

ENTERED
MAY 13 2019
12:00 PM
COMMISSIONERS OFFICE

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
ADMINISTRATIVE AGENCY ACTION NO. 2019-AH-00006

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

vs.

DAVID BOLTON,
BOLTON TOTAL WEALTH MANAGEMENT and
SPIRITED FUNDS, LLC

RESPONDENTS

**COMMISSIONER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND FINAL ORDER**

Comes now the Department of Financial Institutions (the "Department" or "DFI"), pursuant to Kentucky Revised Statute (KRS) 292.470(3) and KRS 292.500, and in support of its Findings of Fact, Conclusions of Law, and Final Order against Respondents David Bolton, Bolton Total Wealth Management, and Spirited Funds, LLC, states as follows:

FINDINGS OF FACTS

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. David Bolton ("Bolton"), managing member of Bolton Total Wealth Management ("BTWM") and Spirited Funds LLC ("SF LLC") (collectively "Respondents"), have a last known address of 1220 Beaumont Drive, Bowling Green, KY 42103.

Respondents' Underlying Conduct

3. Bolton organized and controlled five Kentucky entities, including SF LLC and BTWM.

4. BTWM was organized on November 8, 2013, and administratively dissolved on September 5, 2015.

5. SF LLC was organized on February 8, 2016, and was administratively dissolved on October 16, 2018.

6. Neither Bolton, nor any entity for which he served as a managing member, was ever registered with DFI to solicit or offer investments.

7. Bolton, BTWN, and SF LLC were associated with an investment offering for a new index fund titled Spirited Funds/ETFMG Whiskey & Spirits ETF ("WSKY"). In connection with this fund, SF LLC entered into an agreement with ETF Managers Group, LLC, operating in New Jersey as a covered advisor, to develop and co-own an index to be utilized by an exchange-traded fund specializing in the spirits industry. The original offering of shares in the index fund was offered through a broker-dealer network not directly involving Respondents.

8. Between 2013 and 2016, Bolton offered unregistered promissory notes to eleven (11) investors in BTWM and SF LLC. The purpose of these offerings was to raise capital for Bolton to continue his association with WSKY. SF LLC was listed as the fund's "sponsor" in offering documents. Several investors mistakenly believed they were purchasing equity interests in SF LLC in the form of the promissory notes.

9. In addition to offering the above-referenced unregistered securities, Bolton also failed to provide required disclosures regarding the use of investor funds in the promissory notes

or solicitation documents. The offerings further failed to disclose risks for the invested funds and Bolton's intent to use funds for personal expenses.

10. Moreover, Bolton failed to renew the registration of BTWM with the Kentucky Office of the Secretary of State, and offered investments in an inactive entity without disclosing its inactive status to investors.

Notice of the Administrative Complaint

11. Based upon the foregoing facts, DFI brought an Administrative Complaint against Respondents. The Complaint was transmitted on February 2, 2019, via United States Postal Service ("USPS") certified mail, to Bolton's last known address, 1220 Beaumont Drive, Bowling Green, KY 42103, which was also BTWM and SF LLC's address for service of process (USPS certified mail receipt number 7017 1000 0000 2763 2782). The Complaint was returned to DFI on February 20, 2019, with a USPS notation of "moved, left no address."

12. On March 4, 2019, DFI sent copies of the Complaint to alternative addresses of 100 Shady Hollow Drive, Mt. Juliet, TN 37122 (USPS certified mail receipt number 7017 1000 0000 2763 2785) and 217 Jamestown Park, Suite 11, Brentwood, TN 37027 (USPS certified mail receipt number 7017 1000 0000 2763 2772), via USPS certified mail. The Complaint was returned as "unclaimed" for both addresses.

13. The Department has reasonably attempted to provide appropriate notice of its action to Respondents at all of their known addresses. Respondents have failed to claim the certified mail and have failed to respond to the Administrative Complaint. Nor have they requested a hearing or communicated in any way with DFI concerning the statutory claims and allegations.

CONCLUSIONS OF LAW

Violations of KRS 292.320(1)

14. Pursuant to KRS 292.310(19), a security is defined, in relevant part, as “any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract...”

15. KRS 292.320(1) makes it unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

16. The misrepresentations and/or omissions of material fact in Respondents’ solicitation documentation operate as fraud or deceit upon the investors. Specifically, among other things, Respondents misrepresented and omitted material facts and information by: (a) failing to disclose non-business related and/or personal use of investors’ money in offering documents for investments in BTWM and SF LLC; and (b) misleading eleven (11) investors as to the nature of the investment.

17. Respondents’ foregoing misrepresentations, and omissions of material facts and information, constitute violations of KRS 292.320(1).

Violations of KRS 292.340

18. Pursuant to KRS 292.340, “[i]t is unlawful for any person to offer or sell any security in this state, unless the security is registered under this chapter, or the security or transaction is exempt under this chapter, or the security is a covered security.”

19. Bolton, through BTWM and SF LLC, sold unregistered promissory notes, which constitute securities, without registering the notes with DFI or providing documentation of a qualified exemption.

20. Through their sale of unregistered promissory notes to investors, Respondents have violated KRS 292.340.

Sufficiency of Notice and Respondents’ Default

21. Despite the Department’s reasonable efforts to provide Respondents’ with appropriate notice of this action and an opportunity for a hearing, pursuant to KRS 292.470(3), they have failed to respond in any way to the allegations of statutory violations contained in the Administrative Complaint.

22. Entry of this Final Order is therefore appropriate.

Remedies for Statutory Violations

23. KRS 292.470(3) states, whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order under this chapter, the commissioner may in his or her discretion bring any or all of the following remedies:

- (3) Issue a final order, after notice and an opportunity for a hearing, containing findings of fact and conclusions of law, directing any person or person found to have engaged in, or about to be engaged in,

activity that constitutes a violation of this chapter or any rule or order under this chapter:

- (a) To cease and desist from the activity;
- (b) To perform any other reasonable mandates directed by the commissioner pursuant to an appropriate remedy fashioned by the commissioner and reasonably calculated to carry out the provisions of this chapter; or
- (c) To pay fines assessed under KRS 292.500(14) and costs assessed under KRS 292.500(15).

FINAL ORDER

THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the Commissioner hereby **ORDERS**:

- 1. Respondents, pursuant to KRS 292.470(3), to **CEASE AND DESIST** from committing or causing violations of and any future violations of the Act;
- 2. Respondents, pursuant to KRS 292.500(14), to pay a civil fine in the amount of One Hundred and Ten Thousand dollars (\$110,000) for eleven (11) violations of KRS 292.320(1) and One Hundred and Ten Thousand dollars (\$110,000) for eleven (11) violations of KRS 292.340, for a total of Two Hundred and Twenty Thousand dollars (\$220,000);
- 3. Respondents to pay restitution to the investors, and;
- 4. This is a FINAL and appealable Order.

IT IS SO ORDERED on this the 13th day of May, 2019.



CHARLES A. VICE, COMMISSIONER

NOTICE OF APPEAL RIGHTS

Pursuant to KRS 292.490 and 13B.140, you are hereby notified that any person aggrieved by the FINAL ORDER of the Commissioner may obtain a review of the Order by the Franklin Circuit Court. If you choose to appeal, you must file a written petition asking that the Order be modified or set aside, in whole or in part, in the Franklin Circuit Court within thirty (30) days after the entry of the Order. A copy of the petition must be served on the Commissioner.


Certificate of Service

I hereby certify that a copy of the foregoing **FINAL ORDER** was sent by certified mail, return receipt requested, and by first class mail on this the 15th day of May, 2019, to the following:

David Bolton, individually and Agent for Service for
Bolton Total Wealth Management
1220 Beaumont Drive
Bowling Green, KY 42103

Hand delivered to:

Catherine Falconer
Asst. General Counsel
Department of Financial Institutions
1025 Capitol Center Drive, Suite 200
Frankfort, KY 40601


Name: Allison Reed
Title: Executive Staff Advisor