



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

TENNESSEE SECURITIES DIVISION,)
)
 Petitioner,)
)
 v.) **TSD No.: 19-035**
)
 PENN FINANCIAL GROUP, LLC,)
)
 Respondent.)

CONSENT ORDER

The Securities Division of the Tennessee Department of Commerce and Insurance (“Division”) and Penn Financial Group, LLC (“Respondent”), by and through undersigned counsel, 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 Department (“Commissioner”).

I. PARTIES

1. Penn Financial Group, LLC is a registered investment adviser with Central Registration Depository number (“CRD #”) 128872. It has been registered with the Division for approximately two (2) years, and previously maintained its principal place of business in Tennessee at: 150 4th Avenue North, 22nd Floor, Nashville, TN 37208. In or around July of 2019, it relocated its principal place of business to: 915 S Wolfe Street, Apt. 122, Baltimore, MD 21231.
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 and execution of this Consent Order by the Commissioner. Entry and execution of this Consent Order by the Commissioner shall occur when the Commissioner signs and dates this Consent Order.

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 and execution of this Consent Order by the Commissioner.

III. FINDINGS OF FACT

9. In or around August 2019, Ethan Rosenberg, Securities Examiner II for the Division, conducted an examination of the books and records of the Respondent pursuant to Tenn. Code Ann. § 48-1-111.

10. On or about October 30, 2019, the Division completed its examination of the Respondent and found several deficiencies, which are outlined below.

11. The Division found that the Respondent was registered in Tennessee as an investment adviser on July 6, 2017; however, Matthew McCall (“McCall”), the Respondent’s founder and president, was never registered as an investment adviser representative in Tennessee, but acted as investment adviser representative. The Respondent applied on behalf of Mr. McCall to register him as an investment adviser representative in Tennessee, but the Financial Industry Regulatory Authority’s (“FINRA”) system purged the application on October 4, 2017, due to unpaid application fees.

12. The Division also found that the Respondent failed to keep the minimum net capital of fifteen thousand dollars (\$15,000) in December 2017, and March 2018. In December 2017, the Respondent’s net capital was five thousand, one hundred sixty-nine dollars (\$5,169.00). In March 2018, the Respondent’s net capital was twelve thousand, six hundred twenty-five dollars (\$12,625.00).

13. Lastly, the Respondent was unable to produce to the Division six (6) client agreements.

14. The deficiencies were communicated to the Respondent and settlement negotiations then commenced.

IV. CONCLUSIONS OF LAW

15. 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).

16. 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.

17. Tenn. Code Ann. § 48-1-109 establishes:

...

(c) It is unlawful for any person to transact business from or in this state as an . . . investment adviser representative unless:

(1) The person is registered as an . . . investment adviser representative under this part;

...

(e) The [C]ommissioner 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.

- (f) It is unlawful for any investment adviser to employ an investment adviser representative unless the investment adviser representative is registered under this part. The registration of an investment adviser representative is not effective during any period when the investment adviser representative is not associated with a particular investment adviser. When an investment adviser representative begins or terminates a connection with an investment adviser, or begins or terminates those activities which make that person an investment adviser representative, both the investment adviser representative and the investment adviser shall promptly notify the [C]ommissioner.

18. Tenn. Code Ann. § 48-1-111(a) provides that every investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the Commissioner by rule prescribes.

19. Pursuant to Tenn. Code Ann. § 48-1-111(d)(1), all records referred to in Tenn. Code Ann. § 48-1-111(a) are subject to such reasonable examinations by representatives of the Commissioner, as the Commissioner deems necessary or appropriate in the public interest or for the protection of investors.

20. Tenn. Comp. Rules & Regs. 0780-04-03-.02(3)(a)8. requires every investment adviser to maintain and keep “[c]opies 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 method of payment thereof, and copies of all communications, correspondence, and other records relating to securities transactions.”

21. Tenn. Code Ann. § 48-1-110(a)(1) provides that an investment adviser representative “may obtain an initial or renewal registration by filing with the [C]ommissioner or the [C]ommissioner’s designee an application, together with a consent to service of process pursuant to § 48-1-124(e), and by paying any reasonable costs charged by the designee for processing such filings.”

22. Tenn. Code Ann. § 48-1-110(b) establishes that “[e]very applicant for initial or renewal registration shall pay a nonrefundable filing fee of . . . fifty dollars (\$50.00) in the case of an investment adviser representative.”

23. Tenn. Comp. Rules & Regs. 0780-04-03-.01(9)(a)1. states, “[A]ll investment advisers who are eligible must apply for initial registration in Tennessee through the IARD and CRD System by complying with the electronic application procedures required by the IARD and CRD System.” The application filed through the IARD and CRD System shall contain three (3) elements, one (1) of which is: “[t]he appropriate application fee as set forth in the Act[.]”

24. As authorized by Tenn. Code Ann. § 48-1-110(d), the Commissioner may by Rule require a minimum net capital for registered investment advisers.

25. Tenn. Comp. Rules & Regs. 0780-04-03-.01(6)(a) and (d) requires every investment adviser, unless its principal place of business is in another state, to have and maintain a minimum net capital of fifteen thousand dollars (\$15,000).

26. Tenn. Code Ann. § 48-1-112(a)(2)(G) provides that the Commissioner may by order deny, suspend, or revoke any registration if the Commissioner finds that the investment adviser “[h]as engaged in dishonest or unethical practices in the securities business[.]”

27. Per Tenn. Comp. Rules & Regs. 0780-04-03-.02(c)26., failing to provide information requested by the Division pursuant to the Act or the Rules constitutes dishonest or unethical business practices by an investment adviser under Tenn. Code Ann. § 48-1-112(a)(2)(G).

28. The Findings of Fact detailed above show that the Respondent employed an investment adviser representative that was not registered as required by Tenn. Code Ann. § 48-1-109. The Respondent applied on behalf of Mr. McCall to register him as an investment adviser representative; however, it failed to pay the requisite application fees in violation of

Tenn. Code Ann. § 48-1-110(a)(1), (b), and Tenn. Comp. Rules & Regs. 0780-04-03-.01(9)(a)1. Therefore, Mr. McCall's application was purged from FINRA's system, his application was never approved, and he remained unregistered.

29. The Findings of Fact detailed above prove that the Respondent failed to maintain the required minimum net capital in violation of Tenn. Code Ann. § 48-1-110(d) and Tenn. Comp. Rules & Regs. 0780-04-03-.01(6)(a) and (d).

30. The Findings of Fact detailed above exhibit that the Respondent failed to make and keep the client agreements that it is required to maintain pursuant to Tenn. Code Ann. § 48-1-111 and Tenn. Comp. Rules & Regs. 0780-04-03-.02(3)(a)8.

31. Additionally, the Findings of Fact detailed above show that the Division requested the client agreements and the Respondent failed to provide them to the Division in violation of Tenn. Code Ann. § 48-1-112 and Tenn. Comp. Rules & Regs. 0780-04-03-.02(c)26.

32. 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 and execution 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 four thousand dollars (\$4,000.00) on behalf of the Respondent. The payment of such civil penalty shall be made by check 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 after the entry and execution of this Consent Order, as evidenced by the Commissioner's signature, and mailed to the attention of:

**State of Tennessee
Department of Commerce and Insurance
Attn: Virginia Smith
Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243**

3. 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 action, which may include the assessment of additional civil penalties.

4. **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.

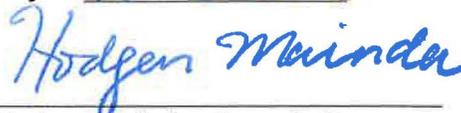
5. This Consent Order is in the public interest and the best interests of the Parties. It represents a settlement of the controversy between the Parties and is for settlement purposes only. By the signatures affixed below, or in two (2) or more counterparts, the Respondent affirmatively states the following: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

6. 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.

7. 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 AND EXECUTED this 30 day of December, 2019.

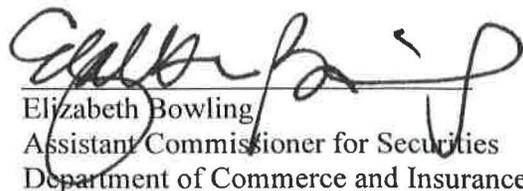


Hodgen Mainda, Commissioner
Department of Commerce and Insurance

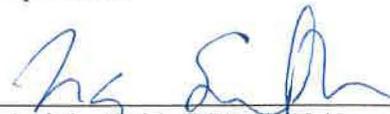
APPROVED FOR ENTRY AND EXECUTION:



Matthew McCall, President
On behalf of
Penn Financial Group, LLC



Elizabeth Bowling
Assistant Commissioner for Securities
Department of Commerce and Insurance



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