

**COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2021-AH-0022**

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

AGREED ORDER

TROPHY POINT FINANCIAL PLANNING LLC
and DEREK MERKLER

RESPONDENTS

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. Trophy Point Financial Planning LLC (CRD# 308997) is a foreign limited liability company organized in South Carolina, with a principal address at 220 Riverbank Ct, Seneca, SC 29678.

3. Derek Merkler (CRD# 6742666) is the registered agent for and an investment adviser representative of Trophy Point Financial Planning LLC, with an address located at 2424 Stamping Ground Rd., Stamping Ground, KY 40379.

4. On February 1, 2021, the Department received a Form ADV and Form U4 filed to initiate the registration of Trophy Point Financial Planning LLC and Mr. Merkler, respectively.

5. Correspondence between Mr. Merkler and the Department indicated that Mr. Merkler had moved to Stamping Ground, Kentucky on or about January 6, 2021 and Respondents had since performed investment advisory services from that new address for 18 different clients.

STATUTORY AUTHORITY

6. KRS 292.310(11) states,

"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...

7. KRS 292.330(8) states,

It is unlawful for any person to transact business in this state as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration under subsection (9) of this section.

8. 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...

9. 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.

10. 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

11. Pursuant to the aforementioned statutory requirements, Respondents Derek Merkler and Trophy Point Financial Planning LLC were not appropriately registered with the Department as an investment adviser representative and investment adviser, respectively, when they served eighteen (18) Kentucky clients from January 6, 2021 to May 9, 2021.

AGREEMENT AND ORDER

12. To resolve this matter without litigation or other adversarial proceedings, the Department and Respondents 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 Derek Merkler agrees to pay a civil fine in the amount of two thousand dollars (\$2,000.00), on behalf of himself and Trophy Point Financial Planning LLC, 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 Respondents, 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-0022, 500 Mero Street, Frankfort, Kentucky 40601;

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

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

v. Respondents consent to and acknowledge 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, Respondents for themselves, and for their successors and assigns, hereby release and forever discharge 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 Respondents 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;

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 8th day of September, 2021.



CHARLES A. VICE
COMMISSIONER



Justin M. Burse, Deputy
Commissioner

Consented to:

On behalf of the Department of Financial Institutions,

This 7th day of September 2021.

Marni Rock Gibson

Digitally signed by: Marni Rock Gibson
DN: CN = Marni Rock Gibson email = marni.gibson@ky.gov C = US
Date: 2021.09.07 15:08:32 -0400

Director, Division of Securities
Department of Financial Institutions

AND

On behalf of himself and Trophy Point Financial Planning LLC,

This 3 day of September 2021.

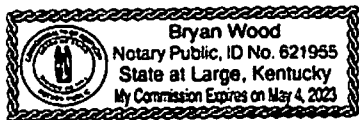
Derek Merkler
Trophy Point Financial Planning LLC

ACKNOWLEDGEMENT

STATE OF Kentucky)
)
COUNTY OF Scott)

On this the 3 day of September 2021, **Derek Merkler**, in my presence, acknowledged himself to be the authorized representative of himself and **Trophy Point Financial Planning LLC** and, being authorized to do so, did enter into and execute the foregoing instrument, on behalf of himself and **Trophy Point Financial Planning LLC**, for the purposes therein contained, acknowledging the same

My Commission Expires: 05/04/2023



CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Agreed Order was sent on this the 13th day of September, 2021 by certified mail, return receipt requested to:

Derek Merkler
TROPHY POINT FINANCIAL PLANNING LLC
2424 Stamping Ground Rd
Stamping Ground, KY 40379
Representative on behalf of Trophy Point Financial Planning LLC

and by messenger mail or electronic delivery to:

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: Alison Reed

Title: Executive Staff Advisor