



State of Tennessee
Department of State
Administrative Procedures Division
312 Rosa L. Parks Avenue
8th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243-1102
Phone: (615) 741-7008/Fax: (615) 741-4472

February 7, 2022

Vishan Ramcharan, Esq.
Tennessee Department of Commerce and Insurance
General Civil - Legal Division
500 James Robertson Parkway, 5th Floor
Nashville, TN 37243

Jason Newman
3327 Marlee Way
Unit 57
Rocklin, CA 95677

William H. Leslie, Esq.
Tennessee Department of Commerce and Insurance
General Civil - Legal Division
500 James Robertson Parkway, 5th Floor
Nashville, TN 37243

**RE: TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE V. JASON
NEWMAN, APD Case No. 12.06-213905J**

Enclosed is an *Initial Order*, including a *Notice of Appeal Procedures*, rendered in this case.

Administrative Procedures Division
Tennessee Department of State

Enclosure(s)

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

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
COMMERCE AND INSURANCE,**

Petitioner,

v.

**JASON NEWMAN d/b/a SOMERSET
CREST, INC.,**

Respondent.

APD Case No. 12.06-213905J

INITIAL ORDER

This matter was heard *de novo* on November 19, 2021, *via* Webex videoconference, before Administrative Judge Phillip R. Hilliard, assigned by the Secretary of State's Administrative Procedures Division (APD) to sit for the Commissioner of the Tennessee Department of Commerce and Insurance (the Commissioner). The Petitioner, the Tennessee Department of Commerce and Insurance, Securities Division (Petitioner or Division), was represented by William Leslie, Associate General Counsel, and Vishan Ramcharan, Associate General Counsel. Neither the Respondent, Jason L. Newman d/b/a Somerset Crest, Inc.¹ (Newman), nor anyone on his behalf appeared.

On December 8, 2021, the Petitioner timely filed PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW. The Respondent did not file a response.

After consideration of the entire RECORD in this matter, it is **ORDERED** that the Respondent is assessed **CIVIL PENALTIES** in the total amount of (\$50,000). This decision is based upon the following.

¹ Though the record identifies Somerset Crest, LLC as being registered in California, there is no evidence that it was, in fact, registered as such with the state of California. The record also identifies Somerset Crest as a corporation, but there is no evidence of it being registered as such. Thus, the d/b/a designation for the Petitioner, Jason Newman.

NOTICE OF DEFAULT

Pursuant to TENN. CODE ANN. § 4-5-307, the Petitioner filed a NOTICE OF HEARING AND CHARGES against the Respondent on August 27, 2021. The NOTICE OF HEARING AND CHARGES was sent to an address obtained during the Petitioner's investigation – 3327 Marlee Way, Unit 57, Rocklin, California 95677. The certified mailing was refused, and the regular mailing was not returned. The NOTICE OF HEARING AND CHARGES was also sent to an email address that is located in the RECORD, which address the RECORD shows the Respondent used during the time in question. Further, the Petitioner unsuccessfully attempted to telephone the Respondent at two numbers located during the Petitioner's investigation – (310) 553-4411 (this number was disconnected) and (941) 975-3762 (after multiple rings, a recording was heard stating the person being called was unavailable, and there was no voicemail box on which to leave a message). No ORDERS issued in this matter, which were all sent regular mail, were returned to APD.

A September 17, 2021, ORDER set this matter for a prehearing conference on September 28, 2021. Counsel for the Petitioner was present, but neither the Respondent nor anyone on his behalf were present. A September 29, 2021, ORDER set this matter for hearing on November 19, 2021. Neither the Respondent nor anyone on his behalf appeared for the hearing.

Based upon the arguments and the evidence presented by counsel for the Division, a motion to deem service proper was GRANTED, during the hearing, as it was determined that service of process of the NOTICE OF HEARING AND CHARGES was sufficient in this case pursuant to TENN. COMP. R. & REGS. 1360-04-01-.06.

Based upon service of process of the NOTICE OF HEARING AND CHARGES and AMENDED NOTICE OF HEARING AND CHARGES being found sufficient, and the Respondent not appearing at this hearing, counsel for the State made an oral motion to hold the Respondent in default and to move forward with the contested case hearing in the Respondent's absence. Based upon the

argument by counsel for the State, and exhibits in support of the motion, the motion was GRANTED.

Based on the failure of the Respondent to appear for the November 19, 2021, hearing, pursuant to TENN. CODE ANN. § 4-5-309 and TENN. COMP. R. & REGS. 1360-04-01-.15, the Respondent was held in default. Pursuant to TENN. CODE ANN. § 4-5-309 and TENN. COMP. R. & REGS. 1360-04-01-.15(2)(b), the hearing was conducted as an uncontested proceeding.

FINDINGS OF FACT

1. The Division's Financial Services Investigative Unit (FSIU) received a complaint from Frank Mucerino (Mucerino) regarding an allegation of fraudulent actions by the Respondent, in the form of investment contracts, and opened an investigation.

2. Mr. Mucerino was a resident of Tennessee at the time of the investment contracts at issue.

3. Mr. Mucerino received an investment proposal from the Respondent for a "Dirty Laundry" concert, which was to take place in Kingston, Jamaica on September 7, 2013.

4. On or about July 18, 2013, Mr. Mucerino signed an investment contract with the Respondent for the Dirty Laundry concert.²

5. The terms of the contract stated that in return for a forty thousand dollar (\$40,000) investment Mr. Mucerino would receive fifty percent (50%) of the concert proceeds and access to certain records (i.e., "contracts, sponsor agreements, vendor agreements, etc.").

6. Mr. Mucerino faced risk in the Dirty Laundry investment contract and was given no control over its management. (Exhibit 3; Tr. p. 19).

7. Mr. Mucerino sent the Respondent twenty thousand dollars (\$20,000), for the Dirty Laundry concert investment, on or about July 18, 2013.

² The contract notes the date of the concert as September 14, 2013.

8. The Dirty Laundry concert did not take place, and Mr. Mucerino received no return on his investment.

9. Mr. Mucerino received an investment proposal from the Respondent for a “Mindless Behavior” concert, which was to take place in Kingston, Jamaica on September 28, 2013.

10. On or about August 14, 2013, Mr. Mucerino received an investment contract from the Respondent for the “Mindless Behavior” concert.

11. Mr. Mucerino faced risk in the Mindless Behavior investment contract and was given no control over its management. (Exhibit 5; Tr. p. 22).

12. The terms of the contract stated that in exchange for a one hundred thousand dollar (\$100,000) investment, Mr. Mucerino would receive fifty-five percent (55%) of the concert proceeds, travel expenses, access to certain records (i.e., “contracts, sponsor agreement, vendor agreements, etc.”), and a joint bank account.

13. Mr. Mucerino wired the Respondent fifty thousand dollars (\$50,000) on two (2) occasions, for a total of one hundred thousand dollars (\$100,000).

14. The Mindless Behavior concert took place, but no monies were paid to Mr. Mucerino as a return on his investment for the same. No travel expenses were reimbursed, and Mr. Mucerino was not provided access to a joint checking account.

15. Neither Somerset Crest, LLC nor Somerset Inc. are registered legal entities.

16. Neither Respondent Newman nor Somerset Crest, LLC/Inc. were registered as a securities broker-dealer or agent in Tennessee during the time in question.

17. Neither investment contract in question was registered as a security in Tennessee.

18. Mr. Mucerino obtained a judgment against Respondent Newman in the United States District Court for the Middle District of Tennessee, Nashville Division, which judgment

found the Respondent to have fraudulently induced Mr. Mucerino to invest over \$150,000 into business ventures, not returning the funds or paying out any profits on the supposed investment.

CONCLUSIONS OF LAW

1. In accordance with TENN. COMP. R. & REGS. 1360-04-01-.02(7) and 1360-04-01-.15(3), the Petitioner has shown by a preponderance of the evidence that the facts alleged in the NOTICE OF HEARING AND CHARGES pertaining to the Respondent are true and that the issues therein should be resolved in its favor.

2. TENN. CODE ANN. § 48-1-102, as part of the Tennessee Securities Act of 1980, as amended, TENN. CODE ANN. §§ 48-1-101 to 48-1-127 (the Act), defines a security as follows:

(20)(A) “Security” means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, a life settlement investment or any fractional or pooled interest in a life insurance policy or life settlement investment, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a “security,” or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing[.]

TENN. CODE ANN. § 48-1-102(20)(A).

3. TENN. CODE ANN. § 48-1-104 provides that it is unlawful to sell any security in this state unless it is registered or exempt from registration under TENN. CODE ANN. § 48-1-103.

4. TENN. CODE ANN. § 48-1-104(b) provides that “[t]he commissioner may, after notice and opportunity for a hearing . . . impose a civil penalty against any person found to be in

violation of this section, or any rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation[.]”

5. TENN. CODE ANN. § 56-1-110 provides as follows:

The commissioner may, against any person, agency, or company licensed, registered, or permitted by or operating under a certificate of authority issued by the commissioner, or acting in an unlawful capacity that brings such person, agency, or company under the jurisdiction of the commissioner, assess the actual and reasonable costs of the investigation, prosecution, and hearing of any disciplinary action held in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, in which sanctions of any kind are imposed on that person, agency, or company. These costs may include, but are not limited to, those incurred and assessed for the time of the prosecuting attorneys, investigators, expert witnesses, administrative judges, and any other persons involved in the investigation, prosecution, and hearing of the action.

TENN. CODE ANN. § 56-1-110(b)(1).

6. TENN. CODE ANN. § 48-1-109(a) provides that “[i]t is unlawful for any person to transact business from, in, or into this state as a broker-dealer or agent unless such person is registered as a broker-dealer or agent . . .” and, under subsection (e), that “[t]he commissioner may, after notice and an opportunity for a hearing . . . impose a civil penalty against any person found to be in violation of this section, or any rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation[.]”

7. “The appropriate test for defining an ‘investment contract’ under Tennessee law is the *Hawaii Market* test . . .” *King v. Pope*, 91 S.W.3d 314, 322 (Tenn. 2002). There are four (4) elements of proof required:

(1) An offeree furnishes initial value to an offeror, and (2) a portion of this initial value is subjected to the risks of the enterprise, and (3) the furnishing of the initial value is induced by the offeror’s promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind, over and above the initial value, will accrue to the offeree as a result of the operation of the enterprise, and (4) the offeree does

not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.

Id. at 321-322 (quoting *State v. Hawaii Market*, 485 P.2d 105, 109 (1971)).

8. TENN. CODE ANN. § 48-1-121 provides, in pertinent part, that:

(a) It is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, directly or indirectly, to:

- (1) Employ any device, scheme, or artifice to defraud;
- (2) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (3) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

...

(d) 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 rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation, or in an amount not to exceed twenty thousand dollars (\$20,000) per violation if an individual who is a designated adult is a victim.

TENN. CODE ANN. § 48-1-121(a)(1-3) and (d).

8. The contracts that Respondent Newman offered to and sold Mr. Mucerino were investment contracts under Tennessee securities law. Respondent Newman failed to register either investment contract as securities in this state although required to do so, which constitutes two (2) violations of TENN. CODE ANN. § 48-1-104.

9. Respondent Newman, doing business as Somerset Crest, Inc., offered and sold two (2) investment contracts to Mr. Mucerino. Neither Respondent Newman nor Somerset Crest, Inc. were registered as a broker-dealer or agent within Tennessee at the time of the offering, which constitutes two (2) violations of TENN. CODE ANN. § 48-1-109.

10. Respondent Newman used the investment contracts as a tool for his own monetary gain. Mr. Mucerino never saw a return on either investment contract or received any documentation concerning an accounting of the monies resulting from the concerts (including the promised contracts, sponsor agreements, or vendor agreements). He was also not provided access to a joint bank account and was not reimbursed for travel expenses, despite both items being promised to him as part of the contracts. These actions constitute a device, scheme, or artifice to defraud; untrue statements of material facts or omissions of material facts; and the engagement in acts, practices or a course of business that operated as a fraud or deceit upon Mr. Mucerino. As such, these actions violated TENN. CODE ANN. § 48-1-121(a)(1-3).

11. The Act does not establish factors to be considered when assessing civil penalties. However, other Tennessee statutes – such as TENN. CODE ANN. § 56-6-112 – that similarly regulate the conduct of commerce in this state provide ample guidance, with factors including the following:

- (1) Whether the person could reasonably have interpreted such person's actions to be in compliance with the obligations required by a statute, rule or order;
- (2) Whether the amount imposed will be a substantial economic deterrent to the violator;
- (3) The circumstances leading to the violation;
- (4) The severity of the violation and the risk of harm to the public;
- (5) The economic benefits gained by the violator as a result of noncompliance;
- (6) The interest of the public; and
- (7) The person's efforts to cure the violation.

TENN. CODE ANN. § 56-6-112(h)(1-7).

8. It is highly unlikely the Respondent could've believed his conduct to be compliant with the law. Because the Respondent is unlicensed, civil penalties are the only available means to deter similar conduct in the future. The circumstances leading to the violation show the conduct to be highly egregious, and the risk to the public is also high. The Respondent gained an economic benefit of at least \$120,000, with Mr. Mucerino receiving no return on his investment. The public has a significant interest in ensuring that the citizens of this state are not defrauded by those who are dealing in securities transactions. There is no evidence that the Respondent has taken efforts to cure the violations of Tennessee law. All of these factors support the imposition of the maximum allowable civil penalty for the violations committed.

JUDGMENT

9. The Respondent is **ASSESSED** the maximum civil penalty of TEN THOUSAND DOLLARS (\$10,000) for each of the two (2) violations for failing to register the investment contracts as securities with the Division, in violation of TENN. CODE ANN. § 48-1-104, for a total of TWENTY THOUSAND DOLLARS (\$20,000).

10. The Respondent is **ASSESSED** the maximum civil penalty of TEN THOUSAND DOLLARS (\$10,000) for each of the two (2) violations of failing to be registered with the Division as a broker dealer or agent, in violation of TENN. CODE ANN. § 48-1-109, for a total of TWENTY THOUSAND DOLLARS (\$20,000).

12. The Respondent is **ASSESSED** the maximum civil penalty of ten thousand dollars (\$10,000) for his actions that constituted a device, scheme, or artifice to defraud; that constituted untrue statements of materials facts or omissions of material facts, and that constituted the engagement in acts, practices or a course of business that operated as a fraud or deceit upon Mr. Mucerino, in violation of TENN. CODE ANN. § 48-1-121(a)(1-3).

11. In accordance with TENN. CODE ANN. § 56-1-110(b)(1), the Respondent shall pay the costs of the investigation, prosecution, and hearing of this matter not to exceed FIVE THOUSAND DOLLARS (\$5,000). The State shall file and serve the Respondent with its Itemized Bill of Costs in this matter.

12. This Initial Order imposing civil penalties against the Respondent is entered to protect the public and investors in the State of Tennessee, consistent with the purposes fairly intended by the policy and provisions of the Act.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the **7th day of February, 2022**.



PHILLIP R. HILLIARD
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the **7th day of February, 2022**.



STEPHANIE SHACKELFORD, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

The Administrative Judge's decision in your case **BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE (COMMISSIONER)**, called an Initial Order, was entered on **February 7, 2022**. 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 with the Administrative Procedures Division (APD). A Petition for Reconsideration should include your name and the above APD case number and should state the specific reasons why you think the decision is incorrect. APD must **receive** your written Petition no later than 15 days after entry of the Initial Order, which is no later than **February 22, 2022**. 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 ruling on a Petition for Reconsideration, or from the twentieth day after filing of the Petition if no order is issued. Filing instructions are included at the end of this document.

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, which must be **received** by 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** by filing an Appeal of the Initial Order with APD. An Appeal of the Initial Order should include your name and the above APD case number and state that you want to appeal the decision to the **COMMISSIONER**, along with the specific reasons for your appeal. APD must **receive** your written Appeal no later than 15 days after the entry of the Initial Order, which is no later than **February 22, 2022**. 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, the **COMMISSIONER** may give written notice of the intent to review the Initial Order, within 15 days after the entry of 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. **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 Stay must be **received** by APD within 7 days of the date of entry of the Initial Order, which is no later than **February 14, 2022**. *See* TENN. CODE ANN. § 4-5-316. 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.

NOTICE OF APPEAL PROCEDURES

REVIEW OF A FINAL ORDER

When an Initial Order becomes a 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 the Initial Order becomes a 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.

FILING

Documents should be filed with the Administrative Procedures Division by email *or* fax:

Email: APD.Filings@tn.gov

Fax: 615-741-4472

In the event you do not have access to email or fax, you may mail or deliver documents to:

Secretary of State
Administrative Procedures Division
William R. Snodgrass Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, TN 37243-1102