

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

TENNESSEE SECURITIES DIVISION,)	
Petitioner)	
)	
v.)	
)	
JAMES E. LUSH and)	
SMARTRADES, LLC)	Order No.: 11-012
Respondents.)	

CONSENT ORDER

The Tennessee Securities Division (“Division”), and James E. Lush (“Lush”), Respondent herein, agree to the entry of this Consent Order in accordance with TENN. CODE ANN. § 48-2-116 of the Tennessee Securities Act of 1980, as amended, TENN. CODE ANN. § 48-2-101, *et seq.* (“Act”), which states that the Commissioner of Commerce and Insurance (“Commissioner”) from time to time may make such orders as are necessary to carry out the provisions of the Act.

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 the 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 against the Respondent for acts or omissions not specifically addressed in this Consent Order for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by any other state government representative against the Respondent for violations of law under other 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 may arise as a result of the execution of this Consent Order by the Respondent.

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

FINDINGS OF FACT

1. The Tennessee Securities Act of 1980, as amended, TENN. CODE ANN. § 48-2-101, *et seq.* (the “Act”), places the responsibility for the administration of the Act on the Commissioner.

The Division is the lawful agent through which the Commissioner discharges this responsibility.

TENN. CODE ANN. § 48-2-115.

2. James Emmett Lush (“Lush”) (CRD#2657072), is a citizen and resident of the state of Tennessee, residing at 91 Hall Lane, Brush Creek, Tennessee. At all relevant times herein, Lush was not registered as a broker-dealer agent or an investment adviser representative with the Division.

3. SmarTrades, LLC (“SmarTrades”) is a business entity with a principal place of business located at 102 Hartmann Drive, Suite G-155, Lebanon, Tennessee. SmarTrades has never been registered as a broker-dealer or an investment adviser with the Division.

4. On June 25, 2009, the Division received a request for assistance in executing a subpoena regarding Lush and SmarTrades from the Indiana Securities Division (“ISD”).

5. According to the ISD, they had received a complaint from a resident in their state that Mr. Lush had given an investment pitch at a restaurant in Covington, Indiana around December 2006 or January 2007 that featured foreign currency. The complainant, along with other people in attendance, gave Mr. Lush one thousand dollars (\$1000.00) to invest and they paid a transaction fee of six hundred dollars (\$600). The complainant received one statement and never heard back from Mr. Lush.

6. After further investigation, Enforcement determined that there were four (4) Tennessee residents that invested with Mr. Lush through SmarTrades and multiple other investors from various states.¹

¹ South Carolina (3); Florida (7); Kentucky (14); Indiana (10); New York (1); Illinois (1)

7. After unsuccessful attempts with Forex trading, Mr. Lush got into financial trouble and used investors' monies to pay his own personal expenses. He did not get permission from the investors' to use their money in this manner.

8. None of these investments were registered with the TSD as a security for sale in or into the State of Tennessee. An examination of the securities registration databases maintained and monitored by the TSD revealed no registration filings for the investment contracts offered by Lush and SmarTrades.

CONCLUSIONS OF LAW

1. Pursuant to TENN. CODE ANN. §48-2-115(a), the responsibility for administration of the Act is upon the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility.

2. TENN. CODE ANN. § 48-2-112(a)(2)(G) states, in pertinent part, that the Commissioner by order may deny, suspend, or revoke any registration under this part if she finds that the order is in the public interest, necessary for the protection of investors, and if she finds that the registrant, or in the case of a broker-dealer, any officer, director, or any person occupying a similar status or performing similar functions has engaged in dishonest or unethical practices in the securities business.

3. TENN. CODE ANN. § 48-2-104(a) states that it is unlawful for any person to sell any security in this state unless: (1) It is registered under this part; (2) The security or transaction is exempted under § 48-2-103; or (3) The security is a covered security.

4. TENN. CODE ANN. § 48-2-109(a) states that it 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.

5. TENN. CODE ANN. § 48-2-121(a) states that 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; (2) Make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in 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.

6. TENN. CODE ANN. § 48-2-104(b) provides that the commissioner may, after notice and 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.

7. TENN. CODE ANN. § 48-2-109(e) provides that the commissioner may, after notice and 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.

8. The averments in paragraphs one-eight of this Consent Order, constitute practices by James E. Lush which would provide grounds under TENN. CODE ANN. §§ 48-2-104 and 48-2-109 for

the entry of an order of sanctions.

9. The averments in paragraphs one-eight of this Consent Order, constitute practices by James E. Lush which would provide grounds under TENN. CODE ANN. § 48-2-112 for the entry of an order of sanctions.

ORDER

NOW, THEREFORE, on the basis of the foregoing, and Respondent's waiver of his right to a hearing and appeal under the Tennessee Securities Act and Tennessee's Uniform Administrative Procedures Act, TENN. CODE ANN. § 4-5-101 *et seq.*, and Respondent's admission of jurisdiction of the Commissioner, the Commissioner finds that the Respondent, for the purpose of settling this matter, admit the "Findings of Fact" as contained herein, and have agreed to the entry of this Consent Order and that the following Consent Order is appropriate, 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.

IT IS ORDERED, pursuant to TENN. CODE ANN. § 48-2-116(a) of the Act and TENN. CODE ANN. §§ 56-6-101, *et seq.*, the Law that:

1. Respondent James E. Lush shall fully **COMPLY** with the Act and all rules promulgated thereunder;
2. Respondent James E. Lush shall permanently **CEASE AND DESIST** in any further conduct as a broker-dealer, agent of a broker-dealer, investment adviser, or investment adviser representative from or in the state of Tennessee, beginning on the date this Consent Order is executed by the Commissioner for the Department of Commerce and Insurance.

3. Respondent James E. Lush shall **CEASE AND DESIST** in conducting securities transactions on behalf of others from, in, or into the State of Tennessee, beginning on the date this Consent Order is executed by the Commissioner for the Department of Commerce and Insurance.

4. Respondent agrees to be **PERMANENTLY BARRED** from seeking registration in the State of Tennessee as a broker-dealer or investment adviser, beginning with the entry date of this Order.

5. Respondent agrees to be **PERMANENTLY BARRED** from seeking registration in the State of Tennessee as an insurance producer, beginning with the entry date of this Order.

6. Respondent James E. Lush is **ORDERED TO AND AGREES** to pay restitution to the investors in the amount of seventy-three thousand five hundred dollars (\$73,500), to be paid upon execution of this document, but in no event later than March 1, 2013. Mr. Lush will pay seventy thousand two hundred dollars (\$70,200) of that amount upon execution of this document. The remaining three thousand three hundred dollars (\$3,300) shall be paid no later than March 1, 2013. Payment in the form of a money order or cashier's check shall be mailed or delivered directly to each of the investors that entered into investment contracts offered by SmarTrades, LLC from Respondent James E. Lush. Proof of payment shall be mailed within (15) fifteen days of payment to:

State of Tennessee
Department of Commerce and Insurance
Securities Division - Broker-Dealer Section
8th Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243

7. Respondent James E. Lush is **ORDERED TO AND AGREES** to pay civil penalties in the amount of ten thousand dollars \$10,000.00, no later than March 1, 2013. Payment in the form of a money order or cashier's check shall be mailed or delivered to:

State of Tennessee
Department of Commerce and Insurance
Securities Division - Broker-Dealer Section
8th Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243

8. Respondent James E. Lush agrees that any failure to comply with all the requirements and prohibitions contained in this Order shall result in further enforcement action by the Division, the Department of Commerce, and/or the State of Tennessee in order to enforce the provisions contained herein.

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 Respondent for violations of the Act and the Law alleged by the Division to have occurred with respect to the transactions involving the above referenced investors and 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 hearing on the matters underlying this Consent Order and to a review of the Findings of Fact and Conclusions of Law

ENTERED this 8th day of June, 2012.

Julie Mix McPeak
Julie Mix McPeak, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

James E. Lush
James E. Lush
Respondent

Daphne D. Smith
Daphne D. Smith,
Assistant Commissioner for Securities
Department of Commerce and Insurance

Ashley Odubeko
Ashley Odubeko (BPR # 026461)
Assistant General Counsel for Securities
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(615) 741-2199/Fax (615) 741-4000

RECEIVED
JUN 20 2012
LEGISLATIVE SERVICES
DEPT OF COMMERCE AND INSURANCE