



COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION NO. II  
CIVIL ACTION NO. 16-CI-00835

DEPARTMENT OF FINANCIAL INSTITUTIONS

PLAINTIFF

v.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
FINAL ORDER GRANTING PERMANENT INJUNCTIVE  
RELIEF AND ORDERING RESTITUTION AND DISGORGEMENT**

DEREK BURCHAM and  
CORNERSTONE BENEFIT ADVISORS, LLC

DEFENDANTS

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Plaintiff, Department of Financial Institutions ("DFI"), has requested the entry of a Final Order in this action granting a permanent injunction and ordering restitution and disgorgement against Defendants, Derek Burcham and Cornerstone Benefit Advisors, LLC, (collectively "Defendants") in accordance with KRS 292.470(2) and CR 65.01. This Court previously entered a Restraining Order against Defendants on August 8, 2016. A Warning Order was issued for Defendants to appear or otherwise defend on September 8, 2016. A Warning Order Report was filed on December 5, 2016, and this Court entered an Order approving the Warning Order Report on December 7, 2016.

Defendants have been afforded more than sufficient time to respond and have failed to appear or otherwise defend this action in any manner. Therefore, on the basis of the pleadings, exhibits, and accompanying affidavits previously offered by Plaintiff in connection with its prior motions for injunctive relief, the Court is satisfied that Plaintiff has made a proper showing that Defendants are in violation of both KRS 292.320(2)

(receiving compensation as an investment adviser or investment adviser representative by employing any device, scheme, or artifice to defraud) and KRS 292.440 (making, or causing to be made, in any document filed with the Commissioner, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect), and that entry of a Final Order is appropriate at this time. The Court makes the following Findings of Fact and Conclusions of Law with respect to Defendants Cornerstone Benefit Advisors, LLC and Derek Burcham.

## **FINDINGS OF FACT**

### **A. The Parties**

1. Plaintiff is the Commissioner of the Department of Financial Institutions of the Commonwealth of Kentucky ("Plaintiff" or "DFI").

2. Plaintiff is charged with the administration and enforcement of the Securities Act of Kentucky, KRS Chapter 292.

3. Defendant Cornerstone Benefit Advisors, LLC ("Cornerstone"), is registered as a Kentucky Limited Liability Company, pending dissolution. Cornerstone operated under the assumed name "Cornerstone Wealth Advisors," and was registered with the DFI as an investment adviser, with its principal office located at 9900 Corporate Campus Drive, Suite 300, Louisville, KY 40223. Cornerstone's investment adviser registration with DFI was suspended on August 8, 2016. The Kentucky Secretary of State's website lists Cornerstone's principal office address as 3035 Roselawn Boulevard, Louisville, KY 40220, the same address as its registered agent, Derek Burcham.

4. Defendant Derek Burcham ("Burcham") is an individual whose last known address is 3035 Roselawn Boulevard, Louisville, KY 40220. Burcham was the managing

member of Cornerstone and was registered with the DFI as an investment adviser representative of Cornerstone. Burcham's investment adviser representative registration with DFI was suspended on August 8, 2016.

### **B. The February 2014 Examination**

5. On February 13, 2014, DFI's Division of Securities, Compliance Branch ("Compliance"), conducted a routine examination of Cornerstone pursuant to KRS 292.336(4).

6. During the examination, Defendants failed to provide the Compliance examiners with multiple records and information that were requested before and during the examination.

7. Following the examination, Compliance continued to communicate with Defendants to obtain documents and request corrective action be taken, including addressing inaccuracies discovered in Cornerstone's registration file, known as the "Form ADV." By e-mail dated August 26, 2014, Burcham said he would update the Form ADV, but that the requested documents could not be provided at that time because Cornerstone had "switched banks and accounting software," and the records from the previous software could not be merged with the new software. Burcham stated that Cornerstone had switched from JP Morgan Chase to PNC Bank, inferring that he had closed Cornerstone's JP Morgan Chase bank account.

8. Other than an inaccurate 2014 Cornerstone balance sheet, Defendants ultimately failed to provide any of the requested documents.

### **C. The August 2015 Examination**

9. By letter dated July 16, 2015, Compliance notified Defendants that their examiners would be conducting a routine examination on August 25, 2015. The letter also provided a list of records and information for Defendants to provide to the examiners during the examination.

10. As part of the preparation for the scheduled examination, Compliance examiners reviewed Cornerstone's Form ADV and Burcham's registration file, known as the "Form U4." Defendants filed an annual amendment to the Form ADV on January 20, 2015. In response to Item 5 of the Form ADV, Defendants indicated that the firm provided continuous and regular supervisory or management services to securities portfolios, and that it had six (6) accounts and over three (3) million dollars in assets under management ("AUM").

11. Cornerstone's Form ADV and Burcham's Form U4, filed January 17, 2012, did not list any outside business interests for Burcham.

12. Due to Burcham having a scheduling conflict on August 25, 2015, Compliance agreed to instead conduct its routine examination of Cornerstone pursuant to KRS 292.336(4) on August 26, 2015. During the examination, Burcham informed Compliance that Cornerstone did not have any clients as of the end of calendar year 2014. This statement directly contradicted the aforementioned Item 5 disclosures on the firm's Form ADV. Additionally, Burcham provided the examiners with a list of his outside business interests, none of which had been disclosed on the Form ADV or Form U4 noted above.

13. During the examination, Burcham also informed examiners: that Cornerstone had not billed any clients since it made two billings in 2014; that all client accounts had been transferred to Covenant Capital Group ("Covenant"); and that Cornerstone had terminated its custodial relationship with Shareholder Services Group ("SSG"). Burcham, moreover, provided the examiners with some of the firm's financial records, which were inconsistent with Burcham's prior statement that the last client billings occurred in 2014.

14. At the time of the examination, Defendants failed to provide multiple documents that had been previously requested in the July 16, 2015 letter, as well as numerous records that were requested during the examination. For example, Respondents did not provide the firm's monthly capital calculation worksheets for the months of February 2014 through July 2014.

15. Respondents, however, did provide monthly capital calculation worksheets for the months of August 2014 through July 2015 that showed Cornerstone's net worth was less than \$10,000 in each of those months. At no point had Respondents notified DFI's Commissioner that the firm's net worth was below \$10,000, as required by 808 KAR 10:200, Section 3(7).

16. After the examination, by e-mail dated August 31, 2015, Compliance provided Defendants with a list of items Defendants were required to provide no later than September 8, 2015.

17. During the August 26, 2015 examination, examiners discovered several inaccuracies on Cornerstone's Form ADV and, by letter dated September 2, 2015,

provided Defendants with a list of correcting amendments that needed to be made to that Form. DFI requested that the amendments be made no later than September 16, 2015.

18. By e-mail dated September 24, 2015, Compliance informed Defendants that they had not yet produced the items requested in Compliance's August 31, 2015 e-mail; nor had the necessary amendments to the Form ADV been made.

19. By e-mail dated September 27, 2015, Burcham informed Compliance that the requested records would be provided on October 2, 2015, and the Form ADV amendments would be made.

20. Defendants, however, never provided the requested records to DFI.

21. Cornerstone's Form ADV was amended more than six months later, on April 4, 2016, but only some of the requested changes had been made. The amendments did indicate, consistent with the statements Burcham made at the August 26, 2015 examination, that Defendants had no clients in 2014 or 2015.

#### **D. Defendants' Advertising**

22. Cornerstone maintained a website, Twitter account, and Facebook page. The website listed an office location in Franklin, TN. The Facebook page and Twitter account both contained a post from August 2, 2013, stating, "We're growing our footprint! Our new Nashville office is official," and provided a link to a picture of a building purportedly located in Franklin, TN. During the August 26, 2015 examination, Burcham informed Compliance that Cornerstone did not conduct business activity at this Tennessee office building.

23. Burcham posted the following statement to Cornerstone's Facebook page and Twitter account on December 4, 2014: "Go to lunch with a client and they have an

additional 7.2 million check waiting for you. A good sign we're taking care of business!" These posts directly contradict Burcham's aforementioned statement that Cornerstone did not have any clients at the end of 2014.

#### **E. Administrative Proceedings Initiated**

24. Based on the foregoing, DFI filed an Administrative Complaint, 2016-AH-00023, against Defendants on March 2, 2016, seeking fines and revocation or suspension of Defendants' registrations with DFI.

25. Defendants' counsel, Judson Wagenseller, obtained an extension until June 24, 2016, to file a responsive pleading, in order to obtain additional documents from the Defendants. During April 2016, Mr. Wagenseller provided various documents to DFI for review.

26. On May 31, 2016, Mr. Wagenseller provided DFI copies of financial planning agreements for three of the Defendants' clients, along with management fee invoices for two of those three clients. He also provided PNC bank statements for the period of February 2014 - July 2014.

27. SSG was the custodian of the client accounts for investment adviser Cornerstone (CRDNo. 160499), and/or Burcham (CRDNo. 5174214). As custodian, SSG maintained records of the account activity of Defendants' clients and made account statements available to Defendants' clients either electronically or via U.S. mail.

28. On June 8, 2016, Compliance submitted a request to SSG for its records on Cornerstone and/or Burcham for the period of February 1, 2012 through May 31, 2016.

29. On June 10, 2016, SSG provided documents that identified more clients and management fees than Defendants had reported to DFI. Cornerstone management

fees had been deducted from client accounts maintained by SSG and deposited via ACH directly into Defendants' account with JP Morgan Chase. This was the bank account that Defendants led DFI to believe had been closed.

30. During the August 2015 examination, Burcham informed Compliance that he had become a junior partner with Covenant, a private equity – real estate group, in Tennessee.

31. On June 9, 2016, Compliance sent a letter to Covenant requesting confirmation that Burcham had affiliated with that company as a junior partner. Covenant responded by letter, dated June 28, 2016, stating that Derek Burcham was not, and has never been, affiliated with the company in any way.

32. On June 23, 2016, Defendants' attorney, Mr. Wagenseller, provided written notice to DFI that he had officially withdrawn as counsel and would no longer be representing Defendants.

33. On June 24, 2016, DFI sent a letter to the Defendants acknowledging receipt of their counsel's notification of withdrawal and stating that a responsive pleading to the Administrative Complaint was due on or before July 14, 2016.

34. On July 12, 2016, Michael Valenti, of Valenti, Hanley, PLLC, contacted DFI to report he would be representing the Defendants and sought an extension to answer the administrative complaint. An extension was granted, and Defendants' Answer to the Administrative Complaint was submitted on July 21, 2016.

#### **F. Securities Enforcement Investigation**

35. On June 16, 2016, Enforcement initiated an investigation of Defendants pursuant to KRS 292.460(1)(a).



**i. Investor No. 1**

36. On June 28, 2016, Enforcement interviewed Investor No. 1, who had transferred approximately \$220,000 in investment funds to Defendants for management. Investor No. 1's investment strategy was to preserve principal and make a small profit after paying advisory expenses. Investor No. 1 did not have a signed copy of the advisory contract, but believed fees of .5% of AUM were being charged to the account.

37. Part 2 of Defendants' February 2, 2012 Form ADV, collectively known as the Brochure and Brochure Supplements (hereinafter "Form ADV Brochure"), states that the maximum advisory fee charged by Defendants is 1% of AUM.

38. However, analysis of SSG records reveals that during the time period of 2015 through July 7, 2016, Defendants actually received \$7,913.94 above the contractual maximum of 1% of AUM from Investor No. 1 as depicted below:

<b>Year</b>	<b>Maximum Allowable Contract %</b>	<b>Maximum Fees Pursuant To Contract % Based Upon Average AUM</b>	<b>Actual Fees Deducted From Account Held At SSG</b>	<b>Diverted Fees Exceeding Maximum Allowed Under Contract</b>	<b>Actual Fee Percentage of AUM Charged</b>
2016*	1.00%	\$1,080.65	\$5,503.25	\$4,422.60	5.09%
2015	1.00%	\$1,305.87	\$4,797.21	\$3,491.34	3.67%

\*Through July 7, 2016

**ii. Investor No. 2**

39. On July 1, 2016, Enforcement interviewed Investor No. 2, who had accepted services from Burcham in March or April of 2012. One long-term goal of Investor No. 2 was to deduct \$30,000 per year for retirement income. Investor No. 2 believed the advisory fees were to be 1% of the AUM, but had not received an account statement via

U.S. mail since December 2014. Although Investor No. 2 was aware that account statements were available on-line through SSG's website, Investor No. 2 had encountered difficulty accessing the website. Investor No. 2 received email notices of trades, but never received any specific details about the trades. Investor No. 2 recalled signing an advisory contract, but Burcham never provided a copy, even after Investor No. 2's repeated requests.

40. An analysis of SSG records reveals that during the time period of 2013 through July 7, 2016, Defendants received \$285,126.31 above the contractual maximum fee of 1% of AUM from Investor No. 2 as depicted below:

<b>Year</b>	<b>Maximum Allowable Contract %</b>	<b>Maximum Fees Pursuant To Contract % Based Upon Average AUM</b>	<b>Actual Fees Deducted From Account Held At SSG</b>	<b>Diverted Fees Exceeding Maximum Allowed Under Contract</b>	<b>Actual Fee Percentage of AUM Charged</b>
2016*	1.00%	\$2,318.86	\$75,482.76	\$73,163.90	32.55%
2015	1.00%	\$4,287.59	\$73,454.00	\$69,166.41	17.13%
2014	1.00%	\$3,667.41	\$75,622.06	\$71,954.65	20.62%
2013	1.00%	\$2,691.75	\$73,533.11	\$70,841.36	27.32%

\*Through July 7, 2016

41. Documents obtained from SSG include a letter, purportedly sent by Investor No. 2, authorizing SSG to allow direct withdrawals to Cornerstone for advisory fees pursuant to an investor's net worth of \$6.5 million. However, Investor No. 2 denied ever having a net worth anywhere near \$6.5 million and indicated that she never knowingly signed any letter that so stated.

42. The investigation further indicates that Defendants provided false documents to Investor No. 2. Investor No. 2 received intermittent invoices from Defendants via U.S. mail outlining quarterly balances and the fees that were to be deducted from Investor No. 2's SSG account; however, invoices were never provided on any consistent basis. On one occasion, Investor No. 2 requested an invoice from the Defendants listing the total amount of fees deducted in calendar year 2015. As illustrated below, the fees that were actually deducted were significantly larger than the amounts shown on the statements Defendants provided:

<b>Quarterly Invoice Date</b>	<b>Fee Amounts To Be Deducted Per Cornerstone Invoices</b>	<b>Actual Fees Deducted From Account Held At SSG</b>	<b>Fees Deducted in Excess of Amount Indicated on Invoice</b>
4/2/2013	\$1,172.77	\$8,674.65	\$7,501.88
7/2/2013	\$1,116.03	\$26,697.44	\$25,581.41
10/3/2013	\$1,230.78	\$28,264.69	\$27,033.91
4/2/2014	\$1,248.63	\$12,779.03	\$11,530.40
10/8/2014	\$1,230.37	\$10,103.23	\$8,872.86
1/6/2015	\$1,293.73	\$14,527.51	\$13,233.78
<b>Yearly Invoice Date</b>	<b>Fee Amounts To Be Deducted Per Cornerstone Invoices</b>	<b>Actual Fees Deducted From Account Held At SSG</b>	<b>Fees Deducted in Excess of Amount Indicated on Invoice</b>
12/31/2015	\$4,019.30	\$73,454.00	\$69,434.70

### iii. Investor No. 3

43. On July 14, 2016, Enforcement interviewed Investor No. 3, who had initially transferred approximately one million dollars (\$1,000,000) to Defendants for management, and added an additional \$220,000 to the advisory account in early 2016. Defendants were granted discretionary authority to make securities trades in this account,

and Investor No. 3 was to be charged a .25% quarterly fee for Defendants' management. However, Defendants were not granted authority to withdraw fees or money from the account. Instead, Investor No. 3 opted to write a physical check for all advisory fees when they became due. These payments were drawn on Investor No. 3's checking accounts, which were not tied to the advisory accounts.

44. Investor No. 3 also opened two advisory accounts for family members, which were also to be under Defendants' management. Although there were three separate accounts, one for Investor No. 3 and two for family members, Defendants treated them as a single account for the purpose of fee assessment. All three accounts were to be charged a .25% quarterly AUM fee. According to Investor No. 3, Defendants were not granted authority to deduct fees from any of these advisory accounts.

45. An analysis of SSG records reveals that during the time period of 2012 through July 7, 2016, Defendants actually received \$469,161.10 above the contractual maximum fee of 1% of AUM for these three advisory accounts. Investor No. 3 paid the initial plan fees as well as the quarterly advisory fees for the accounts with a physical check each quarter. Despite Investor No. 3's specific directive that no fees were to be deducted directly from any of the three SSG accounts, advisory fees were nevertheless deducted from these accounts as illustrated below:

<b>Year</b>	<b>Maximum Allowable Contract %</b>	<b>Maximum Fees Pursuant To Contract % Based Upon Average AUM</b>	<b>Actual Fees Billed and Paid Directly to Cornerstone</b>	<b>Amount of Diverted Fees Above Client's Direct Payment</b>	<b>Diverted Fees Exceeding Maximum Allowed Under Contract</b>	<b>Actual Fee Percentage of AUM Charged</b>
2016*	1.00%	\$9,664.71	\$4,366.08	\$188,686.02	\$183,387.39	19.97%
2015	1.00%	\$20,648.92	\$17,321.24	\$185,774.52	\$182,446.84	9.84%
2014	1.00%	\$14,300.05	\$12,171.82	\$107,491.53	\$105,363.30	8.37%
2013	1.00%	\$10,637.08	\$9,055.51	\$0.00	(\$1,581.49)	0.85%
2012	1.00%	\$1,547.78	\$1,092.92	\$0.00	(\$454.86)	0.71%

\*Through July 7, 2016

46. Documents obtained from SSG include a letter dated December 2, 2014, purportedly signed by Investor No. 3, authorizing SSG to allow a \$16,750 direct withdrawal to Defendants for set-up and distribution of plans from Investor No. 3's SSG account. The letter further authorized management fees related to a private equity account held outside the SSG custodian account to be withdrawn from Investor No. 3's SSG account. However, Investor No. 3 is unable to confirm the signature on the letter, and denies ever authorizing Defendants to manage or collect fees for any accounts held outside the SSG custodian account.

47. Documents obtained from SSG also include a letter dated April 2, 2015, purportedly signed by Investor No. 3, authorizing SSG to allow direct withdrawals to Defendants for advisory fees and declaring that the account with SSG, and another "private equity real estate" account held outside the SSG custodian account, have a combined value of over \$17 million. However, Investor No. 3 expressly denied: signing this authorization letter; having an outside private equity real estate account; and, having managed accounts valued at over \$17 million.

#### iv. Investor No. 4

48. On August 2, 2016, Enforcement spoke with Investor No. 4. While the signed contract stated the advisory fee would be 1% of AUM, Burcham told Investor No. 4 that he would not be charged a fee due to their close personal relationship.

49. However, fees were being charged. In fact, an analysis of SSG records reveals that during the time period of 2015 through July 7, 2016, Defendants actually received \$4,662.16 above the contractual maximum fee of 1% of AUM from Investor No. 4 as depicted below:

Year	Maximum Allowable Contract %	Maximum Fees Pursuant To Contract % Based Upon Average AUM	Actual Fees Deducted From Account Held At SSG	Diverted Fees Exceeding Maximum Allowed Under Contract	Actual Fee Percentage of AUM Charged
2016*	1.00%	\$1,923.13	\$5,300.75	\$3,377.62	2.76%
2015	1.00%	\$3,996.82	\$5,281.36	\$1,284.54	1.32%

\*Through July 7, 2016

#### v. Investor No. 5

50. Compliance received a copy of the contract for Investor No. 5 from Defendants on May 31, 2016. The signed contract stated the advisory fee would be 1% of AUM in addition to an estimated financial plan fee of \$3,500 the first year. Based upon SSG account statements, a financial plan fee of \$3,350 appears to have been withdrawn from Investor No. 5's SSG account in 2014.

51. An analysis of SSG records reveals that during the time period of 2014 through July 7, 2016, Defendants actually received \$2,924.08 above the contractual maximum fee of 1% of AUM from Investor No. 5 as depicted below:

<b>Year</b>	<b>Maximum Allowable Contract %</b>	<b>Maximum Fees Pursuant To Contract % Based Upon Average AUM</b>	<b>Actual Fees Deducted From Account Held At SSG</b>	<b>Diverted Fees Exceeding Maximum Allowed Under Contract</b>	<b>Actual Fee Percentage of AUM Charged</b>
2016*	1.00%	\$1,332.52	\$3,021.17	\$1,688.65	2.27%
2015	1.00%	\$3,197.49	\$4,605.38	\$1,407.89	1.44%
2014	1.00%	\$911.58	\$739.12	(\$172.12)	0.81%

\*Through July 7, 2016

**vi. Investor No. 6**

52. Compliance received a copy of the contract for Investor No. 6 on May 31, 2016, from the Defendants. The signed contract stated the advisory fee would be 1% of AUM.

53. However, an analysis of SSG records reveals that during the time period of 2013 through July 7, 2016, Defendants actually received \$21,413.80 above the contractual maximum fee of 1% of AUM from Investor No. 6 as depicted below:

<b>Year</b>	<b>Maximum Allowable Contract %</b>	<b>Maximum Fees Pursuant To Contract % Based Upon Average AUM</b>	<b>Actual Fees Deducted From Account Held At SSG</b>	<b>Diverted Fees Exceeding Maximum Allowed Under Contract</b>	<b>Actual Fee Percentage of AUM Charged</b>
2016*	1.00%	\$1,788.26	\$4,390.83	\$2,602.57	2.46%
2015	1.00%	\$3,925.16	\$5,670.69	\$1,745.53	1.44%
2014	1.00%	\$2,681.96	\$19,266.31	\$16,584.35	7.18%
2013	1.00%	\$218.65	\$700.00	\$481.35	3.20%

\*Through July 7, 2016

**vii. Investor No. 7**

54. DFI never received a copy of the contract for Investor No. 7. However, the Form ADV Brochure filed with DFI on February 2, 2012, states that the maximum advisory fee charged by Defendants is 1% of AUM.

55. An analysis of SSG records reveals that during the time period of 2012 through July 7, 2016, Defendants actually received \$38,925.28 above the contractual maximum fee of 1% of AUM from Investor No. 7 as depicted below:

Year	Maximum Allowable Contract %	Maximum Fees Pursuant To Contract % Based Upon Average AUM	Actual Fees Deducted From Account Held At SSG	Diverted Fees Exceeding Maximum Allowed Under Contract	Actual Fee Percentage of AUM Charged
2016*	1.00%	\$355.06	\$4,151.89	\$3,796.38	11.69%
2015	1.00%	\$862.54	\$11,528.85	\$10,666.31	13.37%
2014	1.00%	\$610.41	\$12,710.79	\$12,100.38	20.82%
2013	1.00%	\$542.98	\$12,171.99	\$11,629.01	22.42%
2012	1.00%	\$195.81	\$928.57	\$732.76	4.74%

\*Through July 7, 2016

56. In total, the Defendants have collected unearned fees of not less than **\$830,126.67** from Investors Nos. 1 - 7.

57. Moreover, Defendants maintained a tab on their website entitled "Client Login," which was supposed to allow investors to access a snapshot of their managed advisory accounts with the Defendants. However, the information that was provided on Defendants' website did not accurately depict the investors' account values. At least two investors relied upon the erroneous website information as an accurate depiction of their account values.



### **viii. Defendants' Bank Records**

58. On June 14, 2016, upon Compliance's request, DFI's Division of Securities, Enforcement Branch ("Enforcement"), issued an administrative subpoena for Defendants' JP Morgan Chase Bank account records.

59. On June 22, 2016, Enforcement issued an administrative subpoena for Defendants' PNC Bank account records.

60. Defendants' bank account at JP Morgan Chase contained monies that constitute unearned advisory fees wrongfully taken by Defendants. Records obtained from SSG indicated that Defendants received direct deposits totaling \$66,807.72 into this account during the months of June and July 2016. This account was in the name of Cornerstone, and Burcham had signature authority.

61. Defendants' bank account at PNC Bank contained monies that constitute unearned advisory fees wrongfully taken by Defendants. The account was in the name of Cornerstone, and Burcham had signature authority.

62. Records from the Meade County Clerk's Office (Deed Book 606, Page 415(4)) reveal that on March 27, 2014, Burcham purchased a lakeside home at 58 Oak Dale Court, Brandenburg, KY 40108. Enforcement traced deposits of unearned advisory fees into Cornerstone's bank accounts and these funds were used to make improvements to this property.

63. Cornerstone's bank records reveal that during the time period of 2013 through August 2016, Burcham paid American Express \$546,121.82. Enforcement traced deposits of unearned advisory fees into Cornerstone's accounts and these funds were used to pay Defendant Burcham's American Express bills.

64. Cornerstone's bank records reveal that during the time period of 2012 through May 2016, Burcham utilized approximately \$263,591.71 for various personal expenses including, but not limited to, vacations and travel; jewelry; student loans; personal loans; credit cards; purchases at retail stores such as Best Buy and Home Depot; and general living expenses, such as the purchase of food and groceries. Enforcement traced deposits of unearned advisory fees into Cornerstone's accounts, and these funds were used to pay Burcham's personal expenses.

65. Cornerstone's bank records reveal that during the time period of 2012 through May 2016, Burcham made bank branch cash withdrawals of \$33,687.99, which included unearned advisory fees.

66. Cornerstone's bank records reveal that on June 26, 2014, Burcham used a Cornerstone account containing unearned advisory fees to make a \$6,000 deposit on a boat, Hull ID BUJ00443E314, from R&W Marine. Burcham thereafter made monthly payments on the boat from a Cornerstone account that contained unearned advisory fees.

67. In 2015, Burcham started Burcham Holding Group, LLC, d/b/a Smokehouse Social, a BBQ catering business. Burcham is identified as its registered agent at 58 Oak Dale Court, Brandenburg, KY 40108. Burcham utilized \$7,034.00 consisting of unearned advisory fees to purchase an ABS Judge smoker on February 13, 2015.

68. On July 8, 2016, DFI issued administrative subpoenas for the Defendants to appear at DFI's main office in Frankfort, Kentucky, on July 19, 2016, and produce various specified business records. The subpoenas were issued for service by Federal Express ("FedEx") to both the Cornerstone office address and Burcham's home address.

Cornerstone received the subpoena on July 12, 2016, at 11:14 a.m. via FedEx delivery. Service could not be made at Burcham's residence.

69. When Michael Valenti, of Valenti Hanley, PLLC, contacted DFI on July 12, 2016, to report he would be representing Defendants, Mr. Valenti was informed that administrative subpoenas had been issued for Defendants to appear on July 19, 2016, and produce documents for review.

70. Alleging that he had not received the administrative subpoena from the Cornerstone office, Burcham failed to appear on July 19, 2016.

71. Therefore, on July 21, 2016, DFI issued an amended administrative subpoena for the Defendants to appear at DFI's Frankfort office on July 28, 2016, and produce a number of specified business records. Service was made on Mr. Valenti as Defendants' counsel of record.

72. On July 26, 2016, Mr. Valenti informed DFI there had been a death in Burcham's family and, therefore, Defendants' appearance was continued. On July 27, 2016, DFI issued an amended administrative subpoena for Defendants to appear at DFI's Frankfort office on August 1, 2016, and produce specified business records. Service was again made on Mr. Valenti as counsel for Defendants.

73. Defendants failed to appear at the DFI office on August 1, 2016 pursuant to the administrative subpoena.

#### **G. DFI's Administrative Enforcement Action**

74. On August 1, 2016, DFI filed a Notice of Administrative Hearing, with service upon Defendants' counsel, Mr. Valenti, to inform the Hearing Officer that an administrative hearing was pending. Defendants were properly notified in writing that failure to

participate at any stage of the proceeding could be grounds for default pursuant to KRS 13B.080(6).

75. On August 8, 2016, DFI issued a Summary Order suspending Defendants' registrations with DFI and ordering them to cease and desist from engaging in the securities business in Kentucky as an investment adviser or an investment adviser representative. Service of the Order was made upon Defendants' counsel, and they were properly notified of their right to request an emergency hearing pursuant to KRS 12B.125 to contest the Order.

76. Despite receiving proper service, Defendants never requested an emergency hearing regarding the Summary Order, pursuant to KRS 13B.125.

77. Based upon their failure to request an emergency hearing, Defendants' registration suspensions and the orders to cease and desist from engaging in the securities business in Kentucky as an investment adviser or an investment adviser representative have remained in effect pending entry of this Final Order.

78. On September 19, 2016, DFI filed an Amended Administrative Complaint with service upon Defendants' counsel, Mr. Valenti. Defendants were notified in writing that failure to participate at any stage of the proceeding could be grounds for default pursuant to KRS 13B.080(6). Defendants have never filed an answer to the Amended Administrative Complaint.

79. Pursuant to the Hearing Officer's Order dated October 20, 2016, a telephonic prehearing conference was scheduled to begin at 10:00 a.m., on November 1, 2016. On that date and time, the Hearing Officer contacted both DFI and Defendants' counsel, Mr. Valenti. DFI was present and prepared to participate. Mr. Valenti, when

informed the Hearing Officer had called, relayed a message through his office staff that he declined to participate in the hearing. Therefore, counsel for DFI moved for a default judgment, pursuant to KRS 13B.080(6), based upon the Defendants' failure to file an answer to the Amended Administrative Complaint, and their failure to participate in the prehearing conference.

80. On November 9, 2016, the Hearing Officer issued a Recommended Findings of Fact, Conclusions of Law and Recommended Order recommending that the Defendants be held in default, and that DFI be granted the relief sought in its Amended Administrative Complaint. Defendants' counsel, Mr. Valenti, was properly served and notified in writing of all appeal rights and the requirement to file exceptions to the Hearing Officer's Recommended Findings of Fact, Conclusions of Law and Recommended Order.

#### **H. Proceedings before this Court**

81. DFI filed this action on August 8, 2016, and after a hearing on the same date, for which notice was provided to Mr. Valenti, this Court issued a Temporary Restraining Order against Defendants.

82. On August 8, 2016, the Franklin Circuit Clerk mailed a Summons and Complaint to the Defendants by certified mail, return receipt requested. An unknown individual signed for the envelopes and the return receipt was filed with the Franklin Circuit Clerk on August 15, 2016.

83. Plaintiff requested and obtained the appointment of Christopher Hill as Warning Order Attorney for process of service.

84. Christopher Hill filed his Warning Order Attorney Reports with this Court on December 5, 2016.

85. On December 7, 2016, this Court reviewed and approved the Warning Order Attorney Reports.

### **CONCLUSIONS OF LAW**

86. Defendants have been afforded more than sufficient time to respond and have failed to appear or otherwise defend this action in any manner. Therefore, on the basis of the pleadings, exhibits, and accompanying affidavits previously offered by Plaintiff in connection with its prior motions for injunctive relief, the Court is satisfied that Plaintiff has made a proper showing of the following.

87. As a result of the pattern of conduct described in detail above, Defendants have committed multiple violations of KRS 292.336 and 808 KAR 10:450, Section 2, which states that 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 client.

88. Defendants materially misled investors when they took unearned advisory fees by employing a device, scheme, or artifice to defraud investors in violation of KRS 292.320(2)(a).

89. Defendants made express statements in documents filed with the Commissioner which, at the time and in the light of the circumstances under which they were made, were false or misleading in material respects in violation of KRS 292.440.

90. Entry of a Final Order is appropriate at this time.

**ORDER**

On the basis of the foregoing, **IT IS HEREBY ORDERED AND ADJUDGED** as follows:

1. Defendants Derek Burcham and Cornerstone Benefit Advisors, LLC, are hereby **PERMANENTLY ENJOINED** from acting as an investment adviser or investment adviser representative in the Commonwealth of Kentucky.

2. Defendants Derek Burcham and Cornerstone Benefit Advisors, LLC, are **ORDERED TO MAKE RESTITUTION** to the following investors in the following amounts:

<b>Investors</b>	<b>Amount of Loss</b>
WILLIAM V.	\$ 7,913.94
JOANN S.	\$285,126.31
DAN M.	\$469,161.10
RANDALL P.	\$ 4,662.16
DAN S.	\$ 2,924.08
LISA S.	\$ 21,413.80
DIANE S.	\$ 38,925.28
<b>Total Amount</b>	<b>\$830,126.67</b>

Payment shall be in the form of a certified check or money order made payable to the "Kentucky State Treasurer" and mailed to the Department of Financial Institutions, Securities Division – Restitution, 1025 Capital Center Drive, Suite 200, Frankfort, KY 40601.

3. In addition to the funds belonging to the specific investors identified in paragraph 2 above, Plaintiff has presented uncontested evidence that Defendants Derek Burcham and Cornerstone Benefit Advisors, LLC, collected, deposited, and withdrew from their accounts with JP Morgan Chase Bank and PNC Bank, investor funds obtained in violation of KRS 292.320(2), in an amount totaling no less than \$830,126.67. As these sums were unlawfully obtained in violation of KRS Chapter 292, they represent ill-gotten gains and the Plaintiff is entitled to an **ORDER OF DISGORGEMENT** against said Defendants in the amount of **\$830,126.67**. Payment shall be in the form of a certified check or money order made payable to the "Kentucky State Treasurer" and mailed to the Department of Financial Institutions, Securities Division – Disgorgement, 1025 Capital Center Drive, Suite 200, Frankfort, KY 40601.

4. Defendants are **PERMANENTLY ENJOINED** from violating KRS Chapter 292, the Securities Act of Kentucky.

5. Except as specifically provided in paragraphs 2 and 3 above, Defendants are **PERMANENTLY ENJOINED** from dissipating any monies received from investors (or other assets acquired with investor money) wherever those monies or other assets are located and regardless of whether they may be kept in a financial institution or otherwise.

6. This Final Order applies to any person or entity acting in concert with any of the Defendants and any person or entity who willfully assists in, aides in, participates in, or facilitates any conduct or activity in violation of any provision of this Order who has received actual notice of this Order, whether by personal service, facsimile, e-mail, or otherwise. Any party, person, or entity having actual notice of this Order, who violates its



provisions or who willfully assists in, aides in, participates in, or facilitates the violation of any provision of this Order, shall be subject to sanctions for contempt of court.

This is a **FINAL AND APPEALABLE ORDER** in accordance with the provisions of CR 54.01.

SIGNED this 11 day of Oct, 2017.

  
\_\_\_\_\_  
JUDGE THOMAS D. WINGATE  
FRANKLIN CIRCUIT COURT, DIVISION II

**CLERK'S CERTIFICATE**

This is to certify that a true and correct copy of the above Order has been served by U.S. mail, messenger mail, or hand delivery to: Hon. Gary W. Adkins, Kentucky Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, KY 40601; Cornerstone Benefit Advisors, LLC, Attn: Registered Agent Derek Burcham, 3035 Roselawn Boulevard, Louisville, KY 40220, and Derek Burcham, 3035 Roselawn Boulevard, Louisville, KY 40220, on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

AMY FELDMAN, CLERK  
FRANKLIN CIRCUIT COURT

BY: \_\_\_\_\_ D.C.