

What It's All About

Mildred Evans is one of the sweetest ladies you could ever hope to meet. Even though life has dealt her some pretty tough blows, Mildred never complains. She makes only \$13,000 a year as a church secretary, but she still gives what she can to her church and to the local homeless shelter, where she often volunteers. Mildred's husband, Clyde, suffers from dementia and has been almost totally incapacitated for two years now. Before the dementia took away his personality, Clyde had already had a stroke and suffered from diabetes. They are still paying off the bills for his hip replacement and the amputation of his left foot, but Mildred tries not to worry about that. She's working. They'll get by.

Jim Thormby is a man in his late 30's who sang in the church choir along with Mildred. Jim would usually swing by to give her a ride Wednesday nights to and from rehearsals, as Mildred no longer drives at night. Clean-cut, well-dressed, well-spoken, Jim seemed like one of the nicest, most decent men Mildred had met in a long while. He said Mildred reminded him of his mother, whom the Lord had called home when Jim was just a boy. Like Mildred, his mother was a good cook and also loved to sing in the church choir.

Mildred started inviting Jim over for Sunday dinners. With her two children grown, married, and moved out, it was just she and Clyde now, and Clyde mostly sat in his easy chair, staring at nothing in particular. The little two-bedroom house had never felt so big and empty before, but when Jim would sit at the table telling stories, he seemed to fill it up with life. Mildred was getting on in years but was also not ready to stop living and doing the things she enjoyed. At 63, she was more active than many people half her age. She was also lonely. And Jim Thormby was good company.

Although she wouldn't exactly say he was stuck on himself, Jim's favorite topic of conversation was definitely Jim. Then again, he'd lived such an interesting life, it was no wonder. Jim had landed a good job at Coca-Cola over in Atlanta right out of high school. Jim was good with computers, so good he had created Coca-Cola's website. His other specialty at the company was working with all the scientists in the laboratory trying to develop new flavors. He'd created some

very sophisticated computer software that allowed the scientists to cut in half the time it took to roll out a new flavor. The recent release of Vanilla Coke was really just a result of Jim's superior programming skills, although he didn't like to brag. Because he had patented the software, Coca-Cola was forced to pay Jim a big, fat check when he retired.

Now Jim was his own boss. He spent his days trading stocks online and his nights selling insurance. Not that he needed the money, mind you. Jim just liked to help people get the insurance they needed. After helping Mildred exchange her current whole life policy to a much better variable policy, he also managed to put her into some long-term care insurance, just so if something ever happened, she wouldn't have to worry about being sent off to some nursing home somewhere.

One Sunday afternoon over a plate of fried chicken, turnip greens, and potato salad, Jim looked up at Mildred and said, "Mildred, you can tell me to butt out if you want to, but I'd like to make a little suggestion." He dabbed the corners of his mouth daintily with a burgundy dinner napkin and folded the napkin neatly on the table.

Mildred took a sip of sweet tea and said, "Oh no, you go right ahead, Jim."

Jim looked at her a long time before saying, "Mildred, you work hard, don't you?"

"Well, yes, I suppose I do."

"Well," Jim said, "I think it's time you started putting your *money* to work, instead."

With a deep crease in her forehead, Mildred said, "Well how am I going to do that, Jim? All I've got is the secretary job, and you know that doesn't pay much. The shelter is just volunteer work."

"Mildred, I'm talking about investing."

"Well, I've got the CD, of course."

"No, Mildred, I don't mean locking your money up in some bank so the bankers can get rich off it. I'm talking about putting it to work in the stock market."

Mildred took a long drag of iced tea and patted herself gently just below her throat.

"Excuse me—you mean like those mutual funds I told you about, Jim?"

"No—I'm talking about real money, Mildred. You know how much I make just daytrading stocks on my computers?"

"No, I don't guess I do."

Jim smiled broadly and said, "Two thousand dollars."

"A week? That's—"

"No, two thousand a *day*, Mildred."

Mildred finally took her hand away from her mouth and said, "Jim, you never said you had that much money."

"Well, now, I don't mean to brag, Mildred—that's not the point of bringing it up. See, what I'm talking about here is making some money for *you*. Why should the bank and the mutual fund companies get rich off your money? You let me trade some of that money just sitting there getting dusty, and you won't have to worry about a thing the rest of your life."

Jim sat back a bit and added, "Of course, I don't want to push, Mildred. If you're not comfortable—"

"No, it's not that, Jim. I just ... you know my granddaddy lost a lot of money in the Great Crash."

"They didn't have computers back then, Mildred. I've got my system programmed to buy and sell at just the right time. There's no way I can lose, not with the software I've got running. I'm telling you—it's like a money-printing machine. Heck, you saw my set-up a few weeks ago yourself."

"Oh yes. I have no idea what all those lights and all those wires were for, but if you say you can make that much money ... well ... I don't know."

Jim nodded a few times and finished his tea, swirling the remaining ice fragments around the bottom of the glass.

"You think about it, Mildred. That's all. And whatever you decide, that's fine. But ..."

Mildred leaned forward, waiting. When Jim said nothing, she prodded him to continue.

Jim pressed his lips together and looked sideways. Then, he leaned closer and said, "You may think I'm crazy, Mildred."

"Jim, you know I'd never think a thing like that."

"Well, I believe the Lord has called me to this."

"You don't say."

"When I'm trading stocks, well, Mildred, I feel the presence of the Lord within me. It's hard to explain, really. Every morning just before the market opens I get down on my knees, put my hands on the keyboard, and pray to the Good Lord to grant me guidance and the wisdom I'll need to make all those trades at just the right time. And he does. All I have to do is watch the charts, wait for the spirit to guide me, and the rest is, well, it just happens. I wish I'd retired sooner, Mildred, because I truly believe this is my calling." Jim pushed himself back from the table and patted his slight paunch, suppressing a burp.

"Well, you think about it, Mildred. I've got some people waiting for me back at the house—thanks again for a lovely dinner."

"You know you're always welcome, Jim."

Mildred thought about Jim's offer over the next few weeks. But she just wasn't sure about the stock market. When her son called one night to check up on her, he listened to the arrangement Jim had proposed to her. Mostly, her son just said, "Mmm-hmm" every so often, and Mildred could hear the doubt and concern in his voice. "Well," her son said, "just make sure you get something in writing, Mom. And be careful. Okay?"

Mildred promised her son she'd do exactly that.

But when she told Jim she wanted a written agreement, Jim's face turned pale.

"Mildred," he said, stunned. "I thought we had trust between us."

"Oh we do, we *do*, Jim honey. It's just that my boy Ronny thinks we should have something on paper."

Mildred felt like such a jerk.

Jim just stood looking at the floor, shaking his head in disbelief. Then, he looked at Mildred and said, "Then again, I can certainly understand how your son feels. He's just looking out for his Mama, am I right, Mildred?"

Mildred smiled proudly and said, "Well, sure he is."

"Of course he is. But you know I'm a man of God, Mildred. My daddy was a preacher. Just like him, my word is better than anything we could ever put down on some piece of paper somewhere. Like I said, we'll invest your money, putting in just twenty thousand at a time. I'll put half in a reserve account, just like at the bank, and I'll trade the other half. You'll get your statement at the end of each month, and if you like what you see, we'll keep going. And, if you don't, we won't. You trust me, don't you, Mildred?"

Mildred felt so rude calling Jim's character into question. It was such an awkward moment for her. Finally, she just smiled and said, "You know I trust you, Jim. Why don't we just shake hands on it, just like they did in the olden days back when I was a girl." Mildred laughed nervously and held out her hand.

"Sixty-forty, Mildred. On my word."

That night she agreed to let Jim liquidate \$20,000 from her mutual fund account. Over the years she and Clyde had managed to add some savings to the lump sum he got from his pension. Wisely, they had put it all into some conservative mutual funds, which now totaled approximately \$75,000. Twenty thousand was less than a third—more like a fourth—of that amount, so it seemed less risky now that she was actually about to do it. Especially with half the money going into a bank account.

Since he was a licensed insurance agent, Jim explained that he could take care of all the paperwork, so she wouldn't have to bother. When the first monthly statement arrived, Mildred could not believe her eyes. She looked and looked again

before finally accepting that there was really a balance of \$32,000 in the account. How could anybody be that good at trading stocks? From \$10,000 to \$32,000 in less than one month—obviously Jim *did* have a special gift from God. What else could explain it?

When Jim called to see if she was ready to put in another \$20,000, Mildred didn't even hesitate. In fact, she had him liquidate the rest of the mutual funds, keeping just the bank CD and the savings account.

Next month, the balance shot all the way up to \$95,000. At this rate, they'd soon be able to afford that in-home nurse she'd long dreamed of for Clyde. When the CD matured a few weeks later, she took the proceeds and had Jim put that to work for her, too.

The next two statements were equally pleasing. In the space of just four months, Jim had turned about \$85,000 into \$155,000. She wondered how she would ever be able to repay him.

Jim found a way. Looking at her next statement, Mildred was momentarily taken aback when she saw a withdrawal for \$42,000. Then, she remembered the 60/40 split. But when she broke out the calculator, she wondered how 40% could work out to \$42,000. Then, it hit her—the 60% was for Jim. She just assumed ... and then she remembered her son's advice to put something in writing. It would have made things much clearer, if nothing else. Oh well. 40% of \$70,000 was still more than she made at the church in *two years*. And it was Jim doing all the work, anyway, so she decided to let it go.

One night after a long day at the church office, Mildred found a large, overstuffed envelope wedged between the storm door and the front door. When she took it inside and held it under the light, she saw that it was from some company called Jennings-Bryant, LLC. Well, who the heck is that, she wondered. When she opened up the envelope, it appeared that whoever these Jennings-Bryant people were, they sure knew a lot about her. There was more than seventy pages' worth of information in there, showing all kinds of stock symbols and purchases and sales, and disbursements and whatever the heck it all meant.

Of course, she had to call Jim. But when she dialed his number, no answer. When her phone rang a few minutes later, she felt relieved, knowing Jim would clear everything up.

Only, it wasn't Jim. It was an attorney for the Jennings-Bryant people, and his voice could not have sounded more concerned if he were calling from the county morgue. Mildred pinched the bridge of her nose and closed her eyes.

And listened.

Something about a margin loan. The balance in her account was insufficient, and there were insufficient assets to collateralize or whatever the heck he was

saying. None of it made any sense. But the bottom line—at least according to the attorney—was that not only had all the money she'd invested vanished, but also she owed \$7,000 on her margin loan. Payable immediately.

“But I only have three thousand in savings,” Mildred said, her hands shaking.

“That, madam, is certainly not my problem. But I suggest you make arrangements to settle this matter immediately. Thank you.”

She called Jim several times that night but got no answer. She called the next day and the day after that. When he didn't show up for choir practice Wednesday night, she felt sick to her stomach.

A few days later, she managed to catch Jim on the phone, only it seemed as if she had the wrong number. The way he snapped at her was not the Jim she knew. And when the cursing began, and the threats, she began to shake like a frightened child. “If you ever call this number again, you old bitch, so help me God I'll hurt you like you've never been hurt. *Click.*”

Mildred just sat staring at the telephone until the harsh squeal and the recorded voice alerted her “if you'd like to make a call, please hang up and try the number again.”

STATE OF ALABAMA DEPARTMENT OF SECURITIES

In the Matter of

JAMES KENTWOOD THORMBY

Administrative Order #S-04-567-04

CEASE AND DESIST ORDER

The Staff of the Alabama Department of Securities has received information and has in its possession certain evidence which indicates that JAMES KENTWOOD THORMBY has violated provisions of the Alabama Securities Act.

FINDINGS OF FACT

1. JAMES KENTWOOD THORMBY is a natural person, who at all times relevant to this investigation was a resident of Red Oaks, Lowsen County, Alabama.
2. In October of 2003, THORMBY met AL1, an Alabama resident, through a local church choir. THORMBY represented to AL1 that he had enjoyed a successful career at Coca-Cola, where he had used his exceptional technical abilities to design the company's website and create software assisting research scientists in the development of new products. THORMBY represented that he now used his technical abilities to daytrade stocks, making approximately \$2,000 per day. THORMBY represented to AL1 that he had a virtual money-printing machine and there was no way the investor could lose by allowing him to daytrade stocks on her behalf.
3. AL1 works as a church secretary earning \$13,000 a year and cares for her invalid husband, who suffers from severe arthritis, diabetes, and dementia. AL1's liquid assets before becoming entangled with THORMBY consisted of \$75,000 in three mutual funds, a \$10,000 bank CD and approximately \$3,000 in savings.
4. Knowing AL1's religious affiliation, THORMBY represented himself as a "man of God" and the "son of a preacher." THORMBY explained that every morning before the markets opened he would kneel before his computer, lay his hands on the keyboard and pray for wisdom and guidance from God in order to trade successfully.
5. THORMBY also represented himself as an insurance and securities agent properly registered in the state.
6. THORMBY executed a purchase of a variable life insurance policy after surrendering the cash value of AL1's whole life policy. Rather than perform a tax-free 1035 contract exchange, THORMBY's actions resulted in AL1 losing substantial value and paying excessive commissions to THORMBY, who is, in fact, a registered insurance agent in the state. THORMBY also signed AL1's signature on related paperwork in this unsuitable transaction. By providing a false mailing address, THORMBY was able to conceal the true nature of the transaction from the client for many months.
7. While considering THORMBY'S offer to daytrade stocks with her money, AL1 requested

that a written agreement be drawn up first, to which THORMBY declined, claiming that as a man of God his word was more reliable than anything that could be put on paper. On a handshake, AL1 and THORMBY later agreed that THORMBY would trade stocks with AL1's money, introducing \$20,000 at a time, with \$10,000 of each installment to be placed in a "reserve account." THORMBY stated that the trading profits would be split "60/40." AL1 believed that split to represent a 60% share of profits in her favor but later discovered that THORMBY meant the reverse.

8. In November 2003 AL1 allowed THORMBY to liquidate \$20,000 from her mutual fund account. THORMBY represented that, as an insurance agent, he could take care of the transaction. Although AL1 instructed THORMBY to liquidate \$20,000, THORMBY, in fact, liquidated the entire account—valued at \$75,017.35. The untimely redemption order resulted in AL1 paying \$1,501.45 in contingent deferred sales charges and redemption fees. THORMBY forged AL1's signature on several related documents and had the confirmations forwarded to a false address in order to conceal the true nature of the transaction from the client, AL1.
9. AL1 received her first monthly account statement, showing a balance of \$32,000. Thinking that only \$10,000 had been invested, with the other \$10,000 "in reserve," AL1 concluded that her account had appreciated significantly due to THORMBY's trading prowess and expertise. AL1 continued to receive account statements, with one showing a balance as high as \$155,000.
10. Due to the apparent appreciation in AL1's account, as evidenced by the account statements, AL1 provided THORMBY with \$10,000 more to invest when a bank CD matured.
11. Staff have determined that several of the account statements received by AL1 were, in fact, rendered and delivered by THORMBY. THORMBY had also provided TD Ameritrade with a fictitious mailing address, which allowed him to intercept any statements and confirmations he did not desire AL1 to see.
12. With the account balance dropping rapidly, THORMBY made several distributions of cash from the account totaling \$19,659, using the proceeds for personal expenses. According to credit card statements and various sales receipts, THORMBY purchased a fishing boat, a plasma television, 13 pairs of designer blue jeans, and several cases of expensive bourbon whiskey with AL1's funds.
13. When the funds provided by AL1 depreciated further, THORMBY opened a margin account on behalf of and without the consent or knowledge of AL1, once again forging her signature on several documents and providing erroneous information in order to secure the margin loan from Jennings-Bryant, LLC, a properly registered broker-dealer in Arkansas. Be it known that Jennings-Bryant is not a subject of this investigation and has cooperated fully with staff in this matter.
14. On or about March 27th, 2004 AL1 returned from work to find account statements

and trade confirmations from Jennings-Bryant, who had sent originals of the documents months earlier, unwittingly to a fictitious address provided by THORMBY. Upon reading the documentation, AL1 discovered that 953 transactions had been executed by THORMBY, generating \$13,152.47 in commissions and \$3,567 in margin interest, taking the balance to -\$6,853.48.

15. Due to THORMBY'S activities, AL1 has lost the entire value of her liquid assets except for her savings account, which is insufficient to pay the negative balance on the margin account.
16. A search of the registration records kept by the National Association of Securities Dealers and the Alabama Department of Securities reveals no registration for THORMBY in any capacity in the securities industry.
17. Although THORMBY did work for Coca-Cola, he at no time worked in the technology or research & development departments. In fact, THORMBY worked as a forklift operator for a period of 7 months, followed by a period of 13 months working in various other warehouse capacities before eventually being fired for insubordination and unsatisfactory work performance.
18. THORMBY did, in fact, have several online trading accounts open with E-Trade, TD Ameritrade, and Daytek, as indicated to AL1. Contrary to THORMBY's representations, his trading was not profitable in any of the accounts and he had, in fact, lost from 70 to 90% of his own funds in each account before commencing to trade on behalf of AL1.
19. THORMBY did not establish a "reserve account" of any kind on behalf of AL1 and, in fact, immediately commenced trading the entire balance of her funds upon receipt.
20. Although he represented himself as the "son of a preacher," records indicate that THORMBY's father, Lyle Allen Thormby, was, in fact, at no time a preacher affiliated with any tax-exempt religious organization (under IRC 501c3) but was, in fact, a convicted felon serving time in various state correctional facilities until his death in January, 1993.

CONCLUSIONS OF LAW

21. The stock traded on behalf of AL1 is a "security" as that term is defined in Alabama Code 201.4(a).
22. The variable life insurance policy referenced in paragraph 6 is a "security" as that term is defined in Alabama Code 201.4(c).
23. Alabama Code 101(a) defines a "broker-dealer" as any person engaged in the business of effecting transactions in securities for the accounts of others or its own account.
24. Alabama Code 102(a) defines an "agent" as any person representing a broker-dealer in effecting transactions in securities.
25. Alabama Code 101(d) provides that it is unlawful for any person to conduct business as a broker-dealer or agent unless such person is registered pursuant to "the Act."

26. Alabama Code 100(a) provides that it is unlawful for any person in connection with the offer or sale of any security to employ any device, scheme, or artifice to defraud.
27. Alabama code 100(b) provides that it is unlawful for any person in connection with the offer or sale of any security to make any untrue statement or to omit to state a material fact necessary in order to make the statements not misleading.

OPINION

28. By accepting money from an individual and effecting purchases and sales of stock on her behalf, THORMBY was engaged in effecting transactions in securities for the accounts of others without being registered as a broker-dealer or agent in violation of "the Act."
29. By executing a sell/redemption order of AL1's mutual fund shares, THORMBY engaged in effecting transactions in securities for the accounts of others without being registered as a broker-dealer or agent in violation of "the Act."
30. By purchasing a variable life insurance policy on behalf of AL1, THORMBY engaged in effecting transactions in securities for the accounts of others without being registered as a broker-dealer or agent in violation of "the Act."
31. THORMBY'S statement that he would put 50% of the client's money in a "reserve account" was an untrue statement of material fact in connection with the sale of a security in violation of "the Act."
32. THORMBY'S delivery of fictitious account statements and the concealment of relevant account documentation represent a device, scheme, or artifice to defraud.
33. THORMBY'S action of forging client signatures represents a device, scheme, or artifice to defraud.
34. THORMBY'S statements that his trading abilities and technological capabilities meant the client "could not lose" and that he had a "virtual money-printing machine" represent untrue statements of material fact in connection with the sale of a security in violation of "the Act."
35. THORMBY'S statements of successful employment for Coca-Cola, and his purported design of the company's website and product development software were untrue statements of material fact in connection with the sale of a security in violation of "the Act."
36. THORMBY'S statement that "as an insurance agent" he could execute transactions in mutual funds and/or variable life insurance was an untrue statement of material fact in connection with the sale of a security in violation of "the Act."
37. Inasmuch as THORMBY'S ostensible status as a "man of God" and the "son of a preacher" caused the investor to trust him and invest money with him even without a written contract, his ostensible religious affiliation was a device or artifice used to defraud in violation of "the Act."

ORDER

IT IS ORDERED THEREFORE that JAMES KENTWOOD THORMBY **CEASE AND DESIST** from any further actions in the state of Alabama in connection with the offer or sale of the securities described above and any other securities until such time as the securities are properly registered or shown to be exempt from registration pursuant to the "the Act" and he is properly registered or shown to be exempt from registration pursuant to the Alabama Securities Act.

IT IS ORDERED that this action does not limit or create any person's private remedies against THORMBY. Nothing herein is intended to or shall be construed to have created, compromised, settled, or adjudicated any claim or cause of action, or right of any person.

BY ORDER OF THE ADMINISTRATOR.

WITNESS MY HAND AND SEAL this _____ the day of January, 2005.

Daryl B. Williams,
ALABAMA SECURITIES ADMINISTRATOR

Well, that wasn't very nice of James Kentwood Thormby, now, was it? Pretending to be some successful trader when, in fact, he had no clue what the heck he was doing. Taking a nice woman like Mildred Evans and depleting her of her life savings, all in the supposed name of God. Unfortunately, it happens more than you might think. Believe it or not, there are all kinds of violations taking place in the securities industry on a regular basis. Dumb stuff, mostly. An unregistered person sells an unregistered security under false pretenses. Maybe they present it as a "safe, secure investment" or one that's "guaranteed to make you a millionaire." Either way, the stock or bond isn't worth the paper it's printed on. But by the time the investors find out the true nature of their investment, the scoundrel who sold it has already made off with most if not all of their money.

The state securities regulators don't put up with such nonsense. It's no different from how the state regulators get ticked off when a used car salesman sells somebody a car that purportedly has 79,000 miles on it when, in fact, the odometer has turned over twice, making the true mileage 279,000. If a securities representative tells an investor that her money is "guaranteed, just like at the bank," when, in fact, it's invested in some high-risk scheme that destroys her life savings, that's just as bad as, and usually worse, than the fraudulent used car transaction.

Fraud involves offering and selling something deceptively. The states are out to protect investors like Mildred Evans from deceptive offers and sales of securities. In order to provide necessary protection to investors, they insist that securities be registered and that agents and broker-dealers offering/selling securities be registered as well. It's easier to regulate things when you actually know they exist, right? Pretty tough to regulate an unregistered "agent" like Jim Thormby, but, with any luck, the cease and desist order will get his attention. Not to mention that other regulators, such as a district attorney or attorney general, might choose to sue him in civil court or come after him with criminal charges. Wouldn't you call what he did to poor Mildred and Clyde criminal? He basically stole their life savings. He simply didn't use a gun. His weapons of choice were, instead, his mouth and his personal computer.

Well, it isn't just unregistered blowhards like Jim Thormby who present a danger to investors. Plenty of folks who have passed their Series 6, 7, 65, etc. still go out and do the darndest things. Like putting senior citizens into high-fee variable annuities with huge surrender charges, and then switching them out of there to put them into ridiculously high-risk mutual funds that pay fat commissions to the agents. So, before you get a chance to start meeting investors like Mildred who are, perhaps, a bit too trusting, you have to show the state regulators that you understand how business is supposed to be conducted. Don't mislead investors. Don't take their money and put it into your own account. Don't tell them ABC