



COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DIVISION OF SECURITIES
ADMINISTRATIVE ACTION NO. 2023-AH-0003

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

vs.

MICHAEL H. GROSS and
MONEYLIFE PARTNERS, INC.

RESPONDENTS

AGREED ORDER

PARTIES

1. The Department is responsible for administering the provisions of KRS Chapter 292, the Securities Act of Kentucky (“the Act”), as well as any applicable rules, regulations and orders entered pursuant to the Act.

2. Respondent Michael H. Gross is a registered investment adviser representative in Kentucky, Central Registration Depository (“CRD”) #2941586. His primary office address is 13113 Eastpoint Park Boulevard, Suite B, Louisville, Kentucky 40223. Gross is the CEO and Chief Compliance Officer of Respondent MoneyLife Partners, Inc.

3. MoneyLife Partners, Inc. (“MLP”) is a registered investment adviser in Kentucky, CRD #289097. Its principal office and place of business is 13113 Eastpoint Park Boulevard, Suite B, Louisville, Kentucky 40223.

STATEMENT OF FACTS

4. On September 15-16, 2021, the Department conducted a routine compliance examination of MLP and observed the following violations of the Act and regulations promulgated thereunder:

Financial Records

5. MLP failed to maintain financial records in accordance with statutory and regulatory requirements.

6. MLP failed to provide the Department a true and accurate general ledger.

7. The balance sheet which MLP provided to the Department included fixed assets but no documents sufficient to allow the Department to verify the claimed value of those fixed assets, nor any depreciation schedules. Depreciation did not appear to have been recorded for those fixed assets.

8. MLP's bank-account statements showed MLP was not recording check payments on an accrual basis.

9. MLP's financial statements did not properly record quarterly management fees collected in advance as liabilities until earned.

10. The general ledger MLP provided the Department did not record any transactions for a credit card account from June 2021 through August 2021, though account statements reflected multiple transactions during that period.

11. The general ledger and profit-and-loss report MLP provided to the Department impermissibly comingled MLP's fee income and other income from insurance commissions.

12. The equity section of MLP's balance sheet was improperly formatted and contained incorrect accounts.

13. The Department had previously found deficiencies in MLP's financial statements upon compliance examinations on March 20, 2018, and February 25-26, 2020.

Net Worth Computations and Assets Under Management

14. Due to the aforementioned deficiencies in MLP's financial statements, MLP's monthly net-worth computations provided during the examination were inaccurate. Though MLP purported to provide the Department revised and accurate net-worth computations, it only provided the Department a balance sheet reflecting "Total Equity."

15. MLP failed to provide the Department evidence of its monthly assets under management custodied with TD Ameritrade.

16. The Department had previously found deficiencies in MLP's monthly computations of assets under management upon compliance examinations conducted on March 20, 2018, and February 25-26, 2020.

Advisory Contracts

17. A sample review of MLP's client files during the September 15-16, 2021, examination revealed several clients with whom MLP had no executed written investment advisory contract.

18. Certain client agreements in MLP's files lacked the client's signature. Following the compliance examination, MLP produced executed agreements which had only been signed two weeks after the compliance examination.

19. Ten of fifteen sampled client files contained agreements with certain sections and exhibits blank or incomplete.

20. MLP uses a third-party money manager to manage a portion of its client accounts. The fee schedules and fee formulas MLP provided the Department did not match between MLP's agreements and the money manager's agreements with those clients.

21. The Department had previously noted MLP's failure to produce written agreements with clients upon compliance examinations conducted on March 20, 2018, and February 25-26, 2020. Following the examination on March 20, 2018, the Department required MLP to revise portions of its Investment Advisory Agreement and execute new advisory agreements with all ongoing clients. The Department's review of MLP's client files during the September 15-16, 2021, compliance examination revealed five of fifteen sampled clients had never executed a revised agreement.

Advisory Fees

22. A review of one of MLP client files showed that MLP was charging that client an annual fee of 1% of the assets during a seventeen-month period where that client's investments were held solely in cash.

Advertising Material

23. MLP maintains a YouTube channel with four publicly available videos showing Gross speaking to current or prospective advisory clients on behalf of MLP. The "About" section of that YouTube channel contained statements constituting an impermissible guarantee of results and promising "no contracts."

Form U4

24. Following the compliance examination on September 15-16, 2021, the Department advised Gross that his FINRA Form U4, which is required to register as an investment adviser representative in Kentucky, was materially incomplete. While Gross made revisions to the Form U4, he never filed a revised Form U4 on CRD, leaving the incomplete Form U4 as his operative registration application document.

Form ADV

25. The Form ADV which MLP filed to register as an investment adviser in Kentucky failed to disclose the existence of MLP's YouTube channel.

STATUTORY AUTHORITY

26. KRS 292.320(3) provides:

It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:

(a) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client unless the client is an "accredited investor," as defined by Rule 501 of the Securities Act of 1933;

(b) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(c) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

27. KRS 292.331(1) requires persons applying for registration "as a[n] . . . investment adviser, or investment adviser representative" to file "an application containing the information required in a form designated by administrative regulation or order under this chapter."

28. KRS 292.336(1)(a) provides that "[e]very registered broker-dealer, firm employing issuer agents, and investment adviser shall make and keep all accounts, correspondence, memoranda, papers, books, and other records which the commissioner by rule or order prescribes."

29. KRS 292.336(3)(a) requires that, "if the information contained in any document filed is or becomes inaccurate or incomplete in any material respect, then [an] . . . investment adviser . . . shall promptly file a correcting amendment."

30. KRS 292.337(2)(a) allows the Commissioner of the Department to take action against a registered investment adviser representative or investment adviser representative if that investment adviser representative or investment adviser representative “[h]as filed an application for registration . . . which, as of its effective date . . . 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,” or “[h]as violated or failed to comply with this chapter or any administrative regulation promulgated or order issued under this chapter or a predecessor law.”

31. Under KRS 292.470,

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: . . .

(c) To pay fines assessed under KRS 292.500(14) and costs assessed under KRS 292.500(15).

32. KRS 292.500(5) allows the Commissioner of the Department to “by administrative regulation or order prescribe the form and content of financial statements required under this chapter and the circumstances under which consolidated financial statements shall be certified by certified public accountants,” and further requires that “[a]ll financial statements shall be prepared in accordance with generally accepted accounting standards.”

33. Under KRS 292.500(14),

The commissioner may impose civil fines against any person who violates any provision of this chapter or any rule or order or voluntary agreement entered into under this chapter. The fine shall not exceed twenty thousand dollars (\$20,000) per violation[.] . . . Each act or transaction which violates this chapter or administrative regulation, or orders or agreements entered into under this chapter, shall constitute a separate violation.

34. 808 KAR 10:010, Section 1(2) provides: "Pursuant to KRS 292.331(1), Form U-4, Uniform Application for Securities Industry Registration or Transfer, shall be completed to: (a) Register as an agent or an investment adviser representative in Kentucky."

35. 808 KAR 10:010, Section 1(4) provides: "Pursuant to KRS 292.331(1) . . . , Form ADV, Uniform Application for Investment Adviser Registration, shall be completed electronically to register or notice file as an investment adviser . . . in Kentucky."

36. 808 KAR 10:110, Section 1(1) provides: "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."

37. 17 C.F.R. 275.204-2 requires "[e]very investment adviser" to "make and keep true, accurate and current the following books and records relating to its investment advisory business," and provides an extensive list of such books and records, including journals, general and auxiliary ledgers, trade blotters, check books, bank and other account statements, cash reconciliations, trial balances, and documentation describing the method used to compute managed assets.

38. 808 KAR 10:200, Section 3(6) requires investment advisers to "compute [their] net worth at least once every month at the end of the month and . . . maintain a record of each computation along with supporting documentation for a period of two (2) years." That section

further provides: “Each computation shall be accompanied by documentation of the assets under management for the adviser at that point in time.”

39. 808 KAR 10:450, Section 2 provides, in pertinent part: “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.”

40. 808 KAR 10:450, Section 2(8) provides that it shall be “either a breach of fiduciary duty or a dishonest and unethical practice” for an investment adviser or investment adviser representative to:

(a) Misrepresent[] to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser;

(b) Misrepresent[] the nature of the advisory services being offered or fees to be charged for the service; or

(c) Omit[] to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they were made, not misleading.

41. 808 KAR 10:450, Section 2(10) provides that the following shall be “either a breach of fiduciary duty or a dishonest and unethical practice” for an investment adviser or investment adviser representative: “Charging a client an unreasonable advisory fee in light of the fee charged by other investment advisers providing similar services.”

42. 808 KAR 10:450, Section 2(14) provides that the following shall be “either a breach of fiduciary duty or a dishonest and unethical practice” for an investment adviser or investment adviser representative: “Guaranteeing a client that a specific result will be achieved with advice which will be rendered.”

43. 808 KAR 10:450, Section 2(18) provides that provides that the following shall be “either a breach of fiduciary duty or a dishonest and unethical practice” for an investment adviser or investment adviser representative: “Entering into, extending, or renewing an advisory contract unless the contract is in writing and” makes certain specific disclosures.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

44. The Commissioner finds that, by the aforementioned deficiencies in its financial statements, monthly net-worth computations, and monthly computations of assets under management, MLP violated KRS 292.336(1)(a), 292.500(5), 808 KAR 10:110, Section 1(1), and 808 KAR 10:200, Section 3(6).

45. The Commissioner finds that, by the aforementioned deficiencies in MLP’s investment advisory contracts, and MLP’s and Gross’s lack of executed investment advisory contracts with various clients, MLP violated KRS 292.320(3) and 292.336(1)(a), and MLP and Gross violated 808 KAR 10:450, Section 2(8) and Section 2(18).

46. The Commissioner finds that MLP and Gross violated 808 KAR 10:450, Section 2(10) by charging a client an unreasonable annual advisory fee of 1% during a period where that client’s assets were being held solely in cash.

47. The Commissioner finds that MLP and Gross violated 808 KAR 10:450, Section 2(14) by presenting guarantees on the MLP YouTube channel that clients would achieve specific results based on the advice rendered.

48. The Commissioner finds that MLP violated KRS 292.331(1), 292.336(3)(a), and 292.337(2)(a), and 808 KAR 10:010, Section 1(4), by failing to timely file a corrected Form ADV disclosing the existence of its YouTube channel.

49. The Commissioner finds that Gross violated KRS 292.331(1), KRS 292.337(2)(a), and 808 KAR 10:010, Section 1(2), by filing a materially incorrect Form U4 and failing to timely file a corrected Form U4.

AGREEMENT AND ORDER

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

51. In the interest of economically and efficiently resolving the violations described herein, the Department, MLP, and Gross hereby agree as follows:

- a. MLP and Gross agree to pay a civil fine in the amount of **seven-thousand, four-hundred dollars (\$7,400.00)** for the violations described herein, imposed jointly and severally, which fine shall be due and payable within thirty days of the date of entry of this Agreed Order;
- b. All payments under this Agreed Order shall be in the form of an ACH payment made via secure website, pursuant to instructions provided to Gross and MLP, or by a certified check or money order made payable to “Kentucky State Treasurer” and mailed to the Department of Financial Institutions, Securities Division, 2023-AH-0003, 500 Mero Street, 2 SW 19, Frankfort, Kentucky 40601;
- c. By no later than Wednesday, May 31, 2023, MLP and Gross shall complete each of the following corrective actions:
 - i. Provide the Department revised, true and accurate financial statements, including a true General Ledger, for the period from January

2021 through August 2021, and provide the Department evidence of all additional assets, including fixed assets, and their depreciation schedule; balances for any Retained Earnings, Dividends Paid/Owner's Draws and Net Income (Loss) on MLP's revised monthly balance sheets; and a reconciliation of balances for MLP's expenses and net income between MLP's August 2021 balance sheet and the profit-and-loss statement for the corresponding period;

ii. Provide the Department revised monthly net worth calculations and supporting documentation for each such calculation for the period from January 2021 through August 2021, including evidence of MLP's assets under management;

iii. Provide the Department a revised Investment Advisory Agreement that clearly discloses all advisory fees, the frequency of those fees, and how those fees are paid; which ensures that every client's assets are aggregated per household for the purposes of fee calculations; and which complies with 808 KAR 10:450;

iv. Require each existing client and all future clients to execute the revised Investment Advisory Agreement after acceptance by the Department, ensure said Investment Advisory Agreements are fully complete in all material respects, and provide copies of complete and duly executed contracts with each of MLP's existing clients to the Department;

- v. Rectify inconsistent fee calculations and caps between MLP's agreement with clients and its third-party money manager's agreements with those clients;
- vi. Provide the Department proof that the assets of the MLP client identified in paragraph 22, above, are no longer held entirely in cash and that the client is undertaking a different investment strategy meriting the charging of advisory fees, or else remove that client from fee billing;
- vii. Take down or remove public access to MLP's YouTube channel or else amend the About section of that channel and amend MLP's Form ADV;
- viii. Revise MLP's written manual of policies and procedures and business continuity plan to reflect up-to-date information and to comport with 808 KAR 10:200, Section 2(1)(b); and
- ix. File a revised Form U4 for Gross; and

a. MLP and Gross shall cease and desist from any further violations of the Act.

52. MLP and Gross waive their 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 own behalf, or to otherwise appeal or set aside this Agreed Order.

53. MLP and Gross 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.

54. In consideration of the execution of this Agreed Order, MLP and Gross 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 MLP or Gross 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.

55. 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.

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

IT IS SO ORDERED on this the 15th day of February, 2023.



JUSTIN BURSE
ACTING COMMISSIONER

Consented to:

On behalf of the Department of Financial Institutions,

This 15th day of February, 2023.

Chad Harlan

CHAD HARLAN
Director, Division of Securities
Department of Financial Institutions

AND

On his own behalf and on behalf of MoneyLife Partners, Inc.

This 27th day of JANUARY, 2023.

Michael H. Gross

Michael H. Gross
Respondent and Agent for MoneyLife Partners, Inc.

ACKNOWLEDGEMENT

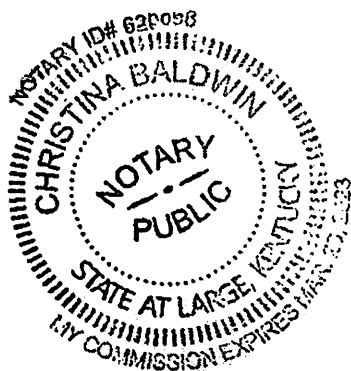
STATE OF Kentucky)

COUNTY OF Jefferson)

On this the 27th day of January, 2023, before me *Christina Baldwin*
~~Michael~~

Michael H. Gross personally appeared and acknowledged himself to be the Respondent named in the foregoing instrument and to be a duly authorized representative of **MoneyLife Partners, Inc.** and acknowledged that he entered into and executed the foregoing instrument for the purposes therein contained.

My commission expires: 02/26/23



Christina Baldwin
Notary Public

CERTIFICATE OF SERVICE

I, Victoria Word, hereby certify that a copy of the foregoing Agreed Order was sent on this the 15 day of February, 2023, by certified mail, return receipt requested, to the following:

MoneyLife Partners, Inc.
13113 Eastpoint Park Blvd.
Suite B
Louisville, KY 40223

Michael H. Gross
13113 Eastpoint Park Blvd.
Suite B
Louisville, KY 40223

And by electronic delivery to:

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

Allison Reed by Victoria Word
Department of Financial Institutions

Name: Allison Reed by Victoria Word

Title: Executive Staff Advisor