



COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
ADMINISTRATIVE AGENCY ACTION NO. 2016-AH-00017

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

vs.

**FINAL ORDER TO CEASE AND DESIST
AND ASSESSING CIVIL PENALTIES**

MICHAEL WINKLER
D/B/A MICHAEL WINKLER INC.

RESPONDENT

the Department of Financial Institutions (“DFI”), pursuant to Kentucky Revised Statute (“KRS”) 292.470, KRS 292.500 and 808 Kentucky Administrative Regulation (“KAR”) 10:225, by counsel, and hereby brings this **Final Order to Cease and Desist and Assessing Civil Penalties** against Michael Winkler d/b/a Michael Winkler Inc.

PARTIES

1. DFI is responsible for administering the provisions 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 Winkler, (“Respondent”), was the purported incorporator of Michael Winkler Inc., a/k/a MW Inc. (“MW Inc.”) Michael Winkler’s last known permanent address was 4320 Turtle Creek Cove, Lexington KY 40509. Michael Winkler no longer resides at this address and, as of the filing of this Final Order, Respondent’s last reported address, according to Kentucky District Court documents, is 6856 Russell Cave Road, Lexington Kentucky 40511.

FACTS

3. Michael Winkler Inc. is not and never has been registered with the Kentucky Secretary of State by Respondent or any other incorporator.

4. Michael Winkler Inc. common stock, securities or other related investment contracts, have never been registered with the DFI nor has Respondent been registered with DFI, in any capacity, to sell securities.

5. On or about February 16, 2015, Respondent, through MW Inc., offered to sell and sold to Investor "RL", a five hundred dollar (\$500) "private investment" contract purportedly protected and insured by MW Inc. and included the Better Business Bureau logo. The investment was proposed to Investor "RL" for the purpose of the sale and distribution of Nike apparel for profit through MW Inc. Respondent failed to provide any written disclosures related to the investment or discuss inherent risks in investing.

6. Investor "RL" accepted the investment offer and thereafter did pay Respondent Five Hundred dollars (\$500) with the provision that the investment was to provide a return within ninety (90) days. (A copy of the document titled "investment receipt" is attached as Exhibit 1.) Respondent failed to return the investment and did not provide any evidence of the proposed procurement of Nike apparel or merchandise as promised.

7. On or about April 16, 2015, Respondent, through MW Inc., offered to sell and sold to Investor, "JM" and "JM's" two friends, Investors "BL" and "JR", a "private investment" purportedly protected and insured by MW Inc. and included the Better Business Bureau logo. The investment was proposed to Investors "JM", "BL" and "JR" and accepted for the purpose of investing in Apple Inc. and Nike Inc. stocks through MW Inc. A cumulative amount of Seven

Hundred and Fifty dollars (\$750) was invested with MW Inc. from the three Investors. (See Exhibit 2) Investors “JM”, “BL” and “JR” did not receive returns on this investment. In addition, Respondent failed to provide any written disclosures related to the investment or discuss inherent risks in investing.

8. Soon thereafter, Respondent, through MW Inc., offered to sell and sold to Investor “JM” an additional “private investment” contract purportedly protected and insured by MW Inc. and included the Better Business Bureau logo. The investment was proposed to Investor “JM” for the purpose of investing in an entity called Golf Associated. An amount of One Hundred and Fifty dollars (\$150) was invested by Investor “JM” with MW Inc. Investor “JM” did not receive a return on this investment. In addition, Respondent failed to provide any written disclosures related to the investment or discuss inherent risks in investing.

9. Based on the above referenced facts and evidence, the Department determined that Michael Winkler, d/b/a MW Inc., did offer and sell unregistered securities to Investors “RL”, “JM”, “BL” and “JR” in the State of Kentucky in violation of KRS 292.340.

10. In addition, based on the above referenced facts and evidence, The Department determined that Michael Winkler, d/b/a, Michael Winkler Inc., employed a scheme to defraud the above referenced Investors through the use of the Better Business Bureau logo in violation of KRS 292.320(1)(a).

11. On December 2, 2016, an Administrative Complaint was sent via certified mail, # 70160600000027597693, to Michael Winkler at the last known residential address of Fayette County Detention Center, 600 Old Frankfort Circle, Lexington, KY 40510. Service was perfected on December 3, 2016 and a confirmation receipt was received by the Department on December 8, 2016. (See Exhibit 3)

12. The Administrative Complaint stated that the Respondent must file an Answer and request a hearing within twenty (20) days of receipt of the Complaint. The Administrative Complaint states that if the Respondent did not file an Answer and request a hearing in a timely manner, the commissioner may issue a Final Order.

13. More than twenty (20) days have passed since the mailing of the Administrative Complaint and the Respondent did not file an Answer nor request a hearing under KRS Chapter 13B.

STATUTORY AUTHORITY

14. Pursuant to KRS 292.310(19), a security is defined, in relevant part, as “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...”

15. Pursuant to KRS 292.340, “[i]t is unlawful for any person to offer or sell any security in this state, unless the security is registered under this chapter, or the security or transaction is exempt under this chapter, or the security is a covered security.”

16. KRS 292.320(1)(a) states;

(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;

17. KRS 292.470(1) and (3) state: 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:

- (1) Issue a cease and desist order, with or without a prior hearing, appealable to Franklin Circuit Court, against the person or persons engaged in the prohibited activities directing that person or persons to cease and desist from illegal activity. In order to issue an order without a prior hearing, the commissioner must find that the delay in issuing a final cease and desist order will cause harm to the public.
- (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).

18. 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.

CONSLUSIONS OF LAW

RESPONDENT OFFERED AND SOLD UNREGISTERED SECURITIES IN VIOLATION OF KRS 292.340 AND KRS 292.320(1)(a).

19. Paragraphs 1-18 are restated and incorporated herein by reference.
20. The private investment contracts referenced herein meet the definition of security under KRS 292.310(19), in which security is defined, in relevant part, as “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”.

21. Respondent violated KRS 292.340 by offering to sell and in fact selling investment contracts, for the purpose of investing in Nike Inc. apparel and company stock, Apple Inc. stock and for investment in an entity titled Golf Associated, to Investors “RL”, “JM”, “BL” and “JR” that were not registered or exempt from registration or a covered security.

22. Respondent’s offer to sell the investment contracts, either directly or indirectly, by representing the investment as being insured by MW Inc. and reviewed and approved by the Better Business Bureau, was employed as a means to defraud the Investor in violation of KRS 292.320(1)(a).

ORDER

Based on the foregoing Findings of Fact, Statutory Authority and Conclusions of Law, the Commissioner **ORDERS** as follows:

1. Michael Winkler, d/b/a Michael Winkler Inc., pursuant to KRS 292.470(3), to **CEASE AND DESIST** from committing or causing violations of and any future violations of the Act, and;
2. Michael Winkler, pursuant to KRS 292.500(14), to pay a civil fine in the amount of Five Thousand Dollars (\$5,000) and;
3. Michael Winkler to pay restitution to the effected investors and;
4. Any other relief which may be appropriate and to which the DFI may be entitled.

IT IS SO ORDERED on this the 19th day of Aug, 2017.



Charles A. Vice
Commissioner
Department of Financial Institutions

NOTICE OF APPEAL RIGHTS

Pursuant to KRS 292.490, you are hereby notified that you have the right to appeal this Final Order of the Commissioner. If you choose to appeal, you must file a written petition asking that the order be modified or set aside in whole or in part with the Franklin Circuit Court within thirty (30) days after entry of this Order. A copy of the petition must be served upon the Commissioner.

Certificate of Service

I hereby certify that a copy of the foregoing **FINAL ORDER TO CEASE AND DESIST AND ASSESSING CIVIL PENALTIES** was sent by certified mail, return receipt requested, and by first class mail on this the 19 day of April, 2017, to the following:

Michael Winkler
c/o Fayette County Detention Center
600 Old Frankfort Circle
Lexington, KY 40510

Hand delivered to:

Catherine Falconer, Attorney
Department of Financial Institutions
1025 Capitol Center Drive, Suite 200
Frankfort, KY 40601



KY Dept. of Financial Institutions

Name: Allison Evans

Title: Executive Staff Advisor