COMMONWEALTH OF KENTUCKY
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
OFFICE OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2007-AH-004
ADMINISTRATIVE ACTION NO. 07-PPC-0086

OFFICE OF FINANCIAL INSTITUTIONS PETITIONER

vs.

FIRST ADVANTAGE SECURITIES CORPORATION and KENNETH G. MUELLER RESPONDENTS

SETTLEMENT AGREEMENT AND FINAL ORDER

On February 8, 2007, the Office of Financial Institutions (OFI) filed an administrative complaint against First Advantage Securities Corporation (FASC) and Kenneth G. Mueller. The Complaint sought revocation of the broker-dealer registration of FASC and a one-month suspension of Mueller from engaging in the securities business. The Complaint alleges that Mueller failed to supervise FASC agents William Champion and Brad Shultz.

FASC was dismissed from this action when its owner, Mark Kroman, agreed to withdraw the registration of FASC. Mark Kroman also owns Eastern Energy Corporation (EEC), an issuer of interests in oil and gas drilling programs. In 2006, OFI filed a civil action in a related matter against Kroman and EEC. In a settlement of that action, EEC agreed to no longer sell, offer, or issue any security, and Kroman agreed to a twelve-month suspension from the securities business and a $25,000 fine.

A hearing on the current matter related to Respondent Mueller is scheduled for August 2, 2007. However, the OFI and Mueller have reached an agreement to resolve the issues remaining in OFI's Complaint. Without admitting or denying the allegations contained in the findings of fact or conclusions of law set forth below, Respondent Mueller, in order to avoid the cost and time of a protracted legal proceeding, agrees to a seven-day suspension from the securities business in Kentucky.

ALLEGATIONS AND FINDINGS OF FACT

During the course of its investigation, the Division of Securities gathered information and took sworn statements from Ken Mueller, William Champion, Donald Bradley Shultz, the office manager of EEC, and three individuals employed by EEC as "fronters." Based on that investigation, the following facts are alleged:

1. Mueller was employed by FASC as its president from October 18, 2002, until February 21, 2006. He was registered as an agent of FASC in Kentucky from June 2, 2003, until February 22, 2006.

2. Mueller was registered as a general securities principal and financial principal of FASC from May 21, 2003, until February 22, 2006. He was also designated by FASC as the supervisor of FASC agents William Champion and Brad Shultz during that time.

3. During the period from July 2003 through October 2005, FASC agents sold at least $2.2 million in oil and gas programs issued by EEC in over 100 separate transactions. The FASC agents were under the supervision of Mueller during this time.

4. The sales of EEC programs that Kroman effected through the FASC agents were not made in accordance with FASC policies and procedures nor were they recorded on the books of FASC.

5. During a routine compliance exam of the firm in January 2006, Mueller stated to an OFI examiner that FASC had never sold any oil and gas offerings.

6. OFI believes that a number of red flags or warning signals existed to alert Mueller of ongoing sales activity by Kroman and the agents under Mueller's supervision.

Regulatory Actions

7. At the time Mueller began his employment with FASC, he was aware that all the agents had previously engaged in conduct that violated state securities laws. He was aware that Kentucky, Wisconsin, Arkansas, Pennsylvania, Missouri, and Minnesota had all taken legal action against EEC, Kroman, Champion, and/or Shultz related to the sale of unregistered securities by an unregistered broker-dealer or agent. These actions were the reason Kroman hired Mueller to establish FASC and to license the EEC salesmen as agents of FASC.

8. Mueller was specifically aware of the prior order of the OFI entered against EEC requiring the company to sell its securities only through a broker-dealer.

9. For the period of July 2004 through June 2005, the Michigan Division of Securities required Shultz to be subject to heightened supervision as a condition of registration in that state. Mueller was responsible for performing the heightened supervision of Shultz during this period.

Investor Complaint to NASD

10. On July 25, 2005, the NASD sent correspondence to Mueller advising him of a complaint received by the NASD from an investor in an EEC program. The investor purchased this investment on August 9, 2003 from Michael Meredith. Meredith was an

employee of FASC from March 3, 2003 through April 26, 2004. He was also employed by EEC.

11. Mueller provided an initial response to the NASD and then Kroman, the owner of EEC, provided all follow-up responses to the NASD's requests for additional information.

Investor Complaint Calls

12. Mueller indicated in his statements that he was aware investors were calling EEC complaining that they were not receiving their share of revenue from their investment in EEC programs. Mueller indicated that on occasions he personally spoke to investors regarding these complaints. In a statement to OFI, the office manager indicated that she received as many as ten complaint calls from investors each day.

Mailing of Informational Packages

13. The office manager also indicated that one of her duties was to mail out informational packages to potential investors. She indicated that Kroman, Champion, or Shultz would give her a list of names and addresses to whom to send packages. However, these packages sometimes included information about the EEC program the FASC agents were currently selling. This information was not approved by the NASD and Mueller claims he was not aware this information was being included in the packages. She further indicated that if she was not available to send packages out, then Kroman, Champion or Shultz would mail them themselves.

14. The office manager was able to name specific EEC programs sold during 2004 and 2005.

Fronters

15. Beginning in 2005, Kroman hired "fronters" to contact potential investors about programs offered by EEC.

16. Mueller indicated in a statement to OFI that he was aware of the fronters and stated that they were hired to build a base of qualified leads to whom FASC agents could later solicit for sales of securities. Mueller stated that he did not, however, regularly meet with the fronters or review their work.

17. The fronters' job duties consisted of calling potential investors to determine their interest in investing in EEC programs. If the person was interested, the fronter would refer the person to Champion or Shultz for further information. If Champion or Shultz made a sale based on a call referred by a fronter, then the fronter would receive a bonus.

18. The fronters indicated that during 2005 they referred many potential investors to Champion and Shultz and received bonuses for sales of EEC programs made by Champion and Shultz during that time. The fronters were able to name specific EEC programs sold during this time.

19. One of the fronters stated she knew that FASC agents made sales of EEC programs during this period because, in addition to receiving a sales bonus, she could overhear agents Champion and Shultz talking on the phone to prospective investors and making sales.

20. The fronters would also receive a bonus if an informational package was mailed to a potential investor with whom they spoke. The fronters indicated that this package sometimes includes information on EEC programs currently being sold by Kroman and the FASC agents.

21. Several fronters also stated that they could overhear Champion and Shultz on the phone talking to investors who complained about not receiving revenue checks.

OFI 2006 Compliance Exam

22. In January 2006, the OFI conducted a routine compliance exam of FASC. This exam was conducted on an unannounced basis. Mueller was present at the exam.

23. The fronters indicated that Kroman instructed them to leave the office on the days that the OFI examiners were present for the exam.

24. In his statement Mueller indicated that during the course of the FASC exam, the OFI examiner indicated to Kroman and Mueller that he needed to discuss EEC because of the "symbiotic between the two firms." Mueller further indicated, "That's where I step back because Mark just doesn't let me have anything to do at all and those are Mark's records. And so Mark sat down one morning for a couple of hours, I went out and had breakfast or did something else and – and I don't know what [the examiner] asked for or what [the examiner] asked him or what [the examiner] got."

No Income for FASC

25. During the time Mueller was employed by FASC, the firm did not generate sufficient income to pay salaries to Mueller or its agents or to support the operation of the firm.

26. Mueller indicated in his statement to OFI that all salaries and expenses were paid by EEC or Advantage Energy. Advantage is owned by Mark Kroman. He further indicated that Kroman would periodically inject capital into FASC to pay its expenses. Mueller was not certain how Kroman obtained the funds he used to inject capital into FASC.

Use of FASC Letterhead

27. On November 3, 2005, Shultz sent correspondence on FASC letterhead to an individual soliciting an investment in an EEC program. The individual subsequently invested in the EEC Huffman program in December 2005.

CONCLUSIONS OF LAW

28. KRS 292.330(13)(a)9.a provides that the executive director may suspend any registration if he finds the order is in the public interest and the registrant has failed reasonably to supervise his agents.

29. 808 KAR 10:030 requires a broker-dealer to establish, maintain, and enforce written supervisory procedures that are designed to detect and prevent violations of the state and federal securities laws, regulations, and orders.

30. As the compliance office for FASC, Mueller was responsible for establishing and maintaining the firm's supervisory procedures. As a principal and supervisor, he was responsible for enforcing those procedures. A supervisor must actively supervise his agents and train the agents as to proper conduct. He is expected to seek out and resolve troublesome areas before they become regulatory problems. He must investigate to conclusion any red flags or warning signals that indicate potential regulatory violations.

31. Mueller failed to enforce the supervisory procedures of FASC. During the time he was a supervisor, agents under his supervision were selling securities in a manner inconsistent with FASC policies and procedures. Given the prior regulatory history of the agents, Mueller should have taken affirmative steps to keep them under close surveillance. However, Mueller's supervision was not proactive, and he did not take

steps to deter the agents' behavior. He failed to investigate or ignored warning signals indicating sales activity.

32. Mueller claims he was unaware that the FASC agents were selling any EEC offerings and that his office was in a different part of the office suite than the agents. However, others working in the same office all knew the FASC agents were selling EEC offerings. The manager and fronters even knew specific EEC programs, and the fronters indicated that telephone conversations within the office were easily overheard.

33. Mueller's failure to enforce FASC's supervisory procedures permitted the agents to forgo adherence to FASC policies and procedures. These policies and procedures serve to prevent violations of the securities laws and to ensure that investors are treated ethically and honestly.

ORDER

Upon agreement of the Office of Financial Institutions and Kenneth G. Mueller, it is **ORDERED** that the registration in Kentucky of Kenneth G. Mueller is **SUSPENDED** for a period of seven (7) days. Because Mueller terminated his registration in Kentucky shortly after the initiation of this action, this suspension shall be reflected as of the last day of registration in Kentucky. That date is February 22, 2006. Accordingly, it is **ORDERED** that his registration record shall reflect that he was **SUSPENDED** in Kentucky from February 22, 2006, through February 28, 2006.

Respondent Mueller neither admits nor denies the allegations contained in the findings and conclusions in this Order and waives his right to demand a hearing, at which he would be entitled to legal representation, to confront and cross-examine witnesses for the Office of Financial Institutions, and to present evidence on his own behalf. Further, Respondent Mueller consents to and acknowledges the jurisdiction of the Office of Financial Institutions over this matter and that this Agreement is a matter of public record and may be disseminated as such.

This Order is in the public interest.

Entered this 1st day of November, 2007.

KH Caldwell Sr. By:

Cordell G. Lawrence
Executive Director

Have seen and agreed to:

Date: 10/29/07

Greg A. Jennings, General Counsel
Counsel for Petitioner

Date: 10/20/2007

Kenneth G. Mueller
Respondent

Date: OCT. 23, 2007

Scott Zoppoth
Counsel for Respondent, Kenneth G. Mueller