



COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2015-AH-00148
ADMINISTRATIVE ACTION NO. 16-PPC-0024

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

vs.

AGREED ORDER

RTAG, Inc.

RICHARD HAMPTON SCURLOCK III

RESPONDENTS

DFI'S FINDINGS OF FACT

1. The Department of Financial Institutions ("DFI") 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. RTAG, Inc. (CRD #145285) is a Kentucky corporation and an investment adviser that was registered with the DFI and doing business as "Retirement Tax Advisory Group." RTAG's principal office was located at 114 Dennis Drive, Lexington, KY 40503. As an investment adviser, RTAG is a fiduciary and has a duty to act primarily for the benefit of its clients.

3. Richard Hampton Scurlock III (CRD #3172045) was the President and owner of RTAG and was previously registered with the DFI as an investment adviser representative of RTAG. Scurlock's last known address is 102 Old Farm Road Richmond, KY 40475. While he was an investment adviser representative, Scurlock was a fiduciary and had a duty to act primarily for the benefit of his clients.

4. Diversified Energy Group, Inc. ("DEG") was a Delaware corporation with its principal office in Florida. DEG was purportedly engaged, primarily, in the business of investing in oil and gas wells.

5. Scurlock executed a document labelled a "Finder's Fee Agreement" with DEG in December 2009 under the terms of which DEG was to pay him a finder's fee in connection with Scurlock recommending DEG's bonds to investors. Beginning in January 2010 and continuing into 2012, Scurlock recommended DEG's bonds to many RTAG clients and other investors who purchased the DEG bonds based upon his recommendation.

6. In April 2010, the Respondents requested that TD Ameritrade approve the DEG Series 2010 9.5% \$5,000 bonds and the DEG Series 2010A 10.25% \$5,000 bonds (together "the 2010 DEG bonds") so that RTAG could facilitate, on behalf of individuals, the purchase of the bonds in retirement accounts for which TD Ameritrade was the custodian.

7. After the 2010 DEG bonds were approved by TD Ameritrade, the Respondents recommended that approximately twelve individuals, most of whom were advisory clients, purchase the 2010 DEG bonds in retirement accounts at TD Ameritrade.

8. In July 2010, Scurlock purchased two (2) DEG series 2010A 10.25% \$5,000 bonds for his personal 401(k) account.

9. Throughout 2010, individuals, some of whom were RTAG clients, purchased DEG bonds directly from DEG, rather than through TD Ameritrade, based upon the Respondents' recommendation.

10. In October 2010, DEG requested that TD Ameritrade approve the DEG Series 2010B 10.25% \$5,000 bonds for purchase in TD Ameritrade accounts.

11. In November 2010, the Respondents requested that TD Ameritrade approve the DEG Series 2011A 10.15% \$10,000 bonds for purchase in TD Ameritrade accounts.

12. For calendar year 2010, DEG paid Scurlock finder's fees totaling \$126,029.14 as a result of the Respondents recommending DEG's bonds to clients and other investors.

13. TD Ameritrade rejected the request for approval of the DEG Series 2010B 10.25% \$5,000 bonds.

14. In January 2011, the Respondents resubmitted their request for the TD Ameritrade's approval of the DEG Series 2011A 10.15% \$10,000 bonds.

15. In February 2011, TD Ameritrade rejected the request for approval of the DEG Series 2011A 10.15% \$10,000 bonds.

16. Upon information and belief, in early 2011 the Respondents received a copy of DEG's balance sheet as of December 31, 2010 and DEG's profit and loss statement for the time period January 1, 2010 through December 31, 2010.

17. Throughout 2011, the Respondents recommended DEG bonds to clients and other investors and received finder's fees from DEG. However, the Respondents failed to inform these investors of DEG's financial condition as reflected on the December 31, 2010 balance sheet and profit and loss statement and failed to inform the investors that TD Ameritrade had rejected the Series 2010B and Series 2011A bonds.

18. In July 2011, Scurlock's DEG bonds matured and DEG paid him the face amount of the bonds. After the bonds were redeemed, the Respondents continued to tell investors that Scurlock owned DEG bonds at the time the Respondents were recommending the DEG bonds to clients and other investors.

19. In November 2011, the Respondents received a copy of DEG's balance sheet as of October 6, 2011 and DEG's profit and loss statement for the time period January 1, 2011 through October 6, 2011.

20. Thereafter and continuing through March 2012, the Respondents recommended DEG bonds, including the Series 2011A 10.15% \$10,000 bonds and the Series 2012A 10.20% \$10,000 bonds, to clients and other investors and continued to receive finder's fees from DEG. However, Respondents failed to disclose to these investors the DEG balance sheet as of October 6, 2011 or the DEG profit and loss statement for the time period January 1, 2011 through October 6, 2011.

21. From January 2010 through March 2012, the Respondents recommended the purchase of DEG bonds to individuals who were not accredited investors even though the private placement memoranda for the Series 2010B, 2011A, and 2012A DEG bonds state that the bonds are only suitable for accredited investors.

22. In some instances, Scurlock filled out the confidential purchaser questionnaires for individuals purchasing DEG bonds and he inflated their net worth on the questionnaire without telling them.

23. For calendar year 2011, DEG paid Scurlock finder's fees totaling approximately \$213,140.60 as a result of the Respondents recommending DEG bonds to clients and other investors.

24. For calendar year 2012, DEG paid the Respondents finder's fees totaling approximately \$95,441.09 as a result of Scurlock recommending DEG bonds to his clients and other investors.

26. The Respondents did not disclose to some of their clients and other investors in DEG bonds the fact that DEG was paying Scurlock a finder's fee equal to 5% or 10% of the amount invested by the clients and other investors.

27. Some of the individuals who purchased DEG bonds based upon the Respondents' recommendations were 60 years or older.

28. In March 2012, the Securities and Exchange Commission began an investigation of DEG.

29. The individuals who purchased DEG bonds in 2011 and 2012 lost the majority of their investment.

30. By letter dated October 30, 2013, an examiner with the DFI's enforcement branch requested that the Respondents provide certain information related to the sale of DEG's bonds no later than November 20, 2013. The information was not provided.

31. During a meeting with Scurlock as part of a routine examination of RTAG in February 2014, an examiner with the DFI's enforcement branch again requested information related to the sale of DEG's bonds. To date, the Respondents have not provided the information

32. DEG was dissolved on April 28, 2014.

33. On January 23, 2015, the Securities and Exchange Commission named RTAG and Scurlock as Respondents in an Order Instituting Administrative and Cease and Desist Proceedings. RTAG's Form ADV and Scurlock's Form U-4 do not disclose this information.

34. By letter dated February 6, 2015, TD Ameritrade informed Scurlock that it was terminating its Advisor Services Agreement with RTAG effective April 7, 2015. RTAG did not amend its Form ADV to reflect that TD Ameritrade terminated the Advisor Services Agreement.

35. By letter dated June 15, 2015, the DFI requested certain information from the Respondents as a result of the termination by TD Ameritrade. The Respondents replied by letter dated June 23, 2015 that was sent by e-mail dated June 29, 2015.

36. By letter dated July 2, 2015, the DFI requested certain additional information from the Respondents and by letter dated July 9, 2015, the Respondents provided some information. By email on July 23, 2015, the DFI informed the Respondents that the July 9 response was insufficient and therefore the DFI needed to conduct an examination of RTAG. The DFI provided the dates of August 10, 11, 12, or 13, as possible dates for the examination.

37. The Respondents did not respond to the July 23, 2015 e-mail so another e-mail was sent on August 4, 2015. Scurlock responded on that same day that he was unavailable August 10-13 and requested to schedule the examination after the week of August 17, 2015.

38. In subsequent e-mails, Scurlock and the DFI agreed to an examination date of August 27, 2015 and the DFI provided the Respondents with a letter dated August 11, 2015 that contained a list of all information and records that needed to be produced during the examination.

39. By e-mail dated August 25, 2015, Scurlock cancelled the August 27, 2015 examination and as a result, the DFI sent an e-mail on August 25, 2015 providing alternative examination dates in September. Scurlock did not confirm any of those dates so the DFI sent another e-mail on September 8, 2015 providing additional dates for the examination.

40. Scurlock did not respond to the DFI's September 8, 2015 e-mail. By e-mail dated September 16, 2015, the DFI informed the Respondents that the examination would take place on September 24, 2015 at 9:00 am. Three DFI employees went to RTAG's offices on September 24, 2015, but no one was at the offices. One of the DFI employees called Scurlock on the phone and

left a message that they were at the office ready to conduct the examination. Scurlock did not return the call and the examination did not take place.

41. During a telephone call Scurlock made to the DFI on September 24, 2015, the DFI's Securities Division Director questioned Scurlock about not being at RTAG's office for the examination that morning and informed him that the examination would occur on September 29, 2015. By e-mail dated September 28, 2015, Scurlock informed the DFI that he would not appear for the examination on September 29, 2015.

42. The DFI responded by e-mail that the examination was still scheduled for 10:00 a.m. on September 29, 2015. DFI employees went to RTAG's office on the 29th, but no one was there. A DFI employee called Scurlock and left a voicemail informing Scurlock that the DFI employees were at his office for the exam. Scurlock did not respond or appear for the examination.

43. On September 28, 2015, Scurlock, as President of RTAG, filed a Form U-5 terminating his registration as an investment adviser representative of RTAG. Also on September 28, 2015, Scurlock, as President of RTAG, filed Form ADV-W which is an application to withdraw RTAG's registration as an investment adviser.

DFI's CONCLUSIONS OF LAW

44. The Respondents in connection with the offer and sale of DEG bonds, directly or indirectly, made untrue statements of material fact or omitted to state material facts necessary, in order to make the statements made, in light of the circumstances under which they were made, not misleading, and thereby committed multiple violations of KRS 292.320(1). The untrue statements and material omissions include:

- a) TD Ameritrade's rejection of the Series 201B and 2011A bonds;
- b) the DEG December 31, 2010 financial statements;
- c) Scurlock owned DEG bonds after July 2011;
- d) the DEG October 6, 2011 financial statements;

- e) DEG bonds limited to accredited investors;
- f) Scurlock inflated investors' net worth; and
- g) the finder's fees paid by DEG.

45. As set forth herein, the Respondents engaged in acts, practices, or courses of business which operated as a fraud or deceit upon their clients and thereby committed multiple violations of KRS 292.320(2).

46. By failing to disclose the SEC lawsuit on Form ADV and failing to disclose TD Ameritrade's termination of the custodial relationship, RTAG violated KRS 292.336(3) and 808 KAR 10:120 which require investment advisers to promptly update any document filed with the DFI that becomes inaccurate or incomplete in any material respect.

47. As a result of the conduct described in paragraph thirty-one (31), the Respondents violated 808 KAR 10:450 Section 2(25) which states that it is either a breach of fiduciary duty or a dishonest and unethical practice for an investment adviser or investment adviser representative to fail to make requested records available to an authorized representative of the DFI conducting an authorized examination or investigation.

48. As a result of the conduct described in paragraph thirty (30), the Respondents violated 808 KAR 10:450 Section 2(26) which states that it is either a breach of fiduciary duty or a dishonest and unethical practice for an investment adviser or investment adviser representative to fail to respond in a timely manner to a written request from an authorized representative of the DFI for information.

49. The Respondents violated 808 KAR 10:450 Section 2(1) which makes it a breach of fiduciary duty or a dishonest or unethical practice for an investment adviser or investment adviser representative to make recommendations to purchase a security that are unsuitable for a client by:

recommending DEG bonds to unaccredited investors;
recommending the purchase of the DEG Series 2010B 10.25% bonds;
recommending the purchase of the DEG Series 2011A 10.15% bonds; and
recommending the purchase of the DEG Series 2012A 10.20% bonds.

50. By failing to disclose to clients in writing the amount of the finder's fee to be paid by DEG, the Respondents violated 808 KAR 10:450 Section 2(11) which states that it is either a breach of fiduciary duty or a dishonest and unethical practice for an investment adviser or investment adviser representative to fail to disclose in writing the amount of any commission to be received for executing transactions pursuant to advice given.

51. As a result of the conduct described in paragraphs thirty-six (36) through forty-two (42), RTAG violated KRS 292.336(1)(b) which requires investment advisers to make available all records for examination upon the request of the commissioner of the DFI.

52. This Order is in the public interest.

AGREEMENT AND ORDER

53. In the settlement of this matter, but without admitting or denying the DFI's findings of fact and conclusions of law, Respondents agree:

a. Scurlock shall pay a civil fine in the amount of \$135,000. In light of Scurlock's current financial condition as evidenced by his sworn financial statements, the civil fine shall be reduced to \$18,000 to be paid as follows: \$15,000 at time of execution of this Agreed Order and \$500 per month for six months beginning ninety (90) days after the execution of this Agreed Order.

b. The initial fine shall be due when Scurlock signs the Agreed Order and returns it to the DFI. Payments 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, Attn: Securities Division - Order, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601.

c. Scurlock has provided a sworn statement of income, assets, and liabilities to the Commissioner as a condition of this Agreed Order. If the Commissioner receives information that the statement is false in any material respect, the Commissioner may reopen these proceedings and seek such further relief as is appropriate.

d. The Respondents shall be barred from registration as an investment adviser, investment adviser representative, broker-dealer, or agent, as defined in KRS 292.310, for ten (10) years;

54. Respondents waives its right to demand a hearing at which it would be entitled to legal representation, to confront and cross examine witnesses, and to present evidence on its own behalf, or to otherwise appeal or set aside this Order.

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

56. In consideration of execution of this Agreed Order, Respondents for itself, and for its 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 action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, that Respondents 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 Agreed Order or its administration.

57. DFI acknowledges and agrees that this Agreed Order concludes, and fully and finally resolves, any and all pending investigations of Respondents, and all matters concerning DEG as it relates to the Respondents, and that this Agreed Order shall serve as the Final Order. DFI further advises and agrees that disqualification under Rule 506(d)(1) of Regulation D (17 C.F.R. 230.506(d)) and a disqualification event under Rule 262(a) of Regulation A (17 C.F.R. 230.262(a)), should not arise as a consequence of this Agreed Order.

58. 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.

IT IS SO ORDERED on this the 9th day of September, 2016.



CHARLES A. VICE
COMMISSIONER

(THIS SPACE INTENTIONALLY LEFT BLANK)

Seen and Consented to:

This 1 day of September, 2016

This 25th day of August, 2016

Shonita Bossier
Shonita Bossier, Director
Division of Securities
Department of Financial Institutions

Richard Hampton Scurlock, III
Richard Hampton Scurlock, III, individually
and as President of RTAG, Inc.

ACKNOWLEDGEMENT

STATE OF Kentucky

COUNTY OF Fayette

On this 25 day of August, 2016, before me Jackie L. Dyer
Notary Public, the undersigned, Richard Hampton Scurlock, III, did personally appear and
acknowledge his identity and acknowledged himself to be the authorized representative of
RTAG, Inc., and that he, being authorized to do so, entered into and executed the foregoing
instrument for the purposes therein contained.

My Commission Expires: 03/16/2020



Jackie L. Dyer
Notary Public

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Agreed Order was served by certified
mail, return receipt request, on:

Hon. Andre F. Regard, attorney for Richard Hampton Scurlock, III & RTAG, Inc.
Regard Law Group
269 West Main Street, Suite 600
Lexington, KY 40507

AND

By hand-delivery to:

Hon. Gary W. Adkins
Kentucky Department of Financial Institutions
1025 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601

On this 9 day of September, 2016.



Allison Hiles
Kentucky Department of Financial Institutions
1025 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601