



State of Tennessee
Department of State
Administrative Procedures Division
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September 21, 2020

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**RE: TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE V. JAMES H.
MOBLEY, APD Case No. 12.06-201279J**

Enclosed is a/an *ORDER OF DISMISSAL* rendered in this case.

Administrative Procedures Division
Tennessee Department of State

Enclosure(s)



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

TENNESSEE SECURITIES DIVISION,)
)
 Petitioner,)
)
 v.)
)
 JAMES H. MOBLEY, JR.,)
)
 Respondent.)

APD No.: 12.06-201279J
TSD No.: 20-042

AGREED ORDER

The Securities Division of the Tennessee Department of Commerce and Insurance (“Division”) and James H. Mobley, Jr. (“Respondent”) agree to the entry and execution of this Agreed 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. The Division is the lawful agent through which the Commissioner administers the Act pursuant to Tenn. Code Ann. § 48-1-115, and it 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. §§ 48-1-112 and 48-1-116 .

2. James H. Mobley Jr. (“Respondent”), at all times relevant, acted as an agent of Discovery Fund LLC, (“DFL”) a business corporation registered with the Nevada Secretary of

State, and Manager of Gen Tech Energy LLC (“GTE”), with a residential address of 248 Summershade Lane, Concord, Tennessee 37922.

3. During all relevant times mentioned herein, the Respondent was not registered with the Division nor the Financial Industry Regulatory Authority (“FINRA”) as an investment adviser, investment adviser representative, broker-dealer, or agent. He was previously registered with Central Registration Depository Number (“CRD #”) 1309800; however, he has remained unregistered since 1999.

II. GENERAL STIPULATIONS

4. It is expressly understood that this Agreed 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 Agreed Order by the Commissioner. Entry and execution of this Agreed Order by the Commissioner shall occur when the Commissioner signs and dates this Agreed Order.

5. It is expressly understood that this Agreed 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.

6. This Agreed 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 Agreed Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Agreed Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

7. The Respondent fully understands that this Agreed Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts and/or omissions

not specifically addressed in this Agreed Order nor for facts and/or omissions that do not arise from the facts or transactions herein.

8. The Respondent fully understands that this Agreed Order will in no way preclude proceedings by state government representatives, other than the Commissioner, for acts or omissions addressed specifically in this Agreed 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 Agreed Order, or acts or omissions addressed specifically herein that result from the execution of this Agreed Order.

9. The Respondent waives all further procedural steps and all rights to seek judicial review of, or otherwise challenge the validity of this Agreed Order, the stipulations and imposition of discipline contained herein, or the consideration and entry and execution of this Agreed Order by the Commissioner.

III. FINDINGS OF FACT

10. On July 16, 2019, the Division received a referral from the Alabama Securities Commission involving a formal complaint from an Alabama resident about the Respondent, who was, at all relevant times, a resident of Tennessee.

11. Per this Alabama resident, the Respondent solicited him, while representing DFL, via telephone in October 2014, to invest in the development of an electronic educational application that would allow parents to track their children's educational development. This technology was being developed and marketed by DFL. The Respondent told this Alabama investor that his investment of twenty-five thousand dollars (\$25,000) would earn a ten percent (10%) return by December 2015.

12. On October 17, 2014, the Respondent issued this Alabama resident a promissory

note stating that he promises to pay the full amount of the investment if DFL fails to return the Alabama resident his funds by December 2015.

13. On December 12, 2014, a ten thousand dollar (\$10,000) wire was credited to DFL's Wells Fargo account by the Alabama resident. On December 26, 2014, the Alabama resident made a second wire of fifteen thousand dollars (\$15,000) into DFL's Wells Fargo account, for a total investment of twenty-five thousand dollars (\$25,000).

14. On December 27, 2014, the Alabama resident was issued a promissory note for an investment of twenty-five thousand dollars (\$25,000) into DFL. The Respondent also executed the promissory note representing GTE as an agent. This offering was neither notice filed nor registered with the Division

15. The Division reviewed its files and found that the Respondent, during all times referenced herein, was not registered as a broker-dealer, agent, investment advisor, or investment advisor representative in Tennessee.

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. § 48-1-104(a)(1) – (3) and (b), effective from July 9, 2012, to May 17, 2017, provides:

- (a) 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 § 48-1-103; or
 - (3) The security is a covered security.
- (b) 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.

19. Tenn. Code Ann. § 48-1-109, effective from July 9, 2012, to May 17, 2017, establishes:

- (a) It is unlawful for any person to transact business from, in, or into this state as a[n] . . . agent unless such person is registered as a[n] agent under this part . . .
...
- (c) It is unlawful for any person to transact business from or in this state as an investment adviser or 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, 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.

20. The Findings of Fact detailed above show that the Respondent violated Tenn. Code Ann. §§ 48-1-104 and 48-1-109.

21. Accordingly, the Parties find 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 Agreed 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;
2. CEASE AND DESIST from further prohibited activity as outlined in the above findings of facts; and
4. PAY A CIVIL PENALTY to the State of Tennessee of five thousand dollars (\$5,000.00). 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 Agreed Order must accompany the payment for reference. Payment shall be remitted within thirty (30) days after the entry and execution of this Agreed 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

5. The Respondent's failure to comply with the terms of this Agreed 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.

7. **IT IS FURTHER ORDERED** that this Agreed 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 Agreed Order provisions contained herein.

8. This Agreed 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 Agreed 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 Agreed Order or the enforcement of this Agreed Order; and the Respondent encountered no threats or promises of any kind by the Commissioner, the Division, or any agent or representative thereof.

9. By signing this Agreed Order, the Commissioner, Division, and the Respondent affirmatively state their agreement to be bound by the terms of this Agreed 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 Agreed Order, are binding upon them.

10. This Agreed 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 by the Commissioner on this 18th day of
September, 2020.


[Hodgen Mainda \(Sep 18, 2020 16:05 CDT\)](#)
Hodgen Mainda, Commissioner
Department of Commerce and Insurance

This Agreed Order is entered and effective this 21st day of September, 2020. Once signed by the Administrative Law Judge presiding over this matter, this matter is DISMISSED as there are no issues remaining to be resolved.

It is so ORDERED.


Mattielyn B. Williams
Administrative Judge
Administrative Procedures Division
Office of the Secretary of State

APPROVED FOR ENTRY AND EXECUTION:


James Mobley
The Respondent


Scott Raymond Maucere, BPR #027407
Counsel for the Respondent


[Elizabeth Bowling \(Sep 17, 2020 11:18 CDT\)](#)
Elizabeth Bowling
Assistant Commissioner for Securities
Department of Commerce and Insurance


[Virginia Smith \(Sep 17, 2020 12:33 CDT\)](#)
Virginia Smith, BPR #31248
Associate General Counsel
Department of Commerce and Insurance

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this Agreed Order will be served upon James H. Mobley's counsel via e-mail and regular mail, to the below enclosed address on the 18th day of September, 2020.

Counsel for Mr. Mobley:

Scott Raymond Maucere Will be mailed 9/22/20
Barham & Maucere LLC
6708 Heritage Business Court
Chattanooga, TN 37421

E-mail address: scott@b-m.law e-mailed 9/18/20

Virginia Smith
Virginia Smith (Sep 17, 2020 12:33 CDT)

Virginia Smith