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

TENNESSEE SECURITIES DIVISION,)	
Petitioner,)	
)	
vs.)	Docket No. 12.06-138873J
)	TSD No. 16-009
)	
SEAN K. HORNBECK,)	
Respondent.)	

AGREED FINAL ORDER

The Tennessee Securities Division (“TSD”) of the Department of Commerce and Insurance (“Department”), by and through undersigned counsel, and Sean K. Hornbeck (“Respondent”) hereby stipulate and agree, subject to the approval of the Commissioner of the Tennessee Department of Commerce and Insurance (“Commissioner”), as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Agreed Final 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 Agreed Final Order is executed by Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Agreed Final Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Agreed Final 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 Agreed Final Order will in no way preclude additional proceedings by the Commissioner for acts and/or omissions not specifically addressed in this Agreed Final Order or for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. Other than this proceeding brought by the Commissioner for violations of Title 48 of Tennessee Code Annotated addressed specifically in this Agreed Final Order, Respondent fully understands that this Agreed Final Order will in no way preclude proceedings by state or local officers, agencies, or civil or criminal law enforcement authorities against Respondent for violations of law under 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 arise as a result of the execution of this Agreed Final Order by Respondent.

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

6. Respondent fully understands and agrees that the TSD is not required to file this Agreed Final Order with the Administrative Procedures Division of the Tennessee Secretary of State's Office if Respondent does not deliver to the Division evidence he has delivered the required \$5,000 restitution payment to complainant Bruce D. Emery in lieu of a civil penalty assessment, and the required reimbursement of the Department's \$200 initial docketing fee with the Secretary of State as investigatory and hearing costs, by the deadline set out below. Should Respondent not deliver to the Division this evidence in a timely manner, this Agreed Final Order

will not become effective and the TSD will reschedule the hearing in this case on a contested docket before an Administrative Judge assigned to the Secretary of State.

AUTHORITY AND JURISDICTION

7. The Commissioner has jurisdiction over this matter pursuant to the Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. §§ 48-1-101 to 48-1-201 (2012) (“Act”). Responsibility for administration of the Act is placed with the Commissioner.

PARTIES

8. The TSD is the lawful agent through which the Commissioner administers the Act and 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. § 48-1-116.

9. Respondent is a resident of Tennessee, with a last known residential address of 1119B Grenada Avenue, Nashville, TN 37206-2634. Respondent is also a suspended attorney in Tennessee, with a listed mailing address of P.O. Box 41134, Nashville, TN 37204-1134, according to the records of the Board of Professional Responsibility of the Tennessee Supreme Court. At all relevant times, Respondent was not registered with the TSD or with the Financial Industry Regulatory Agency (“FINRA”), as a broker-dealer, broker-dealer agent, investment adviser, or investment adviser representative.

FINDINGS OF FACT

10. Bruce Emery first became acquainted with Respondent and Jeff Weaver in approximately late 2009 or early 2010, during Mr. Emery’s search for massage therapists in the Nashville area at that time. Jeff Weaver introduced Respondent to Bruce Emery, who was one of Mr. Weaver’s clients.

11. In early February 2010, Respondent shared a new “investment opportunity” with Mr. Emery. Respondent told Mr. Emery that Willem C. Ackermann, reportedly a South African national, owned a considerable amount of precious metals located in Switzerland worth “millions” of dollars, and that these metals were scheduled to be sold later in February 2010. However, Respondent explained, Mr. Ackermann needed money for travel expenses from the United States to Switzerland in order to finalize the “deal.”

12. Respondent recommended that Mr. Emery loan Ackermann \$12,500 for a period of four (4) days in order for Ackermann to travel to Switzerland to consummate the sale, and told Mr. Emery that this was a legitimate investment. As an additional inducement, Respondent told Mr. Emery that he had “\$200,000 of his own money” invested in this precious metals scheme.

13. Mr. Emery agreed to make the investment, and Respondent prepared a promissory note on behalf of Ackermann, guaranteeing Mr. Emery a minimum repayment of \$35,000 (an approximate return of 280%) by wire transfer to Mr. Emery no later than February 15, 2010. Respondent instructed Mr. Emery to make his \$12,500 check payable to Jeff Weaver, who Respondent described as his “legal assistant.”

14. Acting as a broker-dealer without being registered as such by the TSD, Respondent then effected a transaction in securities for Ackerman’s account, by selling Ackermann’s note to Mr. Emery on February 11, 2010.

15. Mr. Emery made several requests to Respondent for the return of his investment and accrued interest under the note, but, has received no repayment of his \$12,500 principal investment or the \$35,000 guaranteed minimum repayment, to date. Instead, by the end of February 2011, Mr. Emery had not been able to meet with Respondent personally about the matter and received only delays and excuses from Respondent– the repayment had not been

made allegedly due to Respondent's illnesses, deaths in the family, and Respondent's travel schedule.

16. Respondent never arranged for Mr. Emery to meet Ackermann at the time or before the note was sold. Respondent also did not provide Mr. Emery with any evidence that Ackermann was in the United States at the time of this investment, that Ackermann ever travelled to Switzerland in February 2010 as represented, or that there were ever any precious metals sold by Ackermann later in 2010 as Respondent claimed.

17. The note offered and sold by Respondent to Mr. Emery in this matter meets the definition of "security" pursuant to Tenn. Code Ann. § 48-1-102(17)(A), and was not registered with the TSD as required by Tenn. Code Ann. § 48-1-104.

18. In partial mitigation, Respondent submits that prior to, and at the time he recommended that Mr. Emery invest with Ackermann, Respondent's and Ackermann's interests were aligned. During that period of time, Respondent had no reason to believe that Ackermann would not meet the obligations of the promissory note in a timely fashion. Respondent would further submit that beginning about the spring of 2010, before the May 2010 filing of the *KVH Capital Investment Partners et al. v. Willem Ackermann et al.*, suit in Davidson County Chancery Court and continuing through the present, he and Ackermann have developed adverse interests, and have exchanged numerous emails and letters accusing each other of fraud in other transactions amounting to hundreds of thousands of dollars. With respect to his violations of the Act, Respondent also submits that he did not act willfully, and did not realize he had to be registered in order to transact securities business in Tennessee or that the securities themselves had to be registered by the TSD.

19. On August 2, 2016, the TSD, through counsel, filed a Notice of Hearing and Charges against the Respondent relating to his actions as set out above.

CONCLUSIONS OF LAW

20. Respondent's actions as set forth above in the foregoing Findings of Fact constitute violations of Tenn. Code Ann. §§ 48-1-104(a), and 48-1-109(a)(2012), and constitute grounds for the imposition of lawful discipline, including the assessment of civil penalties, pursuant to Tenn. Code Ann. §§ 48-1-104(b) and 48-1-109(e)(2012). These sections read, in pertinent part, as follows:

Tenn. Code Ann. § 48-1-104

(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.

Tenn. Code Ann. § 48-1-109

(a) 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...

...

(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.

...

21. Based upon the above Findings of Fact and Conclusions of Law, the Commissioner considers that the Respondent's actions warrant the imposition of lawful discipline, to include assessment of a civil penalty in accordance with Tenn. Code Ann. §§ 48-1-

104(b) and 48-1-109(e)(2012).

22. In order to avoid further expenses or costs associated with additional administrative litigation of this matter or judicial review, Respondent hereby acknowledges the Commissioner's authority to administer the statutes cited herein, concedes that the Commissioner's interpretation of the statutes cited in the Conclusions of Law are reasonable and enforceable, and agrees to the entry of this Agreed Final Order including each of the following sanctions ordered by the Commissioner.

ORDER

NOW, THEREFORE, on the basis of the foregoing, and Respondent's waiver of the right to a hearing and appeal under the Act and the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 to 4-5-404 (2011), and Respondent's admission of jurisdiction of the Commissioner, the Commissioner finds that Respondent, for the purpose of settling this matter, admits the Findings of Fact and Conclusions of Law, agrees to the entry of this Agreed Final Order pursuant to Tenn. Code Ann. § 4-5-314(a) and agrees that this Agreed Final Order is in the public interest and is consistent with the purposes fairly intended by the Act.

IT IS ORDERED, pursuant to Tenn. Code Ann. §§ 48-1-104(b), 48-1-109(e), and 48-1-116 that:

1. Respondent is **ASSESSED a CIVIL PENALTY** in the amount of \$5,000, but in lieu of remitting this sum to the State of Tennessee, Respondent shall pay this amount to Bruce D. Emery as partial restitution, by March 24, 2017.
2. Respondent shall deliver written evidence to undersigned counsel for the Department that the above restitution has been received by Mr. Emery, no later than March 31, 2017. Respondent is permitted to pay the required restitution sooner if he chooses.

3. Respondent shall reimburse the Department its initial docketing fee of \$200 assessed by the Secretary of State's Office, by March 31, 2017, shall make such costs reimbursement check payable to the State of Tennessee, and shall mail such costs reimbursement to:

State of Tennessee
Department of Commerce and Insurance
Office of Legal Counsel
Attn: Jesse D. Joseph, Assistant General Counsel
500 James Robertson Parkway, 8th Floor
Nashville, TN 37243

4. Respondent is **BARRED** from registration as an investment adviser, investment adviser representative, broker-dealer, or broker-dealer agent in the State of Tennessee.

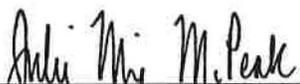
5. Respondent shall **CEASE and DESIST** from conducting any further securities transactions on behalf of others from, in, or into the State of Tennessee, and from any other activities in violation of the Act.

IT IS ORDERED that this Agreed Final 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 Tenn. Code Ann. §§ 48-1-104(a), and 48-1-109(a)(2012) alleged by the TSD to have occurred with respect to the transactions involving the facts contained herein.

This Agreed Final 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 he has freely agreed to the entry of this Agreed Final Order, that he waives the right to a hearing on the matters underlying this Agreed Final Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been

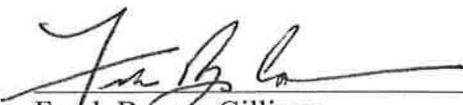
made to him by the Commissioner, the TSD, or any agent or representative thereof. The parties, by signing this Agreed Final Order, affirmatively state their agreement to be bound by the terms of this Agreed Final Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of the settlement as set forth in this Agreed Final Order, are binding upon them.

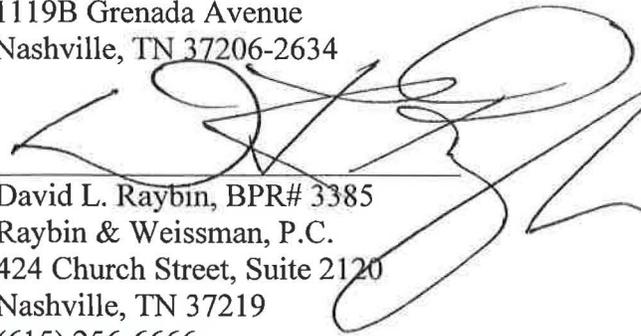
ENTERED this 21 day of March, 2017.

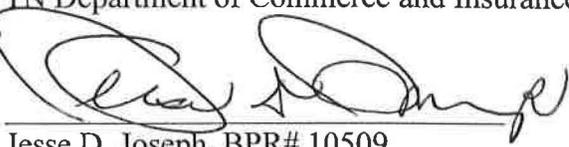

Julie Mix McPeak, Commissioner
TN Department of Commerce and Insurance

APPROVED FOR ENTRY:

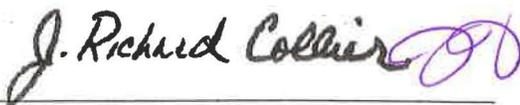

Sean K. Hornbeck, Respondent
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Frank Berger-Gilligan
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TN Department of Commerce and Insurance


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21 Filed in the Office of the Secretary of State, Administrative Procedures Division, this day of March, 2017.


J. Richard Collier, Esq., Director,
Administrative Procedures Division