

**BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE**

IN THE MATTER OF:

TENNESSEE SECURITIES DIVISION
Petitioner

v.

JERRY DOUGLAS HANNER
Respondent

DOCKET NO. 12.06-003513J

NOTICE OF AN INITIAL ORDER BECOMING A FINAL ORDER

All parties are hereby notified that on May 17, 1999, the Initial Order entered in this matter became a Final Order pursuant to T.C.A. §4-5-318(f)(3), no party having filed a Petition for Appeal to the Agency pursuant to T.C.A. §4-5-315, within the ten (10) days permitted for such petitions, and the Agency having failed to issue a Notice of Intention to Review within the ten (10) days permitted under T.C.A. §4-5-315(b).

THE FINAL ORDER MAY BE REVIEWED IN THE FOLLOWING MANNER:

Within ten (10) days after the effective date of the Final Order, as listed above, any party may petition the Administrative Judge for reconsideration of the Final Order. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317.

Any party may petition the Commissioner of the Department of Commerce and Insurance stay of the Final Order within seven (7) days after the effective date of the Order. See T.C.A. §4-5-316.

Any person aggrieved by this final decision may seek judicial review in a Chancery Court having jurisdiction within sixty (60) days after the date of the Final Order as listed above or, if a Petition for Reconsideration of the Final Order is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a Petition for Reconsideration does not itself act to extend the sixty-day period, if the Petition is not granted.) A reviewing court may also order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.

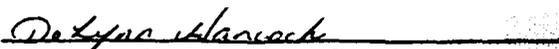

Charles C. Sullivan II, Director
Administrative Procedures Division

If any party has knowledge of an Appeal of the Initial Order or a Notice of Intention to Review the Initial Order having been filed within the required ten (10) days, contrary to the above information, please notify this office, telephone (615) 741-7008 or 741-2078, and this Notice may be set aside.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon counsel and all interested parties by delivering same to them at their address of record by placing a true and correct copy of same in the United States mail, postage prepaid.

This 18th day of May, 1999.


Administrative Procedures Division
Office of the Secretary of State

Respondent maintained his business at 313 East College Street, Suite 1, Dickson, Tennessee and in his home at 9416 Missionary Ridge Road, Bon Aqua, Tennessee 37025.

Ruth Hanner ("Mrs. Hanner") is the wife of Respondent.

At all times pertinent the Hanners resided together at their home at 9416 Missionary Ridge Road, Bon Aqua, Tennessee.

Pauline B. Givens ("Mrs. Givens") is a 78-year old widow in poor health, and is the sole caretaker of an invalid son, Phillip.

Mrs. Givens maintains her residence at 3270 Highway 48 North, Nunnely, Tennessee 37137.

At all relevant times, Mrs. Givens has been a citizen and resident of the State of Tennessee.

Respondent knowingly allowed his wife to borrow money from his client, Mrs. Givens, and The Pauline Bruce Givens Living Trust and benefited therefrom while he exercised custody and control over Mrs. Givens' money, as set out below.

These acts provide adequate grounds for the revocation of Respondent's agent registration.

The Tennessee Securities Act of 1980, as amended, T.C.A. §48-2-101, et seq., (the "Act"), makes the Commissioner of Commerce and Insurance ("Commissioner") responsible for the administration of the Act.

The Securities Division ("Division") is the lawful agent through which the Commissioner discharges this responsibility. T.C.A. §48-2-115

Respondent (CRD 2192054) was registered with the Securities Division as an agent and principal of LPL.

As a principal, Respondent was charged with ensuring that the agents under his supervision complied with all rules, regulations, plus all Division approved LPL policies and procedures.

Mrs. Givens became a customer of Respondent in early June of 1997. Ms. Givens was referred to Respondent for investment assistance by her insurance agent, David Baker.

Mrs. Givens' investment goal was to replace the annuity she held from Beneficial Standard Life Insurance Company ("Beneficial") with an investment product that would protect the principal while paying enough monthly income to meet her living expenses.

During the course of his first two meetings with Mrs. Givens, Respondent learned detailed information about her personal finances, health condition, and family problems.

Respondent also learned that Mrs. Givens has no relatives or friends able to regularly assist her in performing daily household/ business tasks and errands.

During the relevant time period, Mr. and Mrs. Hanner had approximately \$46,268.23 in credit card debt, in addition to business expenses and personal loans.

Recognizing Mrs. Givens' unique and vulnerable state, Mr. and Mrs. Hanner worked to ingratiate themselves to Mrs. Givens, in a way and to a degree that was unlike any of their other client relationships, in order to gain her trust and ultimately access to her money and other property.

Mrs. Hanner visited Mrs. Givens on a daily basis, assisting with housework and the care of Mrs. Givens' invalid son, and running errands.

Mrs. Hanner also transported Mrs. Givens to visit her incarcerated son Donald, as well as visiting him alone when Mrs. Givens was not feeling well.

Additionally, Mrs. Hanner frequently corresponded with Mrs. Givens' son Donald.

Respondent, in addition to providing investment advice and recommendations, also completed the paperwork to surrender Mrs. Givens' annuity.

On July 23, 1997, a check was drawn by Beneficial in the amount of \$89,300.46, representing the proceeds from the annuity, and mailed to Mrs. Givens' address, although she never actually received it herself. Rather, the check went into the possession of the Hanners.

Moreover, Respondent engaged Kenneth Mitteldorf ("Mr. Mitteldorf") to draft a new Living Trust Agreement for Mrs. Givens, as well as a Power of Attorney.

Respondent served as the liaison/courier between Mr. Mitteldorf and Mrs. Givens.

Mr. and Mrs. Hanner were present during Mr. Mitteldorf's one meeting with Mrs. Givens.

Due to the manner in which the Hanners endeared themselves to Mrs. Givens, she believed that if she were to become incompetent or die, that she could entrust the control of her Living Trust, other property, and the financial needs of her sons to the Hanners. Consequently, Mrs. Givens allowed Mrs. Hanner to serve as the Successor Trustee of her Living Trust. When Mrs. Hanner was appointed Successor Trustee, she was also made Mrs. Givens' attorney-in-fact.

The services provided to Mrs. Givens by the Hanners afforded the couple unfettered access to Mrs. Givens' home, family members, personal documents, mail, and bank accounts.

Respondent led Mrs. Givens to believe that he was investing the proceeds from the Beneficial annuity plus an additional \$13,000 from a recently matured CD through her account with LPL, when in fact he and his wife planned to, and did, use the money to reduce some of their substantial debt, pay business expenses, and purchase investments in their personal LPL account.

On September 18, 1997, one month after spending almost half of Mrs. Givens' money, the Hanners drafted an unsecured promissory note from Mrs. Hanner to The Pauline Bruce Givens Living Trust.

Respondent was given a highly unusual and highly irregular, "right of first refusal" for the purchase of the note. No evidence was adduced as to why this phrase was included in the terms of the note nor what purpose it might serve. Its effect would clearly make the note non-negotiable and further circumscribe and protract control of the trust or the estate into the Hanners.

The principal of the loan was \$102,300.46.

According to the terms of the note, the loan would be repaid in fifty-nine (59) monthly installments of Seven Hundred fifty Dollars (\$750.00) at an annual interest rate of 8.97%.

The sixtieth payment would be made at the end of the loan's term for the unpaid balance of the principal and the accrued interest.

Mrs. Givens neither knew about the issuance of the unsecured promissory note nor agreed to make the loan

Although Mrs. Hanner wrote loan payment checks made payable to Mrs. Givens on a monthly basis, they were neither presented to Mrs. Givens nor endorsed by her for deposit until after she learned of the unsecured promissory note and confronted the Hanners for an explanation.

Mrs. Givens learned of the unsecured promissory note sometime in the period between October and December of 1997. Only by inadvertence did she find the note intermingled with her Living Trust Agreement and insurance papers.

Considering the terms of the promissory note, the Trust and Power of Attorney documents drafted by Mr. Mitteldorf, along with Mrs. Givens' lack of familial and social support, if Mrs. Givens were rendered incompetent or died during the effective period of these subject documents, there would have been no competent, reliable, concerned person to insure that the unsecured promissory note was paid and enforced by the Pauline Bruce Givens Living Trust against the Hanners.

Consequently, the Hanners would have been free to default on the loan without fear of penalty.

Considering also Mrs. Givens' investment experience and objectives, financial needs and risk tolerance, the unsecured loan to the Hanners, in addition to being a statutory and rule violation, was totally unsuitable as an investment product for her to utilize in these circumstances.

The Hanners refused numerous requests from Mrs. Givens to return her money.

Respondent rather arrogantly asserts that there was no technical violation in that he did not actually physically handle the funds. Further Respondent asserts he was entitled to "invade the assets" of his spouse, Mrs. Hanner, and benefit therefrom, as any funds obtained by her become lawfully co-owned by him regardless of the source of the funds. This rather flies in the face of the statutes authorizing the tracing and recapturing of funds illegally obtained. Respondent argues he did not borrow money, his spouse did. Respondent dares to assert that the statutes and rules against self-dealing and fiduciary responsibility do not apply to one's spouse, therefore, he is free to acquire new clients even if his spouse misappropriates their funds for his debts.

By Respondents reasoning, if Mrs. Hanner had robbed a bank, he would be entitled to the monies therefrom as her spouse simply because he was legally married to her, and only opened the door for her to enter the bank.

CONCLUSIONS OF LAW

The state bears the burden of proof by a preponderance of the evidence that the Respondent engaged in the acts of which he was charged and that such acts constitute a violation of the cited statute and rules.

The state has carried its burden in that the proof established that the Respondent engaged in prohibited acts that violated the cited statutes, rules and his fiduciary duties which required of him the utmost good faith.

Respondent's assertions that he did not participate in the misappropriation of the corpus of the trust funds are without merit. The proof established that Respondent had knowledge of and received the benefit of the sham loan, in that the funds were used to discharge indebtedness for which he and Mrs. Hanner were jointly liable.

Tennessee Code Annotated §48-2-112(a)(2)(G) provides, in pertinent part, that the Commissioner by order may deny, suspend, or revoke any registration under this part if he finds that the order is in the public interest, necessary for the protection of investors, and if he finds that the registrant, or in the case of a broker-dealer or investment adviser, 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.

Rule 0780-4-3-.02(6)(b)(1.) provides, in pertinent part, that the borrowing of money or securities from a customer is deemed to be a "dishonest or unethical business practice" by an agent under T.C.A. §48-2-112(a)(2)(G).

The proof establishes that, Respondent, Jerry Douglas Hanner engaged in a dishonest or unethical business practice by knowingly allowing and participating with Mrs. Hanner, in the borrowing of money from his customer Pauline B. Givens, The Pauline Bruce Givens Living Trust , and using the money for his personal gain and advantage. Moreover, this act was committed without the knowledge or permission of his customer, Pauline B. Givens, The Pauline Bruce Givens Living Trust, and was contrary to her financial and investment objectives.

Rule 0780-4-3-.02(6) (b)(2.), provides, in pertinent part, that acting as a custodian for money of a customer is deemed to be a "dishonest or unethical business practice" by an agent under T.C.A. § 48-2-112(a)(2)(G).

Respondent Jerry Douglas Hanner engaged in both a dishonest and an unethical business practice by taking custody, possession, and control of Pauline B. Given's money, using it for his personal gain and advantage.

The above-described acts provide sufficient and appropriate grounds under T.C.A. §48-2-112(a)(2)(G) for the entry of an order revoking the registration of Jerry Douglas Hanner and the assessment of an appropriate fine.

T.C.A. §48-2-112(d) provides that in any case in which the commissioner is authorized to deny, revoke, or suspend the registration of a broker-dealer or agent or applicant for broker-dealer registration, the Commissioner of Commerce and Insurance may impose a fine in an amount not to exceed \$5,000 for all violations arising from any single transaction.

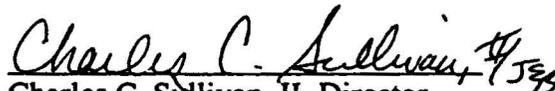
It is **ORDERED** the registration of Respondent is hereby **REVOKED** and Respondent is **FINED** Five Thousand Dollars (\$5,000.00)

This Initial Order entered and effective this 5th day of May, 1999.



Phillip D. Barber
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 5th day of May, 1999.



Charles C. Sullivan, II, Director
Administrative Procedures Division

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon counsel and all interested parties by delivering same to them at their address of record by placing a true and correct copy of same in the United States mail, postage prepaid.

This 5th day of May, 1999.

Janet Blakemore
Administrative Procedures Division
Office of the Secretary of State