



**COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
ADMINISTRATIVE ACTION NO. 2024-AH-0012**

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

MICHAEL DAVID PRATER
and
INDEPENDENT CAPITAL, LLC

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. Michael David Prater is the owner and managing member of Independent Capital, LLC. He is also owner of Mid South Management, LLC and operates on behalf of various entities described in this Administrative Complaint.
3. Independent Capital, LLC is a Kentucky limited liability company with its principal office listed on the Kentucky Secretary of State’s website as P.O. Box 1056, Richmond, KY 40476 and its registered agent’s office address listed as 144 N Broadway, Lexington, KY 40507.

STATEMENT OF FACTS

4. From July 22, 2019, to July 23, 2019, the Department conducted a routine examination of Independent Capital, LLC, a company owned by Prater that conducted investment advisory

activity. The examination revealed securities activity related to advising on a pooled investment vehicle's life settlement contracts.

5. Prater's business structure for the subject securities activity utilizes several entities with similar names but what appear to be specialized roles. Mid South Capital Partners, LP is a pooled investment vehicle—colloquially referred to as a fund—operating under Federal Rule 506(b) of Regulation D (17 CFR § 230.506) and initially formed on August 1, 2011. The fund is helmed by Mid South Capital, LLC as general partner. Mid South Management, LLC serves as the fund manager, performing administrative duties. Independent Capital, LLC provides investment advisory services to each entity.

6. Despite utilizing various entities with distinct roles, Prater owns and/or operates all of them, conducting all business activities on their behalf. Thus, interactions between these entities places Prater in multiple roles.

7. The Mid South Capital Partners, LP fund primarily invests in tax liens, but it was discovered during the 2019 Compliance Branch examination that it had diversified into securities investment through life settlement contracts. Prater worked with an agent to purchase three life settlement contracts in 2016 and 2017, naming himself as beneficiary. The life settlement contracts related to the same insured person. The Mid South Capital Partners, LP fund later purchased the life settlement contracts from Prater and changed the beneficiary of each contract to the fund; one life settlement contract substituted the fund as named beneficiary in 2018 and the remaining two life settlement contracts substituted the fund as named beneficiary in 2019. During the 2019 Compliance Branch examination and subsequent Enforcement Branch investigation into these transactions, it was determined that Prater did not provide the Department written evidence that he disclosed all potential

conflicting divisions of loyalty connected to this transaction or obtained written consent of the investment fund clients prior to proceeding with the transaction.

8. Independent Capital and Prater were registered as an investment adviser and investment adviser representative, respectively, to provide services to a single 401(k) plan and also to advise Mid South Capital Partners, LP on the three life settlement contracts. On December 31, 2021, Independent Capital and Prater failed to renew those registrations. On February 11, 2022, Independent Capital and Prater filed renewal applications, however, those applications were abandoned on September 2, 2022, with no subsequently filed applications to register.

STATUTORY AUTHORITY

9. KRS 292.310(2) states,

“Broker-dealer” means any person engaged in the business of effecting transactions in securities for the account of others or for his own account.

10. KRS 292.310(11) states,

“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.

11. KRS 292.310(12) states,

“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.

12. KRS 292.310(19) states,

“Security” means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement,

collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, life settlement investment, voting-trust certificate, certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest in or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

13. **KRS 292.330 states, in part,**

(8) It is unlawful for any person to transact business in this state as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration...

(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 under subsection (12) of this section.

14. **808 KAR 10:450 Section 2(12) states,**

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 the person's 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 constitute a breach of fiduciary duty or a dishonest and unethical practice, and violations may result in a fine, suspension, or revocation in proportion to the seriousness of the offense:

...
(12) Failing to disclose to clients in writing all potentially conflicting divisions of loyalty in connection with a transaction, and failing to obtain the written consent of the client to proceed with the transaction in accordance with the following requirements:

(a) Any transaction in which a person acts as an investment adviser for one (1) party to that transaction and in which the person (or any person controlling, controlled by, or under common control with the adviser) acts as a broker-dealer for both the advisory client and another person on the other side of the transaction shall be subject to this disclosure and consent requirement, and the client shall be provided a written confirmation for each transaction, which contains the following:

- 1. A statement of the nature of the transaction;**
- 2. The date of the transaction;**

3. An offer to furnish, upon written request, the time of the transaction; and

4. The source and amount of any other remuneration the adviser received or will receive in connection with the transaction. If the investment adviser is not participating in a distribution when the advisory client is purchasing the security or a tender offer when the advisory client is selling the security, the confirmation may state that the investment adviser has been or will be receiving other remuneration and that the source and the amount of this remuneration will be furnished upon the client's written request;

(b) The disclosure and consent requirements of subsection (12)(a) of this section apply to each contemplated transaction and shall be complied with every time the transaction occurs unless the adviser complies with the provisions of subsection (12)(c) of this section;

(c) If the disclosure and consent requirements of subsection (12)(a) of this section prospectively cover more than one (1) transaction, the adviser is responsible for ensuring that the client receives at least annually, with or as part of a written statement or summary of the client's account, written disclosure of the following:

1. The total number of these transactions since the date of the last statement or summary;

2. The total amount of all commissions or other remuneration the adviser received or will receive in connection with the transactions; and

3. A conspicuous statement that the client may revoke the written consent previously given by providing written notice of the revocation to the adviser; and

(d) Any transaction in which the same adviser recommended the transaction to both a seller and a purchaser of a security shall be a dishonest or unethical practice regardless of any disclosure and consent;

15. KRS 292.470(3) states,

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).

16. KRS 292.500(14) states,

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

17. Pursuant to KRS 292.310(19), the life settlement contracts central to these facts qualify as securities because they are a “life settlement investment.”

18. In contravention of 808 KAR 10:450 Section 2(12), Prater effectuated the fund’s purchase of three life settlement contracts that named him as beneficiary without prior written notice to and written consent from the fund’s investors. For these transactions, Prater served as representative of Independent Capital, LLC, which conducted itself as an investment adviser to the life settlement contract transactions. In addition to his investment advisory role to the fund, Prater also engaged in broker-dealer activity on his own behalf in effecting the sale of those securities and broker-dealer activity on behalf of the advisory client by effecting the purchase of those securities. Prater neglected to provide fund investors with written notice before the activity occurred about his roles on each side of the securities transaction and the potential conflicts inherent in advising on a purchase of securities

for which he was named as beneficiary. Furthermore, Prater did not obtain written consent from investors to engage in these transactions before proceeding.

19. In contravention of KRS 292.330(11), Prater acted as an unregistered investment adviser representative after December 31, 2021.

20. In contravention of KRS 292.330(10), Independent Capital, LLC associated with Prater as an unregistered investment adviser representative on behalf of the company after December 31, 2021.

21. In contravention of KRS 292.330(8), Independent Capital, LLC acted as an unregistered investment adviser after failing to renew its registration in December 2021 but maintaining its ability to collect advisory fees upon the death of the named insured of the three life settlement contracts.

AGREEMENT AND ORDER

22. To resolve this matter without litigation or other adversarial proceedings, the Department, Michael David Prater and Independent Capital, LLC agree to compromise and settle all claims arising from the above-referenced factual background in accordance with the terms set forth herein.

23. In the interest of economically and efficiently resolving the violations described herein, it is hereby **AGREED** and **ORDERED**:

- i. The Respondents' compliance with all applicable terms of this Agreed Order shall resolve the issues noted in the Department's 2019 Compliance Branch examination;
- ii. For purposes of settlement, but without admitting or denying the findings of fact or conclusions of law set forth herein, Michael David Prater agrees to pay a civil fine in the

amount of eight thousand dollars (\$8,000.00) for the violations described herein, which shall be due and payable within forty-five (45) days of the entry of this Order;

iii. For purposes of settlement, but without admitting or denying the findings of fact or conclusions of law set forth herein, Independent Capital, LLC agrees to pay a civil fine in the amount of two thousand dollars (\$2,000.00) for the violations described herein, which shall be due and payable within forty-five (45) days of the entry of this Order;

iv. All payments under this Order shall be in the form of an ACH payment made via secure website, pursuant to instructions provided to the Respondents, or by a certified check or money order made payable to “Kentucky State Treasurer” and mailed to the Department of Financial Institutions, Securities Division, 2024-AH-0012, 500 Mero Street, Frankfort, Kentucky 40601;

v. Prater and Independent Capital, LLC waive the 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 behalf, or to otherwise appeal or set aside this Agreed Order;

vi. Prater and Independent Capital, LLC consent to and acknowledge the jurisdiction of the Department over this matter and that this Agreed Order is a matter of public record and may be disseminated as such;

vii. The parties believe the violations described herein, based on the particular facts and circumstances, did not arise from fraudulent, manipulative, or deceptive conduct. As such, the Department agrees that neither disqualification under Rule 506(d)(1) of Regulation D (17 C.F.R. § 230.506(d)(1)(iii)(b)) nor disqualification under Rule 262(a) of Regulation A (17 C.F.R. § 230.262(a)(3)(ii)) should arise as a consequence of this Agreed Order;

viii. In consideration of execution of this Agreed Order, Prater and Independent Capital, LLC for themselves, and for their successors and assigns, hereby release and forever discharge the Commonwealth of Kentucky, the Department, 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 Prater and Independent Capital, LLC ever had, now has, 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;

ix. By signing below, the parties acknowledge they have read the foregoing Agreed Order, fully understand its contents, and that they are authorized to enter into and execute this Agreed Order and legally bind their respective parties; and

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

SO ORDERED on this the 14th day of November, 2024.

/s/ Marni Rock Gibson

MARNI ROCK GIBSON
COMMISSIONER

Consented to:

On behalf of the Department of Financial Institutions.

This 4th day of November, 2024.

Chad Harlan

Assistant Director, Division of Securities
Department of Financial Institutions

and

On behalf of Michael David Prater and Independent Capital, LLC,

This ____ day of _____, 2024.

Michael David Prater

Michael David Prater
Independent Capital, LLC

ACKNOWLEDGEMENT

STATE OF Kentucky)
)
COUNTY OF Fayette)

On this the 4 day of November, 2024, **Michael David Prater**, in my presence, acknowledged **himself** to be the authorized representative of **Independent Capital, LLC** and **himself**, and, being authorized to do so, did enter into and execute the foregoing instrument, on behalf of **Independent Capital, LLC and himself**, for the purposes therein contained, acknowledging the same.

My Commission Expires: 8-17-2026



Laryn Hamilton
Notary Public

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Agreed Order was sent on this the 15 day of November, 2024, by the method indicated below to the following:

Via certified mail, return receipt requested:

Michael David Prater
PO Box 525
Lexington, KY 40588
Respondent

Via electronic delivery:

Brandon Adcock, Staff Attorney III
DEPARTMENT OF FINANCIAL INSTITUTIONS
500 Mero Street
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Counsel for Department of Financial Institutions

Kentucky Department of Financial Institutions

Name: Allison Reed by Victoria Ward

Title: Executive Staff Advisor