



**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
FOR THE STATE OF TENNESSEE**

TENNESSEE SECURITIES DIVISION,)
)
)
 Petitioner,)
)
)
 v.)
)
 FLOOD, BUMSTEAD, MCCREADY &)
 MCCARTHY, INC.)
 and ROGER W. DUNAWAY III)
)
 Respondents.)

MATTER No.: 23-01420

CONSENT ORDER

The Securities Division of the Tennessee Department of Commerce and Insurance (“Division”) and Flood, Bumstead, McCready & McCarthy, Inc. (“FBMM”) and Roger W. Dunaway III (“Dunaway”) and together, “Respondents”, agree to the entry and execution of this Consent Order in accordance with Tennessee Code Annotated (“Tenn. Code Ann.”) § 48-1-116 of the Tennessee Securities Act of 1980 (“Act”), as amended, and Tenn. Code Ann. § 48-1-101 to 48-1-201, subject to the approval of the Commissioner of the Tennessee Department of Commerce and Insurance (“Commissioner”).

PARTIES

1. Flood, Bumstead, McCready & McCarthy, Inc. is an investment adviser firm with its principal place of business located in Nashville, Tennessee, and is assigned Central Registration Depository (“CRD”) number 124163 with the Financial Industry Regulatory Authority (“FINRA”).

2. Dunaway is an investment adviser representative of Flood, Bumstead, McCready & McCarthy, Inc. and is assigned CRD number 5691753 with FINRA.

3. Dunaway acted as the Chief Compliance Officer of Flood, Bumstead, McCready & McCarthy, Inc.

4. The Division is the lawful agent through which the Commissioner discharges the administration of the Act pursuant to Tenn. Code Ann. § 48-1-115.

GENERAL STIPULATIONS

5. It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry and execution of the Commissioner.

6. It is expressly understood that this Consent 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.

7. This Consent Order is executed by the Commissioner, the Division, and the Respondents to avoid further administrative action with respect to this cause. Should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

8. The Respondents fully understand that this Consent Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts and/or omissions not specifically addressed in this Consent Order nor for facts and/or omissions that do not arise from the facts or transactions herein.

9. The Respondents fully understand that this Consent Order will in no way preclude

proceedings by state government representatives, other than the Commissioner, for acts or omissions addressed specifically in this Consent Order, violations of law under statutes, rules, or regulations of the State of Tennessee that arise out of the facts, acts, or omissions contained in this Consent Order, or acts or omissions addressed specifically herein that result from the execution of this Consent Order.

10. The Respondents waive all further procedural steps and waive all rights to seek judicial review of, or otherwise challenge the validity of this Consent Order, the stipulations and imposition of discipline contained herein, or the consideration and entry and execution of this Consent Order by the Commissioner.

11. This Consent Order is submitted on the condition that, if accepted, the Commissioner will not bring any future actions against the Respondents alleging violations based on the same factual findings described herein.

FINDINGS OF FACT

12. FBMM holds custody of client funds as a service for its clients as an investment adviser and did so during the relevant period.

13. FBMM did not conduct an audit regarding its custody of client funds for the years 2021 and 2022.

14. On December 23, 2022, FBMM voluntarily self-reported to the Division that it failed to submit form ADV-E, Certificate of Accounting of Client Securities, and the Funds in the Possession or Custody of an Investment Adviser, for the years 2021 and 2022.

15. According to FBMM, the firm hired Clayton & Royalty CPAs (“CPA Firm”) to conduct the required audits. However, the death of a partner at the CPA Firm contributed to the audit's delay.

16. FBMM made attempts to comply with the audit requirements but were unable to do so in a timely manner.

17. FBMM voluntarily reported the 2021 audit deficiency to the Division.

18. The CPA Firm remained engaged to complete the deficient 2021 audit, but the remaining CPA Firm partner failed to timely do so.

19. The audit for 2022 was not completed within the required timeframe as per Tenn. Comp. R. & Regs. 0780-04-03.07, despite FBMM's attempts to comply.

20. After failing to conduct the audits for 2021 and 2022, FBMM engaged HBK CPAs & Consultants ("HBK") to conduct surprise examinations concerning its custody of client funds for 2021 and 2022.

21. On April 10, 2023, FBMM submitted to the Division Form ADV-E and the independent accountant's report stating that FBMM complied with TN Comp. R & Regs. 0780-04-03-.07 for the period from January 1, 2021, to December 31, 2022.

22. The firm provided four (4) investment advisory agreements out of seventy-six (76) that were signed but not dated.

23. The agreements were not reviewed by the investment adviser representative for full execution.

24. The firm's advisory contracts included business services unrelated to the adviser services, but the business services being provided were not clearly disclosed in the contract.

25. Subsequent to the examination, the firm revised the investment advisory contract, and the services are disclosed properly.

CONCLUSIONS OF LAW

26. Pursuant to Tenn. Code Ann. § 48-1-115(a), the responsibility for the administration of the Act is vested in the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility pursuant to Tenn. Code Ann. § 48-1-115(b).

27. Tenn. Code Ann. § 48-1-116 provides that 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.

28. Tenn. Code Ann. § 48-1-121 additionally provides, in relevant part, that:

- (b) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise, in this state, to:

...

- (3) Take or have custody of any securities or funds of any client except as the commissioner may by rule permit or unless the person is licensed as a broker-dealer under this part.

29. Tenn. Comp. R. & Regs. 0780-04-03-.07 provides, in relevant part, that:

- (1) It shall constitute an act, practice, or course of business which operates or would operate as a fraud or deceit upon another person, within the meaning of T.C.A. § 48-1-121(b)(3) of the Act, for any investment adviser in this state who has custody or possession of any funds or securities in which any client has any beneficial interest, to commit an act or take any action, directly or indirectly, with respect to any funds or securities, unless:

...

- (f) All such funds and securities of clients are verified by actual examination at least once during each calendar year by an independent public accountant at a time that shall be chosen by such accountant without prior notice to the investment adviser. A

certificate of such accountant stating that an examination of such funds and securities has been made, and describing the nature and extent of the examination, shall be attached to a completed Form ADV-E and transmitted to the Division promptly after each examination, unless the investment adviser is not registered with the Division pursuant to T.C.A. § 48-1-109(c)(2).

30. Tenn. Comp. R. & Regs. 0780-04-03-.02 provides, in relevant part, that:

(3) (a) [...] [E]very registered investment adviser shall maintain and keep current the following books and records relating to its business, unless waived by order of the commissioner:

...

(8) Copies of all agreements entered into by the investment adviser with respect to any account, which agreements shall set forth the fees to be charged and the manner of computation and method of payment thereof, and copies of all communications, correspondence, and other records relating to securities transactions[.]

31. Tenn. Comp. R. & Regs. 0780-04-03-.02 provides, in relevant part:

(6) (c) The following are deemed “dishonest or unethical business practices” by an investment adviser or an investment adviser representative under T.C.A. § 48-1-112(a)(2)(G), to the extent permitted under Section 203A of the Investment Advisers Act, without limiting those terms to the practices specified herein:

...

(19) Entering into, extending, or renewing any investment advisory contract, unless such contract is in writing and, in substance, discloses:

(i) The services to be provided[.]

32. The Findings of Facts detailed in paragraphs twelve (12) through sixteen (16) above show that Respondent FBMM violated Tenn. Comp. R. & Regs. 0780-04-03-.07(1)(f).

33. The Findings of Facts detailed in paragraphs seventeen (17) through twenty (20) above show that Respondent Dunaway violated Tenn. Comp. R. & Regs. §§ 0780-04-03-02(3)(a)(8) and 0780-04-03-.02(6)(c)(19)(i).

34. The Findings of Fact detailed in paragraph thirteen (13) shows that Respondents violated Tenn. Code Ann. § 48-1-121(b)(3)

35. Respondents' violations constitute grounds for the assessment of civil penalties pursuant Tenn. Code Ann. § 48-1-112.

36. Respondents' violations constitute grounds for the assessment of civil penalties pursuant Tenn. Code Ann. § 48-1-121(d).

37. The Commissioner finds the following relief appropriate, in the public interest, and necessary for the protection of investors.

ORDER

NOW, THEREFORE, based on the foregoing, including the Respondents' waiver of the right to a hearing and appeal under the Act and the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 *et seq.*, and the Respondents' admission to the jurisdiction of the Commissioner, the Commissioner finds that the Respondents agree to the entry and execution of this Consent Order to settle this matter as evidenced by the Respondents' signature.

IT IS ORDERED, pursuant to Tenn. Code Ann. § 48-1-116(a), that the Respondents, jointly and severally, shall:

1. **COMPLY** with the Act, as amended, and all rules promulgated thereunder; and
2. **PAY A CIVIL PENALTY** to the State of Tennessee of three thousand five hundred dollars (\$3,500). The payment of such civil penalty shall be made by check or money order payable to the Tennessee Department of Commerce and Insurance. Page one (1) of this Consent Order must accompany the payment for reference. Payment shall be remitted within thirty (30) days of the date of entry and execution of this Consent Order mailed to the attention of:

**State of Tennessee
Department of Commerce and Insurance
Attn: Catherine A. Tabor
500 James Robertson Parkway
Davy Crockett Tower
Nashville, Tennessee 37243**

3. **DELINQUENCY** – Respondents hereby agree that failure to make any payment according to this Consent Order shall result in the immediate revocation of Respondents’ registrations with the Division.

4. **MODIFICATION** – The Division and Respondent hereby agree that modifications to this Consent Order regarding any term may only be made in writing and signed by an authorized representative of each party.

5. The Respondents’ failure to comply with the terms of this Consent Order, including the manner and method of payment of the civil penalty described above, shall result in further administrative disciplinary actions, which may include the assessment of additional civil penalties.

6. This Consent Order represents the complete and final resolution of and discharge of all administrative and civil claims, demands, actions, and causes of action by the Commissioner against the Respondents for violations of the Act with respect to the transactions involved in above-referenced facts. However, excluded from and not covered by this paragraph, are any claims by the Division arising from or relating to the enforcement of the Consent Order provisions contained herein.

7. This Consent Order is in the public interest and the best interests of the Parties. It represents a settlement of the controversy between the Parties and is for settlement purposes only. By the signatures affixed below, or in two (2) or more counterparts, the Respondents affirmatively state the following: the Respondents freely agree to the entry and execution of the Consent Order;


the Respondents waive the right to a hearing on, or a review of, the matters, the Findings of Fact, TSD v. Flood, Bumstead, McCready & McCarthy, Inc.
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and the Conclusions of Law underlying this Consent Order or the enforcement of this Consent Order; and the Respondents encountered no threats or promises of any kind by the Commissioner, the Division, or any agent or representative thereof.

8. By signing this Consent Order, the Commissioner, the Division, and the Respondents affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement as set forth in this Consent Order, are binding upon them.

9. This Consent Order may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. The facsimile, email, or other electronically delivered signatures of the parties shall be deemed to constitute original signatures, and facsimile or other electronic copies shall be deemed to constitute duplicate originals.

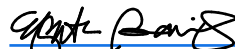
ENTERED AND EXECUTED _____, 2024.


Carter Lawrence (Nov 20, 2024 20:22 CST)

Carter Lawrence, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY AND EXECUTION:

Roger W. Dunaway III
Individually and on behalf of:
Flood, Bumstead, McCready & McCarthy, Inc.


Elizabeth Bowling (Nov 18, 2024 09:28 CST)

Elizabeth Bowling
Assistant Commissioner for Securities
Department of Commerce and Insurance

Thomas D. Giachetti, Esq.
Counsel for Roger W. Dunaway III and
Flood, Bumstead, McCready & McCarthy, Inc.

Catherine A. Tabor
Catherine A. Tabor (Oct 28, 2024 15:00 CDT)

Catherine A. Tabor, BPR #038467
Associate General Counsel
Department of Commerce and Insurance

FLOOD, BUMSTEAD, McCREADY & McCARTHY, INC.

P.O. BOX 340020
NASHVILLE, TENNESSEE 37203-0020
(615) 329-9902

TRUXTON TRUST COMPANY

87-891/640

DATE 10/14/2024

AMOUNT

PAY

Three thousand five hundred

\$ 3,500.00

TO THE
ORDER
OF:

State of Tennessee

Matter 23-01420



AUTHORIZED SIGNATURE

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and the Conclusions of Law underlying this Consent Order or the enforcement of this Consent Order; and the Respondents encountered no threats or promises of any kind by the Commissioner, the Division, or any agent or representative thereof.

8. By signing this Consent Order, the Commissioner, the Division, and the Respondents affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement as set forth in this Consent Order, are binding upon them.

9. This Consent Order may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. The facsimile, email, or other electronically delivered signatures of the parties shall be deemed to constitute original signatures, and facsimile or other electronic copies shall be deemed to constitute duplicate originals.

ENTERED AND EXECUTED _____, 2024.



Carter Lawrence (Nov 20, 2024 20:22 CST)

Carter Lawrence, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY AND EXECUTION:



Roger W. Dunaway III
Individually and on behalf of:
Flood, Bumstead, McCreedy & McCarthy, Inc.



Elizabeth Bowling (Nov 19, 2024 09:38 CST)

Elizabeth Bowling
Assistant Commissioner for Securities
Department of Commerce and Insurance

DocuSigned by:

Thomas D. Giachetti

Thomas D. Giachetti, Esq.
Counsel for Roger W. Dunaway III and
Flood, Bumstead, McCready & McCarthy, Inc.

Dorian Yoanidis

Dorian Yoanidis
On behalf of:
Flood, Bumstead, McCready & McCarthy, Inc.

Catherine A. Tabor

Catherine A. Tabor (Oct 28, 2024 15:00 CDT)

Catherine A. Tabor, BPR #038467
Associate General Counsel
Department of Commerce and Insurance