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COMMISSIONERS OFFICE

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2019-AH-0015

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

AGREED ORDER

MARK THOMAS LAMKIN

RESPONDENT

FACTUAL BACKGROUND

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

2. Mark Thomas Lamkin (“Respondent”) is the sole managing member of Lamkin Wealth Management, LLC (“LWM”), with a principal business address of 901 Lily Creek Road, Suite 102, Louisville, Kentucky 40243. Respondent is currently registered as an investment adviser representative and broker-dealer agent with Calton & Associates, Inc. (“Calton”). Calton has a principal business address of 2701 N. Rocky Point Dr., Suite 1000, Tampa, Florida 33607.

3. Prior to his association with Calton, Respondent had been registered with LPL Financial LLC (“LPL”) as a broker-dealer agent and investment adviser representative, providing investment services and advice to clients, from 2000 through 2018. Respondent was terminated by LPL on August 17, 2018.

4. Respondent’s unexpected termination by LPL on August 18, 2018 caused him to be temporarily unregistered, until December 7, 2018, when he received a provisional registration through Calton.

5. Respondent was not registered under KRS Chapter 292 between August 18 and December 7, 2018, a period of approximately three and a half months. DFI initiated an action against Respondent on May 28, 2019 by a Notice and Order of Revocation of Registration ("Notice and Order"). The Notice and Order found, in part, that Respondent violated KRS 292.330(8) and (11) by transacting business in Kentucky as an investment adviser and investment adviser representative, without being registered under KRS 292. In addition, Respondent was alleged to have violated KRS 292.320 by coordinating with registered employees to receive compensation for investment advisory fees.

6. The Notice and Order was based, in part, on the allegation that Respondent transacted business while unregistered because he remained as the sole signatory on the LWM business account after Respondent was terminated from LPL and before Respondent associated with Calton, and while registered persons of LWM continued to conduct business and earn fees and commissions for the period of August 18, 2018 to December 7, 2018 which were deposited into the LWM account which Respondent controlled.

7. Respondent denies that he acted as an investment adviser or investment adviser representative for the period of August 18, 2018 to December 7, 2018, or received any commissions, advisory fees, or other moneys for such over the same period, and denies to have violated KRS 292.320 by coordinating with registered employees to receive compensation for investment advisory fees.

8. A hearing was held on October 9, 2019. The Parties each called various witnesses and introduced multiple exhibits. The Hearing Officer submitted his Recommended Findings of Fact, Conclusions of Law and Order on March 5, 2020 recommending the Notice and Order be vacated.

Thereafter, the Commissioner of the DFI entered an Order of Remand on June 3, 2020, remanding the case to the Office of Administrative Hearings (OAH) for further consideration.

9. On Remand, a new Hearing Officer was assigned to review the entire case file and transcript of the October 9, 2019 Hearing and all exhibits, read and consider the briefs of the Parties, and consider the evidence on the record in accordance with the instructions of the Commissioner.

10. The Hearing Officer concluded that Respondent transacted business as an investment adviser while unregistered because of the deposit of moneys earned by other registered LWM individuals into an account Respondent legally controlled, and the fact that Respondent did not exercise actual, practical control over LWM or its bank accounts during the time he was unregistered, nor attempt to pay himself any money from such accounts, does not negate the alleged violation of KRS 292.330(8) and (11).

11. The Hearing Officer issued a Recommended Order that Respondent be found to have committed the single violation set out immediately above and assessed an administrative fine of \$1,000. The Hearing Officer further recommended that the Notice and Order be set aside, and that Respondent's registration be fully reinstated.

12. The Commissioner of the DFI issued a Final Order divergent from with the Recommended Order of the Hearing Officer, and Respondent ultimately initiated an action in the Franklin Circuit Court requesting that the Court modify or set aside in whole or in part the Commissioner's Final Order. The issues were fully briefed, and oral argument was scheduled and held on November 9, 2021. Thereafter, the Parties agreed to mediation and mediation was held on December 29, 2021.

13. The Parties reached a mediated resolution on December 29, 2021.

STATUTORY AUTHORITY

14. KRS 292.330(8) and (11) state it is unlawful for any person to transact business in this state as an investment adviser or investment adviser representative unless the person is registered under this chapter as an investment adviser, investment adviser representative, or is exempt from registration.

15. KRS 292.310(11) and (12) state, in relevant part, that an investment adviser means any person who, for compensation directly or indirectly, engages in the business of advising others. 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.

16. KRS 292.470 states, in pertinent part,

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).

17. 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."

VIOLATION

18. Respondent transacted business in this state as an investment adviser and investment adviser representative while unregistered due to his failure to remove himself as signatory of the LWM business account while such account continued to receive moneys earned by other LPL registered persons of associated with LWM for the period of August 18, 2018 to December 7, 2018, which is in contravention of KRS 292.330(8) and (11).

AGREEMENT AND ORDER

19. To resolve this matter without further litigation, the 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.

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

- i. That Respondent violated KRS 292.330(8) and (11);
- ii. That the allegations that Lamkin violated KRS 292.320(1) and (2) are hereby dismissed;
- iii. Respondent shall pay an administrative fine of \$1,000 within 30 days from the entry of the Order; Respondent shall be subject to heightened supervision for twelve (12) months following the entry of this Agreed Order; Respondent's Investment Adviser Registration shall be suspended for a period of three (3) months, with such suspension being fully waived by DFI so long as Respondent does not commit a securities violation under

Kentucky or federal law within three (3) years following the entry of this Order, as determined by a final, non-appealable order of a court or regulatory agency with competent jurisdiction; so long as Respondent is compliant with the terms of this section, Respondent's waived suspension does not constitute a denial, suspension, or revocation of his registration or license or otherwise, by order of any state regulatory agency.

iv. The Parties agree to dismissal of the pending action in Franklin Circuit Court, Case No. 21-CI-00453;

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

vi. 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, the 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 actions, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or in equity, that Respondent 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;

vii. 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; and

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

SO ORDERED on this the 2nd day of March 2022.

Charles
A. Vice

Digitally signed by:
Charles A. Vice
DN: CN = Charles A. Vice
email = charles.vice@ky.
gov C = US O = Dept. of
Financial Institutions OU
= RPC/DFI/Commissioner
Date: 2022.03.02 22:48:
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/s/ Charles A. Vice

**CHARLES A. VICE
COMMISSIONER**

CONSENTED TO:

On behalf of the Department of Financial Institutions,

This 1st day of March, 2022.

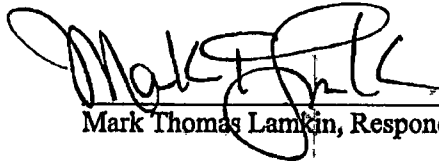
Marni Rock Gibson
Digitally signed by: Marni Rock Gibson
DN: CN = Marni Rock Gibson email = marni.
gibson@ky.gov C = US
Date: 2022.03.01 07:49:28 -05'00'

Marni Gibson
Director, Division of Securities
500 Mero Street
Frankfort, Kentucky 40601
Department of Financial Institutions

AND

On behalf of Mark Thomas Lamkin,

This 25 day of 2, 2022.



Mark Thomas Lamkin, Respondent



David J. Gagnieri
Trevor M. Nichols
McBrayer PLLC
201 E. Main Street, Suite 900
Lexington, Kentucky 40507
Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Agreed Order was send on this the 7th day of March 2022, by electronic delivery to the following:

David J. Guarnieri
Trevor M. Nichols
McBrayer PLLC
201 E. Main Street, Suite 900
Lexington, Kentucky 40507
Counsel for Mark Thomas Lamkin

Catherine Falconer
Department of Financial Institutions
500 Mero Street
Frankfort, Kentucky 40601
Counsel for Department of Financial Institutions

Kentucky Department of Financial Institutions

Name: Allison Reed by Mary Johnson

Title: Executive Staff Advisor