



COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
ADMINISTRATIVE AGENCY ACTION NO. 2016-AH-00050

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

vs.

WILLIAM TODD EMERICK AND
EMERICK & COMPANY, LLC

RESPONDENTS

**FINAL ORDER DENYING APPLICATION FOR INVESTMENT ADVISER
REPRESENTATIVE REGISTRATION AND INVESTMENT ADVISOR
REGISTRATION**

Pursuant to KRS 292.337, the Commissioner of the Department of Financial Institutions (“DFI”) enters this **Final Order** denying the application of William Todd Emerick (“Respondent Emerick”) for registration as an Investment Adviser Representative and the Investment Advisor Registration of Emerick & Company, LLC (“Respondent ECL”).

FINDINGS OF FACT

1. The Department of Financial Institutions (“DFI”) 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. No person shall transact business in Kentucky as an investment adviser or as an investment advisor representative unless that person is registered with DFI or is exempt from registration pursuant to KRS 292.330.

2. On November 6, 2015, Respondent Emerick sent notice to DFI, via email, that Respondent ECL was insolvent as of October 31, 2015. Notice to DFI was required pursuant to

808 KAR 10:200, Section 3(7). Respondents were registered with DFI as an Investment Adviser Representative and as an Investment Advisor at the time of this notice.

3. On November 9, 2015, DFI acknowledged receipt of the required net worth deficiency notification, via email, and requested Respondent ECL promptly file a report of financial condition which was to include a balance sheet, a year to date income statement and copies of supporting documentation.

4. On November 9, 2015, DFI received, via email, from Respondent ECL a balance sheet dated October 31, 2015, a Profit and Loss statement for the period January to October 2015 and the October 31, 2015 net worth computation.

5. On December 10, 2015, DFI requested, via email, a copy of the November 30, 2015 balance sheet and income statement and copies of the October and November 2015 Woodforest Business Checking Account statements from Respondent ECL. Respondent ECL supplied the requested documents, via email, the same day.

6. Upon review of the provided documents, DFI concluded the Respondent ECL did not have sufficient liquid assets reflected on the October 31, 2015 and November 31, 2015 balance sheets to meet the financial obligations of the business. Furthermore, Respondent ECL's bank accounts retained a negative balance for the above referenced time frame and no deposits were reflected in the business account. DFI concluded the Respondent ECL was therefore insolvent.

7. In addition, Respondent Emerick and Respondent ECL did not submit the required 2016 registration renewal fee. The registration for the Investment Adviser Representative for Respondent Emerick and the Investment Adviser registration for Respondent ECL expired on December 31, 2015.

8. On January 11, 2016, the DFI's Division of Securities received a new application from Respondent Emerick (CRD# 4618541) for registration as an Investment Adviser Representative and received a new application from Respondent ECL (CRD# 149692) for registration as an Investment Adviser.

9. Upon initial review of the applications, the DFI determined that the applications were incomplete. In order to complete the registration, DFI's Securities Division sent a letter, via email, dated February 1, 2016, to Respondents ECL and Emerick requesting specific revisions to the registration documents and to have Respondents confirm whether Respondent ECL was conducting advisory business in the month of January 2016 when the Respondent was not registered.

10. Respondents failed to substantially comply with the request. On February 9, 2016, Respondent Emerick provided a copy of an outdated 2007 home appraisal to DFI in an effort to substantiate the value of the home being claimed on Respondent Emerick's Personal Balance sheet but no other documentation was provided to DFI.

11. On March 2, 2016, DFI sent a request, via email, to Trade PMR, the custodian of assets being managed by Respondent ECL, requesting account activity history for the time frame December 1, 2015 through February 29, 2016.

12. On March 11, 2016, DFI received from Trade PMR the requested account history which reflected that Respondent Emerick had three advisory accounts in which Respondent conducted trade activity in January 2016, after the registration expired. In addition, Trade PMR provided information that Respondent collected quarterly management fees from these three accounts on January 5, 2016 for the time frame January 1, 2016 through March 31, 2016, after the registration expired.

13. Respondents failed to complete the new registration for Emerick and ECL and failed to provide additional or supplemental information regarding the status of the business.

14. On September 26, 2016, DFI filed an Administrative Complaint with Notice of Intent to Deny Application for Investment Adviser Representative Registration and Investment Adviser Registration of Respondent Emerick and Respondent ECL.

15. The Administrative Complaint stated the Respondent must file an Answer and request a hearing within twenty (20) days of receipt of the Complaint. The Administrative Complaint stated that if the Respondent did not file an Answer and request a hearing in a timely manner, the Commissioner may issue a Final Order.

16. On September 26, 2016, October 6, 2016 and October 17, 2016, the Administrative Complaint with the Notice of the Intent to Deny Respondents' registration application along with notice of violations of KRS 292.310(10), KRS 292.330(8) and (11) and 808 KAR 10:450 Section 2(26)(a), was mailed via certified mail return receipt requested to Respondents at their principle business location of record, to the agent for service of process and to additional addresses DFI obtained after the initial certified mailing was completed by counsel for the Department. All certified letters were returned to the Department with US Postal Service notations of "unclaimed" and/or "unable to forward". (See Exhibit 1)

STATUTORY AUTHORITY

17. KRS 292.330(8) states, in relevant part, "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."

18. KRS 292.330(11) states, in relevant part, “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.”

19. 808 KAR 10:450 Section 2(26)(a) states, “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:

- (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;”

20. KRS 292.337(1) states “The Commissioner may deny, refuse to renew, suspend, or revoke the registration of any broker-dealer, agent, 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).”

21. KRS 292.337(2) states in order to deny the registration of an investment adviser or an investment adviser representative, “the Commissioner shall find that such denial is in the public interest and that applicant, or in the case of an investment adviser, any person directly or indirectly

controlling the investment adviser, has committed one of the violations enumerated in KRS 292.337(2)(a)-(n).”

22. KRS 292.337(2)(a) provides that an application may be denied where the applicant “has filed an application for registration under this chapter which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact.”

23. KRS 292.337(2)(b) provides that an application may be denied where the applicant “has violated or failed to comply with this chapter or any administrative regulation promulgated or order issued under this chapter or a predecessor law.”

24. KRS 292.337(2)(h) provides that an application may be denied where the “applicant or controlling person has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten (10) years.”

25. KRS 292.337(2)(i) provides that an application may be denied where the applicant “is insolvent.”

26. KRS 292.310(10) defines “insolvent” as either a person's liabilities exceed the person's assets, or the person cannot meet obligations as they mature.

CONCLUSIONS OF LAW

27. Respondent ECL engaged in unlawful transactions in January 2016 as an Investment Adviser, as evidenced by Trade PMR account history documentation, after Respondent’s registration had expired in violation of KRS 292.330(8).

28. Respondent Emerick engaged in unlawful transactions in January 2016 as an Investment Adviser Representative, as evidenced by Trade PMR account history documentation, after Respondent's registration had expired in violation of KRS 292.330(11).

29. Respondents have filed applications for registration under KRS Chapter 292 which, as of its effective date, were incomplete and Respondents did not provide required supplemental information in violation of 808 KAR 10:450 Section 2 (26)(a).

30. Respondent ECL is deemed insolvent pursuant to KRS 292.310(10), based on financial documentation provided by Respondents to DFI on November 9, 2015 and December 10, 2015.

31. In accordance with KRS 292.337(1), KRS 292.337(2)(a)(b)(h) and (i), it is in the public interest that the investment adviser application for registration of Respondent ECL and the investment adviser representative application for registration of Respondent Emerick be denied as a result of the foregoing.

ORDER

THEREFORE, based upon the foregoing facts and findings and conclusions of law, the Commissioner hereby **ORDERS** that:

1. Emerick & Company, LLC, CRD #149692, application for registration as an Investment Adviser is **DENIED**; and

2. William Todd Emerick, CRD #4618541, application for registration as an Investment Adviser Representative is **DENIED**.

3. This is a **Final Order**.

NOTICE OF APPEAL RIGHTS

Pursuant to KRS 292.490 and KRS 13B.140, you are hereby notified that you have the right to appeal this **Final Order** of the Commissioner. If you choose to appeal, you must file a written notice of appeal with the Franklin Circuit Court within thirty (30) days after service of this Order.

SO ORDERED on this the 14th day of December, 2016.



CHARLES A. VICE
COMMISSIONER

CERTIFICATE OF SERVICE


I hereby certify that a copy of the foregoing **Final Order** was sent by certified mail return receipt requested and on this the 15 day of December, 2016, to the following:

William Todd Emerick
c/o Emerick & Company LLC
389 Elaine Drive
Lexington, KY 40504

William T. Emerick – Agent for Service
421 Redding Road, #33
Lexington, KY 40517

Hand delivered to:

Catherine Falconer, attorney
Department of Financial Institutions
1025 Capitol Center Drive, Suite 200
Frankfort, KY 40601
Counsel for Complainant



KY Department of Financial Institutions
Name: Allison E Hiles
Title: Executive Staff Advisor



DEPARTMENT OF FINANCIAL
INSTITUTIONS

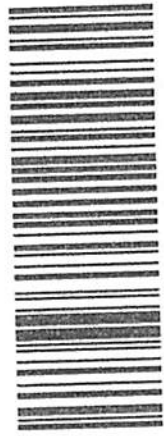
1025 Capital Center Drive, Suite 200
Frankfort, Kentucky 40501

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DFI/OGC

*P.O. Box
HARRODSBURG
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*Fund
CFL*

CERTIFIED MAIL



EMER421 405174001-1A15 700 09/29/16
NOTIFY SENDER OF NEW ADDRESS
EMERICK, WILLIAM T
PO BOX 173
HARRODSBURG KY 40330-0173

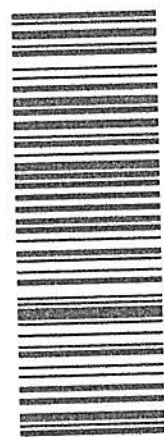
421 Redding Road, #33
Lexington, KY 40517

EXHIBIT

1A



DEPARTMENT OF FINANCIAL
INSTITUTIONS
1025 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601



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UTP

William Todd Emerick
c/o Emerick & Company, LLC
P.O. Box 173
Harradshurn KY 40330

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RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

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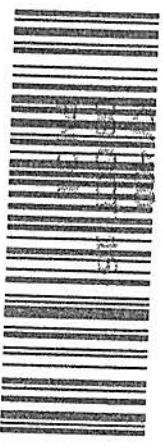
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EXHIBIT

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DEPARTMENT OF FINANCIAL
INSTITUTIONS
1025 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601



7014 1820 0001 3772 9333

William Todd Emerick
~~904 Meadow Lane~~
~~Hartrodsberg, KY 40330~~

Forwarded

WV

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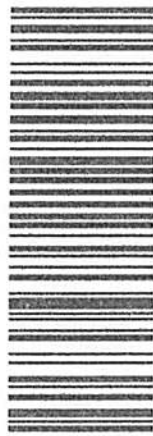
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DEPARTMENT OF FINANCIAL
INSTITUTIONS

1025 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601

CERTIFIED MAIL



7014 1820 0001 3772 9770

William Todd Emerick
c/o Emerick & Company, LLC
3900 Crosby Drive, Apt. 210
Lexington, KY 40515

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EXHIBIT

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