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COMMISSIONERS OFFICE

COMMONWEALTH OF KENTUCKY  
PUBLIC PROTECTION CABINET  
DIVISION OF SECURITIES  
ADMINISTRATIVE ACTION NO. 2021—AH—0013

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

vs.

AGREED ORDER

CLEARLEAF FINANCE, LLC; and  
LOUIS RUDOLPH KELMANSON

RESPONDENTS

PARTIES

1. The Kentucky Department of Financial Institutions (DFI, or 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 the rules and regulations enacted thereunder.

2. Respondent Clearleaf Finance, LLC (“Clearleaf” or the “Firm”) is a Kentucky company that is managed by its managers, and a registered investment adviser assigned CRD# 288707. Clearleaf’s principal office is located at 6000 Brownsboro Park Boulevard, Suite F, Louisville, Kentucky 40207.

3. Respondent Louis Rudolph Kelmanson (“Kelmanson”) is a Kentucky citizen and a registered investment adviser representative assigned CRD# 6816569. Kelmanson works out of Clearleaf’s principal office.

STATEMENT OF FACTS

4. On October 15, 2019, the Department conducted a routine compliance examination of Clearleaf at its principal office in Louisville, and a Statement of Findings letter containing the results of this examination was sent to the Firm on May 14, 2020. This Statement of Findings letter noted a number of compliance issues and potential violations of the Act.

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5. In May of 2020, the Department opened an independent investigation into the facts and circumstances surrounding the potential violations uncovered in the October 15, 2019 compliance examination. This investigation revealed a number of potential violations of the Act as detailed herein.

6. Between the Department's compliance examination and subsequent investigation of Clearleaf, two chief issues have come to light: first, that Clearleaf violated of the Act by using a publicly available website to promote securities in a misleading fashion and making misleading filings with the Department; and second, that Kelmanson violated the Act by acting as an investment adviser representative (IAR) without being registered with the Department.

7. Clearleaf's violations stem from its use of a website which provided misleading information to potential investors in an attempt to condition the market for an offering of a security, and the Firm's filings with the Department which contained several misleading statements and/or misstatements of material facts.

8. Kelmanson's violation stems from his work as Clearleaf's Chief Compliance Officer while not being registered with the Department as an IAR as required under the Act.

9. Since at least July of 2017, Clearleaf has solicited investments in the Clearleaf Short Alternative Fund, L.P. (the "Fund"), which is the Firm's sole investment. The Fund is offered under a registration exemption pursuant to Rule 506(b) of Regulation D, as enacted by the Securities and Exchange Commission.

10. Through its website and other channels, Clearleaf solicited investments in the Fund by using a Private Placement Memorandum (PPM), an Investor Pitch Book (IPB), and the Firm's Form ADV.

11. The Department's review of these documents has revealed that they contain misleading statements, omit material facts, and guarantee specific results, all in violation of the Act. These statements nullify Clearleaf's registration exemption under Regulation D, and constitute independent violations of the Act.

12. Kelmanson has also violated the Act by acting as an IAR without being registered with the Department. The Act requires that anyone transacting business as an IAR in Kentucky be registered as such with the Department; this includes any individual who "makes any recommendations or otherwise gives investment advice regarding securities," or who "supervises employees who perform" such services. See KRS 292.310(12).

13. As the Chief Compliance Officer for Clearleaf, Kelmanson was responsible for providing investment advice as well as supervising the Firm's other employee, who is also an IAR.

14. A review of the Department's records has shown that Kelmanson did not apply for registration as an IAR with the Department until May 22, 2020, and a review of the Firm's records has shown that Kelmanson has been acting as an IAR since October 12, 2017. Kelmanson promptly applied for registration with the Department once the violation was discovered.

15. As Kelmanson's registration with the Department was not approved until August 7, 2020, he has violated the Act by transacting business as an unregistered IAR.

#### **STATUTORY AUTHORITY**

16. Under KRS 292.310(12), an "investment adviser representative" is defined as:

"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."

17. Pursuant to KRS 292.320(1), it "is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

- (a) To employ any device, scheme, or artifice to defraud;
- (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person."

18. Per KRS 292.330,

"(10) It is unlawful for an investment adviser to employ or associate with an investment adviser representative unless the representative is registered under this chapter or exempt from registration.

(11) 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, which provides examples of dishonest or unethical practices for investment advisers and investment adviser representatives, states that:

"Section 2. 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:

...  
(8)(c) Omitting 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;

...  
(14) Guaranteeing a client that a specific result will be achieved with advice which will be rendered;

...  
(15) Using any advertisement that does any of the following:

...

(f) Contains any untrue statement or omission of a material fact, or that is otherwise false or misleading ...”

20. KRS 292.470 states in part that: “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).”

21. Pursuant to 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...”

### **VIOLATIONS**

22. Clearleaf violated 808 KAR 10:450 § 2(8) by omitting to state material facts necessary to make statements made on the Firm’s website and Form ADV not misleading;

23. Clearleaf violated 808 KAR 10:450 § 2(14) by guaranteeing on the Firm's website and in its IPB that specific results could be achieved with advice provided by Clearleaf;

24. Clearleaf violated 808 KAR 10:450 § 2(15)(f) by including untrue statements in and/or omitting material facts from the Company's website and IPB;

25. Clearleaf violated KRS 292.330(10) by employing or associating with Kelmanson while he was acting as an unregistered IAR, and allowing him to supervise another employee of the Firm; and

26. Kelmanson violated KRS 292.330(11) by transacting business as an IAR without being registered with the Department.

#### **AGREEMENT AND ORDER**

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

28. In the interest of economically and efficiently resolving the violations described herein, DFI and Respondents hereby agree as follows:

- a. Respondent Clearleaf agrees to pay a civil fine in the amount of **five thousand dollars (\$5,000)** for the violations described herein, which shall be due and payable within thirty (30) days of the entry of this Order;
- b. Respondent Kelmanson agrees to pay a civil fine in the amount of **three thousand dollars (\$3,000)** for the violations described herein, which shall be due and payable within thirty (30) days of the entry of this Order;
- c. Respondent Kelmanson's registration with the Department as an IAR shall be suspended for a period of thirty (30) days following the entry of this Order;

- d. Respondent Clearleaf agrees to cease and desist from using any publicly available website to offer or solicit securities in any way;
- e. All payments under this Order shall be in the form of an ACH payment made via secure website, pursuant to instructions provided to Respondent, or a certified check or money order made payable to "Kentucky State Treasurer" and mailed to the Department of Financial Institutions, Securities Division, 2021-AH-0011, 500 Mero Street 2SW19, Frankfort, Kentucky 40601; and
- f. Respondents shall cease and desist from any future violations of the Act.

29. Respondents 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.

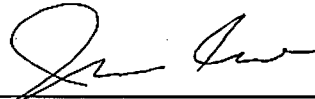
30. Respondents consent to and acknowledge the jurisdiction of DFI over this matter and that this Agreed Order is a matter of public record and may be disseminated as such.

31. In consideration of execution of this Agreed Order, Respondents for themselves, and for their successors and assigns, hereby releases and forever discharges the Commonwealth of Kentucky, DFI, 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.

32. 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.

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

IT IS SO ORDERED on this the 23rd day of June, 2021.



CHARLES A. VICE COMMISSIONER	Justin M. Burse, Deputy Commissioner on behalf of
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**CERTIFICATE OF SERVICE**

I, Allison Reed, hereby certify that a copy of the foregoing Administrative Complaint was sent on this the 24 day of June, 2021, by certified mail, return receipt requested, to the following:

Clearleaf Finance, LLC d/b/a Clearleaf  
Attn: Kris Robbins  
6000 Brownsboro Park Blvd., Suite F  
Louisville, KY 40207  
RESPONDENT

Louis Kelmanson  
6000 Brownsboro Park Blvd., Suite F  
Louisville, KY 40207  
RESPONDENT

Godfrey and Kahn, S.C.  
Attn: Pam Krill  
One East Main Street, Suite 500  
Madison, WI 53703  
COUNSEL FOR RESPONDENT

AND BY HAND DELIVERY TO:

Stuart Michael  
Department of Financial Institutions  
500 Mero Street 2SW19  
Frankfort, KY 40601  
COUNSEL FOR DEPARTMENT OF FINANCIAL INSTITUTIONS

Allison Reed  
Kentucky Department of Financial Institutions

Name: Allison Reed

Title: Executive Staff Advisor