

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2016-AH-00023



DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

vs.

FINAL ORDER

CORNERSTONE BENEFIT ADVISORS, LLC
and DEREK BURCHAM

RESPONDENTS

This matter is before the Commissioner of the Department of Financial Institutions (“DFI”), pursuant to KRS 292.337, KRS 292.470, and 808 KAR 10:225. The Commissioner hereby enters this **Final Order** against Cornerstone Benefit Advisors, LLC (“Cornerstone”) (CRDNo. 160499) and Derek Burcham (“Burcham”) (CRDNo. 5174214), (collectively referred to herein as “Respondents”). The Commissioner finds that it is in the public interest that a Final Order be entered in this matter on the basis of the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

A. The Parties

1. DFI is responsible for administering the provisions of KRS Chapter 292, the Securities Act of Kentucky (“the Act”), as well as any applicable rules, regulations and orders entered pursuant to the Act.

2. Cornerstone is registered as a Kentucky Limited Liability Company, pending dissolution. Cornerstone operated under the assumed name “Cornerstone Wealth Advisors,” and was registered with the DFI as an investment adviser, with its principal

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office located at 9900 Corporate Campus Drive, Suite 300, Louisville, KY 40223. Cornerstone's investment adviser registration with DFI was suspended on August 8, 2016. The Kentucky Secretary of State's website lists Cornerstone's principal office address as 3035 Roselawn Boulevard, Louisville, KY 40220, the same address as its registered agent, Derek Burcham.

3. Burcham is an individual whose last known address is 3035 Roselawn Boulevard, Louisville, KY 40220. Burcham was the managing member of Cornerstone and was registered with the DFI as an investment adviser representative of Cornerstone. Burcham's investment adviser representative registration with DFI was suspended on August 8, 2016.

B. The February 2014 Examination

4. On February 13, 2014, DFI's Division of Securities, Compliance Branch ("Compliance"), conducted a routine examination of Cornerstone pursuant to KRS 292.336(4). As part of the examination, Burcham provided the Division with Cornerstone's monthly capital calculation worksheets for January through December 2013, indicating that Cornerstone's net worth was less than \$10,000 for seven (7) of those months. During the examination, the Respondents failed to provide Compliance examiners with multiple records and information that were requested before and during the examination.

5. On July 7, 2014, Compliance issued a Statement of Findings letter that requested the Respondents provide the following documents from Cornerstone Wealth Advisors no later than August 7, 2014:

- a.) Revised monthly balance sheets, income statements, and a general ledger for the time period 9/1/2012 through 1/31/2014;
- b.) Copies of all bank statements for the time period 9/1/2012 through 1/31/2014; and
- c.) proof of assets under management (“AUM”) each month during the time period 9/1/2012 through 1/31/2014.

6. The Statement of Findings letter also instructed Respondents to make certain revisions to Cornerstone Wealth Advisors’ Form ADV.

7. As of August 8, 2014, a day after Respondents’ deadline, Compliance had not received the requested records, and the requested updates had not been made to the Form ADV. Therefore, as a courtesy, Compliance contacted Burcham by e-mail on August 20, 2014, reminding Burcham that the response and revisions were overdue and giving him until August 27, 2014 to fully comply.

8. On August 26, 2014 (the day before the extended deadline), Burcham said he would update the Form ADV, but he could not provide the requested records because Cornerstone had “switched banks and accounting software,” and the records from the previous software could not be merged into the new software. Burcham further stated that Cornerstone had switched from JP Morgan Chase to PNC Bank, and gave the impression that he had closed Cornerstone’s JP Morgan Chase bank account.

9. By e-mail dated September 24, 2014, Compliance advised Respondents that changing software did not eliminate or suspend the statutory requirements of KRS 292.336 to maintain certain books and records. Compliance requested the specified

records be provided by October 1, 2014. Compliance also reminded Respondents that the updates to Cornerstone's Form ADV had still not been completed.

10. By e-mail dated October 1, 2014, Burcham provided a balance sheet for Cornerstone as of January 1, 2014, and stated the Form ADV had been updated. However, the January 2014 balance sheet was inaccurate and was not prepared in accordance with generally accepted accounting principles (GAAP). Burcham did not provide any of the other requested records, but indicated he was working on creating an "accurate ledger and income statement."

11. To date, Respondents have failed to provide the remaining requested records.

C. The August 2015 Examination

12. By letter dated July 16, 2015, DFI notified Respondents that, pursuant to KRS 292.336(4), Compliance examiners would conduct an examination on August 25, 2015. The letter also provided a list of records and information that Respondents were required to provide during the examination.

13. As part of the preparation for this examination, Compliance examiners reviewed Cornerstone's Form ADV and Burcham's registration file, known as the "Form U4." Respondents filed an annual amendment to the Form ADV on January 20, 2015. In response to Item 5 of the Form ADV, Respondents indicated that the firm provided continuous and regular supervisory or management services to securities portfolios, and that it had six (6) accounts and over three (3) million dollars of assets under management ("AUM").

14. Cornerstone's Form ADV and Burcham's Form U4, filed January 17, 2012, did not list any outside business interests for Burcham.

15. Due to Burcham having a scheduling conflict on August 25, 2015, Compliance agreed to instead conduct its routine examination of Cornerstone pursuant to KRS 292.336(4) on August 26, 2015. During the examination, Burcham informed Compliance that Cornerstone did not have any clients as of the end of calendar year 2014. This statement directly contradicted the aforementioned Item 5 disclosures on the firm's Form ADV. Additionally, Burcham provided the examiners with a list of his outside business interests, none of which had been disclosed on the Form ADV or Form U4 noted above.

16. During the examination, Burcham also informed examiners that Cornerstone had not billed any clients since it made two (2) billings in 2014; that all client accounts had been transferred to Covenant Capital Group ("Covenant"); and that Cornerstone had terminated its custodial relationship with Shareholders Services Group ("SSG"). Burcham, moreover, provided the examiners with some of the firm's financial records, which were inconsistent with Burcham's prior statement that the last client billings occurred in 2014.

17. Respondents failed to provide multiple records that were specifically requested in DFI's July 16, 2015 letter, as well as numerous records that Compliance examiners requested during the examination. For example, Respondents did not provide the firm's monthly capital calculation worksheets for the months of February 2014 through July 2014.

18. Respondents, however, did provide monthly capital calculation worksheets for the months of August 2014 through July 2015 that showed Cornerstone's net worth was less than \$10,000 in each of those months. At no point had Respondents notified DFI's Commissioner that the firm's net worth had fallen below \$10,000, as required by 808 KAR 10:200, Section 3(7).

19. After the examination, on August 31, 2015, Compliance e-mailed Respondents a list of records they were to provide no later than September 8, 2015.

20. In a letter dated September 2, 2015, Compliance also provided Respondents with a list of the amendments that needed to be made to Cornerstone's Form ADV. Compliance requested that the amendments be made no later than September 16, 2015.

21. By e-mail dated September 24, 2015, Compliance informed Respondents that Respondents had failed to: (a) produce the items listed in the August 31, 2015 e-mail; and (b) make the necessary amendments to Form ADV.

22. On September 27, 2015, Burcham informed Compliance that the requested records would be provided on October 2, 2015, and the Form ADV amendments would be made.

23. Respondents, however, never provided the requested records to DFI.

24. Cornerstone's Form ADV was amended more than six (6) months later on April 4, 2016, but only some of the requested corrections had been made. One amendment conformed the Form ADV to Mr. Burcham's statement at the August 26, 2015 examination, that Respondents had no clients in 2014 or 2015.

D. Respondents' Advertising

25. Cornerstone maintained a website, Twitter account, and Facebook page. The website listed an office location in Franklin, TN. The Facebook page and Twitter account both contained a post from August 2, 2013, stating, "We're growing our footprint! Our new Nashville office is official," and provided a link to a picture of a building purportedly located in Franklin, TN. During the August 26, 2015 examination, Burcham informed Compliance that Cornerstone did not conduct business activity at this Tennessee office building.

26. Burcham posted the following statement to Cornerstone's Facebook page and Twitter account on December 4, 2014: "Go to lunch with a client and they have an additional 7.2 million check waiting for you. A good sign we're taking care of business!" These posts directly contradict Burcham's aforementioned statement that Cornerstone did not have any clients at the end of 2014.

E. Administrative Proceedings Initiated

27. Based on the foregoing, DFI filed an Administrative Complaint, 2016-AH-00023, against Respondents on March 2, 2016, seeking fines and revocation or suspension of Respondents' registrations.

28. Respondents' counsel, Judson Wagenseller, obtained an extension until June 24, 2016, to file a responsive pleading, in order to obtain additional documents from Respondents. During April 2016, Mr. Wagenseller provided various documents to DFI for review.

29. On May 31, 2016, Mr. Wagenseller provided DFI copies of financial planning agreements for three of the Respondents' clients, along with management fee

invoices for two of those three clients. He also provided PNC bank statements for the period of February 2014 - July 2014.

30. SSG was the custodian of the client accounts for investment adviser, Cornerstone (CRDNo. 160499), and/or Burcham (CRDNo. 5174214). As custodian, SSG maintained records of the account activity of Respondents' clients and also made account statements available to these clients either electronically or via U.S. mail.

31. On June 8, 2016, Compliance submitted a request to SSG for its records on Cornerstone and/or Burcham for the time period of February 1, 2012 through May 31, 2016.

32. On June 10, 2016, SSG provided documents that identified more clients and management fees than Respondents had reported to DFI. Cornerstone management fees had been deducted from client accounts maintained by SSG and deposited via ACH directly into Respondents' bank account with JP Morgan Chase. This was the bank account that Respondents had led DFI to believe had been closed.

33. During the August 26, 2015 examination, Burcham informed Compliance that he had become a junior partner with Covenant, a private equity – real estate group, located in Tennessee.

34. On June 9, 2016, Compliance sent a letter to Covenant requesting confirmation that Burcham had affiliated with that company as a junior partner. Covenant responded by letter, dated June 28, 2016, stating that Burcham was not, and has never been, affiliated with Covenant in any manner.

35. On June 23, 2016, Respondents' counsel, Mr. Wagenseller, provided written notice to DFI that he had officially withdrawn as counsel and would no longer be representing Respondents.

36. On June 24, 2016, DFI sent a letter to Respondents acknowledging receipt of Mr. Wagenseller's notice of withdrawal and stating that a responsive pleading to the Administrative Complaint was due on or before July 14, 2016.

37. On July 12, 2016, Michael A. Valenti, of Valenti, Hanley, PLLC, contacted DFI to report he would be representing Respondents and request an extension to answer the administrative complaint. An extension was granted, and Respondents' Answer to the Administrative Complaint was submitted on July 21, 2016.

F. Securities Enforcement Investigation

38. On June 16, 2016, Enforcement initiated an investigation of Respondents pursuant to KRS 292.460(1)(a).

i. Investor No. 1

39. On June 28, 2016, Enforcement interviewed Investor No. 1, who had transferred approximately \$220,000 in investment funds to Respondents for management. Investor No. 1's investment strategy was to preserve principal and make a small profit after paying advisory expenses. Investor No. 1 did not have a signed copy of the advisory contract, but believed fees of .5% of AUM were being charged to the account.

40. Part 2 of the Respondents' February 2, 2012 Form ADV, collectively known as the Brochure and Brochure Supplements (hereinafter "Form ADV Brochure"), states that the maximum advisory fee charged by Respondents is 1% of AUM.

41. However, an analysis of SSG records reveals that during the time period of 2015 through July 7, 2016, Respondents actually received \$7,913.94 above the contractual maximum of 1% of AUM from Investor No. 1 as depicted below:

Year	Maximum Allowable Contract %	Maximum Fees Under Contract % Based on Average AUM	Actual Fees Deducted From Account Held At SSG	Diverted Fees Exceeding Maximum Allowed Under Contract	Actual Fee Percentage of AUM Charged
2016*	1.00%	\$1,080.65	\$5,503.25	\$4,422.60	5.09%
2015	1.00%	\$1,305.87	\$4,797.21	\$3,491.34	3.67%

*Through July 7, 2016

ii. Investor No. 2

42. On July 1, 2016, Enforcement interviewed Investor No. 2, who had accepted services from Burcham in March or April of 2012. One long-term goal of Investor No. 2 was to deduct \$30,000 per year for retirement income. Investor No. 2 believed the advisory fees were to be 1% of the AUM, but had not received an account statement via U.S. mail since December 2014. Although Investor No. 2 was aware that account statements were available on-line through SSG's website, Investor No. 2 had encountered difficulty accessing the website. Investor No. 2 received email notices of trades, but never received any specific details about the trades. Investor No. 2 recalled signing an advisory contract, but Burcham never provided a copy, even after Investor No. 2's repeated requests.

43. An analysis of SSG records reveals that during the time period of 2013 through July 7, 2016, Respondents received \$285,126.31 above the contractual maximum fee of 1% of AUM from Investor No. 2 as depicted below:

Year	Maximum Allowable Contract %	Maximum Fees Pursuant To Contract % Based Upon Average AUM	Actual Fees Deducted From Account Held At SSG	Diverted Fees Exceeding Maximum Allowed Under Contract	Actual Fee Percentage of AUM Charged
2016*	1.00%	\$2,318.86	\$75,482.76	\$73,163.90	32.55%
2015	1.00%	\$4,287.59	\$73,454.00	\$69,166.41	17.13%
2014	1.00%	\$3,667.41	\$75,622.06	\$71,954.65	20.62%
2013	1.00%	\$2,691.75	\$73,533.11	\$70,841.36	27.32%

*Through July 7, 2016

44. Documents obtained from SSG include a letter, purportedly sent by Investor No. 2, authorizing SSG to allow direct withdrawals to Cornerstone for advisory fees pursuant to an investor's net worth of \$6.5 million. However, Investor No. 2 denied ever having a net worth anywhere near \$6.5 million and indicated that she never knowingly signed any letter that so stated.

45. The investigation further indicates that Respondents provided false documents to Investor No. 2. Investor No. 2 received intermittent invoices from Respondents via U.S. mail outlining quarterly balances and the fees that were to be deducted from Investor No. 2's SSG account; however, invoices were never provided on any consistent basis. On one occasion, Investor No. 2 requested an invoice from the Respondents listing the total amount of fees deducted in calendar year 2015. As

illustrated below, the fees that were actually deducted were significantly larger than the amounts shown on the statements Respondents provided:

Quarterly Invoice Date	Fee Amounts To Be Deducted Per Cornerstone Invoices	Actual Fees Deducted From Account Held At SSG	Fees Deducted in Excess of Amount Indicated on Invoice
4/2/2013	\$1,172.77	\$8,674.65	\$7,501.88
7/2/2013	\$1,116.03	\$26,697.44	\$25,581.41
10/3/2013	\$1,230.78	\$28,264.69	\$27,033.91
4/2/2014	\$1,248.63	\$12,779.03	\$11,530.40
10/8/2014	\$1,230.37	\$10,103.23	\$8,872.86
1/6/2015	\$1,293.73	\$14,527.51	\$13,233.78
Yearly Invoice Date	Fee Amounts To Be Deducted Per Cornerstone Invoices	Actual Fees Deducted From Account Held At SSG	Fees Deducted in Excess of Amount Indicated on Invoice
12/31/2015	\$4,019.30	\$73,454.00	\$69,434.70

iii. Investor No. 3

46. On July 14, 2016, Enforcement interviewed Investor No. 3, who had initially transferred approximately one million dollars (\$1,000,000) to Respondents for management, and added an additional \$220,000 to the advisory account in early 2016. Respondents were granted discretionary authority to make securities trades in this account, and Investor No. 3 was to be charged a .25% quarterly fee for Respondents' management. However, Respondents were not granted authority to withdraw fees or money from the account. Instead, Investor No. 3 opted to write a physical check for all advisory fees when they became due. These payments were drawn on Investor No. 3's checking accounts, which were not tied to the advisory accounts.

47. Investor No. 3 also opened two advisory accounts for family members, which were also to be under Respondents' management. Although there were three separate accounts, one for Investor No. 3 and two for family members, Respondents treated them as a single account for the purpose of fee assessment. All three accounts were to be charged a .25% quarterly AUM fee. According to Investor No. 3, Respondents were not granted authority to deduct fees from any of these advisory accounts.

48. An analysis of SSG records reveals that during the time period of 2012 through July 7, 2016, Respondents actually received \$469,161.10 above the contractual maximum fee of 1% of AUM for these three advisory accounts. Investor No. 3 paid the initial plan fees as well as the quarterly advisory fees for the accounts with a physical check each quarter. Despite Investor No. 3's specific directive that no fees were to be deducted directly from any of the three SSG accounts, advisory fees were nevertheless deducted from these accounts as illustrated below:

Year	Maximum Allowable Contract %	Maximum Fees Pursuant To Contract % Based Upon Average AUM	Actual Fees Billed and Paid Directly to Cornerstone	Amount of Diverted Fees Above Client's Direct Payment	Diverted Fees Exceeding Maximum Allowed Under Contract	Actual Fee Percentage of AUM Charged
2016*	1.00%	\$9,664.71	\$4,366.08	\$188,686.02	\$183,387.39	19.97%
2015	1.00%	\$20,648.92	\$17,321.24	\$185,774.52	\$182,446.84	9.84%
2014	1.00%	\$14,300.05	\$12,171.82	\$107,491.53	\$105,363.30	8.37%
2013	1.00%	\$10,637.08	\$9,055.51	\$0.00	(\$1,581.49)	0.85%
2012	1.00%	\$1,547.78	\$1,092.92	\$0.00	(\$454.86)	0.71%

*Through July 7, 2016

49. Documents obtained from SSG include a letter dated December 2, 2014, purportedly signed by Investor No. 3, authorizing SSG to allow a \$16,750 direct withdrawal to Respondents for set-up and distribution of plans from Investor No. 3's SSG account. The letter further authorized management fees related to a private equity account held outside the SSG custodian account to be withdrawn from Investor No. 3's SSG account. However, Investor No. 3 is unable to confirm the signature on the letter, and denies ever authorizing Respondents to manage or collect fees for any accounts held outside the SSG custodian account.

50. Documents obtained from SSG also include a letter dated April 2, 2015, purportedly signed by Investor No. 3, authorizing SSG to allow direct withdrawals to Respondents for advisory fees and declaring that the account with SSG, and another "private equity real estate" account held outside the SSG custodian account, have a combined value of over \$17 million. However, Investor No. 3 expressly denied: signing this authorization letter; having an outside private equity real estate account; and, having managed accounts valued at over \$17 million.

iv. Investor No. 4

51. On August 2, 2016, Enforcement spoke with Investor No. 4. While the signed contract stated the advisory fee would be 1% of AUM, Burcham told Investor No. 4 that he would not be charged a fee due to their close personal relationship.

52. However, fees were being charged. In fact, an analysis of SSG records reveals that during the time period of 2015 through July 7, 2016, Respondents actually received \$4,662.16 above the contractual maximum fee of 1% of AUM from Investor No. 4 as depicted below

Year	Maximum Allowable Contract %	Maximum Fees Pursuant To Contract % Based Upon Average AUM	Actual Fees Deducted From Account Held At SSG	Diverted Fees Exceeding Maximum Allowed Under Contract	Actual Fee Percentage of AUM Charged
2016*	1.00%	\$1,923.13	\$5,300.75	\$3,377.62	2.76%
2015	1.00%	\$3,996.82	\$5,281.36	\$1,284.54	1.32%

*Through July 7, 2016

v. Investor No. 5

53. Compliance received a copy of the contract for Investor No. 5 from Respondents on May 31, 2016. The signed contract stated the advisory fee would be 1% of AUM in addition to an estimated financial plan fee of \$3,500 the first year. Based upon SSG account statements, a financial plan fee of \$3,350 appears to have been withdrawn from Investor No. 5's SSG account in 2014.

54. An analysis of SSG records reveals that during the time period of 2014 through July 7, 2016, Respondents actually received \$2,924.08 above the contractual maximum fee of 1% of AUM from Investor No. 5 as depicted below:

Year	Maximum Allowable Contract %	Maximum Fees Pursuant To Contract % Based Upon Average AUM	Actual Fees Deducted From Account Held At SSG	Diverted Fees Exceeding Maximum Allowed Under Contract	Actual Fee Percentage of AUM Charged
2016*	1.00%	\$1,332.52	\$3,021.17	\$1,688.65	2.27%
2015	1.00%	\$3,197.49	\$4,605.38	\$1,407.89	1.44%
2014	1.00%	\$911.58	\$739.12	(\$172.12)	0.81%

*Through July 7, 2016

vi. Investor No. 6

55. Compliance received a copy of the contract for Investor No. 6 on May 31, 2016, from the Respondents. The signed contract stated the advisory fee would be 1% of AUM.

56. However, an analysis of SSG records reveals that during the time period of 2013 through July 7, 2016, Respondents actually received \$21,413.80 above the contractual maximum fee of 1% of AUM from Investor No. 6 as depicted below:

Year	Maximum Allowable Contract %	Maximum Fees Pursuant To Contract % Based Upon Average AUM	Actual Fees Deducted From Account Held At SSG	Diverted Fees Exceeding Maximum Allowed Under Contract	Actual Fee Percentage of AUM Charged
2016*	1.00%	\$1,788.26	\$4,390.83	\$2,602.57	2.46%
2015	1.00%	\$3,925.16	\$5,670.69	\$1,745.53	1.44%
2014	1.00%	\$2,681.96	\$19,266.31	\$16,584.35	7.18%
2013	1.00%	\$218.65	\$700.00	\$481.35	3.20%

*Through July 7, 2016

vii. Investor No. 7

57. DFI never received a copy of the contract for Investor No. 7. However, the Form ADV Brochure filed with DFI on February 2, 2012, states that the maximum advisory fee charged by Respondents is 1% of AUM.

58. An analysis of SSG records reveals that during the time period of 2012 through July 7, 2016, Respondents actually received \$38,925.28 above the contractual maximum fee of 1% of AUM from Investor No. 7 as depicted below:

Year	Maximum Allowable Contract %	Maximum Fees Pursuant To Contract % Based Upon Average AUM	Actual Fees Deducted From Account Held At SSG	Diverted Fees Exceeding Maximum Allowed Under Contract	Actual Fee Percentage of AUM Charged
2016*	1.00%	\$355.06	\$4,151.89	\$3,796.38	11.69%
2015	1.00%	\$862.54	\$11,528.85	\$10,666.31	13.37%
2014	1.00%	\$610.41	\$12,710.79	\$12,100.38	20.82%
2013	1.00%	\$542.98	\$12,171.99	\$11,629.01	22.42%
2012	1.00%	\$195.81	\$928.57	\$732.76	4.74%

*Through July 7, 2016

59. In total, the Respondents have collected unearned fees of not less than **\$830,126.67** from Investors Nos. 1 – 7.

60. Moreover, Respondents maintained a tab on their website entitled “Client Login,” which was supposed to allow investors to access a snapshot of their managed advisory accounts with the Respondents. However, the information that was provided on Respondents’ website did not accurately depict the investors’ account values. At least two investors relied upon the erroneous website information as an accurate depiction of their account values.

viii. Respondents’ Bank Records

61. On June 14, 2016, upon Compliance’s request, DFI’s Division of Securities, Enforcement Branch (“Enforcement”), issued an administrative subpoena for Respondents’ JP Morgan Chase Bank account records.

62. On June 22, 2016, Enforcement issued an administrative subpoena for Respondents’ PNC Bank account records.

63. Respondents' bank account at JP Morgan Chase contained monies that constitute unearned advisory fees wrongfully taken by Respondents. Records obtained from SSG indicated that Respondents received direct deposits totaling \$66,807.72 into this account during the months of June and July 2016. This account was in the name of Cornerstone, and Burcham had signature authority.

64. Respondents' bank account at PNC Bank contained monies that constitute unearned advisory fees wrongfully taken by Respondents. The account was in the name of Cornerstone, and Burcham had signature authority.

65. Records from the Meade County Clerk's Office (Deed Book 606, Page 415(4)) reveal that on March 27, 2014, Burcham purchased a lakeside home at 58 Oak Dale Court, Brandenburg, KY 40108. Enforcement traced deposits of unearned advisory fees into Cornerstone's bank accounts and these funds were used to make improvements to this property.

66. Cornerstone's bank records reveal that during the time period of 2013 through August 2016, Burcham paid American Express \$546,121.82. Enforcement traced deposits of unearned advisory fees into Cornerstone's accounts and these funds were used to pay Defendant Burcham's American Express bills.

67. Cornerstone's bank records reveal that during the time period of 2012 through May 2016, Burcham utilized approximately \$263,591.71 for various personal expenses including, but not limited to, vacations and travel; jewelry; student loans; personal loans; credit cards; purchases at retail stores such as Best Buy and Home Depot; and general living expenses, such as the purchase of food and groceries.

Enforcement traced deposits of unearned advisory fees into Cornerstone's accounts, and these funds were used to pay Burcham's personal expenses.

68. Cornerstone's bank records reveal that during the time period of 2012 through May 2016, Burcham made bank branch cash withdrawals of \$33,687.99, which included unearned advisory fees.

69. Cornerstone's bank records reveal that on June 26, 2014, Burcham used a Cornerstone account containing unearned advisory fees to make a \$6,000 deposit on a boat, Hull ID BUJ00443E314, from R&W Marine. Burcham thereafter made monthly payments on the boat from a Cornerstone account that contained unearned advisory fees.

70. In 2015, Burcham started Burcham Holding Group, LLC, d/b/a Smokehouse Social, a BBQ catering business. Burcham is identified as its registered agent at 58 Oak Dale Court, Brandenburg, KY 40108. Burcham utilized \$7,034.00 consisting of unearned advisory fees to purchase an ABS Judge smoker on February 13, 2015.

71. On July 8, 2016, DFI issued administrative subpoenas for the Respondents to appear at DFI's main office in Frankfort, Kentucky, on July 19, 2016, and produce various specified business records. The subpoenas were issued for service by Federal Express ("FedEx") to both the Cornerstone office address and Burcham's home address. Cornerstone received the subpoena on July 12, 2016, at 11:14 a.m. via FedEx delivery. Service could not be made at Burcham's residence.

72. When Michael Valenti, of Valenti Hanley, PLLC, contacted DFI on July 12, 2016, to report he would be representing Respondents, Mr. Valenti was informed that administrative subpoenas had been issued for Respondents to appear on July 19, 2016, and produce documents for review.

73. Alleging that he had not received the administrative subpoena from the Cornerstone office, Burcham failed to appear on July 19, 2016.

74. Therefore, on July 21, 2016, DFI issued an amended administrative subpoena for the Respondents to appear at DFI's Frankfort office on July 28, 2016, and produce a number of specified business records. Service was made on Mr. Valenti as Respondents' counsel of record.

75. On July 26, 2016, Mr. Valenti informed DFI there had been a death in Burcham's family, and Respondents' appearance was continued. On July 27, 2016, DFI issued an amended administrative subpoena for Respondents to appear at DFI's Frankfort office on August 1, 2016, and produce various specified business records. Service was again made on Mr. Valenti as counsel for Respondents.

76. Respondents failed to appear at the DFI office on August 1, 2016 pursuant to the administrative subpoena.

G. DFI's Administrative Enforcement Action

77. On August 1, 2016, DFI filed a Notice of Administrative Hearing, with service upon Respondents' counsel, Mr. Valenti, to inform the Hearing Officer that an administrative hearing was pending. Respondents were properly notified in writing that failure to participate at any stage of the proceeding could be grounds for default pursuant to KRS 13B.080(6).

78. On August 8, 2016, DFI issued a Summary Order suspending Respondents' registrations with DFI and ordering them to cease and desist from engaging in the securities business in Kentucky as an investment adviser or an investment adviser representative. Service of the Order was made upon Respondents' counsel, and they

were properly notified of their right to request an emergency hearing pursuant to KRS 12B.125 to contest the Order.

79. Despite receiving proper service, Respondents never requested an emergency hearing regarding the Summary Order, pursuant to KRS 13B.125.

80. Based upon their failure to request an emergency hearing, Respondents' registration suspensions and the orders to cease and desist from engaging in the securities business in Kentucky as an investment adviser or an investment adviser representative have remained in effect pending entry of this Final Order.

81. On September 19, 2016, DFI filed an Amended Administrative Complaint with service upon Respondents' counsel, Mr. Valenti. Respondents were notified in writing that failure to participate at any stage of the proceeding could be grounds for default pursuant to KRS 13B.080(6). Respondents have never filed an answer to the Amended Administrative Complaint.

82. Pursuant to the Hearing Officer's Order dated October 20, 2016, a telephonic prehearing conference was scheduled to begin at 10:00 a.m., on November 1, 2016. On that date and time, the Hearing Officer contacted both DFI and Respondents' counsel, Mr. Valenti. DFI was present and prepared to participate. Mr. Valenti, when informed the Hearing Officer had called, relayed a message through his office staff that he declined to participate in the hearing. Therefore, counsel for DFI moved for a default judgment, pursuant to KRS 13B.080(6), based upon the Respondents' failure to file an answer to the Amended Administrative Complaint, and their failure to participate in the prehearing conference.

83. On November 9, 2016, the Hearing Officer issued a Recommended Findings of Fact, Conclusions of Law and Recommended Order recommending that the Respondents be held in default, and that DFI be granted the relief sought in its Amended Administrative Complaint. Respondents' counsel, Mr. Valenti, was properly served and notified in writing of all appeal rights and the requirement to file exceptions to the Hearing Officer's Recommended Findings of Fact, Conclusions of Law and Recommended Order.

84. Based upon all the facts detailed above, the Commissioner finds that this Final Order is in the public interest.

CONCLUSIONS OF LAW

85. As a result of the pattern of conduct described in detail above, Respondents have committed multiple violations of KRS 292.336 and 808 KAR 10:450, Section 2, which states that a person who is an investment adviser or an investment adviser representative shall be a fiduciary and shall have a duty to act primarily for the benefit of its client. An investment adviser or investment adviser representative shall not engage, either directly or indirectly, in unethical or dishonest practices. Examples of acts and practices (relevant to this matter) that shall be considered either a breach of fiduciary duty or a dishonest and unethical practice include:

(8)(b) Misrepresenting the nature of the advisory services being offered or fees to be charged for the services;

(8)(c) Omitting to state a material fact necessary to make the statements made regarding the qualifications, services or fees, in light of the circumstances under which they were made, not misleading;

...

(10) Charging a client an unreasonable advisory fee in light of the fee charged by other investment advisers providing similar services;

...

(15)(f) Using any advertisement that contains any untrue statements or omissions of a material fact or is otherwise false or misleading;

...

(18) Entering into, extending, or renewing an advisory contract unless the contract is in writing and discloses the following:

- (a) The nature of the advisory services to be provided;
- (b) The time period that the contract remains in effect;
- (c) The advisory fee and the formula for computing the fee;
- (d) The amount of the prepaid fee to be returned if there is contract termination or nonperformance;
- (e) Whether the contract grants discretionary power to the adviser and, if so, the terms of the discretionary power;
- (f) Whether the contract grants custody of client funds to the advisor and, if so, the terms of the custody; and
- (g) That the adviser shall not assign the contract without the prior written consent of the client;

...

(21) Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative contrary to the provisions of Section 206(4) of the Investment Advisors Act of 1940, whether or not the investment adviser is registered or required to be registered under Section 203 of the Act;

(22) Failing to provide all material information with respect to any dealings with or recommendations to any advisory client in violation of KRS 292.320;

(23) Committing any act involving a client, the client's assets, or any business records which would constitute a criminal offense;

(24) Lying to or otherwise misleading a representative of the Department of Financial Institutions conducting an authorized examination or investigation;

(25) Failing to make requested records available to or otherwise impeding a representative of the Department of Financial Institutions conducting an authorized examination or investigation; and

(26) Failing to respond in a timely manner to a written request from an authorized representative of the Department of Financial Institutions for:

- (a) Information;
- (b) An explanation of practices or procedures;

- (c) A response to a complaint filed with the department; or
- (d) A response to a written statement of findings from an examination.

86. Pursuant to 808 KAR 10:450, Section 4, the Commissioner may also determine that an activity not included in the examples identified in Section 2 of the administrative regulation constitutes a dishonest or unethical practice if the activity is similar in nature to an enumerated activity.

87. As a result of the conduct described above, Respondents have committed multiple violations of KRS 292.320(2), which states that it is unlawful for any person who receives consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance or analyses or reports or otherwise, to employ any device, scheme, or artifice to defraud the other person; or to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

88. As a result of the conduct described above, Respondents have committed multiple violations of KRS 292.440, which states that it is unlawful for any person to make, or cause to be made, in any document filed with the Commissioner in any proceeding under the Securities Act, any statement which is, at the time and in light of the circumstances under which it is made, false or misleading in any material respect.

89. As a result of the conduct described above, Respondents violated KRS 292.331, KRS 292.336, 808 KAR 10:010, 808 KAR 10:030, and 808 KAR 10:120, which states that an investment adviser shall keep current its registration file with DFI, known as a Form ADV. Part 2 of the ADV includes a brochure which requires disclosure of the

investment adviser's business, fees, and compensation terms. This information must also be provided to each client or prospective client.

90. As a result of the conduct described above, Respondents committed multiple violations of KRS 292.336(1) and 808 KAR 10:110, which require investment advisers to maintain books and records in accordance with 17 C.F.R. 275.204-2, preserve the records for three (3) years, and make these records available to the Commissioner at any time for examination.

91. As a result of the conduct described above, Respondents committed multiple violations of 808 KAR 10:200, Section 3(6), which requires an investment adviser to: compute its net worth at least once a month; maintain a record of each computation; and, keep documentation of its assets under management (AUM) at that point in time.

92. As a result of the conduct described above, Respondents committed multiple violations of 808 KAR 10:200, Section 3(3)(a), which requires an investment adviser -- (a) with discretionary authority over client funds or securities, but no custody over client funds or securities, and (b) with assets of \$25 million or less under management -- to maintain a net worth of at least \$10,000.

93. As a result of the conduct described above, Respondents committed multiple violations of 808 KAR 10:200, Section 3(7), which requires an investment adviser to notify the Commissioner if its net worth falls below the required minimum.

94. As a result of the conduct described above, Respondents committed multiple violations of KRS 292.336(3), which requires investment advisers to promptly file a correcting amendment if the information contained in any document filed with DFI is or becomes inaccurate or incomplete in any material respect.

95. As a result of the conduct described above, the Commissioner may suspend or revoke the registration of Respondents in accordance with KRS 292.337.

96. Pursuant to KRS 292.500(14), the Commissioner may impose civil fines not to exceed twenty thousand dollars (\$20,000) per violation; except when the violation is directed at, or results in monetary damage to, one (1) or more individuals who are sixty (60) years of age or older, the Commissioner may impose an additional fine not to exceed twenty thousand dollars (\$20,000) per violation.

97. Complainant DFI has presented uncontested evidence that Respondents Cornerstone Benefit Advisors, LLC and Derek Burcham, collected, deposited and withdrew from their accounts with JP Morgan Chase Bank and PNC Bank, investor funds obtained in violation of KRS 292.320(2), in an amount totaling no less than \$830,126.67. As these sums were unlawfully obtained in direct violation of KRS Chapter 292, they represent ill-gotten gains.

98. Respondents have never filed an answer to the Amended Administrative Complaint and declined to participate in the Hearing Officer's prehearing conference. Therefore, it is appropriate at this time to enter a Final Order granting the relief requested in the Amended Administrative Complaint.

ORDER

Based upon the foregoing Statements of Facts and Conclusions of Law, the Commissioner hereby **ORDERS:**

1. The registration of Respondent Cornerstone Benefit Advisors, LLC (CRDNo. 160499) as an investment adviser representative is immediately **REVOKED**.

2. The registration of Respondent Derek Burcham (CRDNo. 5174214) as an investment adviser representative is immediately **REVOKED**.

3. Respondent Cornerstone Benefit Advisors, LLC shall **CEASE AND DESIST** from engaging in the securities business in Kentucky and shall **CEASE AND DESIST** from acting as an investment adviser in Kentucky.

4. Respondent Derek Burcham shall **CEASE AND DESIST** from engaging in the securities business in Kentucky and shall **CEASE AND DESIST** from acting as an investment adviser representative in Kentucky.

5. Respondents, jointly and severally, are **ORDERED TO PAY A FINE** of **\$575,000.00**. Payment is due within 30 (thirty) days, shall be in the form of a certified check or money order made payable to the "Kentucky State Treasurer," and mailed to the Department of Financial Institutions, Securities Division – Order, 1025 Capital Center Drive, Suite 200, Frankfort, KY 40601.

6. Respondents, jointly and severally, are hereby **ORDERED TO PAY RESTITUTION** in the following amounts:

Investor	Amount of Loss
Investor No. 1	\$7,913.94
Investor No. 2	\$285,126.31
Investor No. 3	\$469,161.10
Investor No. 4	\$4,662.16
Investor No. 5	\$2,924.08
Investor No. 6	\$21,413.80
Investor No. 7	\$38,925.28

Total Amount	\$830,126.67
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Payment is due within 30 (thirty) days, shall be in the form of a certified check or money order made payable to the "Kentucky State Treasurer," and mailed to the Department of Financial Institutions, Securities Division – Restitution, 1025 Capital Center Drive, Suite 200, Frankfort, KY 40601.

7. Nothing in this Order shall prevent DFI or any other authority from taking any further administrative or enforcement action under the Act or any other applicable laws and regulations.

APPEAL RIGHTS

This is a **FINAL AND APPEALABLE ORDER**. In accordance with KRS 292.337 and KRS 13B.140, any person aggrieved by a Final Order of the Commissioner may seek judicial review after all administrative appeals have been exhausted. A party shall institute an appeal by filing a petition in Franklin Circuit Court within thirty (30) days after the Final Order is mailed or delivered by personal service. The **EFFECTIVE DATE** of this Order shall be the date reflected on the certificate of service.

SIGNED this the 16 day of October, 2017.



CHARLES A. VICE
COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Final Order was served as follows:

By Messenger Mail to:

Hearing Officer Tim Cocanougher
Department of HBC
101 Sea Hero Road, Suite 100
Frankfort, KY 40601

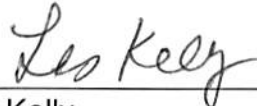
By Certified Mail Return Receipt Request to:

Hon. Michael Valenti
Valenti Hanley PLLC
Counsel for Respondents
One Riverfront Plaza, Suite 1950
401 West Main Street
Louisville, KY 40202

By Hand-Delivery to:

Hon. Gary W. Adkins
Kentucky Department of Financial Institutions
1025 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601

On this 17th day of October, 2017.



Les Kelly
Kentucky Department of Financial Institutions
1025 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601