

**COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2021-AH-0017**

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

AGREED ORDER

JOHN S. GUTERMUTH

RESPONDENT

STATEMENT OF FACTS

1. The Kentucky Department of Financial Institutions (hereinafter, the "Department") is responsible for administering the provisions of Kentucky Revised Statutes (KRS) Chapter 292, the Securities Act of Kentucky, as well as any applicable rules, regulations, and orders enacted pursuant to the Code.

2. John S. Gutermuth (CRD # 1965885) was managing director and an investment adviser representative on behalf of Green Square Capital Louisville, LLC (CRD# 172945) from May 11, 2017 to July 6, 2018.

3. Green Square Capital Louisville, LLC is a foreign corporation, incorporated under the laws of the state of Delaware with its principle office at 6075 Poplar Avenue, Suite 221, Memphis, TN 38119. Green Square Capital Louisville, LLC had a certificate of authority to transact business in Kentucky, which was revoked on October 1, 2016 due to failure to file its 2016 annual report. Green Square Capital Louisville, LLC currently maintains an inactive entity status.

4. On March 31, 2018, the Department received Green Square Capital Louisville, LLC's application for registration as an investment adviser. During the review of the registration application, the Department discovered that Green Square Capital Louisville, LLC filed a Form ADV-W on May 11, 2017 to terminate its SEC registration.

5. In reviewing the application, the Department discovered Green Square Capital Louisville, LLC employed three (3) individuals, including the Respondent, who performed

advisory services at its Kentucky location and were not registered as investment adviser representatives following Respondent's May 11, 2017 termination of its SEC registration.

STATUTORY AUTHORITY

6. KRS 292.310(12) states,

"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. The term does not include an individual who:

- (a) Performs only clerical or ministerial acts;
- (b) Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;
- (c) Is employed by or associated with a covered adviser, unless the individual has a "place of business" in this state as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-3a, and is either:
 - 1. An "investment adviser representative" as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-3a; or
 - 2. Not a "supervised person" as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-2(a)(25); or
- (d) Is excluded by the commissioner pursuant to order or regulation[.]

7. KRS 292.330(11) states,

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 as an investment adviser representative or is exempt from registration under subsection (12) of this section.

8. KRS 292.330(12) states,

The following investment adviser representatives are exempt from the registration requirement of subsection (11) of this section:

(a) An investment adviser representative who is employed by or associated with an investment adviser that is exempt from registration under this chapter or a federal covered adviser that is excluded from the notice filing requirements under this chapter; and

(b) Any other investment adviser representative exempted from registration by rule or order under this chapter.

9. KRS 292.470 states, in pertinent part,

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).

VIOLATIONS

10. Respondent acted as an investment adviser representative on behalf of Green Square Capital Louisville, LLC from May 11, 2017 to July 6, 2018, however, Respondent has never been registered to act as an investment adviser representative in Kentucky while performing those services, which is in violation of KRS 292.330(11).

11. Respondent did not qualify for an exemption under KRS 292.330(12); Green Square Capital Louisville, LLC was not registered with any state or federal regulatory agency after

May 11, 2017 because it filed a Form ADV-W on that date to terminate its SEC registration and Green Square Capital Louisville, LLC did not qualify for an exemption from registration.

AGREEMENT AND ORDER

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

13. In the interest of economically and efficiently resolving the violations described herein, it is hereby **AGREED** and **ORDERED**:

i. Respondent agrees to pay a civil fine in the amount of **two thousand dollars (\$2,000.00)** for the violations described herein, which shall be due and payable within thirty (30) days of the entry of this Order;

ii. All payments under this Order shall be in the form of an ACH payment made via secure website, pursuant to instructions provided to Respondent, or by a certified check or money order made payable to "Kentucky State Treasurer" and mailed to the Department of Financial Institutions, Securities Division, 2021-AH-0017, 500 Mero Street, Frankfort, Kentucky 40601;

iii. Respondent shall cease and desist from any future violations of the Securities Act of Kentucky;

iv. Respondent waives the right to demand a hearing at which he would be entitled to legal representation, to confront and cross-examine witnesses, and to present evidence on his behalf, or to otherwise appeal or set aside this Agreed Order;

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

vi. In consideration of execution of this Agreed Order, Respondent for himself, and for his successors and assigns, hereby releases and forever discharges the Commonwealth of Kentucky, the Department, 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 has, 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;

vii. 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; and

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

SO ORDERED on this the 20th day of July, 2021.

/s/ Charles A. Vice

CHARLES A. VICE
COMMISSIONER

Digitally signed by: Charles A. Vice
DN: CN = Charles A. Vice email =
Charles.Vice@ky.gov C = US O =
KY DFI OU = Commissioner's
Office
Date: 2021.07.20 16:16:42 -04'00'

Charles
A. Vice

Consented to:
On behalf of the Department of Financial Institutions.

This 20th day of July, 2021.

Marni Rock Gibson
Digitally signed by: Marni Rock Gibson
DN: CN = Marni Rock Gibson email = marni.gibson@ky.gov C = US
Date: 2021.07.20 10:42:08 -0400

Director, Division of Securities
Department of Financial Institutions

AND
On behalf of himself.

This 9th day of July, 2021.



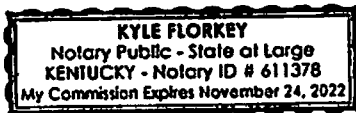
John S. Gutermuth

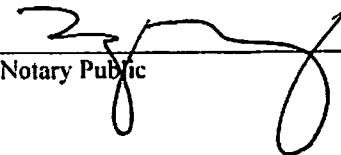
ACKNOWLEDGEMENT

STATE OF Kentucky)
)
COUNTY OF Jefferson)

On this the 9 day of July, 2021, John S. Gutermuth, in my presence, acknowledged himself to be the authorized representative of himself and did enter into and execute the foregoing instrument on behalf of himself for the purposes therein contained, acknowledging the same.

My Commission Expires: 11-24-2022




Notary Public

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Agreed Order was sent on this the 28th day of July, 2021 by the method indicated below to the following:

Via certified mail, return receipt requested:

John S. Gutermuth
4022 Brookfield Ave.
Louisville, KY 40207-2004
Respondent

Via electronic delivery:

Brandon Adcock, Staff Attorney III
DEPARTMENT OF FINANCIAL INSTITUTIONS
500 Mero Street
Frankfort, KY 40601
brandon.adcock@ky.gov
Counsel for Department of Financial Institutions

Kentucky Department of Financial Institutions

Name: Allison Reed

Title: Executive Staff Advisor