

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2019—AH—00066



DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

vs.

PARTIAL AGREED ORDER

DONALD EUGENE BENTLEY

RESPONDENT

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. Donald Eugene Bentley (Bentley) is a resident of the Commonwealth of Kentucky, and is currently employed with FWG as a Vice President of Financial Services. Bentley is registered with DFI as an investment adviser representative (IAR) with FWG; his CRD# is 2882828.

FACTUAL BACKGROUND

3. On May 8 through May 10, 2017, DFI examiners conducted a routine compliance examination of FWG pursuant to the Act. As several members of FWG’s management team were not present during the exam, a follow-up visit was conducted on May 31, 2017, to complete this examination. DFI sent a Statement of Findings letter containing the conclusions of this examination to FWG on July 10, 2017; this letter identified compliance concerns noted during DFI’s examination of FWG. Since July of 2017, FWG has exchanged several letters with DFI;

however, the Firm has repeatedly provided incomplete, or insufficient responses to questions and document requests by DFI.

4. DFI was unable to bring the Firm into compliance with the Act. Accordingly, DFI opened a formal investigation into FWG's investment-related activities on June 26, 2018 through which DFI confirmed the following facts and allegations, and uncovered additional information pertinent to this action.

5. Bentley was hired by FWG in December of 2016, and he was conditionally registered with DFI as an IAR for FWG on January 11, 2017. Bentley's registration was conditioned upon the provision that he take and pass the Uniform Investment Adviser Law Examination (Series 65 Exam) within ninety (90) days of DFI's approval of his conditional registration. Bentley failed to satisfy this requirement, and his registration was terminated by DFI on April 12, 2017.

6. Both FWG and Bentley were notified on April 11, 2017, that Bentley had failed to satisfy the requirements of his conditional registration, and that his registration would be terminated on the following day. DFI further advised FWG and Bentley that, among other things, as of April 12, 2017, Bentley should cease all IAR activities; that Bentley's clients, and fund custodians for accounts under his management, should be notified that he would no longer be able to serve as an IAR; and Bentley should not be compensated for investment advisory activities until he became properly registered.

7. Despite the termination of Bentley's registration, FWG's internal client notes show that the Firm allowed him to continue to meet with clients and provide investment advice to them before he ultimately passed the Series 65 exam and was duly registered to provide such advice.

STATUTORY AUTHORITY

8. KRS 292.310, which provides definitions for the Act, states, in relevant part, that:

(11) "Investment adviser" means any person who, for compensation, directly or indirectly, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities...

(12) "Investment adviser representative" means 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...

9. Pursuant to KRS 292.330(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 ... or is exempt from registration." 292.330(10) additionally provides that 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."

10. KRS 292.470(3) describes DFI's investigative authority, and states 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).

11. KRS 292.500(14) states in relevant part that:

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, except when the violation is directed at or results in monetary damage to one (1) or more individuals who are sixty (60) years of age or older, the commissioner may impose an additional fine not to 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. Any employer or principal shall be jointly and severally liable for fines imposed in connection with the conduct of employees or agents.

VIOLATIONS

12. After his registration was terminated by DFI on April 12, 2017, Bentley continued to meet with and provide investment advice to FWG's clients. As Bentley was neither registered nor exempt from registration during this timeframe, his conduct is in violation of KRS 292.330(11).

AGREEMENT AND ORDER

13. To resolve this matter without litigation or other adversary proceedings and without admitting liability, DFI and Respondent agree to compromise and settle all claims

arising from the above-referenced factual background in accordance with the terms set forth herein.

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

- a. Bentley agrees to pay a civil fine in the amount of **ten thousand dollars (\$10,000)** for the violations described herein, which shall be due and payable upon the entry of this Order;
- b. Bentley's registration with the Department shall be suspended for a period of **one hundred and twenty (120) days** from the entry of this Order, after which time Bentley may re-apply for registration with DFI;
- c. During this suspension period, Bentley will be prohibited from engaging in any investment-related advisory business, including communications with FWG's clients regarding any investment-related advisory business;
- d. All payments under this Order shall be in the form of a certified check or money order made payable to "Kentucky State Treasurer" and mailed to the Department of Financial Institutions, Securities Division, 2019-AH-00066, 500 Mero Street 2SW19, Frankfort, Kentucky 40601; and
- e. Bentley shall cease and desist from any further violations of the Act.

15. Respondent waives his right to demand a hearing at which he would be entitled to legal representation, to confront and cross-examine witnesses, and to present evidence on his own behalf, or to otherwise appeal or set aside this Agreed Order.

16. Respondent consents to and acknowledges the jurisdiction of DFI over this matter and that this Agreed Order is a matter of public record and may be disseminated as such.

17. In consideration of execution of this Agreed Order, Respondent for himself, and for his 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 Respondent 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. For purposes of clarity, however, the parties acknowledge that either may bring an action to enforce or interpret this Agreed Order.

18. 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.

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

IT IS SO ORDERED on this the 30th day of April, 2020.



CHARLES A. VICE
COMMISSIONER

CERTIFICATE OF SERVICE


I hereby certify that a copy of the foregoing **Partial Agreed Order** was sent on this the 30 day of April, 2020, by certified mail, return receipt requested, to:

Donald Eugene Bentley
1388 Clubhouse Lane
Mount Sterling, Kentucky 40353
RESPONDENT

Stoll Keenon Ogden, PLLC
Attn: Adam M. Back
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507
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


Amy Haley for Allison Reed
Kentucky Department of Financial Institutions

Consented to:

On behalf of the Department of Financial Institutions,

This 27th day of April, 2020.

Maui R. Gbf

Director, Division of Securities
Department of Financial Institutions

AND

On his own behalf,

This 24th day of April, 2020.

~~Donald Eugene Bentley~~

Donald Eugene Bentley

ACKNOWLEDGEMENT

STATE OF Kentucky)

COUNTY OF Fayette)

On this the 24th day of April, 2020, before me _____,

Donald Eugene Bentley did personally appeared and acknowledged themselves to be the Respondent named herein, and acknowledged that they entered into and executed the foregoing instrument for the purposes therein contained.

My Commission Expires: 4-26-23

[Signature]
Notary Public