

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2013-AH-230



DEPARTMENT OF FINANCIAL INSTITUTIONS

PETITIONER

v.

BERNHARD FINANCIAL LLC AND
BRANDON LEE BERNHARD

RESPONDENTS

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

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This matter is before the Commissioner of the Department of Financial Institutions (“DFI”), pursuant to KRS 292.337. The Commissioner hereby enters this **Final Order** denying the application of Bernhard Financial LLC (“Respondent Bernhard Financial”) and Brandon Lee Bernhard (“Respondent Bernhard”), pursuant to KRS Chapter 292, for investment adviser and investment adviser representative, respectively.

FINDINGS OF FACT

1. DFI is responsible for regulating and licensing investment advisers and investment adviser representatives in accordance with the provisions of KRS Chapter 292. No person shall transact business in Kentucky as an investment adviser unless that person is registered with DFI or is exempt from registration. *See* KRS 292.330. No person shall transact business in Kentucky as an investment adviser representative unless that person is registered with DFI or is exempt from registration. *See* KRS 292.330.

2. The DFI received an application from Bernhard Financial and Bernhard for registration as an investment adviser and investment adviser representative on September 12, 2013. As represented in the application, Bernhard is the sole managing member of Bernhard Financial.

3. Upon its initial review of the Applications, the DFI determined that the Applications were incomplete. Deficiency letters requesting additional information were sent on October 14, 2013 and October 16, 2013.

4. Additional information was furnished by Bernhard's former employer, Legend Equities Corporation ("Legend"), on or about October 29, 2013 as well as the Applicants' consultant, Integrity Compliance Consulting, Inc., on or about December 2, 2013.

5. The Applicants filed a revised Form ADV on December 5, 2013, and the Applications were deemed complete on that date.

6. In the course of reviewing and investigating Bernhard's U4 as authorized under KRS 292.460(1)(a), the DFI discovered that he was discharged from his employment as a registered representative (or broker-dealer agent) from Legend on June 8, 2012. The reason cited for the discharge was that in May, 2012 Bernhard had contacted his previous employer, Woodbury, by telephone and impersonated a client ("GR") in an attempt to place stock purchase orders through the client's account at Woodbury.

7. In addition to the packet of information which Legend sent to DFI on October 29 2013, Legend also sent the DFI copies of the recorded telephone calls that Bernhard made to Woodbury. The audio recordings confirm that Bernhard did misrepresent his identity to Woodbury in an attempt to impersonate Woodbury's client during both calls.

8. At the time of these telephone calls from Bernhard to Woodbury, GR's account had not been transferred from Woodbury to Legend and Bernhard had no authority to execute trades through GR's account or on his or her behalf.

9. Included in the package provided to the DFI by Legend, was a letter from Bernhard to Legend's compliance officer dated May 25, 2012. In that letter, Bernhard admits to calling Woodbury and impersonating the client in order to execute trades on two occasions. That letter states in part:

"Friday, I called Woodbury with the client's Social Security number, knowing that Woodbury would think that I was the client. I placed a limit order to buy 32 shares @ \$1000 per share... Assuming the first trade was executed, and knowing the client still had funds he wished to invest in FB, I called Woodbury again. This time I was going to complete the client's wishes and purchase shares with the remainder of his cash available. When asked for the birthdate of the client, I stumbled in my response and hung up the phone."

10. As a part of the application for registration, Bernhard submitted a letter to the DFI addressed "to whom it may concern" and dated September 15, 2013. This letter is virtually identical to and appears to be a modification of Bernhard's May 25, 2012 letter to Legend. However, the two letters differ in certain material respects. Specifically, the September 15, 2013 letter which Bernhard provided to the DFI states in part:

"Friday, I called [GR] and conferenced with Woodbury. A limit order to buy 32 shares @ \$1000 per share was placed... Many hours had passed, I assumed the first trade was executed, and knowing the client still had funds he wished to invest in FB, We called Woodbury again, this time, to complete the client's wishes and purchase the shares with the remainder of his available cash. While waiting, client was disconnected and I stayed on phone thinking I would just finish the transaction. When asked for the birthdate of the client, I stumbled in my response and hung up the phone."

11. The September 15, 2013 letter to DFI contains statements which are, in light of the circumstances under which they were made, false or misleading with respect to a material fact.

12. On the basis of the foregoing, an Order Denying Application for Investment Adviser and Investment Adviser Representative was entered in this action on December 18, 2013.

13. The Order was sent via certified mail, return receipt requested, to Respondents' last known address, 1377 Oak Grove Road, Clarkson, Kentucky, which is the same address provided to DFI by Respondents' applications.

14. The Order notified Respondents of their right to request a hearing within twenty (20) days of service. The Order also explained that if a request for hearing was not received within 20 days, DFI would seek a Final Order from the Commissioner denying the applications for registration.

15. The U.S. Post Office attempted to serve the Order upon Respondents on three (3) separate occasions, but returned to sender as unclaimed/unable to forward on January 24, 2014, and the DFI received notice of attempted service on January 27, 2014.

16. More than twenty (20) days have passed, and the Respondents have failed to respond to the Order or request a hearing in this matter.

17. After having considered all the relevant facts and circumstances and the available remedies, the Respondents' applications for registration should be denied.

STATUTORY AUTHORITY

18. 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).”

19. 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).

20. KRS 292.337(2)(h) provides that an application(s) 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;”.

21. 808 KAR 10:440 provides examples of dishonest or unethical practices for broker-dealers and agents. Included among them are instances of the following conduct:

a) 808 KAR 10:440, Section 1(18): Executing a transaction on behalf of a customer without authorization to do so;

b) 808 KAR 10:44, Section 1(22): Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design or contrivance, which may include any of the following:

c) 808 KAR 10:440, Section 1 (27): Lying to or otherwise misleading representatives of the Department of Financial Institutions conducting an authorized examination or investigation;

d) 808 KAR 10:440, Section 2(2): Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

22. 808 KAR 10:440, Section 4, provides that the Commissioner may determine that an activity not included in the examples identified in Sections 1 through 3 of this administrative regulation constitutes a dishonest or unethical practice if the activity is similar to an enumerated activity.

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

24. Pursuant to KRS 13B.050, service by certified mail to a respondent’s last known address is complete upon the date on which an administrative agency receives the return receipt or the returned notice.

CONCLUSIONS OF LAW

25. Bernhard engaged in dishonest or unethical conduct or practice in the securities business within the previous ten (10) years when, while a registered representative of Legend, he telephoned Woodbury impersonating a client and misrepresenting his true identity in an attempt to effectuate trades in the client’s account at Woodbury.

26. Bernhard engaged in dishonest or unethical conduct or practice in the securities business within the previous ten (10) years when he misrepresented material fact in his September 15, 2013 letter to DFI which was sent as a part of and in connection with the investment adviser and investment adviser representative applications.

27. The false or misleading statements contained in Bernhard's September 15, 2013 letter constitute an attempt to lie to or mislead representatives of the DFI conducting an authorized examination or investigation.

28. Bernhard has filed an application for registration under this chapter which, as of its effective date, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

29. Respondents were served with the Order pursuant to KRS 13B.050.

30. In accordance with KRS 292.337(1), KRS 292.337(2)(a) and KRS 292.337(2)(h), it is in the public interest that the investment adviser application for registration of Bernhard Financial LLC and the investment adviser representative application for registration of Bernhard 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. Bernhard Financial LLC's, CRD #168571, application for registration as an investment adviser is **DENIED**; and
2. Brandon Lee Bernhard's, CRD #4428501, 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 31 day of March, 2014.


CHARLES A. VICE
COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Order** was sent by certified mail return receipt requested and on this the 1 day of April, 2014, to the following:

Brandon Lee Bernhard
Bernhard Financial LLC
1377 Oak Grove Road
Clarkson, KY 42726


Christina Hayden