

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2008-AH- 226

RECEIVED
AUG 1 2008
CH. SECURITIES

DEPARTMENT OF FINANCIAL INSTITUTIONS

PETITIONER

V.

MONEY CONCEPTS CAPITAL CORPORATION

RESPONDENT

SETTLEMENT AGREEMENT AND ORDER

BACKGROUND AND FACTUAL FINDINGS

1. The Department of Financial Institutions (“DFI”) is the agency of Kentucky state government charged with enforcement of the provisions of KRS Chapter 292 (the “Kentucky Securities Act”) and the rules and regulations enacted thereunder.

2. Money Concepts Capital Corporation (“Money Concepts”) is a registered Broker/Dealer, which is also registered as such in Kentucky with the DFI. Money Concepts maintains its principal offices at 11440 North Jog Road, Palm Beach Gardens, Florida 33418. Money Concepts is doing business in the Commonwealth of Kentucky through its agents and representatives.

3. On March 10 through 19, 2008, pursuant to the authority granted by KRS 292.330(12), the DFI, Division of Securities (the “Division”), conducted a routine examination of a branch office of Money Concepts (Examination No. BD-043), located at 323 Townepark Circle, Louisville, Kentucky 40243.

4. On April 9, 2008, the Division issued a written report of its examination, which contained a Statement of Findings (“Statement of Findings”) indicating areas of concern regarding the aforementioned branch office of Money Concepts and the principal office’s supervision over suitability matters.

5. In paragraphs 1 through 5 of the Statement of Findings (“Supervision of Nikolas Kane”), the Division noted that on May 30, 2007, Money Concepts agreed to specific heightened supervision requirements of its registered representative, Nikolas A. Kane, as a part of a conditional registration. Item 1 of the conditional registration provided that all outgoing correspondence of registered representative Kane would be reviewed and approved prior to distribution. It was determined during the examination that Kane was forwarding all outgoing correspondence to the Louisville, Kentucky Office of Supervisory Jurisdiction (“OSJ”) at the end of each week and that registered principal, Russell Lytle, reviewed and approved the correspondence after it had already been sent and distributed. In response to the Statement of Findings, Money Concepts represents that Nikolas Kane is now forwarding all correspondence to its Chief Compliance Officer for review prior to distribution.

6. In paragraph 2 of the Statement of Findings, the Division notes that the conditional registration required Money Concepts to conduct at least two on-site inspections during the 12 month period after registration and provide copies of those inspections to the Division within thirty (30) days after the inspection. An on-site inspection was conducted on October 17, 2007. In response to the Statement of Findings, Money Concepts has explained that the inspection report was placed in the mail to the Division on October 18, 2007 (as well as to the Compliance Director of

Money Concepts). However, the Division does not have a record of receiving a copy of the inspection report.

7. In paragraph 3 of the Statement of Findings, the Division noted that on December 17, 2007, registered representative Kane received an email for a client indicating that the client had six stock certificates to give to him. On December 21, 2007, Kane sent an email response indicating that he had the stock certificates but could do nothing with them because the backs of the certificates were not signed. Kane then logged the certificates on a Check Blotter, marking out "check" and inserting "certificate." Kane logged the certificates as being received on December 26, 2007 and forwarded to Pershing, LLC on December 27, 2007. Pursuant to Money Concepts' written supervisory procedures, registered representatives are not allowed to accept stock certificates. The emails were forwarded to the OSJ on December 21, 2007, approved on December 26, 2007, and registered principal Lytle noted no problem with the fact that Kane accepted stock certificates in violation of Money Concepts own written procedures. In addition, Kane made up a form to record receipt of the stock certificates rather than contact the firm or review written supervisory procedures to determine how to properly or timely record receipt of the certificates.

8. In paragraph 4 of the Statement of Findings, the Division noted that correspondence from a client dated December 10, 2007 indicated that the client sent a check to Kane requesting that he hold it until December 14, 2007. However, Kane's check blotter recorded that the check was received and forwarded on December 17, 2007. Furthermore, registered principal Lytle did not question the practice of holding

client checks. In its response to the Statement of Findings, Money Concepts states that Kane received the check on December 14, 2007 and forwarded it on December 17, 2007. The check blotter, however, recorded it as received on December 17, 2007, rather than December 14, 2007, the actual date of receipt.

9. In paragraph 5 of the Statement of Findings, the Division noted that a review of Kane's February, 2008 check blotter showed two instances where client checks were not forwarded within twenty-four hours of receipt as required. In response to the Statement of Findings, Money Concepts acknowledges the foregoing and represents that it is revising its procedures to ensure that a single individual in its office is responsible for receiving checks and for keeping and maintaining the check blotter and recording the dates received and forwarded for all checks.

10. In paragraph 7b of the Statement of Findings, the Division noted that a review of incoming correspondence revealed that another client check was received by the Louisville, Kentucky OSJ but was not recorded on the transaction blotter as required. Money Concepts acknowledges this error.

11. In paragraph 8 of the Statement of Findings, the Division noted that Money Concepts' recordation system was deficient in that it did not allow for an audit trail to determine that checks are received and forwarded in a proper and timely manner. In response to the Statement of Findings, Money Concepts represents that it is revising its procedures to ensure that a single individual in its office is responsible for receiving and forwarding checks and for keeping and maintaining the check blotter and recording the dates received and forwarded for all checks.

12. In paragraph 9 of the Statement of Findings (“Switching Transactions”), the Division noted that the Division considers switching transactions to include mutual fund to mutual fund, mutual fund to variable annuity, variable annuity to variable annuity and the sale of a security to purchase an indexed annuity. Money Concepts could not generate a switch report for review by the Division during the examination, and the Louisville, Kentucky OSJ does not maintain a switch file as all switch documents are filed by client. In response to the Statement of Findings, Money Concepts represents that it has revised its internal procedures so that it has developed and revised standard switch form letters and written disclosures and all registered representatives will maintain a separate switch file and its proprietary software is being revised to more effectively access switch letters for all of its registered representatives in Kentucky.

13. In paragraph 13 of the Statement of Findings (“Complaint File”), the Division noted that each individual registered representative maintained his or her own complaint file. The Division recommended that one central complaint file be maintained along with dispositions. Money Concepts agrees to now establish and maintain a central complaint file in its Kentucky offices with copies of all complaints being promptly forwarded to its chief compliance officer.

14. In paragraph 14 of the Statement of Findings (“E-Mail Review”), the Division noted that there was no evidence of review and approval of e-mail correspondence of registered representatives in the Louisville, Kentucky OSJ by a principal located either at this office or at the home office in violation of 808 KAR 10:030, which requires the prompt review and approval of all correspondence,

including electronic mail. Money Concepts has advised the Division that it is in the process of establishing a system that will evidence review and approval of all electronic correspondence.

15. In paragraph 17 of the Statement of Findings, the Division noted that the Outside Business Activity (“OBA”) Forms submitted by registered representative, Edward Schweitzer, disclosed that he is a trustee on multiple clients’ irrevocable trusts while at the same time serving as account representative of record. The Division has taken the position that this dual representation creates a potential conflict of interest necessitating a higher level of supervision by the OSJ than is currently being provided. In response to the Statement of Findings, Money Concepts represents that it has addressed this issue by replacing Mr. Schweitzer as the account representative on accounts where he serves as trustee.

LEGAL AUTHORITY

16. KRS 292.330(12)(d) provides that the Commissioner of DFI (the “Commissioner”) may make periodic examinations of each broker-dealer registered in Kentucky at such times and in such scope as he determines, and the expense reasonably attributable to any such examination shall be paid by the broker-dealer whose business is examined but the expense so payable may not exceed an amount which the Commissioner by rule prescribes.

17. 808 KAR 10:400, Section 2 provides that the fee for a routine examination of a broker-dealer shall be thirty five (35) dollars per working hour with the total fee not to exceed \$1,000. The total fees associated with this examination exceeded \$1,000.

18. KRS 292.500(3) authorizes the Commissioner to promulgate administrative regulations necessary to carry out the provisions of the Kentucky Securities Act.

19. KRS 292.330(12)(f) authorizes the Commissioner to promulgate administrative regulations regulating the conduct of business by broker-dealers which he finds appropriate in the public interest and for the protection of investors.

20. Pursuant to 808 KAR 10:030, Section 2(1) each agent shall be subject to the supervision of a supervisor designated by the broker-dealer employing the agent. The responsibilities of a designated supervisor with respect to each agent under his supervision shall include, among other things, the prompt review and written approval of the opening of each new customer account by the agent, each securities transaction by the agent.

21. Pursuant to 808 KAR, Section 3 each broker-dealer shall establish, maintain and enforce written procedures that are reasonably designed to detect and prevent violations of the Kentucky Securities Act, 808 KAR Chapter 10, orders issued under that chapter, rules promulgated by the Securities and Exchange Commission pursuant to 15 U.S.C. 78w, and the rules of any self-regulatory organization (such as FINRA) of which the broker-dealer is a member.

22. In order to resolve this matter without further litigation or adversary proceedings, Money Concepts has agreed to compromise and settle all claims arising from the above referenced examination by the Division in accordance with the terms set forth herein.

AGREEMENT AND ORDER

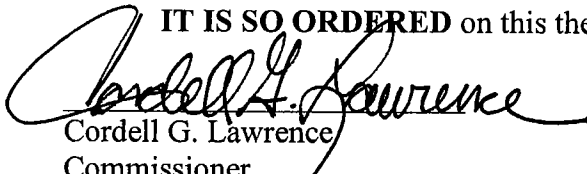
The Department of Financial Institutions and Money Concepts Capital Corporation, in the interest of economically and efficiently resolving the issues raised in the foregoing Background and Factual Findings, agree as follows:

1. Money Concepts Capital Corporation agrees to pay examination fees in the amount of one thousand dollars (\$1,000), payable to the “Kentucky State Treasurer” and mailed to the Department of Financial Institutions, Attn: William B. Owsley, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, simultaneously with the execution of this Settlement Agreement and Order.
2. Money Concepts Capital Corporation further agrees to promptly implement (within sixty days following entry of this Order), to the extent it has not done so already, such system changes as will address those issues raised in the Statement of Findings relating to the detection of switching transactions and review and approval of all correspondence, including electronic mail. Failure to timely implement the system changes will be considered a material breach of this settlement agreement and may result in legal action and penalties.
3. Money Concepts further agrees to maintain and continue heightened supervision regarding prior approval of correspondence of registered representative Nikolas Kane for an additional twelve (12) month period from the date of entry of this Order. Failure to maintain this heightened

supervision will be considered a material breach of this settlement agreement and may result in legal action and penalties.

4. Money Concepts will provide additional training to the registered representatives in the Louisville, Kentucky branch office and the manager of the office to ensure that they are educated about Money Concepts policies and the importance of compliance therewith.
5. Money Concepts will make a voluntary contribution of Five Thousand Dollars (\$5,000) to the Kentucky Account of the Investor Protection Trust, with such contribution to be made simultaneously with the execution of this Settlement Agreement and Offer.
6. In regard to this matter, Money Concepts Capital Corporation waives its right to demand a hearing, at which it would be entitled to legal representation, to confront and cross examine witnesses for the Department of Financial Institutions, and to present evidence on its own behalf. Further, Money Concepts Capital Corporation consents to and acknowledges the jurisdiction of the Department of Financial Institutions over this matter and that this Agreement is a matter of public record and may be disseminated as such.
7. This Settlement Agreement shall constitute the Final Order in this matter.

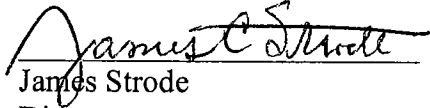
IT IS SO ORDERED on this the 4 day of July, 2008.


Cordell G. Lawrence
Commissioner
Department of Financial Institutions

Consented To:

This 4th day of August, 2008

Consented To:


James Strode

Director

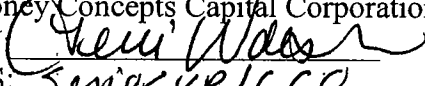
Division of Securities

Kentucky Department of Financial Institutions

AND

This 23 day of July, 2008

Money Concepts Capital Corporation.

BY 

ITS: Senior VP/CCO