



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

TENNESSEE SECURITIES DIVISION,)

Petitioner,)

TSD No.: 19-028

OI No.: 2017-0027

v.)

JOHN NORTH)

Respondent.)

CONSENT ORDER

The Securities Division of the Tennessee Department of Commerce and Insurance (“Division”), and John North (“Respondent”), by and through undersigned counsel, agree to the entry 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 Tennessee Code Annotated §§ 48-1-101 to 48-1-201, subject to the approval of the Commissioner of the Department (“Commissioner”).

I. PARTIES

1. The Respondent was a Tennessee resident in 2015 to 2017, during the events that give rise to this matter. He was formerly registered with the Division as a broker-dealer agent; however, his registration terminated in or about 2005. At no point from 2015 to 2017 was the Respondent registered with the Division as a broker-dealer or broker-dealer agent.

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

II. GENERAL STIPULATIONS

3. 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 of the Commissioner.

4. 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.

5. This Consent Order is executed by the Commissioner, the Division, and the Respondent to avoid further administrative action with respect to the findings of fact described herein. 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.

6. The Respondent fully understands 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.

7. The Respondent fully understands 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.

8. The Respondent waives all further procedural steps and 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 of this Consent Order by the Commissioner.

III. FINDINGS OF FACT

9. Ms. Angelyn Dempsey, a lady who is currently eighty (80) years old, met the Respondent approximately sixteen (16) years ago. She hired the Respondent to prepare her tax returns and, throughout that period of time, she developed a friendship and strong trust in the Respondent's abilities as a certified public accountant and friend.

10. In 2015, Ms. Dempsey, at the Respondent's direction and with his assistance, opened a margin account with Ameritrade ("account") and the Respondent began to teach her how to invest her money. The original oral agreement was for him to sit down with Ms. Dempsey and help her place trades in her account via her computer; ultimately, this arrangement changed.

11. At some point in or about 2015, Ms. Dempsey provided the Respondent with her Ameritrade account number and password, and in turn, the Respondent began investing Ms. Dempsey's money for her out of compassion for his friend.

12. In 2015, the Respondent and/or Ms. Dempsey with his help, placed forty-nine (49) transactions in her account. In 2016, the Respondent placed three hundred thirty-eight (338) transactions in Ms. Dempsey's account. The following year, the Respondent placed one hundred five (105) transactions in Ms. Dempsey's account. Due to the Respondent placing these transactions on behalf of Ms. Dempsey and maintaining custody of her funds, the Respondent acted as broker-dealer and/or broker-dealer agent, all while not qualifying for an exemption nor registering with the Division.

13. From 2015 to 2017, Ms. Dempsey sent various text messages to the Respondent inquiring about the status of her account, to which the Respondent mostly responded timely until May of 2017. Beginning in May of 2017, the Respondent's communications with Ms. Dempsey decreased and at times, he became unresponsive to her questions.

14. From 2015 to 2017, Ms. Dempsey monitored her account closely, usually via text messages provided by Ameritrade, but sometimes via her computer and Ameritrade's website.

15. Ms. Dempsey finally closed her account in 2017. Excluding the wire transfer deductions that Ms. Dempsey admitted she made on her own behalf, the Respondent invested seventy-one thousand, six hundred fifteen dollars and thirty-one cents (\$71,615.31) and lost that amount.

IV. CONCLUSIONS OF LAW

16. 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).

17. Tenn. Code Ann. § 48-1-116 sets forth 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.

18. Tenn. Code Ann. § 48-1-109, prior to being amended in 2017, provides:

(a) It is unlawful for any person to transact business from, in, or into this state as a broker-dealer or agent. . . unless such person is registered as a broker-dealer or agent . . .

(e) The commissioner may, after notice and an opportunity for a hearing

under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any regulation, rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation.

19. Tenn. Code Ann. § 48-1-109, in effect since May 18, 2017, provides:

(a) It is unlawful for any person to transact business from, in, or into this state as a broker-dealer or agent. . . unless such person is registered as a broker-dealer or agent . . .

(e) The commissioner may, after notice and an opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any regulation, rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation, or in an amount not to exceed twenty thousand dollars (\$20,000) per violation if an individual who is a designated adult is a victim.

20. Tenn. Code Ann. § 48-1-102(9)(A), in effect since May 18, 2017, establishes that a designated adult includes, but is not limited to, “[a]n individual sixty-five (65) years of age or older.”

21. The Findings of Fact detailed above show that the Respondent acted as a broker-dealer and/or a broker-dealer agent without qualifying for an exemption or registering with the Division as such, in violation of Tenn. Code Ann. § 48-1-109, prior to being amended, and the current Tenn. Code Ann. § 48-1-109 in effect since May 18, 2017.

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

V. ORDER

NOW, THEREFORE, based on the foregoing, including the Respondent’s 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 Respondent's admission to the jurisdiction of the Commissioner, the Commissioner finds that the Respondent agrees to the entry of this Consent Order to settle this matter as evidenced by the Respondent's signature.

IT IS ORDERED, pursuant to Tenn. Code Ann. § 48-1-116, that the Respondent 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 twenty-five thousand dollars (\$25,000.00), which shall be abated and considered fulfilled by the Respondent's payment in full of said twenty-five thousand dollars (\$25,000) directly to Ms. Angelyn Dempsey.

3. The payment of such civil penalty, to be abated and considered fulfilled by the Respondent's payment in full of said twenty-five thousand dollars (\$25,000) directly to Ms. Dempsey, shall be made by wire transfer, or check, payable to Ms. Angelyn Dempsey. If by check, the check shall be sent to an address that is agreeable to Ms. Dempsey.

4. The civil penalties of twenty-five thousand dollars (\$25,000) shall be abated and considered fulfilled by the Respondent, if paid to Ms. Dempsey as follows:

- a. The first payment of five thousand dollars (\$5,000) shall be received by Ms. Dempsey no later than seven (7) calendar days after execution of this Consent Order. A copy of the check and/or proof of payment shall also be provided to counsel for the Division, Virginia Smith, via e-mail to virginia.smith@tn.gov, no later than seven (7) calendars days after execution of this Consent Order.

- b. The first two thousand dollar (\$2,000) payment shall be received by Ms. Dempsey no later than fourteen (14) calendar days after the five thousand dollar (\$5,000) payment is paid to Ms. Dempsey.

c. The remaining nine (9) payments of two thousand dollars (\$2,000) each shall be received by Ms. Dempsey on the first of each month, until Ms. Dempsey receives full payment.

d. If at any point a payment is late, not sent or received, or becomes past due, for technical reasons or otherwise, the remaining balance shall be immediately due in full.

5. The Respondent's 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.

6. **IT IS FURTHER ORDERED** that 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 Respondent for violations of the Act with respect to the transactions involved in the 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 Respondent affirmatively states the following: the Respondent freely agrees to the entry of this Consent Order; the Respondent waives the right to a hearing on, or a review of, the matters, the Findings of Fact, and the Conclusions of Law underlying this Consent Order and enforcement of this Consent Order; and the Respondent encountered no threats or promises of any kind by the Commissioner, the Division, or any agent or representative thereof.

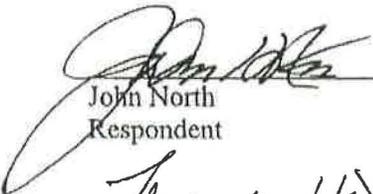
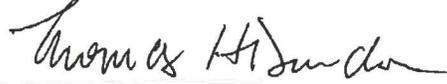
8. By signing this Consent Order, the Commissioner, Division, and the Respondent affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement as set forth in this 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 electronic copies shall be deemed to constitute duplicate originals.

ENTERED this 12 day of November, 2019.


Hodgen Mairda, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:


John North
Respondent

Thomas H. Dundon, BPR # 004539
Attorney for the Respondent
Neal & Harwell


Elizabeth Bowling
Assistant Commissioner for Securities
Department of Commerce and Insurance

Virginia Smith, BPR #31248
Associate General Counsel
Department of Commerce and Insurance