



COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SECURITIES
ADMINISTRATIVE ACTION NO. 2023-AH-0026

Kentucky Department of Financial Institutions,

Complainant;

vs.

Scott Christopher Mann and

Mann Capital Management, LLC;

Respondents.

AGREED ORDER

PARTIES

1. The Kentucky Department of Financial Institutions (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 any applicable rules, regulations and orders entered pursuant to the Act, and is responsible under the Act for registering and regulating investment advisers and investment adviser representatives in Kentucky.

2. Respondent Scott Christopher Mann ("Mann") is a registered investment adviser representative ("IAR") and the sole IAR associated with Respondent Mann Capital Management, LLC ("MCM"). Mann has FINRA Central Registration Depository #4333296. His most recent office address with MCM is 73 Cavalier Boulevard, Suite 210, Florence, Kentucky 41042.

3. Respondent MCM is a Kentucky limited liability company and a registered investment adviser ("IA") firm with Mann as its sole IAR. MCM has FINRA Central Registration Depository #139402, a principal office at 73 Cavalier Boulevard, Suite

210, Florence, Kentucky 41042, and a registered agent of Respondent Mann at the same address. Mann is MCM's sole managing member, officer, and organizer.

STATEMENT OF FACTS

4. Mann and MCM have been registered with the Department since March 6, 2006.
5. Historically, Mann and MCM have operated with discretionary authority and custody over clients' funds and securities.
6. Kentucky statutes and regulations require IAs with custody over clients' funds or securities to remain solvent with a minimum positive net worth of at least \$35,000, of which all but \$10,000 can be met with a surety bond.
7. During four prior compliance examinations of MCM, the Department has noted that MCM relied heavily on fixed assets to maintain regulatory net-worth requirements.
8. During a routine compliance examination conducted September 14–15, 2020, the Department noted several concerns at MCM, including the following:
 - a) That MCM's US Bank account reflected negative account balances in seven months during the examination period;
 - b) That MCM used the proceeds of a Small Business Administration Economic Recovery Loan, intended to be used as working capital, to purchase a \$14,000 Yamaha grand piano; to distribute \$34,500 to Northbend Partners, LLC ("Northbend"), another business owned by Mann; and to distribute at least \$20,800 directly to Mann;
 - c) That, to enable the Department to assess the true value of MCM's claimed fixed assets, MCM provided the Department only bills of sale created by Mann or his immediate family, rather than original purchase receipts and paid invoices;

- d) That shares MCM purchased in Northbend were issued directly to Mann and thereafter recorded as an asset of the firm;
- e) That the liability recorded on MCM's books for the Economic Recovery Loan did not reflect the lien filing fee and third-party UCC handling charge of \$100;
- f) That MCM's recorded advertising expenses were unverifiable, as MCM retained neither invoices nor paid receipts for those expenses nor sufficient copies of advertising circulars as required by regulation; and
- g) That MCM's monthly net-worth calculations required by regulation were inaccurate owing to the above issues.

9. In light of and because of the above issues and its insufficient capitalization, MCM has been operating insolvent in derogation of applicable statutes and regulations.

10. MCM further reported that in ten months between January 2022 and February 2023, it operated below the net-worth requirement set by statute and regulation. During five of those ten months, MCM was insolvent.

11. A revised balance sheet which Mann provided the Department during a follow-up examination on March 28, 2023, showed that MCM had removed some fixed assets including the piano, that MCM improperly recorded a \$10,000 fine paid to the Department from a prior case as a negative liability reducing its total liabilities, and that even with that reduction, MCM was again insolvent as of December 31, 2022.

12. On October 6, 2023, Mann submitted to the Department an application for IA registration for a new firm, Fortress Financial Partners, LLC ("Fortress"). Fortress has FINRA Central Registration Depository #328804, and a principal office at 73 Cavalier Boulevard, Suite 210, Florence, Kentucky 41042.

STATUTORY AUTHORITY

13. KRS 292.310(10) defines "insolvent" to mean "either a person's liabilities exceed the person's assets, or the person cannot meet obligations as they mature."

14. KRS 292.310(11) defines "investment adviser" to mean

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.

15. KRS 292.310(12) defines "investment adviser representative" to mean

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.

16. KRS 292.330(8) requires IAs to be registered with the Department in order to transact business in Kentucky.

17. KRS 292.330(11) requires IARs to be registered with the Department in order to transact business in Kentucky.

18. KRS 292.336(1)(a) and (b)(1) require every registered IA to "make and keep," for at least three years, "all accounts, correspondence, memoranda, papers, books, and other records which the commissioner by rule or order prescribes."

19. KRS 292.337(1) states, in pertinent part:

The Commissioner may deny, refuse to renew, suspend, or revoke the registration of any . . . investment adviser[] or investment adviser representative. The Commissioner may bar, censure, or place on probation any registrant or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant, or, restrict, condition, or limit a registrant as to any function or activity of the business for which registration is required in this state. The Commissioner may take any of the foregoing actions for any reason set forth in subsection (2).

20. KRS 292.337(2) states, in pertinent part:

For actions taken in subsection (1) of this section, the commissioner shall find that it is in the public interest and further find that the applicant or registrant or, in the case of a[n] . . . investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the . . . investment adviser: . . .

(b) Has violated or failed to comply with this chapter or any administrative regulation promulgated or order issued under this chapter or a predecessor law; [or] . . .

(i) Is insolvent[.]

21. 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).

22. KRS 292.500 states, in pertinent part:

- (1) The administration of the provisions of this chapter shall be under the Department of Financial Institutions. . . .
- (2) The commissioner may promulgate, amend, and repeal administrative regulations, forms, and orders as are necessary to carry out the provisions of this chapter[.] . . . [and]
- (3) Every administrative hearing shall be conducted in accordance with KRS Chapter 13B and the provisions of this chapter, and shall be public unless the commissioner in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.

23. 808 KAR 10:110, Section 1(1) states: "Pursuant to KRS 292.336(1)(a), an investment adviser who maintains his principal place of business in Kentucky shall:

- (a) Meet the recordkeeping requirements established in 15 U.S.C. 80b-3; and
- (b) Maintain his books and records in accordance with the applicable federal regulations, including 17 C.F.R. 275.204-2."

24. 808 KAR 10:200 generally, and Section 1(4) specifically, require an IA to submit to the department monthly net-worth calculations that must be prepared according to generally accepted accounting principles.

25.808 KAR 10:200, Section 1(1) defines “custody” to mean “holding, directly or indirectly, client funds or securities, or having any authority to appropriate them or obtain possession, in accordance with the requirements established in Section 2 of this administrative regulation.”

26.808 KAR 10:200, Section 3(1) states, in pertinent part:

An adviser who has custody of client funds or securities . . . shall maintain a net worth as follows:

(a) For advisers with assets under management of \$25,000,000 or less, the minimum net worth required shall be \$35,000. . . .

(c) An adviser may substitute all but \$10,000 of the net worth required under paragraph] (a) . . . of this subsection with a surety bond for the substituted amount issued by a bonding company that is qualified to do business in Kentucky.

27.808 KAR 10:200, Section 3(4) states “[a]n adviser shall maintain a positive net worth at all times.”

28.17 C.F.R. 275.204-2 requires IAs to “make and keep true, accurate and current the following books and records relating to its investment advisory business,” and lists “[a]ll bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such,” and copies of “each advertisement . . . that the investment advisor disseminates, directly or indirectly,” and each “[n]otice, circular, newspaper article, investment letter, bulletin, or other communication that the investment adviser disseminates, directly or indirectly, to ten or more persons.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

29. The Commissioner, pursuant to KRS 292.337(1) and (2), finds as follows:

a) That MCM was at all relevant times operated by and controlled by Mann;

- b) That MCM, as operated and controlled by Mann, has operated insolvent and insufficiently capitalized for numerous months, in violation of 808 KAR 10:200, Sections 3(1) and (4) and KRS 292.337(2)(i);
- c) That MCM remains insolvent;
- d) That MCM, as operated and controlled by Mann, has violated KRS 292.336(1) and 808 KAR 10:110, Section 1(1), incorporating 17 C.F.R. 275.204-2., by failing to prepare and keep appropriate books and records of MCM, including sufficient records of the purchase of fixed assets to enable the Department to assess those assets' value, sufficient records of advertising expenses paid, and copies of advertising circulars;
- e) That MCM, as operated and controlled by Mann, violated KRS 292.336(1) and 808 KAR 10:110, Section 1(1), incorporating 17 C.F.R. 275.204-2, by keeping inaccurate books and records, including by recording as an asset of MCM shares in Northbend which were issued directly to Mann and by recording a liability for a Small Business Administration Economic Recovery Loan without reflecting the lien filing fee and third-party UCC handling charge for that loan;
- f) That Mann, as sole manager, officer, controller, and IAR of MCM, is responsible and liable for MCM's insolvency and other violations.
- g) That it is in the public interest that MCM and Mann's registrations be withdrawn, that they be fined, that Mann be temporarily barred from registration, and that Fortress be required to disclose Mann's disciplinary history.

AGREEMENT AND ORDER

30. To resolve this matter without further litigation or other adversary proceedings, the Department, Mann, and MCM agree to compromise and settle all

claims arising from the above-referenced factual background in accordance with the terms set forth herein.

31. In the interest of economically and efficiently resolving the violations described herein, the Department, Mann, and MCM hereby agree as follows:

- a) Immediately upon the registration of Fortress, but in any event no later than ninety days from the entry of this agreed order, Mann shall withdraw his IAR registration in Kentucky, and MCM shall withdraw its IA registration in Kentucky;
- b) Mann represents and warrants, as a former owner of Fortress, that Fortress has agreed to disclose Mann's disciplinary history, including the existence of this action, on Fortress's Form ADV 2A as a condition to approval of Fortress's pending application for registration;
- c) Mann shall be prohibited for a period of two years from his withdrawal of his registration, as contemplated by paragraph 32a, above, from acting in any management or control capacity over the operations of any Kentucky registrant firm;
- d) Mann shall be prohibited for that same two-year period from applying for registration in Kentucky as an investment adviser, investment adviser representative, or broker-dealer agent;
- e) While Mann is unregistered, Mann shall refrain from acting as an investment adviser or investment adviser representative in Kentucky; to wit, Mann shall refrain from making any recommendations or otherwise giving investment advice regarding securities, managing accounts or portfolios of clients, determining which recommendations or advice regarding securities should be given, providing investment advice, holding himself out as providing investment advice, receiving compensation to solicit, offer, or negotiate for the sale of or for selling investment advice,

supervising employees who perform any of the foregoing, or participating in client meetings at Fortress or any other firm where investment advice is sought, or otherwise participating in client meetings in any capacity in which those clients might reasonably be led to believe that Mann would provide them investment advice.

- f) Mann and MCM agree to pay, jointly and severally, a civil fine in the amount of \$5,000.00; however, \$2,500.00 of that fine shall be due and payable within thirty days of the date of entry of this Agreed Order, while payment of the remaining \$2,500.00 shall be indefinitely suspended until such time as Mann or MCM seek to again file an application for registration with the Department, in which case the suspended portion of the fine shall be immediately due and payable before the Department will accept as complete any application from Mann or MCM;
- g) All fine payments under this Agreed Order shall be in the form of an ACH payment made via secure website, pursuant to instructions provided to Mann and MCM by the Department, or via certified check or money order made payable to "Kentucky State Treasurer" and mailed to the Department of Financial Institutions, Securities Division, 2023-AH-0026, 500 Mero Street, 2 SW 19, Frankfort, Kentucky 40601.

32. The parties consent to the dismissal of this administrative action upon these terms.

33. Mann and MCM consent to and acknowledge the jurisdiction of the Department over this matter and recognize that this Agreed Order is a matter of public record and may be disseminated as such.

34. In consideration of the execution of this Agreed Order, Mann and MCM, for themselves and for their successors and assigns, hereby release and forever discharge the Commonwealth of Kentucky, the Department, the 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 Mann or MCM 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.

35. 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.

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

IT IS SO ORDERED on this the 27th day of March, 2024.

Marni Rock Gibson

MARNI ROCK GIBSON
Commissioner

Consented to:

On behalf of the Kentucky Department of Financial Institutions,

This ^{26th} ~~27th~~ day of March, 2024.

Chad K. Harlan

CHAD HARLAN
Assistant Director, Division of Securities
Kentucky Department of Financial Institutions

AND

On his own behalf and on behalf of Mann Capital Management, LLC;

This ^{20th} day of March, 2024.

Scott Christopher Mann

SCOTT CHRISTOPHER MANN
Respondent

ACKNOWLEDGEMENT

STATE OF Nevada)

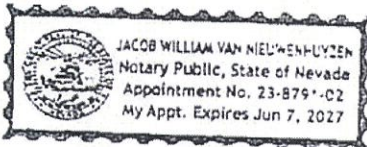
COUNTY OF Washoe)

On this the 20 day of March, 2024, before me Jacob Van Nieuwenhuizen

Scott Christopher Mann personally appeared, acknowledged himself to be the Respondent named herein; acknowledged that he has authority to sign on behalf of and to bind Mann Capital Management, LLC; and acknowledged that he entered into and executed the foregoing instrument for the purposes therein contained.

My commission expires: June 7, 2027

Jacob Van Nieuwenhuizen
Notary Public



CERTIFICATE OF SERVICE

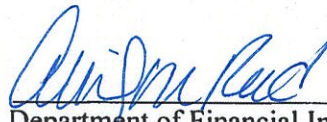
I, Allison Reed, hereby certify that a copy of the foregoing Agreed Order was sent on this the 21 day of March, 2024, by certified mail, return receipt requested, to the following:

Via certified mail, return receipt requested:

Hon. Michael A. Valenti
Valenti Hanley PLLC
401 West Main Street
Suite 1950
Louisville, Kentucky 40202
Counsel for Respondents

By electronic delivery:

Michael Barnett
Staff Attorney
Department of Financial Institutions
500 Mero Street
2 SW 19
Frankfort, Kentucky 40601
michael.barnett@ky.gov



Department of Financial Institutions

Name: Allison Reed

Title: Executive Staff Advisor