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# Texas State Securities Board

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EDWARD ESCUDERO  
MEMBER

DOCKET NO. 312-07-0070  
(SSB Docket No. 06-IC07)

IN THE MATTER OF  
THE APPLICATION FOR  
INVESTMENT ADVISER REGISTRATION OF  
DAVID HENRY DISRAELI DBA  
LIFEPLAN ASSOCIATES  
AND THE INVESTMENT ADVISER  
REPRESENTATIVE REGISTRATION OF  
DAVID HENRY DISRAELI

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ORDER NO. IC08-DOR-01

TO: David Henry Disraeli (CRD No. 1432735)  
David Henry Disraeli dba Lifeplan Associates (IARD No. 124175)  
710 West Avenue  
Austin, Texas 78701  
and  
7907 Havenwood  
Austin, Texas 78759

## **ORDER DENYING REGISTRATION AS AN INVESTMENT ADVISER AND AS AN INVESTMENT ADVISER REPRESENTATIVE**

### **STATEMENT OF THE CASE**

A Notice of Hearing was issued to David Henry Disraeli (Respondent) on October 2, 2006, for a November 29-30, 2006 hearing on the merits. The hearing on the merits was held June 5-8, 2007, before Administrative Law Judge Paul D. Keeper (ALJ) in a hearing room at the State Office of Administrative Hearings in the William P. Clements Building, 300 West 15th Street, Austin, Texas.

The Respondent represented himself. The Staff of the State Securities Board was represented by Benette L. Zivley. The parties stipulated to most of the basic facts in this case. The issues of notice and jurisdiction were not contested and are addressed in the Findings of Fact and Conclusions of Law.

The ALJ issued a Proposal for Decision (PFD) on September 7, 2007. On September 24, 2007, Respondent filed Respondent's Exceptions to Proposal for Decision. Staff filed a Reply to Respondent's Exceptions on October 9, 2007. The ALJ responded to the exceptions and reply by letter dated October 19, 2007. In the letter, the ALJ modified the PFD by making several changes, amendments, and revisions, and declining to make changes to several of the Respondent's other exceptions.

The Findings of Fact and Conclusions of Law from the modified PFD are as follows:

### **FINDINGS OF FACT**

1. David Henry Disraeli (Respondent) has been involved in the securities industry since 1985, holding registrations from the United States Securities and Exchange Commission (SEC) and the Texas State Securities Board (SSB) and State Securities Commissioner (Commissioner) as a securities dealer, an agent of a dealer, an investment adviser, and an investment adviser representative.
2. On November 6, 2002, the Deputy Securities Commissioner of the SSB issued Emergency Cease and Desist Order CDO-1483 against Respondent for his actions in offering unregistered securities and engaging in violations of the Texas Securities Act (Securities Act), TEX. REV. CIV. STAT. ANN. Art. 581-1 et **seq.**
3. On April 2, 2003, Respondent waived his rights to a hearing and consented to the Commissioner's entry of a Cease and Desist Order against Respondent in which the Commissioner found that Respondent had:
  - failed to pay his federal income taxes for calendar years 1999 and 2000;
  - been the subject of a federal tax lien by the United States Internal Revenue Service (IRS);
  - solicited investments in interests that were not registered for sale in Texas;
  - identified himself as an "investment adviser" without having that registration; and
  - failed to disclose the existence of the federal tax lien in his investment sales materials.

#### Reaistration as a Newly Formed Adviser

4. On August 13, 2003, Respondent filed a Uniform Application for Securities Industry Registration or Transfer, Form U-4, with the Commissioner in which Respondent applied for registration as an agent of 1st Discount Brokerage, Inc. (1st Discount).
5. On September 30, 2003, Respondent filed an amended Form U-4 with the Commissioner for registration as an agent of 1st Discount.

6. On September 19, 2003, and October 8, 2003, the staff of the SSB (Staff) opposed Respondent's application for registration as an agent of 1st Discount on the basis of Respondent's prior disciplinary history.
7. On October 8, 2003, Respondent requested a hearing on his application as agent for 1st Discount before the State Office of Administrative Hearings (SOAH).
8. On October 8, 2003, Respondent filed with the SEC a Uniform Application for Investment Adviser Registration, Form ADV, for registration of the applicant, "Disraeli and Associates," using the primary business name of "David Henry Disraeli d/b/a Lifeplan Associates" [sic].
9. In Respondent's October 8, 2003, Form ADV filing, Respondent claimed that Disraeli & Associates was a corporation and was a newly formed adviser under the provisions of Rule 203A-2(d) because he expected to be eligible for SEC registration within 120 days.
10. In representing to the SEC in his October 8, 2003, Form ADV filing that he was a newly formed adviser, Respondent claimed that: (1) he was not required to be registered with any state securities authority, (2) he had a reasonable expectation that he would be eligible to register with the SEC within 120 days after the date his registration with the SEC became effective, and (3) he would undertake to withdraw from SEC registration if, on the 120th day after his registration with the SEC became effective, he would be prohibited from registering with the SEC.
11. At the time that Respondent filed his October 8, 2003, Form ADV with the SEC, he did not have a reasonable basis to believe that he would have \$25 million under management or be an investment adviser to an investment company.
12. On October 21, 2003, Respondent filed with the Commissioner a Form U-4 for registration as an investment adviser representative of David Henry Disraeli d/b/a Lifeplan Associates, f/k/a Lifeplan Associates, Inc.
13. On November 12, 2003, Staff notified Respondent of its opposition to Respondent's October 21, 2003, Form U-4 application.
14. On November 12, 2003, Respondent requested a hearing on his application for registration as an investment adviser representative for Lifeplan.
15. Staff referred Respondent's applications to SOAH for hearing, and SOAH docketed the case as SOAH Docket No. 312-04-1334.
16. On November 13, 2003, Respondent filed with the SEC an amendment to the October 8, 2003, Form ADV in which Respondent changed the legal name of the applicant from "Disraeli & Associates" to "Lifeplan Associates, Inc." and changed the form of business from a corporation to a sole proprietorship.

17. By registering as a sole proprietorship with the SEC, Respondent avoided registering with the Commissioner as an investment adviser representative.
18. At the time that Respondent filed the November 13, 2003, amendment to Form ADV, Respondent did not meet the SEC threshold requirement of having \$25 million in assets under management.
19. Although Respondent represented to the SEC in his October 8, 2003, Form ADV filing that Disraeli & Associates was a newly formed adviser, Respondent had previously provided advisory services to Richard Bass, William Behrens, and Nicholas Mallouf.
20. The assets that Respondent had under management at the time of the filing of the October 8, 2003, Form ADV were derived from Disraeli & Associates.
21. Respondent provided to his existing clients to whom he was rendering advisory services at the time of his filing of the October 8, 2003, Form ADV with the SEC a summary memorandum (Summary Memorandum) that stated that Lifeplan was the successor entity to Disraeli & Associates in all respects.

#### Reaistration as a Multi-State Adviser

22. On February 11, 2004, Respondent entered into an Undertaking, a compromise settlement agreement with the Commissioner, that settled all disputes in SOAH Docket No. 312-04-1334 and in which Respondent agreed:
  - to withdraw his September 30, 2003, Form U-4 application for registration as an agent of 1st Discount;
  - to withdraw his October 21, 2003, Form U-4 application as an investment adviser representative of David Henry Disraeli d/b/a Lifeplan;
  - not to file or allow to be filed any application for the registration of Respondent in Texas as a dealer, agent, investment adviser, or investment adviser representative for a period of 18 months following the date of the entry of the Undertaking;
  - not to act as a securities dealer or agent in Texas until Respondent registered with the Commissioner or used an available exemption from registration;
  - not to render services as an investment adviser or investment adviser representative in Texas until Respondent registered with the Commissioner or used an available exemption from registration; and
  - that Staff would not consider adversely any violations of the Act or SSB rules that were specifically alleged in the pleadings of the contested case.

23. On February 13, 2004, Respondent filed a second amendment to his October 8, 2003, Form ADV in which he changed the name of the applicant to "David Henry Disraeli dba Lifeplan Associates," retained the primary business name of "David Henry Disraeli d/b/a Lifeplan Associates" [sic], and claimed that Respondent met the multi-state adviser exemption under the provisions of the Advisers Act Rule 203A-2(e).
24. Under the terms of the multi-state advisers rule, Respondent asserted that he qualified for SEC registration (instead of registration in Texas alone with the Commissioner) by virtue of his obligation to register with 30 or more states as an adviser in their jurisdictions.
25. In amendments to his Form ADV filed on July 1, 2004, March 31, 2005, and November 9, 2005, Respondent also claimed the multi-state exemption.
26. At the time of Respondent's assertion of the multi-state exemptions, Respondent had an office in Texas only and all but one of his clients resided in Texas.
27. At no time did Respondent have more than 30 clients, and Respondent never had more than six clients in 30 or more states.
28. The basis for Respondent's claim that he was required to be registered as an investment adviser in 30 or more states was that he was engaged in soliciting advisory clients over the Internet.

#### Lifeplan Offering

29. During the periods September to December 2003 and December 2004 to March 2005, Respondent offered (Offering) and sold 220,000 shares of Lifeplan's common stock (Shares) at \$0.50 per share to eleven of his investment advisory clients.
30. Respondent's sale of the 220,000 shares of Lifeplan's stock raised a total of \$105,000.
31. Respondent made the Offering and sale of the Shares through the publication of a Summary Memorandum and later a full private offering memorandum (Final Memorandum).
32. The Summary and Final Memoranda stated that:
  - Lifeplan would operate under a business plan by which the company would apply the offering's proceeds to the operation of various wealth management services and ventures, including the operation of the advisory business and the creation of a limited partnership that would purchase and collect distressed consumer debt;

- a maximum of \$100,000 would be raised through the Offering (with a \$50,000 minimum) and that Lifeplan would apply the Offering proceeds to administrative and start up expenses and working capital;
  - Respondent would not receive a salary from Lifeplan and that his compensation would be calculated based on net profit, split pro-rata, between him and the other Lifeplan Associates, Inc. shareholders, according to their ownership in Lifeplan;
  - Lifeplan would hold and segregate the Offering proceeds, for return to investors, until reaching a \$50,000 minimum;
  - Lifeplan would apply \$42,000 to various administrative and start up expenses, and approximately \$58,000 to working capital, assuming that at least \$100,000 was raised through the offering; and
  - a the profits would be calculated and paid quarterly.
33. Contrary to Respondent's statements in the Offering representations in the Summary and Final Memoranda, Respondent used over \$80,000 of the total funds raised for personal and non-business related expenditures.
  34. On October 9, 2003, after raising only \$30,000 of the required minimum \$50,000, Respondent transferred \$12,000 from Lifeplan's account to his personal account to purchase a \$9,300 cashier's check payable to the IRS to discharge a personal federal income tax debt and to release a personal tax lien.
  35. Between October 9 and December 31, 2003, Respondent spent at least \$50,700 in funds raised through the Offering for personal debts and expenses, including \$25,000 for past-due rent on his personal residence, an additional \$3,300 for personal federal income taxes, and \$22,700 for other personal expenses, such as household groceries, medical fees, entertainment, charitable donations and dining.
  36. As of December 31, 2003, Respondent had deposited \$90,000 of investor funds in Lifeplan's bank account and had transferred \$83,500 of investor funds from Lifeplan's bank account to Respondent's personal bank account.
  37. Respondent never disclosed to investors in either the Summary or Final Memorandum that he intended to borrow funds from Lifeplan.
  38. During a January 2005 examination by the SEC of Respondent's advisory business, Respondent produced an undated personal promissory note (Note) payable by Respondent to Lifeplan, an obligation that had not been previously disclosed.
  39. Respondent did not disclose in the Summary or Final Memorandum the existence of his personal tax debt or tax lien and/or release.

40. Respondent knew that an offering document should disclose the personal use of investor proceeds and that generally such disclosure is necessary.

#### Failure to Timely Disclose

41. On May 31, 2005, Respondent was notified in writing by the SEC that he was the subject of a formal investigation, and was served with a subpoena requiring Respondent to provide the SEC staff sworn testimony and documents.
42. On September 16, 2005, Respondent filed with the Commissioner a Form U-4 for registration as an agent of 1stDiscount.
43. In completing his September 16, 2005, Form U-4, Respondent answered "No" to Disclosure Question 14G.(2) that inquired whether Respondent had been notified in writing that he was currently the subject of any investigation that could result in a "yes" answer to any part of Disclosure Question 14C.
44. Disclosure Question 14C required Respondent to disclose whether the SEC had ever: (1) found Respondent to have made a false statement or omission; (2) found him to have been involved in a violation of its regulations or statutes; (3) found him to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted; or imposed a civil penalty on him, or ordered him to cease and desist from any activity.
45. The instructions in Form U-4 include an explanation that an "investigation" is an SEC investigation after a "Wells notice" has been given.
46. A "Wells notice" is a notification issued by regulators to individuals or companies informing them of an investigation where potential legal infractions have been discovered.
47. The September 16, 2005, Form U-4 included an acknowledgment form that Respondent executed, stating that: (1) he had read and understood the instructions on the form, (2) his answers were true and complete to the best of his knowledge, (3) he understood that he was subject to administrative, civil or criminal proceedings if he gave false or misleading answers, and (4) he agreed to update his responses with timely filed amendments whenever changes occurred to answers previously reported.
48. On September 29, 2005 the staff of the SEC notified Respondent by a Wells notice (the Wells Notice) that (1) SEC staff intended to recommend that legal injunctive or administrative action be taken against Respondent and Life Associates, Inc., (2) SEC staff were alleging violations of provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940, and (3) the SEC staff could seek a permanent injunction and/or administrative relief, including revocation of Respondent's investment adviser registration, a bar against

future registration as, or association with, an investment adviser, disgorgement of ill-gotten monies, and a money penalty.

49. On October 7, 2005, the SEC granted Respondent an extension of time to respond to the Wells Notice.
50. On April 4, 2006, Respondent filed with the Commissioner a Form U-4 for registration as investment adviser representative under the firm name "David Henry Disraeli dba Lifeplan Associates, Inc." [sic].
51. As part of his April 4, 2006, Form U-4, Respondent answered "Yes" to Disclosure Question 14G.(2), stating that "[t]he Ft. Worth Office of the S.E.C. obtained a formal order of investigation in May of 2005. I believe the investigation has been completed and as of this date, no action has been taken . . . ."
52. On May 5, 2006, the SEC issued its "Order Instituting Administrative and Cease and Desist Proceedings" (SEC Order) against Respondent alleging that: (1) Respondent was not qualified to claim the multi-state adviser exemption in his February 13, 2004, Form ADV filing with the SEC; (2) Respondent misappropriated as much as \$60,000 of the \$105,000 in funds that Respondent raised from the sale of the Shares in the Offering; and (3) Respondent failed to keep books and records for his advisory business.
53. As part of the May 5, 2006, SEC Order, the SEC ordered that an SEC administrative law judge convene a public hearing to take evidence on the questions raised by the cease and desist order.
54. On June 26, 2006, Respondent filed with the Commissioner an amendment to his November 9, 2005, Form ADV in which he answered "Yes" to Question 11.G, which required him to disclose whether he was the subject of any regulatory proceeding that could result in a "yes" answer to any part of Question 11.C, which required disclosure if the SEC ever found him or any advisory affiliate to: have made a false statement or omission; have been involved in a violation of SEC regulations or statutes; have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or suspended; or if the SEC ever entered an order against him or any advisory affiliate in connection with investment-related activity; or if the SEC ever imposed a civil money penalty on him or any advisory affiliate, or ordered him or any advisory affiliate to cease and desist from any activity.
55. On April 4, 2006, Respondent filed a Form U-4 with the Commissioner to become registered with the Board as an investment adviser representative to Lifeplan.
56. On April 4, 2006, Respondent filed a Form ADV with the Commissioner to become registered with the Board as an investment adviser.

57. Respondent filed his April 2006 Forms U-4 and ADV with the Commissioner because the SEC had filed a formal action against Respondent to revoke his registration as an investment adviser.
58. On November 13, 2003, Respondent registered with the SEC as an investment adviser.
59. On November 13, 2003, Respondent filed with the SEC a Form ADV by which he amended an SEC registration for Lifeplan.
60. In the November 2003 Form ADV, Respondent claimed that he was a sole-proprietor successor entity of Lifeplan.
61. The hearing on the merits was held June 5-8, 2007, at the State Office of Administrative Hearings in Austin, Texas, before Administrative Law Judge Paul Keeper.
62. The record in this docket closed on August 3, 2007
63. Staff appeared through its counsel, Benette Zivley, and Mr. Disraeli appeared on his own behalf.
64. The allocation of pages of the transcript between the parties was 48% to Respondent and 52% to Staff.

### **CONCLUSIONS OF LAW**

The Securities Commissioner (Commissioner) has jurisdiction over this matter. Texas Securities Act, TEX. REV. CIV. STAT. ANN. art. 581-1 et seq. (Securities Act).

2. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. TEX. GOV'T CODE ANN. §§2003.021(b) and 2003.042.
3. David Henry Disraeli, Respondent, received proper and timely notice of the hearing. TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. An individual that is registered with the Securities and Exchange Commission (SEC) as an adviser is not required to register with the Commissioner as an advisory representative. Securities Act §12.B.
5. The Commissioner may deny an application for registration as an investment adviser or investment adviser representative if the applicant has engaged in any inequitable practice in the sale of securities or in rendering services as an investment adviser, or in any fraudulent business practice. Securities Act §14.A(3).

6. The Commissioner may deny an application for registration as an investment adviser or investment adviser representative if the applicant has made any material misrepresentation to the Commissioner or Board in connection with any information deemed necessary by the Commissioner or Board to determine an investment adviser's financial responsibility or an investment adviser's or investment adviser representative's business repute or qualifications. Securities Act §14.A(7).
7. In failing to make adequate disclosure to investors of his relevant financial information, including his Internal Revenue Service (IRS) lien, Mr. Disraeli engaged in an inequitable practice in the sale of securities and a fraudulent business practice, a violation of Securities Act §14.A(3).
8. In using corporate funds of Lifeplan Associates, Inc. (Lifeplan) for private purposes and in failing to disclose that use to his investors, Mr. Disraeli engaged in an inequitable practice in the sale of securities and a fraudulent business practice, a violation of Securities Act §14.A(3).
9. In making a loan to himself and failing to disclose that fact to his investors, Mr. Disraeli engaged in an inequitable practice in the sale of securities and a fraudulent business practice, a violation of Securities Act §14.A(3).
10. Mr. Disraeli engaged in a fraudulent business practice, a violation of Securities Act §14.A(3), when he: (1) represented to the SEC that he had a reasonable basis to expect to be eligible for registration with the SEC within 120 days, and (2) had no such reasonable belief.
11. Mr. Disraeli engaged in a fraudulent business practice, a violation of Securities Act §14.A(3), when he: (1) represented to the SEC that he was required to register as an investment adviser in 30 or more states, and (2) was not required to register.
12. In representing to the SEC that he was a newly formed adviser that expected to qualify for SEC registration within 120 days, when he was not a newly formed adviser, Mr. Disraeli engaged in a fraudulent business practice, a violation of Securities Act §14.A(3).
13. In failing to timely amend his responses to Questions 14G.(1) and (2) on his Form **U-4**, filed with the Commissioner on April 4, 2006, to disclose the SEC investigation after receipt of a "Wells notice," Mr. Disraeli engaged in a fraudulent business practice, a violation of Securities Act §14.A(3).
14. In representing to the Commissioner in Parts I.A and I.B of the Disclosure Regulatory Page (DRP) of the Form ADV of June 26, 2006, that a DRP had been submitted with a Form U-4 by an advisory affiliate, Mr. Disraeli made a false statement and engaged in a material misrepresentation to the Commissioner of information deemed necessary to determine the business repute and qualifications of an investment adviser and investment adviser representative, a violation of Securities Act §14.A(7).

15. In representing to the Commissioner in Parts I.A and 1.B of the Disclosure Regulatory Page (DRP) of the Form ADV of June 26, 2006, that a DRP had been submitted with a Form U-4 by an advisory affiliate, Mr. Disraeli made a false statement and engaged in a material misrepresentation to the Commissioner of information of a relevant fact, a violation of Securities Act §14.A(3).
16. Mr. Disraeli is liable for 48% of the cost of the transcript of the hearing on the merits. 7 TEX. ADMIN. CODE §105.14.
17. Based on the Findings of Fact and Conclusions of Law, Mr. Disraeli's applications for registration of April 4 and 6, 2006, as an investment adviser and investment adviser representative should be denied, and Mr. Disraeli should be assessed 48% of the cost of the transcription of the hearing on the merits.

### ORDER

IT IS THEREFORE ORDERED pursuant to TEX. REV. CIV. STAT. ANN. art. 581-14 that the applications for registration of DAVID HENRY DISRAELI as an investment adviser and investment adviser representative are hereby DENIED.

IT IS FURTHER ORDERED pursuant to 7 TEX. ADMIN. CODE §105.14 that DAVID HENRY DISRAELI is assessed \$2,474.04, representing 48% of the cost of the transcription of the hearing on the merits. Payment shall be made by the Respondent's delivery of a cashier's check to the Securities Commissioner in the amount of Two Thousand Four Hundred Seventy-Four and <sup>04/100</sup> Dollars (\$2,474.04), payable to the State of Texas, within fifteen (15) days after this order becomes final.

SIGNED and ENTERED by the Securities Commissioner this 14<sup>th</sup> day of February, 2008.



DENISE VOIGT CRAWFORD  
Securities Commissioner

## CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been sent to the Respondent by facsimile and certified mail, return receipt requested, at the last known addresses on Page 1 of this Order, to the Staff by hand delivery, and by hand delivery to the State Office of Administrative Hearings, on this the 14th day of February, 2008.

David Henry Disraeli  
David Henry Disraeli dba Lifeplan Associates  
710 West Avenue  
Austin, Texas 78701  
and  
7907 Havenwood  
Austin, Texas 78759

**VIA FACSIMILE (512) 857-0844**  
**& CERTIFIED MAIL. RETURN**  
**RECEIPT REQUESTED**

Paul D. Keeper  
Administrative Law Judge  
State Office of Administrative Hearings  
300 West 15th Street, Suite 502  
Austin, Texas 78701

**VIA FACSIMILE (512) 475-4994**  
**& HAND DELIVERY**



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David Weaver  
Bar No. 21006800  
General Counsel  
State Securities Board