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LEGAL PROCESS #1

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

THE PEOPLE OF THE STATE OF CALIFORNIA, by and through the CALIFORNIA CORPORATIONS COMMISSIONER, Plaintiff, vs. FRANK JOSEPH DEFELICE, Defendant.	Case No.: 06AM03883 **COMPLAINT FOR PERMANENT INJUNCTION** **VIOLATION OF CALIFORNIA CORPORATIONS CODE SECTION 25230 (UNLICENSED INVESTMENT ADVISER)** **VIOLATION OF AN ORDER ISSUED BY THE CALIFORNIA CORPORATIONS COMMISSIONER UNDER CALIFORNIA CORPORATIONS CODE SECTION 25532**

THE PEOPLE OF THE STATE OF CALIFORNIA, by and through Wayne Strumpfer, Acting California Corporations Commissioner, acting to protect the public from unlicensed and unlawful investment advisers, brings this action in the public interest, allege as follows:

VENUE AND JURISDICTION

1. The California Corporations Commissioner ("Commissioner") brings this action to enjoin the defendant from violating the Corporate Securities Law of 1968 (California Corporations Code section 25000, et seq.).

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2. The Commissioner brings this action pursuant to California Corporations Code sections 25530 and Government Code section 11180 et seq., in his capacity as head of the California Department of Corporations ("Department").

3. The Defendant, Frank Joseph DeFelice, has transacted and continues to transact business within Sacramento County, California and throughout the state. The violations of law described herein have occurred within Sacramento County, California and will continue to occur unless enjoined.

DEFENDANT

4. Frank Joseph DeFelice ("DeFelice" or "Defendant") is a resident of San Jose, California and is employed as a dance instructor at Fred Astaire Dance Studio located in Santa Clara, California.

STATEMENT OF FACTS

5. On or about 2003, DeFelice became acquainted with a recently widowed, elderly woman ("Victim") while giving dance lessons at his place of employment, the Fred Astaire Dance Studio. DeFelice became a companion to the Victim, charging her $60 per hour for in-home care services. DeFelice also managed the Victim's finances, including managing her securities accounts at brokerage firms, at an initial rate of $50 per hour, which he subsequently raised to $60 per hour. Thereafter, as the number of hours charged by DeFelice increased, he reduced his hourly rate for investment advice and management to $45 per hour. The securities accounts managed by DeFelice consisted of two separate securities accounts totaling approximately $100,000. DeFelice charged the Victim for services including market research and monitoring, recommending investment opportunities and portfolio management, including buying and selling securities on the Victim's behalf pursuant to a limited power of attorney. Effective November 1, 2004, DeFelice began charging an additional 20 percent quarterly bonus based on the net investment profits realized from his services relating to the Victim's two securities accounts.

6. California Corporations Code section 25230 provides that it is unlawful for any individual to conduct business as an investment adviser without having first applied for and secured a certificate from the California Corporations Commissioner. DeFelice has neither

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applied for nor secured from the California Corporations Commissioner a certificate authorizing him to conduct business as an investment adviser.

7. On April 4, 2005, the Department issued a Desist and Refrain Order to DeFelice, pursuant to California Corporations Code section 25532, for violations of section 25230. The Desist and Refrain Order prohibited the Defendant from conducting business as an investment adviser, i.e. "from charging compensation for managing or providing advice concerning securities and/or securities portfolios or as to the advisability of investing in, purchasing or selling securities and/or securities portfolios, unless and until DeFelice has been appropriately licensed." Service of the Department's Desist and Refrain Order on DeFelice was completed on April 18, 2005.

8. On or about April 18, 2005 the Department received a letter from DeFelice in reply to the Department's Desist and Refrain Order, wherein he stated that he would "no longer actively manage her stocks, nor have any desire to continue to do so."

9. The Victim died on September 10, 2005. Contrary to the assurances DeFelice made to the Department in his letter of April 18, 2005, DeFelice continued to manage the Victim's securities accounts up to and after her death, including two purchases he carried out on September 23, 2005 in the Victim's account at TD Waterhouse. DeFelice indicated that he never received the 20 percent bonus on the profits resulting from the September 23, 2005 transaction.

FIRST CAUSE OF ACTION

CONDUCTING BUSINESS AS AN INVESTMENT ADVISER WITHOUT A CERTIFICATE IN VIOLATION OF CORPORATIONS CODE SECTION 25230

10. Plaintiff incorporates by reference paragraphs 1 through 9 of this Complaint as though fully set forth herein.

11. California Corporations Code section 25230 subdivision (a), in relevant part, provides:

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It is unlawful for any investment adviser to conduct business as an investment adviser in this state unless the investment adviser has first applied for and secured from the commissioner a certificate . . . authorizing the investment adviser to do so or unless the investment adviser is exempted by the provisions of Chapter 1 (commencing with Section 25200) of this part or unless the investment adviser is subject to Section 25230.1.

12. California Corporations Code section 25009 subdivision (a) defines "investment adviser," in relevant part, as:

"Investment Adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as part of a regular business, publishes analyses or reports concerning securities . . . .

13. During the period starting from approximately 2003 to the present, Defendant conducted business as an investment adviser without first obtaining the required certificate from the Commissioner in violation of Corporations Code section 25230. Defendant conducted market research and monitoring, and recommended investment opportunities. In conjunction with providing investment advice, Defendant, through a limited power of attorney, bought and sold securities on the Victim's behalf. Furthermore, Defendant was compensated for the investment advice he provided.

14. Defendant, in conducting said securities investment adviser business, was an investment adviser within the meaning of California Corporations Code section 25009.

15. At all relevant times, Defendant did not possess a certificate from the Commissioner authorizing him to engage in the business activities of an investment adviser.

16. Defendant was also not exempt from the provisions of California Corporations Code section 25230 requiring investment advisers to obtain a certificate from the Commissioner.

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17. Defendant continued to violate California Corporations Code section 25230 after the issuance of a final order by the Commissioner requiring Defendant to desist and refrain from violating the California Corporations Code, and after informing the Department by his letter of April 18, 2005, that he would comply with the order and halt his unlawful activity.

18. Defendants' pattern of conduct, as set forth above, demonstrates the necessity for permanent injunctive relief to restrain and prevent such and similar acts in violation of California Corporations Code section 25230 in the future. Unless enjoined, Defendant will continue to violate section 25230 of the California Corporations Code.

SECOND CAUSE OF ACTION

VIOLATION OF A PRIOR DESIST AND REFRAIN ORDER OF THE COMMISSIONER IN VIOLATION OF CORPORATIONS CODE SECTION 25532

19. Plaintiff realleges and incorporates by reference paragraphs 1 through 18 of this Complaint as though fully set forth herein.

20. California Corporations Code section 25532 authorizes the Commissioner of the Department of Corporations to issue orders directing persons to desist and refrain from engaging in investment adviser activities, when in the opinion of the Commissioner, they have engaged in activities in violation of the requirements set forth in section 25230.

21. The Department issued a Desist and Refrain Order to DeFelice on April 4, 2005. The Desist and Refrain Order prohibited DeFelice "from charging compensation for managing or providing advice concerning securities and/or securities portfolios or as to the advisability of investing in, purchasing or selling securities and/or securities portfolios unless and until he has been appropriately licensed."

22. On April 18, 2005, the Desist and Refrain Order was served on Defendant.

23. Thereafter Defendant violated the Desist and Refrain Order by continuing to charge compensation for managing and providing advice concerning securities and/or securities portfolios and as to the advisability of investing in, purchasing or selling securities and/or securities portfolios.

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24. Defendants' pattern of conduct, as set forth above, demonstrates the necessity for permanent injunctive relief to restrain and prevent such and similar acts in violation of California Corporations Code section 25532 in the future. Unless enjoined, Defendant will continue to violate the Commissioner's Desist and Refrain Order.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment against Defendant Frank DeFelice as follows:

1. For an Order of Preliminary Injunction and, ultimately, a Permanent Injunction restraining and enjoining Defendant Frank Joseph DeFelice, also known as Frank DelFelice, from directly or indirectly:

a. Violating California Corporations Code section 25230 subdivision (a) by conducting business as an investment adviser without a certificate from the Corporations Commissioner, or aiding and abetting or substantially assisting the violations thereof.

b. Violating the Desist and Refrain Order issued, pursuant to California Corporations Code section 25235, on DeFelice.

c. Removing, destroying, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, any books, records, documents, correspondence, brochures, manuals, or other documents of any kind in the possession, custody or control of the Defendant, including but not limited to those pertaining to the Victim.

2. That plaintiff recover its costs of suit herein.

3. For such and further relief as the court may deem just and proper.

Dated: May 19, 2006

WAYNE STRUMPFER
Acting California Corporations Commissioner

By: _____
ALEXANDER M. CALERO
Corporations Counsel
Attorney for the People
of the State of California

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