



COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2019—AH—00066

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

vs.

PARTIAL AGREED ORDER

FWG INVESTMENTS, LLC

RESPONDENT

PARTIES

1. The Kentucky Department of Financial Institutions (DFI, or the “Department”) is responsible for administering the provisions of Kentucky Revised Statutes (KRS) Chapter 292, the Securities Act of Kentucky (the “Act”), as well as the rules and regulations enacted thereunder.

2. FWG Investments, LLC, (FWG or “the Firm”) is a Kentucky Limited Liability Company with a registered principal office at 2704 Old Rosebud Road, Suite 160, Lexington, Kentucky 40509, whose registered agent for service of process is Geoffrey Kevin Metzler at the same address. FWG is also a registered investment adviser with the Securities and Exchange Commission (SEC) with CRD# 284064. As discussed below, FWG employed or associated with two notable individuals during the times indicated below: Donald Eugene Bentley (Bentley, CRD# 2882828), and Jeffrey Kyle Sheppard (Sheppard, CRD# 6708038).

FACTUAL BACKGROUND

3. On May 8 through May 10, 2017, DFI examiners conducted a routine compliance examination of FWG pursuant to the Act. As several members of FWG’s management team were not present during the exam, a follow-up visit was conducted on May 31, 2017, to complete this examination. DFI sent a Statement of Findings letter containing the conclusions of this

examination to FWG on July 10, 2017; this letter identified compliance concerns noted during DFI's examination of FWG. Since July of 2017, FWG has exchanged several letters with DFI; however, the Firm provided incomplete, or insufficient responses to questions and document requests by DFI.

4. DFI was unable to bring the Firm into compliance with the Act. Accordingly, DFI opened a formal investigation into FWG's investment-related activities on June 26, 2018, through which DFI confirmed the following facts and allegations, and uncovered additional information pertinent to this action.

I. Unregistered Investment Adviser Representative Activity

5. Sheppard was hired by FWG in September of 2016, and immediately began to transact business as an investment adviser representative (IAR) for the Firm. Sheppard was not registered with DFI as an IAR until July 6, 2018; yet internal client notes provided to DFI by FWG show that in the two years between his hiring and his registration, Sheppard met with clients and provided investment advice to them.

6. Bentley was hired by FWG in December of 2016, and he was conditionally registered with DFI as an IAR for FWG on January 11, 2017. Bentley's registration was conditioned upon the provision that he take and pass the Uniform Investment Adviser Law Examination (Series 65 Exam) within ninety (90) days of DFI's approval of his conditional registration. Bentley failed to satisfy this requirement, and his registration was terminated by DFI on April 12, 2017 although he ultimately passed the Series 65 exam and was then duly registered to provide such advice.

7. Both FWG and Bentley were notified on April 11, 2017, that Bentley had failed to satisfy the requirements of his conditional registration, and that his registration would be terminated on the following day. DFI further advised FWG and Bentley that among other things,

as of April 12, 2017, Bentley should cease all IAR activities; that Bentley's clients, and the fund custodians for accounts under his management, should be notified that he would no longer be able to serve as an IAR; and Bentley should not be compensated advisory fee income until he became properly registered.

8. FWG continued to employ and associate with both Bentley and Sheppard while they were acting as unregistered investment advisers.

II. Misrepresentation of Bentley's Registration Status

9. When Bentley's registration was terminated in April of 2017, FWG was advised that the Firm would be required to notify Bentley's clients that he would be unable to serve as an IAR until he was properly registered with DFI. While FWG did ask Bentley's clients to sign a form acknowledging that the IAR assigned to their accounts had been changed, this form did not disclose the fact that DFI had terminated Bentley's registration.

10. In failing to disclose this information, and in allowing Bentley to continue to meet with and provide investment advice to clients, FWG misrepresented Bentley's registration status and his qualifications as an IAR.

III. Failure to Maintain Correspondence

11. DFI's review of business records provided by FWG revealed that the Firm failed to maintain correspondence with its clients as required under state and federal law. In the course of DFI's investigation of FWG and subsequent communications with the Firm, the Department repeatedly requested that the Firm produce all incoming and outgoing correspondence between FWG personnel and the Firm's clients.

12. Specifically, the Department requested that FWG produce copies of all correspondence between the Firm's IARs and their clients on two occasions; first, as a follow up to the 2017 compliance examination; and second, through a subpoena issued by the Department

on July 24, 2018. In each instance, FWG required multiple deadline extensions to produce these documents.

13. While federal regulations enacted by the SEC (and incorporated into the Act by specific reference) do allow investment advisers to store and manage their records electronically, these records must *inter alia* be arranged and indexed “in a way that permits easy location, access, and retrieval of any particular record.” 17 C.F.R. 275-204.2(g)(2)(i). FWG required two deadline extensions and a total of more than eight (8) months to produce any of the requested correspondence. When FWG was asked to explain this delay, the Firm told DFI that retrieving past electronic mail is “a manually intensive task and will require considerable time to complete.”

14. In light of the significant time and effort required for FWG to comply with the Department’s requests, it is clear that FWG has failed to maintain the records of this correspondence in a clear and accessible manner as required under 17 CFR 275-204.2(g). FWG’s statement to the Department on this point only served to underscore the complex and inaccessible nature of the Firm’s records storage system. Consequently, FWG violated 292.336(1)(a) and 808 KAR 10:110 § 1(1)(b).

IV. Failure to Maintain Trade Blotter

15. A review of FWG’s records of trades executed by the Firm on behalf of its clients (the Firm’s “trade blotter”) revealed that FWG failed to maintain certain kinds of information required by the Act.

16. In lieu of a traditional trade blotter, FWG produced trading records maintained by the Firm’s custodians; however, these records omitted several types of information that the Act requires the Firm to maintain. Notably, the records provided failed to state: which FWG employee recommended the trade to the client; which FWG employee placed the trade order

with the fund custodian; and whether the trade was made pursuant to discretionary authority or pursuant to a direct request from the client.

17. In failing to maintain the records of the Firm's trading activity as required under federal law, FWG violated 292.336(1)(a) and 808 KAR 10:110 § 1(1)(b).

STATUTORY AUTHORITY

18. KRS 292.310, which provides definitions for the Act, states, in relevant part, that:

(11) "Investment adviser" means any person who, for compensation, directly or indirectly, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities...

(12) "Investment adviser representative" means an individual employed by or associated with an investment adviser or covered adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendations or advice regarding securities should be given, provides investment advice or holds himself or herself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing...

19. Pursuant to KRS 292.330(11), it is "unlawful for an individual to transact business in this state as an ... investment adviser representative unless the individual is registered under this chapter ... or is exempt from registration." 292.330(10) additionally provides that it is "unlawful for an investment adviser to employ or associate with an investment adviser representative unless the representative is registered under this chapter or exempt from registration."

20. Under the recordkeeping requirements of KRS 292.336(1)(a), “[e]very registered broker-dealer, firm employing issuer agents, and investment adviser shall make and keep all accounts, correspondence, memoranda, papers, books, and other records which the commissioner by rule or order prescribes.”

21. Accordingly, 808 KAR 10:110 § 1(1)(b) requires that an “investment adviser who maintains his principal place of business in Kentucky shall ... Maintain his books and records in accordance with the applicable federal guidelines, including 17 C.F.R. 275.204-2.”

22. Notably, 17 CFR 275.204-2(a) requires that every investment adviser “shall make and keep true, accurate and current the following books and records relating to its investment advisory business;

(3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank, broker or dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

...

(7) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to:

- (i) Any recommendation made or proposed to be made and any advice given or proposed to be given;
- (ii) Any receipt, disbursement or delivery of funds or securities;
- (iii) The placing or execution of any order to purchase or sell any security;

- (iv) The performance or rate of return of any or all managed accounts or securities recommendations; Provided, however:
 - (A) That the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and
 - (B) That if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

23. Further, 17 CFR 275-204.2(g) allows an investment adviser to store records on electronic media, provides that:

- (2) General requirements. The investment adviser must:
 - (i) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;
 - (ii) Provide promptly any of the following that the Commission (by its examiners or other representatives) may request:
 - (A) A legible, true, and complete copy of the record in the medium and format in which it is stored;
 - (B) A legible, true, and complete printout of the record; and
 - (C) Means to access, view, and print the records; and
 - (iii) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.
- (3) Special requirements for electronic storage media. In the case of records on electronic storage media, the investment adviser must establish and maintain procedures:
 - (i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;
 - (ii) To limit access to the records to properly authorized personnel and the Commission (including its examiners and other representatives); and
 - (iii) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

24. Under KRS 292.336(4)(a), the Commissioner of DFI is authorized to “conduct examinations, within or outside this state, of each broker-dealer, issuer agent, or investment adviser at such times and in such scope as he or she determines.”

25. KRS 292.470(3) describes DFI’s investigative authority, and states that:

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 persons 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).

26. KRS 292.500(14) states in relevant part that:

The commissioner may impose civil fines against any person who violates any provision of this chapter or any rule or order or voluntary agreement entered into under this chapter. The fine shall not 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. Each act or transaction, which violates this chapter or administrative regulation, or orders or agreements entered into under this chapter, shall constitute a separate violation. Any employer or principal shall be jointly and severally liable for fines imposed in connection with the conduct of employees or agents.

27. 808 KAR 10:450, Section 2, which defines deceptive or unethical business practices by investment advisers, states in relevant part 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 clients. An investment adviser or investment adviser representative shall not engage, either directly or indirectly, in unethical or dishonest practices. The following acts and practices shall be considered either a breach of fiduciary duty or a dishonest and unethical practice. Violations may result in a fine, suspension, or revocation in proportion to the seriousness of the offense:

...

(8) (a) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser;

...

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

...

(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;

...

(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.

VIOLATIONS

28. FWG continued to employ and associate with Sheppard and Bentley during the conduct described above. As Bentley and Sheppard were not registered with the Department, and as their conduct meets the definition of an investment adviser representative under KRS 292.310(12), FWG's continued employment or association with them is in violation of KRS 292.330(10).

29. When Bentley's registration was terminated by DFI, FWG misrepresented Bentley's qualifications as an IAR by failing to disclose that Bentley was not properly registered to provide investment-related advice or recommendations. Notably, this includes FWG allowing Bentley to meet with clients in the Firm's offices. Together, these facts created the misleading impression that Bentley was qualified to act as an IAR when in fact he was specifically prohibited from doing so. Thus, this conduct is in violation of 808 KAR 10:450 § 2(8)(a), (c).

30. FWG failed to maintain clear and accurate copies of correspondence between the Firm's clients and employees as required under 17 CFR 275-204.2(a) and (g). This conduct is in violation of KRS 292.336(1)(a) and 808 KAR 10:110(1)(b).

31. FWG failed to maintain clear and accurate transaction records as required under 17 CFR 275-204-2(a)(3). This conduct is in violation of 808 KAR 10:110(1)(b).

AGREEMENT AND ORDER

32. To resolve this matter without litigation or other adversary proceedings and without admitting liability, DFI and Respondent agree to compromise and settle all claims arising from the above-referenced factual background in accordance with the terms set forth herein.

33. In the interest of economically and efficiently resolving the violations described herein, DFI and Respondent hereby agree as follows:

- a. FWG agrees to pay a civil fine in the amount of **fifty thousand dollars (\$50,000)** for the violations described herein, which shall be due and payable upon the entry of this Order;
- b. All payments under this Order shall be in the form of a certified check or money order made payable to “Kentucky State Treasurer” and mailed to the Department of Financial Institutions, Securities Division, 2019-AH-00066, 500 Mero Street 2SW19, Frankfort, Kentucky 40601; and
- c. Respondent shall cease and desist from any further violations of the Act.

34. Respondent waives its right to demand a hearing at which it would be entitled to legal representation, to confront and cross-examine witnesses, and to present evidence on its own behalf, or to otherwise appeal or set aside this Agreed Order.

35. Respondent consents to and acknowledges the jurisdiction of DFI over this matter and that this Agreed Order is a matter of public record and may be disseminated as such.

36. In consideration of execution of this Agreed Order, Respondent for itself, and for its successors and assigns, hereby releases and forever discharges the Commonwealth of Kentucky, DFI, Office of Legal Services, and each of their members, agents, and employees in their individual capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, that Respondent ever had, now have, may have or claim to have against any or all of the persons or entities named in this paragraph arising out of or by reason of this investigation, this disciplinary action, this settlement or its administration. For purposes of clarity, however, the parties acknowledge that either may bring an action to enforce or interpret this Agreed Order.

37. By signing below, the parties acknowledge they have read the foregoing Agreed Order, know and fully understand its contents, and that they are authorized to enter into and execute this Agreed Order and legally bind their respective parties.

38. This Agreed Order shall constitute the Final Order in this matter.

IT IS SO ORDERED on this the 30th day of April, 2020.



CHARLES A. VICE
COMMISSIONER

Consented to:

On behalf of the Department of Financial Institutions,

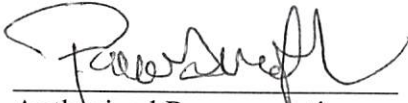
This ____ day of _____, 2020.

Director, Division of Securities
Department of Financial Institutions

AND

On behalf of FWG Investments, LLC,

This 24th day of April, 2020.




Authorized Representative
FWG Investments, LLC

ACKNOWLEDGEMENT

STATE OF Kentucky)
)
COUNTY OF Fayette)

On this the 24th day of Apr. 1, 2020, before me Paul Mettler,
_____ did personally appeared and acknowledged themselves to be a duly
authorized representative of FWG Investments, LLC, the Respondent named herein, and
acknowledged that they entered into and executed the foregoing instrument for the purposes
therein contained.

My Commission Expires: 4-26-23

Notary Public 



CERTIFICATE OF SERVICE

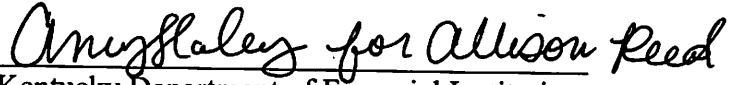
I hereby certify that a copy of the foregoing **Partial Agreed Order** was sent on this the 30 day of April, 2020, by certified mail, return receipt requested, to:

FWG Investments, LLC
2704 Old Rosebud Road, Suite 160
Lexington, Kentucky 40509
RESPONDENT

Stoll Keenon Ogden, PLLC
Attn: Adam M. Back
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507
COUNSEL FOR FWG INVESTMENTS, LLC

And by Hand-Delivery to:

Stuart Michael
Department of Financial Institutions
500 Mero Street 2SW19
Frankfort, KY 40601
COUNSEL FOR DEPARTMENT OF FINANCIAL INSTITUTIONS


Amy Hales for Allison Reed
Kentucky Department of Financial Institutions

Consented to:

On behalf of the Department of Financial Institutions.

This 27th day of April, 2020.

Maui P. G. G. G.

Director, Division of Securities
Department of Financial Institutions

AND

On behalf of FWG Investments, LLC,

This 24th day of April, 2020.

[Signature]

Authorized Representative
FWG Investments, LLC

ACKNOWLEDGEMENT

STATE OF Kentucky)
)
COUNTY OF Fayette)

On this the 24th day of April, 2020, before me Paul Metler.

_____ did personally appeared and acknowledged themselves to be a duly authorized representative of FWG Investments, LLC, the Respondent named herein, and acknowledged that they entered into and executed the foregoing instrument ~~for the purposes~~ therein contained.

My Commission Expires: 4-26-23

[Signature]
Notary Public

