



STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE

TENNESSEE SECURITIES DIVISION,)
)
Petitioner,)
)
vs.) TSD No.: 21-029
)
MICHAEL DAVID HARRIS,)
)
Respondent.)

PETITION FOR AN EX PARTE ORDER TO CEASE AND DESIST

The Securities Division of the Tennessee Department of Commerce and Insurance (“Division”), by and through undersigned counsel, pursuant to the Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. §§ 48-1-101 through 48-1-201 *et seq.* (“Act”) petitions the Commissioner of the Tennessee Department of Commerce and Insurance (“Commissioner”) to issue an Order to Cease and Desist All Securities Activity to Michael David Harris (“Respondent”).

I. JURISDICTION

1. Tenn. Code Ann. § 48-1-116 establishes that the Commissioner may execute Orders as are necessary to carry out the Act when the Commissioner finds that the action is in the public interest, necessary for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

II. PARTIES

2. The Commissioner is responsible for the administration of the Act. The Division, pursuant to Tenn. Code Ann. § 48-1-115, is the lawful agent through which the Commissioner

discharges this responsibility.

3. The Respondent is resident of Tennessee. At no time has the Respondent been registered as a broker-dealer, broker-dealer agent, investment adviser or investment adviser representative within the State of Tennessee.

III. FACTUAL ALLEGATIONS

A. Respondent sold securities from or within Tennessee without being registered to sell securities from or within Tennessee.

4. On February 5, 2020, the Financial Services Investigative Unit (“FSIU”) received information from Detective Ricky Sanders (“Detective Sanders”) of the Morristown Police Department about the Respondent issuing promissory notes to consumers. (“Smith Aff.”).

5. Detective Sanders reported that a police report was filed by a consumer and alleged that the Respondent issued the consumer a promissory note with a stated rate of return in exchange for twenty-five thousand dollars (\$25,000.00). The consumer received no return on his investment but was unwilling to come forward to file a criminal action against the Respondent. (“Smith Aff.”).

6. The Morristown Police Department received information about eighteen (18) victims that invested three hundred fifty-four thousand dollars (\$354,000.00), and the Jefferson City Police Department received information about another ten (10) victims that invested a total of approximately fifty thousand dollars (\$50,000.00). Detective Sanders reported that the Respondent issued promissory notes for approximately eleven (11) years and lost the money in the stock market. (“Smith Aff.”).

7. As a result of Detective Sanders referral, Order of Investigation 2020-0010 was issued. (“Smith Aff.”).

8. Theresa Smith (“Ms. Smith”), one victim, was shown documents that related to day

trading, and the Respondent guaranteed her a ten percent (10%) weekly return on an investment into energy and gas. The Respondent told Ms. Smith that her investment was safe and provided her a promissory note for her twenty thousand dollar (\$20,000) investment. (“Smith Aff.”).

9. Casey Smith (“C. Smith”) was referred to the Respondent by his mother, Ms. Smith. C. Smith invested thirty thousand dollars (\$30,000.00) with the Respondent and was promised a weekly ten percent (10%) risk-free return. (“Smith Aff.”).

10. On September 1, 2020, FSIU issued a subpoena for the Respondent to submit to an interview on December 15, 2020 and provide documentation about each investor and each investment. The Respondent failed to appear on December 15, 2020 as instructed by the subpoena. (“Smith Aff.”).

11. On December 21, 2020, FSIU received a phone call from the Respondent. The Respondent apologized for not appearing and asked for more time to gather information. The Respondent was told he had until January 5, 2021 to provide the information requested in the subpoena. (“Smith Aff.”).

12. On January 4, 2021, Mr. Harris provided a signed statement that acknowledged the issuance of promissory notes along with names and amounts owed to clients. Mr. Harris provided copies of promissory notes issued. (“Smith Aff.”).

13. During a January 8, 2021 phone call, the Respondent indicated that he had provided all the documentation that he had. Mr. Harris admitted to not being registered in Tennessee, issuing promissory notes and paying off older notes with new promissory notes. Mr. Harris also admitted that he knew what he was doing was wrong and that he intended to pay everyone back. (“Smith Aff.”).

14. In total, in 2018 and 2019 Mr. Harris issued promissory notes to Casey Smith,

Johnathan Smith, James Bunch, Tim Cope, Bill Gardner, Josh Collins, Darrell Goodrich, Tony Drinnon, Jarrod Gregg, Josh Pritting, James King, and Ken Hopson in 2018 and 2019 and gave each investor an interest in the same Farm Bureau life insurance policy. (“Smith Aff.”).

15. In August 2021, FSIU received another complaint regarding Mr. Harris from Justin Taylor that was filed with the Securities and Exchange Commission. Mr. Taylor indicated that he met with Mr. Harris in February 2021 and was given a promissory note in exchange for approximately thirty thousand dollar (\$30,000) investment. (“Smith Aff.”).

16. On August 19, 2021, letters and questionnaires were mailed to Justin Taylor, Michael and Katy Barnes, Jeremy and Sonja Elkins, and Wendell and Tiffany Elkins. Each questionnaire was returned and indicated that the Respondent continued to issue promissory notes to investors. (“Smith Aff.”).

17. On October 8, 2021, the Division received a complaint from Kent Tyler that was referred from the SEC. Mr. Tyler indicated that he invested with the Respondent. When Mr. Tyler sought a return of his funds, the Respondent was unable to provide them from August 13, 2020 through the present. (“Smith Aff.”).

18. At no point has the Respondent been registered, or applied to register, in Tennessee as a broker-dealer, agent, investment adviser, or investment adviser representative. (“Odom Aff.”).

B. Respondent sold securities from or within Tennessee without the securities being properly registered and failed to disclose that the securities were unregistered.

19. None of the promissory notes offered or sold by the Respondent are registered with the State of Tennessee.

20. The Respondent did not disclose to any investor that the promissory notes being offered were not properly registered with the State of Tennessee.

C. Respondent employed a scheme to defraud, made untrue or omitted statements of material

fact, and engaged in an act which operated as a fraud or deceit.

21. The Respondent issued promissory notes after he admitted that what he was doing was wrong and effectively admitted to running a Ponzi Scheme by issuing the newer promissory notes to pay off older promissory notes.

22. The Respondent gave investors the false impression that he was a registered investment professional.

23. The Respondent told investors that they could request their funds at any time.

IV. APPLICABLE LAW

A. Pertaining to the Definition of Security

24. According to Tenn. Code Ann. § 48-1-102(20)(A), security is defined as, in pertinent part, “[A]ny note, stock, treasury stock, bond, debenture, evidence of indebtedness . . . preorganization certificate or subscription, transferable share, investment contract . . . or, in general, any interest or instrument commonly known as a ‘security[.]’[.]”

B. Pertaining to the Commissioner’s Authority to Carry Out the Provisions of the Tennessee Securities Act of 1980

25. According to Tenn. Code Ann. § 48-1-116, the Commissioner may make, promulgate, amend, and rescind such Orders as are necessary to carry out the provisions of the Act, upon a finding that such Order is in the public interest, necessary for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

C. Pertaining to the Commissioner's Authority to Order the Respondents to Cease and Desist All Securities Activity

26. Tenn. Code Ann. § 48-1-116(a) states, in pertinent part, that “[t]he [C]ommissioner may from time to time make, promulgate, amend, and rescind such rules, forms, and orders as are necessary to carry out this part[.]”

27. Tenn. Code Ann. § 48-1-116(e)(2)(A) provides that the Commissioner may enter Orders without “[n]otice to the affected parties (which shall be prior notice unless the commissioner determines that prior notice would not be in the public interest and would be detrimental to the protection of investors)[.]”

D. Pertaining to the Respondent's Failure to Register to Offer or Sell Securities from or in Tennessee

28. Tenn. Code Ann. § 48-1-109(a) states, in pertinent part, that “[i]t is unlawful for any person to transact business from or in this state as a broker-dealer or agent unless such person is registered as a broker-dealer or agent under this part[.]”

E. Pertaining to the Respondent's Failure to Offer Registered Securities

29. According to Tenn. Code Ann. § 48-1-104, it is unlawful for any person to sell any security in this state unless it is registered under this part.

F. Pertaining to the Respondent's Securities Fraud

30. Tenn. Code Ann. § 48-1-121(a) provides that it is unlawful for any person, in connection with the offer, sale, or purchase of any security within the State of Tennessee, directly or indirectly, to:

- (1) Employ any device, scheme, or artifice to defraud;
- (2) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

- (3) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

V. CAUSES OF ACTION

A. The Respondent offered securities without being registered to offer or sell securities from or in Tennessee.

31. The facts as set out above demonstrate that the Respondent offered to sell and sold securities in Tennessee without being registered under the Act to offer to sell or to sell securities from or in Tennessee. It is unlawful for any person to transact business from or in this state as a broker-dealer or broker-dealer agent unless such person is registered as a broker-dealer or broker-dealer agent under the Act. Tenn. Code Ann. § 48-1-109(a).

32. The Respondent's offers to sell and selling of securities without being registered with the Division to engage in the offering/selling of securities from, in, or into Tennessee provides adequate grounds under Tenn. Code Ann. § 48-1-116(a) for the entry of an Order to Cease and Desist All Securities Activity.

B. The Respondent offered securities from or in Tennessee without the securities being registered.

33. The facts as set out above demonstrate that the Respondent offered to sell and sold securities in the form of promissory notes in Tennessee without the securities being registered. It is unlawful for any person to sell any security in this state unless it is registered under Tenn. Code Ann. § 48-1-104.

34. The Respondent's offers to sell and selling of securities without the securities being registered provides adequate grounds under Tenn. Code Ann. § 48-1-104 for the entry of an Order to Cease and Desist All Securities Activity.

C. The Respondents engaged in securities fraud.

35. The facts as set out above demonstrate that the Respondent failed to inform the investors that they are not registered to offer or to sell securities in or from Tennessee, and the failed to inform the investors that the securities in which they offered to sell have not been registered for sale in Tennessee. The Respondent's omission of these facts conveyed to the investors a false impression that the Respondent was operating legally in Tennessee and rendered the entirety of their promissory notes materially misleading and fraudulent pursuant to Tenn. Code Ann. § 48-1-121(a)(2) and (3).

36. The facts as set out above also demonstrate that the Respondent admitted to issuing newer promissory notes in order to pay investors for the older promissory notes. The Respondent mislead investors to believe they could receive their investment back at any time. The Respondent effectively ran a Ponzi Scheme to defraud investors. The untrue statements and omission of these facts falsely indicated to potential investors that the Respondent conducted fair business practices and rendered the entirety of their promissory notes materially misleading and fraudulent pursuant to Tenn. Code Ann. § 48-1-121(a)(2) and (3).

37. The Respondent's fraudulent actions by omitting these facts provide adequate grounds under Tenn. Code Ann. § 48-1-116(b) for the entry of an Order to Cease and Desist All Securities Activity.

D. The Respondent is still engaging in the unregistered offering/selling of unregistered securities.

38. The Respondent continues to offer to sell securities in Tennessee that are not registered with the Division for sale in Tennessee, and the Respondent is still not registered with the Division to offer to sell or to sell securities from, in, or into Tennessee.

39. The Respondent's continuing illegal conduct provides grounds under Tenn. Code Ann. § 48-1-116(a) and (e)(2)(A) for the immediate entry of an Order to Cease and Desist All Securities Activity.

VI. PRAYER FOR RELIEF

THE DIVISION HEREBY REQUESTS the entry of an Order requiring, pursuant to the Act, that:

1. The Respondent shall **COMPLY** with the provisions of the Act and all rules promulgated pursuant to the Act.

2. The Respondent shall **CEASE AND DESIST** from any further conduct as a broker-dealer, broker-dealer agent, investment adviser, or investment adviser representative from or in the State of Tennessee until such time as they are effectively registered with the Division to engage in such activity.

3. The Respondent and any of their successor entities shall immediately **CEASE AND DESIST** from the transacting of any securities business, and from the issuance, offer to sell, or sale of any security, including, but not limited to, promissory notes, mutual fund shares, investment contracts, loan agreements, stock, brokered CDs, or any other investment interest or "security" to any "person", as those terms are defined under the Act, until such time as any such security is 1) deemed by the Division to be registered with the Division for sale in Tennessee; 2) deemed by the Division to be exempted from the registration provisions of the Act; or 3) deemed by the Division to be a covered security, as that term is defined in the Act.

4. The Respondent shall be **PERMANENTLY BARRED** from conducting securities transactions on behalf of others from, in, or into the State of Tennessee.

5. All persons or entities in any way assisting, aiding, or helping the aforementioned

Respondent in any of the aforementioned violations of the Act shall **CEASE AND DESIST** all such activities in violation of the Act.

6. In addition, the Division requests such other, further, general, or different relief to which the Division may be entitled.

Respectfully Submitted,



William H. Leslie, BPR #36098
Associate General Counsel
500 James Robertson Parkway
Davy Crockett Tower
Nashville, TN 37243
(615) 532-9912
William.Leslie@tn.gov

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this Petition for an Order to Cease and Desist All Securities Activity upon the Respondent, Michael David Harris, via U.S. Certified Mail, Return Receipt Requested, to the below enclosed addresses on February 18, 2022.

Return Receipt No.:

Michael David Harris
4442 White Cliff Drive
Morristown, TN 37813



William H. Leslie