions. The panel ordered that Belden be fined \$40,000, suspended in all capacities for 90 days, ordered to pay restitution of \$55,567.03 plus interest, ordered to requalify by examination, and ordered to pay assessed costs. (State's Exhs. 45 and 47, T. 36/22-25, 37/1-12).

110. Belden and Edwards have repeatedly refused in this case to comply with subpoenas issued by the Administrator and by the Hearing Officer and have repeatedly exhibited their contempt for the authority of the Administrator and the Hearing Officer and the Act and Rules. (Final Prehearing Order filed March 25, 2002).

111. To the extent any of these Findings of Fact are more properly characterized as Conclusions of Law, they should be so considered.

B. Conclusions of Law

1. Southmark is an investment adviser as defined in subsection (1) of Sec. 2 of the Act.

2. Belden and Edwards are investment adviser representatives as defined in subsection (m) of Sec. 2 of the Act.

3. Southmark transacted business in this state as an investment adviser without benefit of registration under the Act from January 1, 2001 until at least May 2, 2001, which is 30 days from the date of filing of its application on Form ADV for registration under the Act for 2001. The Department has not demonstrated that the application was incomplete in any material respect, and the Hearing Officer has previously ruled on March 7, 2002 that it is not rendered

incomplete merely because an investigation is pending by the Department. Southmark has willfully violated Sec. 201 of the Act.

4. The registrations of Belden and Edwards as investment adviser representatives are not effective during any period that Southmark is not registered or exempt from registration under the Act.

5. Belden and Edwards willfully violated Sec. 201 of the Act by transacting business in this state as investment adviser representatives of Southmark without registration under the Act from January 1, 2001 through May 2, 2001 and from January 1, 2002 through February 23, 2002. While the Department presented evidence that further information was requested from the applicants in 2002, the Department did not present evidence that the application was incomplete in any material respect.

6. Southmark willfully violated Sec. 201 of the Act by employing, supervising, being represented by, and associating with investment adviser representatives who were not registered under the Act.

7. Respondents breached their continuing duty to make a determination of whether a market timing program is appropriate for each of their clients.

8. Respondents breached their continuing duty to determine the suitability of all recommendations prior to making such recommendations to their clients.

9. Respondents breached their duty to disclose all potential conflicts of interest between Respondents and their clients.

10. Respondents breached their duty to disclose to their clients that the transactions to purchase the securities Respondents recommended can be effected through a broker-dealer other than Southmark, Inc. or directly through the Potomac Funds.

11. Respondents breached their duty to disclose to their clients the negative consequences of purchasing Broker Class shares if such shares are not held for the duration of the required holding period.

12. Respondents breached their fiduciary duty to deal fairly and to act in the best interests of their clients.

13. Respondents charged their clients an unreasonable advisory fee.

14. Respondents made materially false and misleading representations to their clients and prospective clients.

15. Respondents willfully violated 660:10-742 of the Rules as a result of the foregoing and by entering into investment advisory contracts with their clients that improperly attempt to limit Southmark's liability by having the client agree in advance that all investments are suitable and by imposing on the client the duty to make inquiry to obtain investment information.

16. Respondents willfully engaged in acts, practices, or courses of business that operated as a fraud or deceit upon their clients, in violation of Sec. 102 of the Act.

17. Respondents willfully engaged in dishonest and unethical practices in the securities industry in violation of the Act and the Rules.

18. While Respondents refused to comply with proper discovery orders of the Administrator and the Hearing Officer, this was not a violation of the Act. While a refusal without adequate excuse to make books and records available to the Administrator would be a violation of Sec. 203 of the Act, failure to respond to subpoenas of the Administrator may be remedied under Sec. 405 of the Act by application to the District Court and failure to comply with discovery may be addressed under 660:2-9-3 of the Rules by preclusion orders of the Hearing Officer.

19. Appropriate sanctions against Southmark under Sec. 406 of the Act should include a fine of \$50,000, censure, and assessment of the costs of the investigation by the Department under Sec. 405 of the Act.

20. Appropriate sanctions against Belden should include a fine of \$50,000, censure, a cease and desist order, assessment of the costs of the investigation by the Department under Sec. 405 of the Act, and suspension from association with any investment advisor subject to the provisions of the Act for a period of two years.

21. Appropriate sanctions against Edwards should include a fine of \$5,000, censure, a cease and desist order, and suspension from association with any investment advisor subject to the provisions of the Act for a period of six months.

22. It is in the public interest for the Administrator to impose sanctions against the Respondents.

23. To the extent any of these Conclusions of Law are more properly characterized as findings of Fact, they should be so considered.

II.

Administrative Proceeding - ODS File. No. 02-156

A. Findings of Fact

1. At all times material to the proceeding in File No. ODS 02-156, Brown, an individual, was an Oklahoma resident who resided at 2850 E. 90th St. South, Tulsa, Oklahoma and was employed at 5110 S. Yale, Tulsa, Oklahoma. (SE 3 and DE 3)
2. At all times material to the proceeding in File No. ODS 02-156, Ferrell, an individual, was an Oklahoma resident who resided at 47 Fox Run Circle, Tulsa, Oklahoma and was employed at 5110 S. Yale, Tulsa, Oklahoma. (DE 4)
3. Southmark was initially registered under the Act as an investment adviser on August 5, 1991. Southmark was registered as an investment adviser with the U.S. Securities and Exchange Commission ("SEC") on March 1, 2002. (FS 3)
4. The Department received a notice concerning exemption from registration as an investment adviser from Southmark pursuant § 202.1 of the Act on December 27, 2001. [Official notice taken of the ODS public records ("Notice")]
5. All of the requirements for such exemption notice pursuant to § 202.1 of the Act were met on March 1, 2002. (Notice)
6. The official records of the ODS show that Southmark is not and has not been registered as an investment adviser in the state of Oklahoma at any time in 2002. (Notice)
7. From January 1, 2002, through June 19, 2002, Southmark transacted business in the state of Oklahoma as an investment adviser. (FS 2)
8. From January 1, 2002, through February 28, 2002, Southmark entered into at least thirteen investment account service contracts ("Client Agreements") with Oklahoma residents that provided for Southmark, among other services, to monitor investments, research new managers and Funds, keep the allocation of investments in line with the objectives of safety and return, and charge fees for management, transactions, exchanges and set-up. (SE 11-23)
9. Between February 28, 2002, and April 2, 2002, Southmark entered into at least four (4) additional Client Agreements with Oklahoma residents. (SE 24-27)

10. Belden is Chairman of the Board of Directors and the sole shareholder of Southmark. (FS 21)
11. Belden was initially registered under the Act as an investment adviser representative of Southmark on August 5, 1991. (FS 21)
12. On January 23, 2002, Belden submitted an application for registration under the Act as an investment adviser representative of Southmark for calendar year 2002. (FS 22)
13. By letter dated March 6, 2002, Belden was notified that his application for registration under the Act was deficient. (FS 23)
14. On March 20, 2002, Belden submitted to the Department additional information in connection with his application for registration. (FS 24)
15. The official records of the ODS show that Belden's application for registration has not become effective for 2002. (Notice)
16. Edwards is Vice President of Southmark. (FS 25)
17. On January 23, 2002, Edwards submitted an application for registration as an investment adviser representative of Southmark for calendar year 2002. (FS 27)
18. By letter dated March 6, 2002, Edwards was notified that her application for registration under the Act was deficient. (FS 27)
19. On March 20, 2002, Edwards submitted additional information to the Department in connection with her application for registration. (FS 28)
20. The official records of the ODS show that Edward's application for registration has not become effective for 2002. (Notice)
21. Brown filed an application to register under the Act as an investment adviser representative of Southmark on January 23, 2002. (FS 28)
22. By letter dated March 6, 2002, Brown was notified that her application for registration under the Act was deficient. (FS 29)
23. On March 20, 2002, Brown submitted additional information to the Department in connection with her application for registration to include a letter dated March 6, 2002, stating that she had not "conducted any advisory activity through the firm [Southmark of Tulsa, Inc.]." (SE 9, FS 30)

24. The official records of the ODS show that Brown's application for registration has not become effective for 2002. (Notice)
25. Ferrell is not and has never been registered under the Act as an investment adviser representative of Southmark. (FS 31)
26. Ferrell has not filed an application to register under the Act as an investment adviser representative of Southmark. (FS 32)
27. For the period beginning January 1, 2002, and ending June 19, 2002, Belden, Edwards, Brown and Ferrell met with potential customers of Southmark at its offices in Tulsa, Oklahoma. (FS 4)
28. For the period beginning January 1, 2002, and ending on June 19, 2002, Belden, Edwards, Brown and Ferrell each recommended and advised Oklahoma residents to participate in the managed investment account program of Southmark. (FS 5)
29. For the period beginning January 1, 2002, and ending on June 19, 2002, Belden, Edwards, Brown and Ferrell each recommended and advised Oklahoma residents to purchase certificates of deposit and/or shares of mutual funds sponsored by the Potomac Funds or American Skandia that would be managed through the managed account program of Southmark. (FS 6)
30. For customers purchasing mutual fund shares, Belden, Edwards, Brown and Ferrell obtained customer information, assessed suitability and recommended the shares of the Potomac Funds and/or American Skandia mutual funds. (FS 8)
31. Belden executed eleven (11) of the Client Agreements as the principal of Southmark. (FS 13)
32. Edwards executed six (6) of the Client Agreements as the principal of Southmark. (FS 12)
33. Brown executed eight (8) of the Client Agreements as the representative of Southmark. (FS 11)
34. Ferrell executed nine (9) of the Client Agreements as the representative of Southmark. (FS 10)
35. Southmark is identified in the Client Agreements as "a registered Investment Advisory service." (SE 24-27, FS 14)
36. By the terms of the Client Agreements, clients are charged a management fee of 1% per quarter. (FS 16)

37. At all times material to the proceeding in File No. ODS 02-156, Southmark paid salaries to Edwards, Brown and Ferrell. (SE 60, FS 19)

38. At all times material to the proceeding in File No. ODS 02-156, Southmark paid Belden \$180,365.67. (SE 61)

39. At all times material to the proceeding in File No. ODS 02-156, Belden and Edwards supervised the activities of Brown and Ferrell. (FS 17)

40. As a part of the applications for registration in Oklahoma as investment adviser representatives or broker-dealer agents, Belden, Edwards, Brown and Ferrell have each filed a certification with the Department that he or she has carefully reviewed the Act, and the rules and regulations adopted thereunder, and fully understands his or her responsibilities thereunder as an investment adviser representative or broker-dealer agent. (SE 3, 4 and 5 and Notice)

41. From January 1, 2002, through June 19, 2002, Southmark did not advise its clients that Belden, Edwards, Brown and Ferrell were not registered as investment adviser representatives under the Act. (FS 33)

42. On April 17, 2002, the Department initiated a formal administrative proceeding to deny the effectiveness of the 2002 applications for registration of Belden, Edwards and Brown as investment adviser representatives and for an order for Southmark and Ferrell to cease and desist from violations of the Act, and/or to impose other appropriate sanctions. The proceeding was initiated through the submission of an Enforcement Division Recommendation to the Administrator of the Department. (FS 34)

43. To the extent any of these Findings of Fact are more properly characterized as Conclusions of Law, they should be so considered.

B. Conclusions of Law

1. At all times material to the proceeding in File No. ODS 02-156, Southmark was an investment adviser as defined in § 2 (l) of the Act.

2. At all times material to the proceeding in File No. ODS 02-156, Belden, Edwards, Brown and Ferrell were investment adviser representatives as defined in § 2 (m) of the Act.

3. Every registration as an investment adviser representative under § 201 (e) of the Act expires on December 31 each year and may be renewed annually upon written application, as specified by the Administrator by rule or order, and payment of the fee without furnishing any further information unless specifically required by the Administrator. Application for renewals must be made no later

than December 31 in each year; otherwise, the requirements for initial registration must be satisfied.

4. Southmark transacted business in this state as an investment adviser without benefit of registration or exemption from registration under the Act from January 1, 2002, until February 28, 2002.

5. Belden, Edwards, Brown and Ferrell transacted business in this state as investment adviser representatives of Southmark from January 1, 2002, until June 19, 2002.

6. Belden, Edwards, Brown and Ferrell willfully violated § 201 of the Act by transacting business in this state as investment adviser representatives of Southmark without registration under the Act from January 1, 2002, through June 19, 2002.

7. In the proceeding in File No. ODS 02-156, Brown made a statement in a document filed that was, at the time and in light of the circumstances under which it was made, false or misleading in a material respect.

8. Southmark willfully violated § 201 of the Act by employing, supervising, being represented by, and associating with investment adviser representatives who were not registered under the Act.

9. Appropriate sanctions against Southmark under § 406 of the Act should include a censure and a cease and desist order.

10. Appropriate sanctions against Belden should include a civil penalty of \$50,000, a censure, a cease and desist order, assessment of the costs of the investigations by the Department under § 405 of the Act, and a bar from association with any investment adviser subject to the provisions of the Act.

11. Appropriate sanctions against Edwards should include a civil penalty of \$5,000, a censure, a cease and desist order and suspension from association with any investment adviser subject to the provisions of the Act for a period of six months.

12. Appropriate sanctions against Brown should include a civil penalty of \$5,000, a censure, a cease and desist order and suspension from association with any investment adviser subject to the provisions of the Act for a period of six months.

13. Appropriate sanctions against Ferrell should include a civil penalty of \$5,000, a censure and a cease and desist order.

14. It is in the public interest for the Administrator to impose sanctions against the Respondents.

15. To the extent any of these Conclusions of Law are more properly characterized as Findings of Fact, they should be so considered.

On the basis of the foregoing it is hereby ORDERED that the sanctions imposed in the Consolidated Order are MODIFIED and AFFIRMED as follows:

Respondent Southmark is ordered to cease and desist from violations of §§ 102 and 201 of the Act and 660:10-7-42 of the Rules;

Respondent Belden is ordered to cease and desist from violations of §§ 102 and 201 of the Act and 660:10-7-42 of the Rules;

Respondent Edwards is ordered to cease and desist from violations of §§ 102 and 201 of the Act and 660:10-7-42 of the Rules;

Respondent Brown is ordered to cease and desist from violations of §§ 201 and 403 of the Act; and

Respondent Ferrell is ordered to cease and desist from violation of § 201 of the Act.

It is further Ordered that:

Respondent Southmark is censured;

Respondent Belden is barred from association with an investment adviser that is subject to the provisions of the Act;

Respondent Edwards is censured and suspended from association with Southmark or any other investment adviser that is subject to the provisions of the Act for a period of six (6) months commencing sixty (60) days from the date of the Consolidated Order. Respondent Edwards is further ordered to pay a civil penalty in the amount of \$5,000.00;

Respondent Brown is censured and suspended from association with Southmark or any other investment adviser that is subject to the provisions of the Act for a period of six (6) months commencing sixty (60) days from the date of the Consolidated Order. Respondent Brown is further ordered to pay a civil penalty in the amount of \$5,000.00;

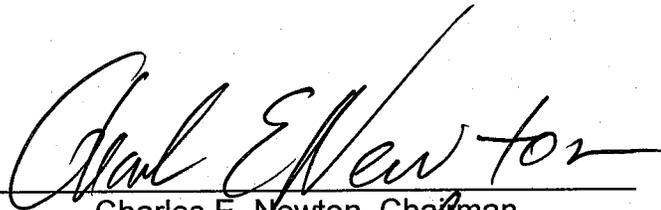
Respondent Ferrell is censured and ordered to pay a civil penalty in the amount of \$5,000.00; and

The pending registration applications of Respondents Edwards and Brown as investment adviser representatives of Southmark are ordered effective as of the date of the Consolidated Order.

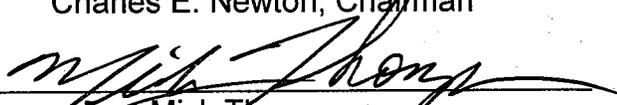
By the Commission

Dated this 8th day of November, 2002.

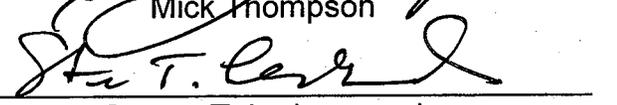
(SEAL)



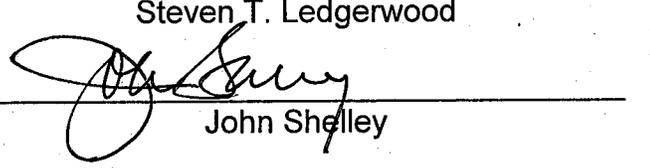
Charles E. Newton, Chairman



Mick Thompson



Steven T. Ledgerwood



John Shelley

Donald E. Criswell