



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

TENNESSEE SECURITIES DIVISION,)
)
 Petitioner,)
)
 v.)
)
 KAY OLDHAM,)
 ABNER BRUCE OLDHAM, AND)
 ABNER BRUCE OLDHAM d/b/a)
 CAPITAL PERSPECTIVES)
 INVESTMENT MANAGEMENT)
)
 Respondents.)

MATTER No.: 24-00369

CONSENT ORDER

The Securities Division of the Tennessee Department of Commerce and Insurance (“Division”) and Abner Bruce Oldham doing business as (“d/b/a”) Capital Perspectives Investment Management (“Capital Perspectives”), its chief compliance officer (“CCO”) Kay Oldham, its sole investment adviser representative, Abner Bruce Oldham, together, (“Respondents”), 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 Tennessee Department of Commerce and Insurance (“Commissioner”).

PARTIES

1. Capital Perspectives is an investment adviser firm with its principal place of business located in Chattanooga, Tennessee, and is assigned Central Registration Depository (“CRD”) number 123866 with the Financial Industry Regulatory Authority (“FINRA”).

2. Kay Oldham is a minority owner and chief compliance officer of Capital Perspectives and is assigned CRD number 5917743 with FINRA.

3. Abner Oldham is the majority owner and sole investment adviser representative of Capital Perspectives and is assigned CRD number 351872.

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

GENERAL STIPULATIONS

5. 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 the Commissioner.

6. 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.

7. This Consent Order is executed by the Commissioner, the Division, and the Respondents to avoid further administrative action with respect to this cause. 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.

8. The Respondents fully understand 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.

9. The Respondents fully understand 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.

10. The Respondents waive all further procedural steps and waive 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.

11. This Consent Order is submitted on the condition that, if accepted, the Commissioner will not bring any future actions against the Respondents alleging violations based on the same factual findings described herein.

FINDINGS OF FACT

12. The Division opened a cyclical books and records examination of Capital Perspectives on or about June 30, 2023.

13. The Division examiner reviewed client agreements for Capital Perspectives' client roster of thirty (30) clients.

14. During the examination, the Division's examiner discovered that thirteen (13) out of thirty (30) client agreements were not signed by Capital Perspectives or by its investment

adviser representative. Three (3) additional client agreements were not signed by the investment adviser representative.

15. The Division's examiner found that Capital Perspectives maintained one (1) client agreement which was not signed by the client.

16. Capital Perspectives failed to obtain a client agreement for one (1) client on its roster on the belief that a client agreement was not needed since advisory fees were not being charged.

17. One (1) of the thirty (30) client agreements failed to contain a required clause indicating that no assignments of the contract would be made by the investment adviser without the consent of the client.

18. Capital Perspectives' client agreements state that it must obtain prior approval from the client before making changes to the client's portfolio. For four (4) clients, Capital Perspectives was acting on a discretionary basis and making changes to the client's portfolio without prior approval from the client.

19. Capital Perspectives used the client's own username and password credentials for two (2) clients to manage annuities with a third party on behalf of the clients.

20. Capital Perspectives maintained insufficient policies and procedures in its compliance manual. The compliance manual lacked policies and procedures for handling client complaints, trading errors, protection of vulnerable clients, and business continuity plans. The compliance manual also lacked any written cybersecurity policies and procedures.

21. Capital Perspectives maintained Move Money Authorization forms, which are a form of standing letters of authorization, for eighteen (18) clients and twenty-five (25) accounts.

Capital Perspectives has used these forms since approximately 1993 but has never complied with Tennessee's custody requirements related to standing letters of authorization.

22. Capital Perspectives failed to deliver its written disclosure statements to six (6) clients in 2021 and 2023. Capital Perspectives failed to maintain documentation of delivery of the written disclosure statements for twenty-nine (29) clients in 2022.

23. Respondents cooperated with the examination and took corrective action to address the findings of the examination.

CONCLUSIONS OF LAW

24. 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).

25. Tenn. Code Ann. § 48-1-116 provides 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.

26. Tenn. Comp. R. & Regs. 0780-04-03-.02(3)(a)8. provides that:

(a) Except as provided in subparagraph (3)(c) of this Rule, every registered investment adviser shall maintain and keep current the following books and records relating to its business, unless waived by order of the commissioner:

...

8. Copies 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 the manner of computation and method of payment thereof, and copies of all communications, correspondence, and other records relating to securities transactions.

27. Tenn. Comp. R. & Regs. 0780-04-03-.02(6)(c) provides that:

(c) The following are deemed “dishonest or unethical business practices” by an investment adviser or an investment adviser representative under T.C.A. § 48-1-112(a)(2)(G), to the extent permitted under Section 203A of the Investment Advisers Act, without limiting those terms to the practices specified herein:

1. Exercising any discretionary power in placing an order for the purchase or sale of securities for the account of a customer without first obtaining written discretionary authority from the customer;

...

5. Executing a transaction on behalf of a customer without authority to do so;

...

19. Entering into, extending, or renewing any investment advisory contract, unless such contract is in writing and, in substance, discloses:

...

(vii) That no assignments of such contract shall be made by the investment adviser without the consent of the other party to the contract;

20. Failing to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such investment adviser’s business, to prevent the misuse in violation of the Investment Advisers Act or the 1934 Act, or the rules or regulations promulgated thereunder, of material, non-public information by such investment adviser or any person associated with such investment adviser;

28. Tenn. Comp. R. & Regs. 0780-04-03-.02(4)(a)2. provides that:

(a)2. For any investment adviser registered in this state which has custody of client funds or securities, or which requires prepayment of more than five hundred dollars (\$500) in advisory fees six (6) or more months in advance, such statement of financial condition (balance sheet) shall be:

(i) Certified by an independent certified public accountant or independent public accountant;

(ii) Prepared in accordance with generally accepted accounting principles consistently applied; and

- (iii) Accompanied by an opinion of the accountant as to the investment adviser's financial condition which is unqualified, except as to matters which would not have a substantial effect on the financial condition of the investment adviser.

29. Tenn. Comp. R. & Regs. 0780-04-03-.10 provides that:

- (1) General Requirement. Unless otherwise provided in this Rule, an investment adviser, registered or required to be registered pursuant to T.C.A. § 48-1-109(c) shall, in accordance with the provisions of this Rule, furnish each advisory client and prospective advisory client with a written disclosure statement which may be either a copy of Part 2 of its Form ADV or a written document containing at least the information then so required by Part 2 of Form ADV.

...

- (3) Offer to deliver.
 - (a) An investment adviser, except as provided in subparagraph (3)(b) of this Rule, annually shall without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required by this Rule.

30. The Findings of Fact detailed above show that Capital Perspectives failed to maintain and keep current client agreements in violation of Tenn. Comp. R. & Regs. 0780-04-03-.02(3)(a)8.

31. The Findings of Fact detailed above show that Capital Perspectives failed to include required language regarding the assignment of the investment advisory contract in violation of Tenn. Comp. R. & Regs. 0780-04-03-.02(6)(c)19.(vii).

32. The Findings of Fact detailed above show that Capital Perspectives failed to maintain and enforce written policies and procedures regarding compliance and cybersecurity in violation of Tenn. Comp. R. & Regs. 0780-04-03-.02(6)(c)20.

33. The Findings of Fact detailed above show that Capital Perspectives failed to comply with custody requirements in violation of Tenn. Comp. R. & Regs. 0780-04-03-.02(4)(a)2.

34. The Findings of Fact detailed above show that the Respondents failed to deliver and maintain record of its annual delivery of written disclosures in violation of Tenn. Comp. R. & Regs. 0780-04-03-.10(1) and (3)(a).

35. The Findings of Fact detailed above show that the Respondents exercised discretionary power without prior written authorization and executed transactions on behalf of clients without authorization to do so in violation of Tenn. Comp. R. & Regs. 0780-04-03-.02(6)(c)1. & 5.

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

ORDER

NOW, THEREFORE, based on the foregoing, including the Respondents' 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 Respondents' admission to the jurisdiction of the Commissioner, the Commissioner finds that the Respondents agree to the entry and execution of this Consent Order to settle this matter as evidenced by the Respondents' signature.

IT IS ORDERED, pursuant to Tenn. Code Ann. § 48-1-116(a), that the Respondents 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 two thousand five hundred dollars (\$2,500) on behalf of the Respondents for which they will be jointly and severally liable. Payment shall be made within thirty (30) days of the execution of this Consent Order by the Commissioner. 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 mailed to the attention of:

State of Tennessee
Department of Commerce and Insurance
Attn: Jacob R. Strait
500 James Robertson Parkway
Davy Crockett Tower
Nashville, Tennessee 37243

3. **GRACE PERIOD** – Payment shall be timely made if postmarked within five (5) business days of the date payment is due.

4. **ACCELERATION** – Respondents hereby agree that failure to remit any payment more than sixty (60) calendar days following the due date of said payment as indicated in the above scheduled payments shall constitute default. Upon default, the entire outstanding civil penalty shall be due and payable immediately.

5. **DELINQUENCY** – Respondents hereby agree that failure to make any payment according to this Consent Order shall result in the immediate revocation of Respondents' registrations with the Division.

6. **MODIFICATION** – The Division and Respondent hereby agree that modifications to this Consent Order regarding any term may only be made in writing and signed by an authorized representative of each party.

7. The Respondents' 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, which may include the assessment of additional civil penalties.

8. 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 Respondents for violations of the Act with respect to the transactions involved in 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.

9. 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 Respondents affirmatively state the following: the Respondents freely agree to the entry and execution of the Consent Order; the Respondents waive 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 Respondents encountered no threats or promises of any kind by the Commissioner, the Division, or any agent or representative thereof.

10. By signing this Consent Order, the Commissioner, the Division, and the Respondents 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.

11. 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 other electronic copies shall be deemed to constitute duplicate originals.

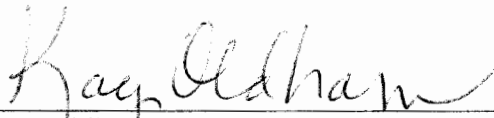
ENTERED AND EXECUTED November 26th, 2024.



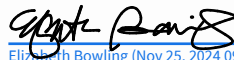
Carter Lawrence (Nov 26, 2024 08:06 CST)

Carter Lawrence, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY AND EXECUTION:

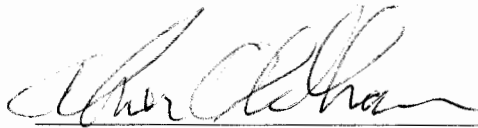


Kay Oldham
Individually and on behalf of:
Capital Perspectives Investment
Management, et al.



Elizabeth Bowling (Nov 25, 2024 09:29 CST)

Elizabeth Bowling
Assistant Commissioner for Securities
Department of Commerce and Insurance



Abner Oldham,
Individually



Jacob Strait, BPR #032389
Associate General Counsel
Department of Commerce and Insurance