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August 09, 2018

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RE: In the Matter of: Full Life Financial, LLC and Michael Keith Newcomb
Docket No. 12.06-149235J

Enclosed is an *Initial Order* and *Notice of Appeal Procedures* rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/arb
Enclosure

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AUG 13 2018

**DEPT. OF COMMERCE AND INSURANCE
LEGAL OFFICE**



STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE

TENNESSEE SECURITIES DIVISION,)
)
Petitioner,)
)
v.) Order No. 17-022
) Docket No. 12.06-149235J
FULL LIFE FINANCIAL, LLC)
and)
MICHAEL KEITH NEWCOMB,)
)
Respondents.)

INITIAL ORDER

This cause came on to be heard on April 23, 2018, by the Honorable Michael Begley, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division (“APD”), to sit for the Commissioner of the Tennessee Department of Commerce and Insurance. The Petitioner, the Tennessee Securities Division (“TSD”) was represented by Charles S. Herrell, Assistant General Counsel. No appearance was made by Respondents, Full Life Financial, LLC and Michael Keith Newcomb.

On May 16, 2018, Respondent filed a Motion to Set Aside Default Judgement, to which Petitioner filed an Opposition to the Motion to Set Aside on May 18, 2018. Petitioner correctly points out that the proper procedural remedy would be the filing of a Petitioner for Reconsideration within 15 days after the date of entry of the undersigned Administrative Judge’s Initial Order. As such, Petitioner’s Motion to Set Aside in denied as it pertains to this Initial

Order. Upon consideration of the pleadings, documents, live testimony of witnesses, and the proof as a whole, it is hereby determined as follows:

NOTICE OF DEFAULT

Pursuant to TENN. CODE ANN. § 4-5-307, the Petitioner filed and served a NOTICE OF HEARING AND CHARGES against Respondent on December 1, 2017, setting this matter for hearing on February 2, 2018. On February 2, 2018, Newcomb appeared for the February 2, 2018, hearing, but Full Life Financial was not represented.

Due to the lack of representation for Full Life Financial, and the presence of certain errors in the pleadings, Administrative Judge Shannon Barnhill granted the Motion of Newcomb to continue the case in order to obtain counsel, and granted the Motion of the Petitioner to amend the pleadings to properly frame the issues before the Court. Judge Barnhill entered an Order of Continuance and reset the case for a hearing on April 23, 2018.

Respondents did not appear or otherwise send representation to the April 23, 2018, hearing. Petitioner moved for, and was granted, a default Judgment, and the hearing was held on an uncontested basis.

PROPOSED FINDINGS OF FACT

Parties and Jurisdiction

1. Respondent Full Life Financial, LLC (“Full Life Financial”) is a registered investment adviser firm, and is a Limited Liability Company organized under the laws of the State of Tennessee, whose registered agent is Michael Keith Newcomb, 604 Georgetown Dr., Nashville, TN 37205.
2. Michael Keith Newcomb (“Newcomb”), is a registered investment adviser representative and agent of Full Life Financial. Newcomb is the sole owner and employee of Full Life Financial.

3. Newcomb and Full Life Financial are participants in the securities industry dealing in securities as "securities" are defined by TENN. CODE ANN. § 48-1-102(17)(A).
3. This matter is properly before the Court, pursuant to the Tennessee Securities Act of 1980, as amended, ("Act"), TENN. CODE ANN. §§ 48-1-101 to 48-1-201, which places the responsibility for the administration of the Act on the Commissioner ("Commissioner") of the Department of Commerce and Insurance ("Department").
4. The TSD is the lawful agent through which the Commissioner administers the Act and discharges this responsibility.
5. The TSD 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. TENN. CODE ANN. § 48-1-116.
6. Full Life Financial has been assigned Central Records Depository ("CRD") number 121518 by the Financial Industry Regulatory Authority ("FINRA") and is recognized by FINRA as an investment adviser firm.
7. Newcomb has been assigned Central Records Depository ("CRD") number 2772800 by FINRA and holds the status of registered investment adviser.
8. On or about October 25, 2016, the TSD gave notice to Respondents of an examination of the books and records of Full Life Financial and Newcomb, under the authority of TENN. CODE ANN. § 48-1-111.
9. Periodic examination of the books and records of Tennessee-based Investment Adviser firms by the TSD is conducted in the normal course of business for the public good and the protection of investors, pursuant to TENN. CODE ANN. § 48-1-111(d)(1).
10. Respondents failed to reply to the October 25, 2016 notice letter, resulting in the issuance of a second letter issued on or about December 5, 2016, informing Newcomb of the requirement

to provide the requested information or face administrative action to enforce the provisions of the Act.

11. Respondents failed to reply to the December 5, 2016 letter, resulting in the issuance of a final notice letter on or about February 23, 2017, providing details of the previously described attempts to achieve compliance with the request of the TSD, and demanding response within fourteen (14) days.

12. Respondents failed to reply to the February 23, 2017, final notice letter which resulted in the referral of the matter to the Financial Services Investigative Unit (“FSIU”) within the Department.

13. On or about April 17, 2017, the Assistant Commissioner for Securities issued an Order of Investigation, Number 2017-0009, authorizing agents of the FSIU to conduct an investigation of Respondents to determine whether there was misfeasance or malfeasance in the conduct of their business.

14. In the course of the resulting investigation a Subpoena *duces tecum* was issued by the Commissioner on May 31, 2017, ordering Respondents to appear with the previously requested documents as detailed in the aforementioned notice letters.

15. On July 3, 2017, the date for response to the lawfully issued Subpoena ordering Respondents to produce responsive materials, Newcomb appeared at the offices of the TSD and presented a portion of the subpoenaed materials. An inventory of these documents indicated that there were omissions of responsive materials, and the omissions were identified in a letter to the Respondents dated July 5, 2017.

16. A second extension of time for compliance was granted, with a date of September 7, 2017, for production of all missing materials. An inventory of these documents indicated that there were again omissions of responsive materials, and the omissions were identified in a letter to Newcomb dated September 13, 2017.

17. There was no reply from Respondents to the September 13, 2017, letter.
18. Notice of proposed litigation was presented by certified mail to Respondents dated November 15, 2017.
19. A Notice of Hearing and Charges (“NOHC”) dated December 1, 2017, was filed with the Administrative Procedures Division of the Tennessee Secretary of State on December 1, 2017, setting a hearing on charges contained within for February 2, 2018.
20. On February 2, 2018, a directive was given by Judge Shannon Barnhill to Newcomb as an agent of Full Life Financial that, as a Limited Liability Company, Full Life Financial must have representation by an attorney in a contested case. For this reason, and because of certain defects in the charging document, Judge Barnhill ordered that the case be continued to allow the Respondent(s) to obtain counsel, and for Petitioner to amend the pleadings.
21. On February 5, 2018, counsel for Petitioner filed the Motion to Amend, and Amended Notice of Hearing and Charges. Certified mail receipts indicate delivery to Respondents on February 8, 2018.
22. On March 1, 2018, Judge Barnhill issued an Order granting the Motion to Amend, and setting the date for the final hearing of this matter for April 23, 2018.
23. Respondents failed to appear at or to send an authorized representative to the April 23, 2018 hearing. Petitioner was granted permission to proceed on an uncontested basis.
24. Substantial repeated efforts have been made by Petitioner to accommodate Respondents’ requests for additional time to establish compliance with the original records request and later subpoena of those records.
25. Respondents have failed to comply with the subpoena issued by Commissioner of the Department of Commerce and insurance Julie Mix McPeak on April 17, 2017, seeking information from Respondents that is required to establish compliance with the Act.

26. Substantial and material evidence is before the Court to support the allegation by the Petitioner of non-compliance with the provisions of TENN. CODE ANN. § 48-1-111 (b), (c), and (d), by Newcomb and by Full Life Financial.

27. Substantial and material evidence is before the Court to support the allegation of non-compliance with the provisions of TENN. COMP. R. & REGS. 0780-04-03-.02(6)(c)(26) by Newcomb and by Full Life Financial.

28. Substantial and material evidence is before the Court to support the allegation of dishonest or unethical business practice(s)” as contemplated by TENN. COMP. R. & REGS. 0780-04-03-.02(6)(c) by Newcomb and by Full Life Financial.

29. The conduct of Newcomb and by Full Life Financial in engaging in dishonest or unethical business practices subjects both Newcomb and Full Life Financial to the sanctions available under TENN. CODE ANN. § 48-1-112(a)(2)(G).

CONCLUSIONS OF LAW

30. In accordance with TENN. COMP. R. & REGS. 1360-04-01-.02(7) and 1360-04-01-.15(3), Petitioner has proven by a preponderance of evidence that the facts alleged in the Amended Notice of Hearing and Charges pertaining to Respondents Newcomb and Full Life Financial are true and that the issues raised therein should be resolved in their favor.

31. TENN. CODE ANN. § 48-1-111(a) mandates the maintenance of adequate records by broker-dealers and investment advisers of securities business activities and clients. Broker-dealers and investment advisers are required by the provisions of TENN. CODE ANN. § 48-1-111 (b), (c), and (d) to submit such records to periodic review by the agents of the Commissioner.

32. The request for inspection of the books and records, which was first initiated by the TSD on or about October 25, 2016, was a lawful exercise of the authority of the Commissioner.

33. TENN. CODE ANN. § 48-1-118 provides to the Commissioner a broad mandate to conduct investigations, and provides specific authority to issue subpoenas, as reproduced below:

(1) For the purpose of conducting any investigation as provided in this section, the commissioner has the power to administer oaths, to call any party to testify under oath at such investigations, to require the attendance of witnesses, the production of books, records, and papers, and to take the depositions of witnesses.

(2) For such purposes, the commissioner is authorized to issue a subpoena for any witness or a subpoena *duces tecum* to compel the production of any books, records or papers. These subpoenas may be served by registered mail, return receipt requested, to the addressee's business mailing address, or by such personnel of the department of commerce and insurance as the commissioner may designate, or shall be directed for service to the sheriff of the county where such witness resides or is found or where such person in custody of any books, records, or papers resides or is found.

34. The issuance of the May 31, 2017, subpoena *duces tecum* to compel the production of books, records or papers maintained by Full Life Financial and Newcomb in the conduct of securities related business was a lawful exercise of the authority of the Commissioner.

35. TENN. CODE ANN. § 48-1-116 provides that the Commissioner may make, promulgate, amend, and rescind such rules, forms and Orders as are necessary to carry out this part 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.

36. The May 31, 2017 subpoena *duces tecum* commanding Newcomb and Full Life Financial to produce the information enumerated within the subpoena was a lawful Order of the Commissioner.

37. TENN. CODE ANN. § 48-1-112(a) provides that:

(a) The commissioner may by order deny, suspend, or revoke any registration under this part if the commissioner finds that:

(1) The order is in the public interest and necessary for the protection of investors; and

(2) The applicant or registrant or, in the case of a broker-dealer or investment adviser, any affiliate, partner, officer, director, or any person occupying a similar status or performing similar functions:

...

(B) Has willfully violated or willfully failed to comply with any provision of this part or a predecessor chapter or any rule or order under this part or a predecessor chapter, including, without limitation, any net capital requirements;

...

(G) Has engaged in dishonest or unethical practices in the securities business[.]

38. TENN. COMP. R. & REGS. 0780-04-03-.02(6)(c) provides:

(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:

...

26. Failing to provide information requested by the Division pursuant to the Act or these Rules.

39. TENN. CODE ANN. § 48-1-112(d) provides that:

(d) In any case in which the commissioner is authorized to deny, revoke, or suspend the registration of a broker-dealer, agent, investment adviser, investment adviser representative, or applicant for broker-dealer, agent, investment adviser, investment adviser representative registration, the commissioner may, in lieu of or in addition to such disciplinary action, impose a civil penalty in an amount not to exceed five thousand dollars (\$5,000) for all violations for any single transaction.

40. The non-compliance of Full Life Financial and Newcomb with the initial request for information that was required to be produced in the October 25, 2016 notice, in spite of a lawful subpoena ordering the production of the information and being offered seven (7) separate opportunities to achieve compliance, is a willful failure to comply with the provisions of TENN. CODE ANN. § 48-1-111(d).

41. The failure to provide information requested by the Division pursuant to TENN. CODE ANN. § 48-1-111(d) and TENN. COMP. R. & REGS. 0780-04-03-.02(6)(c) subjects Full Life

Financial and Newcomb to the sanctions available under TENN. CODE ANN. § 48-1-112(a) and (d).

IT IS, THEREFORE, ORDERED that:

1. This Initial Order, imposing sanctions against Full Life Financial, LLC, and Michael Keith Newcomb, is entered to protect the public in the State of Tennessee, consistent with the purposes fairly intended by policy and provisions of the policy and provisions of the Tennessee Securities Act (“the Act”), TENN. CODE ANN., Title 48, Chapter 1.
2. The registration of Full Life Financial, LLC as an Investment Adviser with the Tennessee Securities Division is hereby **REVOKED**, pursuant to the provisions of TENN. CODE ANN. § 48-1-112(a).
3. The registration of Michael Keith Newcomb as an Investment Adviser Representative with the Tennessee Securities Division is hereby **REVOKED**, pursuant to the provisions of TENN. CODE ANN. § 48-1-112(a) and (d).
4. Full Life Financial, LLC is assessed a **CIVIL PENALTY** in the amount of one thousand dollars (\$1,000) for the willful violation of TENN. CODE ANN. § 48-1-112(a)(2)(B).
5. Michael Keith Newcomb is assessed a **CIVIL PENALTY** in the amount one thousand dollars (\$1,000) for the willful violation of TENN. CODE ANN. § 48-1-112(a)(2)(B).
6. Respondents Full Life Financial, LLC, and Michael Keith Newcomb shall jointly and severally liable for the above described **CIVIL PENALTIES** in the total amount of two thousand dollars (\$2,000).
7. Respondents Full Life Financial, LLC, and Michael Keith Newcomb shall fully **COMPLY** with the provisions of the Tennessee Securities Act, including, but not limited to, the complete compliance with the lawful Order of the Commissioner to produce for inspection all of the materials related to the operations of Full Life Financial, LLC that were described in the October 25, 2016, initial request and again in the May 31, 2017, subpoena *duces tecum*.

8. All persons in any way assisting, aiding, or helping the aforementioned Respondents in any of the aforementioned violations of the Act shall **CEASE AND DESIST** all such activities in violation of the Act.

9. The costs incurred by Petitioner in the pursuit of this action are assessed to Respondents Full Life Financial, LLC and Michael Keith Newcomb, jointly and severally.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the 9th day of August, 2018.



MICHAEL BEGLEY
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

9th Filed in the Administrative Procedures Division, Office of the Secretary of State, this the 9th day of August 2018.


J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

Attached is the Administrative Judge's decision in your case before the Commissioner of the Tennessee Department of Commerce and Insurance, called an Initial Order, with an entry date of **August 9, 2018**. The Initial Order is not a Final Order but shall become a Final Order unless:

1. **A Party Files a Petition for Reconsideration of the Initial Order:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and states the specific reasons why you think the decision is incorrect. The APD must **receive** your written Petition no later than 15 days after entry of the Initial Order, which is no later than **August 24, 2018**. A new 15 day period for the filing of an appeal to the Commissioner (as set forth in paragraph (2) below) starts to run from the entry date of an order disposing of a Petition for Reconsideration, or from the twentieth day after filing of the Petition if no order is issued.

The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph 2 below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied, you may file an appeal. Such an Appeal must be **received** by the APD no later than 15 days after the date of denial of the Petition. See TENN. CODE ANN. § 4-5-317 and § 4-5-322.

2. **A Party Files an Appeal of the Initial Order:** You may appeal the decision to the Commissioner. Mail to the APD a document that includes your name and the above APD case number, and states that you want to appeal the decision to the Commissioner, along with the specific reasons for your appeal. The APD must **receive** your written Appeal no later than 15 days after the entry of the Initial Order, which is no later than **August 24, 2018**. The filing of a Petition for Reconsideration is not required before appealing. See TENN. CODE ANN. § 4-5-317.
3. **The Commissioner decides to Review the Initial Order:** In addition to a party filing an appeal of the Initial Order, the Commissioner may, on the Commissioner's own motion, review the Initial Order.

If either of the actions set forth in paragraphs (2) or (3) above occurs prior to the Initial Order becoming a Final Order, there is no Final Order until the Commissioner renders a Final Order.

If none of the actions in paragraphs (1), (2), or (3) above are taken, then the Initial Order will become a Final Order on **August 27, 2018**. **In that event, YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER.**

STAY

In addition, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Initial Order. A Petition for a stay must be **received** by the APD within 7 days of the date of entry of the Initial Order, which is no later than **August 16, 2018**. See TENN. CODE ANN. § 4-5-316.

NOTICE OF APPEAL PROCEDURES

REVIEW OF A FINAL ORDER

1. **A Party may file a Petition for Reconsideration of the Final Order:** When an Initial Order becomes a Final Order, a party may file a Petition asking for reconsideration of the Final Order. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and states the specific reasons why you think the Final Order is incorrect. If the Initial Order became a Final Order without an Appeal being filed, and without the Commissioner deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the Commissioner rendered a Final Order, the Commissioner will consider the Petition. The APD must **receive** your written Petition for Reconsideration no later than 15 days after: (a) the issuance of a Final Order by the Commissioner; or (b) the date the Initial Order becomes a Final Order. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing the Final Order will be adjusted. If no action is taken within 20 days of filing of the Petition, it is deemed denied. *See* TENN. CODE ANN. § 4-5-317.
2. **A Party Files an Appeal of the Final Order:** A person who is aggrieved by a Final Order in a contested case may seek judicial review of the Final Order by filing a Petition for Review “in the Chancery Court nearest to the place of residence of the person contesting the agency action or alternatively, at the person’s discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County,” within 60 days of the date of entry of the Final Order. *See* TENN. CODE ANN. § 4-5-322. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317. A reviewing court also may order a stay of the Final Order upon appropriate terms. *See* TENN. CODE ANN. §§ 4-5-322 and 4-5-317.
3. **A Party may request a stay of the Final Order:** A party may file a Petition asking for a stay that will delay the effectiveness of the Final Order. If the Initial Order became a Final Order without an Appeal being filed, and without the Commissioner deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the Commissioner rendered a Final Order, the Commissioner will consider the Petition. A Petition for a stay of a Final Order must be **received** by the APD within 7 days after the Initial Order becomes a Final Order. *See* TENN. CODE ANN. § 4-5-316.

FILING

To file documents with the Administrative Procedures Division, use this address:

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