



STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE

TENNESSEE SECURITIES DIVISION,)
 Petitioner,)
)
vs.) **TSD No. 16-021**
)
CLARENCE ANDREW (“CAL”) ELCAN,)
 Respondent.)

CONSENT ORDER

The Tennessee Securities Division (“TSD”) of the Department of Commerce and Insurance (“Department”), by and through undersigned counsel, and Clarence Andrew (“Cal”) Elcan (“Respondent”), hereby stipulate and agree, subject to the approval of the Commissioner of the Tennessee Department of Commerce and Insurance (“Commissioner”), as follows:

GENERAL STIPULATIONS

1. 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.
2. This Consent Order is executed by Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, 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.

3. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner for acts and/or omissions not specifically addressed in this Consent Order, or for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. Other than this proceeding brought by the Commissioner for violations of Title 48 of Tennessee Code Annotated addressed specifically in this Consent, Respondent fully understands that this Consent Order will in no way preclude different proceedings by state or local officers, agencies, or civil or criminal law enforcement authorities against Respondent for violations of law under statutes, rules, or regulations of the State of Tennessee, which may arise out of the facts, acts, or omissions contained in the Findings of Fact and Conclusions of Law stated herein, or which arise as a result of the execution of this Consent Order by Respondent.

5. Respondent expressly waives all further procedural steps, and expressly waives rights to seek judicial review of, or to otherwise challenge or contest the validity of this Consent Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Consent Order by the Commissioner.

6. Respondent fully understands and agrees that the TSD is not required to accept this Consent Order, and that the Commissioner is not obligated to enter same, if Respondent has not delivered to the TSD his first payment of \$5,000.00 toward the civil penalty assessment by May 15, 2017. Should Respondent not pay the civil penalty in a timely manner, this Consent Order will not become effective, and the TSD will reschedule the hearing in this case on a contested docket before an Administrative Judge assigned to the Secretary of State.

AUTHORITY AND JURISDICTION

7. The Commissioner has jurisdiction over this matter pursuant to the Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. §§ 48-1-101 to 48-1-201 (“Act”). Responsibility for administration of the Act is placed with the Commissioner.

PARTIES

8. The TSD is the lawful agent through which the Commissioner administers the Act and is authorized to bring this action based on the finding that such 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, pursuant to Tenn. Code Ann. § 48-1-116.

9. Respondent is a resident of Tennessee, with a last known residential address of 125 Taggart Avenue, Nashville, TN 37205. Respondent was last registered with the TSD and with the Financial Industry Regulatory Agency (“FINRA”) as an investment adviser representative (Individual Central Registration Depository (“CRD”) # 4006999) employed by Clearpoint Capital Management, LLC (“CCM”) from August 12, 2014, through September 5, 2014. Prior to his employment with CCM, Respondent was previously registered with the TSD and with FINRA as a broker-dealer agent employed by UBS Financial Services, Inc. (“UBS”) from December 3, 2008, through May 2, 2014. Respondent resigned from UBS on May 1, 2014.

10. According to records of the Alabama Secretary of State, CCM is an active Alabama Foreign Limited Liability Company, with a listed business address of 4513 Old Shell Rd., Bldg. 1-B, Mobile, AL 36608, and with Scott R. McCaghren serving as its Registered Agent at the same listed address. CCM was formed in Florida in September 2012, and was registered in Alabama as an investment adviser on February 19, 2013. CCM was last registered by the TSD as

an investment adviser from August 12, 2014, through the date of its termination/withdrawal of registration on May 2, 2016. At all times relevant herein, Respondent was listed as portfolio manager by CCM.

FINDINGS OF FACT

10. On or about March 27, 2014, Respondent was arrested in Davidson County, Tennessee, and charged with Conspiracy to Deliver Three Hundred (300) pounds or more of Marijuana in violation of Tenn. Code Ann. § 39-17-417(j), and Money Laundering in violation of Tenn. Code Ann. § 39-14-903.

11. Because of the pendency of these criminal charges, Respondent resigned his position with UBS effective May 1, 2014, and was asked by his brother, Daniel G. Elcan, to transfer to CCM during the spring of 2014. At that time, CCM used T.D. Ameritrade as its trading platform. However, due to Respondent's legal issues pending in Davidson County Criminal Court, T.D. Ameritrade would not allow him access on the trading platform.

12. Between May 2014 and October 2015, Respondent used the T.D. Ameritrade access numbers of Paul Elcan, his nephew and a registered investment adviser representative employed with CCM, and of Richard Foster, an owner, President, and registered investment adviser representative employed with CCM, to access the trading platform on behalf of CCM's clients. According to Mr. Foster, Respondent was the only member or employee of CCM who actively managed and traded clients' accounts during this time period.

13. On or about June 27, 2014, Respondent entered a conditional guilty plea pursuant to Tenn. Code Ann. § 40-35-313 in Davidson County Criminal Court to amended felony charges of Attempting to Possess over Seventy (70) Pounds of Marijuana in violation of Tenn. Code Ann. § 39-17-417 and 39-12-101, and Facilitation of Money Laundering in violation of Tenn.

Code Ann. § 39-14-903. He was placed on three (3) years of judicial diversion (probation) to expire on or about June 2017, if he successfully complies with all conditions. He also paid a \$100,000 fine and agreed to the judicial forfeiture of the residence located at 400 Hunt Club Road in Williamson County, Tennessee. If he successfully completes the term of judicial diversion, the pending criminal charges will be dismissed and he will be eligible to have the charges expunged from his official records.

14. Between August 21, 2014 and August 18, 2015, CCM paid Respondent net compensation or fees of \$237,026.24, which is consistent with Mr. Foster's statement that Respondent was compensated 85 basis points based on the 1% of management fees for total client assets with CCM.

15. As late as October 2, 2015, Respondent used Mr. Foster's name and T.D. Ameritrade password to gain access to CCM client accounts, and the internet protocol address used to gain online access was listed for Nashville, Tennessee. During all relevant times, no officers, members, employees, or others associated with CCM who had investment adviser representative or broker-dealer agent responsibilities, other than Respondent and his spouse, Pamela Elcan, had listed internet protocol or residential addresses in Tennessee. Further, Mr. Foster and Pamela Elcan have admitted that Respondent was the individual accessing the CCM clients' online accounts at that time.

16. On September 30, 2015, the Alabama Securities Commission ("ASC") received information that CCM was using Respondent as an unregistered investment adviser representative to manage clients' accounts.

17. On October 30, 2015, the ASC issued an order requiring Respondent to cease and desist from all further securities activity in, from, or into the State of Alabama, and on November

24, 2015, the ASC issued a show cause order against CCM, Respondent, Elcan Wealth Consulting, Paul Elcan, Daniel Elcan, Pamela Elcan, and Richard Foster.

18. At all relevant times, Elcan Wealth Consulting (“EWC”) was a subsidiary of CCM with a business address of 3601 Springhill Business Park, Suite 201, Mobile, AL 36608, and Respondent was listed as a Senior Vice President, Senior Portfolio Manager, and registered investment adviser with EWC.

19. On December 23, 2015, an informal hearing was conducted by the ASC with all of the above listed Alabama Respondents in attendance, and the ASC entered a final Consent Order agreed to by all such Respondents on March 18, 2016. All factual matters set out above regarding Respondent Cal Elcan’s actions have been conclusively determined by the ASC in this March 18, 2016 Consent Order.

20. All Respondents before the ASC (including Cal Elcan and CCM), had the right to further administrative proceedings, including the right to a contested case administrative hearing before the ASC, but voluntarily waived such rights and agreed to resolve the matter before the ASC by entering into the March 18, 2016 Consent Order.

21. Respondent knew that T.D. Ameritrade would not allow him access on its trading platform beginning on or about early May 2014, but by working with CCM to surreptitiously use the names, and T.D. Ameritrade access numbers and passwords of other CCM employees or associates, Respondent engaged in a deceptive scheme, artifice, and/or course of business that operated to deprive T.D. Ameritrade of the ability to enforce this ban.

22. The ASC’s Consent Order required CCM to cease business within 90 days of the said Consent Order’s entry, and barred Respondent from future registration in Alabama as an investment adviser, investment adviser representative, or broker-dealer agent. Pursuant to this

ASC Consent Order entered on March 18, 2016, CCM was required to disgorge to the ASC the net fees paid to the Respondent between August 2014 and August 2015, in the amount of \$237,026.24, and to pay an additional sum of \$75,000, for a total of \$302,026.24.

23. Further, the ASC's Consent Order required CCM to donate \$20,000 to the ASC's Alabama Investor Protection Trust ("IPT") program, for the specific use of IPT programs in that state at the discretion of the ASC Commissioner. Finally, the ASC's Consent Order required CCM to donate \$5,000 to the Alabama Council on Economic Education, for use in economic education programs in Alabama.

24. By mid-March 2016, CCM did not have available funds to satisfy the full amount (\$327,026.24) of penalties required by the ASC Consent Order, and Respondent contributed one-third (1/3) of the total required, or \$109,008.74, by paying this sum to CCM on March 16, 2016. Thereafter, CCM satisfied the full amount due under the ASC Consent Order, by making a total payment of \$327,026.24 to the ASC on March 18, 2016.

25. Respondent has satisfied other sanctions involving these same facts by paying out of his individual funds a substantial portion (\$109,008.74) of the total monetary penalties imposed against CCM in the March 2016 ASC Consent Order. Moreover, he has acquiesced in the ASC's findings and conclusions, and he has accepted a permanent bar from the securities business in Alabama.

CONCLUSIONS OF LAW

26. Respondent's actions as set forth above in the foregoing Findings of Fact constitute violations of Tenn. Code Ann. § 48-1-109(c)(1), and constitute grounds for the imposition of lawful discipline, including the assessment of civil penalties, pursuant to Tenn. Code Ann. § 48-1-109(e), which read in pertinent part:

Tenn. Code Ann. § 48-1-109

...

(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 or investment adviser representative under this part;

...

(e) The commissioner may, after notice and an opportunity for a hearing under the Uniform Administrative Procedures Act, complied 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.

...

27. Respondent's actions as set forth above in the foregoing Findings of Fact constitute violations of Tenn. Code Ann. §§ 48-1-121(a)(1) and (3), and constitute grounds for the imposition of lawful discipline, including the assessment of civil penalties, pursuant to Tenn. Code Ann. §§ 48-1-116(a) and 48-1-121(d). These sections read, in pertinent part, as follows:

Tenn. Code Ann. § 48-1-116

(a) The commissioner may from time to time make...such orders as are necessary to carry out this part...

...

Tenn. Code Ann. § 48-1-121

(a) It is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, directly or indirectly, to:

(1) Employ any device, scheme, or artifice to defraud;

...

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

28. Based upon the above Findings of Fact and Conclusions of Law, the Commissioner considers that the Respondent's actions warrant the issuance of an order barring the Respondent from the securities business in Tennessee, requiring that Respondent cease and desist from conducting any further securities transactions on behalf of others from, in, or into the State of Tennessee, and from any other activities in violation of the Act, and the imposition of lawful discipline in the form of a civil penalty assessment in accordance with Tenn. Code Ann. §§ 48-1-109(e), 48-1-116(a), and 48-1-121(d).

29. In order to avoid further expenses or costs associated with additional administrative litigation of this matter or judicial review, Respondent hereby acknowledges the Commissioner's authority to administer the statutes cited herein, concedes that the Commissioner's interpretation of the statutes cited in the Conclusions of Law are reasonable and enforceable, and agrees to the entry of this Consent Order including each of the following sanctions ordered by the Commissioner.

ORDER

NOW, THEREFORE, on the basis of the foregoing, and Respondents' waiver of the right to a hearing and appeal under the Act and the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 to 4-5-404, and Respondents' admission of jurisdiction of the Commissioner, the Commissioner finds that Respondents, for the purpose of settling this matter, admit the Findings of Fact and Conclusions of Law, agree to the entry of this Consent Order, and agree that this Consent Order is in the public interest and is consistent with the purposes fairly intended by the Act.

IT IS ORDERED, pursuant to Tenn. Code Ann. §§ 48-1-109(c)(1) & (e), 48-1-116(a), 48-1-121(a)(2) & (a)(3), and 48-1-121(d), that:

1. Respondent is **ASSESSED a CIVIL PENALTY** in the amount of \$10,000.00.
2. All payments to the Department of the \$10,000.00 civil penalty assessment shall be mailed to:

State of Tennessee
Department of Commerce and Insurance
Office of Legal Counsel
Attn: Jesse D. Joseph, Assistant General Counsel
500 James Robertson Parkway, 8th Floor
Nashville, TN 37243

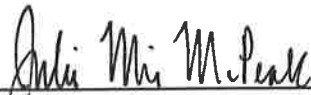
3. Respondent's payment of the civil penalty to the Department shall be in two (2) installments over three (3) months as follows:
 - (a) Respondent shall deliver his first \$5,000.00 payment to the Department toward the civil penalty assessment by **May 15, 2017**; and
 - (b) Respondent shall deliver his second \$5,000.00 payment to the Department toward the civil penalty assessment by **August 15, 2017**.
4. Respondent is permitted to pay the civil penalty assessment before August 15, 2017, if he chooses.
5. Respondent's payment shall be considered timely made if it is **received** by the Department within seven (7) calendar days of the date such payment is due. The payment shall include a copy of the first page of this Consent Order and shall be made payable to "State of Tennessee."
6. Respondent is **PERMANENTLY BARRED** from registration as an investment adviser, investment adviser representative, broker-dealer, or broker-dealer agent in the State of Tennessee.

10. Respondent shall **CEASE and DESIST** from conducting any further securities transactions on behalf of others from, in, or into the State of Tennessee, and from any other activities in violation of the Act.

IT IS ORDERED that this Consent Order represents the complete and final resolution of, and discharge with respect to all administrative and civil, claims, demands, actions and causes of action by the Commissioner against Respondents for violations of Tenn. Code Ann. §§ 48-1-109(c)(1) & (e), 48-1-116(a), 48-1-121(a)(2) & (a)(3), and 48-1-121(d) alleged by the TSD to have occurred with respect to the transactions involving the facts contained herein.

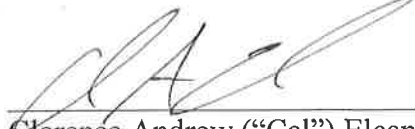
This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties, and is for settlement purposes only. By the signatures affixed below, Respondent affirmatively states that he has freely agreed to the entry of this Consent Order, that he waives the right to a contested case hearing on the matters underlying this Consent Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made to him by the Commissioner, the TSD, or any agent or representative thereof. The parties, by signing this Consent Order, 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 the settlement as set forth in this Consent Order, are binding upon them.

ENTERED this 12 day of May, 2017.



Julie Mix McPeak, Commissioner
TN Department of Commerce and Insurance

APPROVED FOR ENTRY:




Clarence Andrew ("Cal") Elcan,
Respondent
125 Taggart Avenue
Nashville, TN 37205



Frank Borger-Gilligan
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TN Department of Commerce and Insurance



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