



COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
ADMINISTRATIVE AGENCY ACTION NO 2019-AH- 00026

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

V.

AGREED ORDER

RITE FINANCIAL GROUP, LLC,
f/k/a DOUGLAS HAWKINS INVESTMENTS, LLC,
a/k/a ACCELERATED WEALTH KENTUCKY,
MICHAEL TODD AVERY,
DOUGLAS T. HAWKINS and
RPB RENTAL MS, LLC

RESPONDENTS

PARTIES

1. The Department of Financial Institutions (“DFI” or “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. DFI herein enters into this Agreed Order with Respondent Michael Todd Avery for settlement. This Agreed Order modifies the Partial Agreed Order between the parties originally filed on January 11, 2021.

2. RITE Financial was a Kentucky limited liability company (CRD# 160924) with a principal business office located at 1795 Alysheba Way, Suite 3206, Lexington, Kentucky 40509. RITE Financial was previously registered under the business name of Douglas Hawkins Investments, LLC (“DHI”) and Accelerated Wealth Kentucky (“Accelerated Wealth”).

3. Michael Todd Avery (“Avery”) was an Investment Adviser Representative (“IAR”) (CRD# 6252909) registered in Kentucky and employed with RITE Financial.

4. Douglas T. Hawkins (“Hawkins”) was previously registered in Kentucky as a broker-dealer agent with Questar Capital Corporation (CRD# 4159537) until his termination on January 3, 2012. Subsequently, Hawkins was registered as an IAR with DHI and Accelerated

Wealth (IARD#160924) from April 17, 2012, until his registration was terminated on December 14, 2017. Hawkins served as Chief Compliance Officer and legal counsel for DHI and its successors in name from 2012 to 2017. Hawkins was responsible for vetting and approving DHI's investment offerings and advising the company's investment adviser representatives about the offerings and their legality.

5. RPB is a limited liability company with a registered business address of 1795 Alysheba Way, Suite 3106, Lexington, Kentucky 40509. Hawkins was the managing member for RPB. Avery was not involved in the ownership, daily operations, or decisions of RPB.

STATEMENTS OF FACT

6. DHI, subsequently known as RITE Financial as of November 20, 2017, became registered in Kentucky as an Investment Adviser ("IA") on April 17, 2012. At that time, Hawkins was the sole owner and only IAR of DHI. Avery joined DHI as an IAR in September 2013. Avery's registration was approved by DFI on October 3, 2013.

7. On October 29, 2013, single ownership of DHI changed to co-ownership, with Hawkins granting Avery a fifty percent (50%) share in exchange for the latter's future equity.

8. On June 26 - 27, 2017, examiners with the Compliance Branch of the DFI's Division of Securities conducted a routine investment adviser examination of DHI. Due to the volume of documents to examine, DFI obtained copies for off-site review.

9. During the off-site review, the examiners noted several issues with DHI's books and records, advertisements, contracts, disclosures and client files.

10. Specifically, during the examination document review, DFI discovered DHI engaged in questionable promissory note sales to clients. This concern prompted DFI to conduct a limited-scope examination of DHI/RITE Financial at the Lexington office location on December 18 - 19, 2017. DFI examiners conducted follow-up interviews with Hawkins and Avery on January 22,

2018. Based on the additional documents provided by RITE Financial and the information provided during the January interviews, the DFI Compliance Branch made a referral to the DFI Enforcement Branch for further review and investigation. It was confirmed by records that Hawkins, in his role as counsel and Chief Compliance Officer, made the determination that the notes were exempt from registration. As an investment advisor, Avery was required to follow the investment related instructions of the Chief Compliance Officer.

11. During the scope of the compliance review and the Enforcement Branch investigation, DFI determined that DHI placed clients into unregistered promissory notes with a company called True Wholesale Houses (TWH), which had multiple subsidiaries located in several states including Mississippi, Pennsylvania, and Ohio. The purported purpose of this company was to purchase homes in need of repair, rehabilitate the homes, and either rent the homes to individuals or sell the homes and split the profits, under predetermined terms, with the investors.

12. Specifically, Hawkins placed two clients of DHI in the True Wholesale Houses Mississippi (TWHMS) promissory notes prior to Avery joining the firm in 2013. After Avery joined DHI, additional clients were placed in the promissory notes with TWHMS, True Wholesale Houses Pennsylvania (TWHPA), and True Wholesale Houses Ohio (TWHOH). Respondents failed to provide prospectuses to the promissory note investors or otherwise provide required disclosure documents.

13. On August 17, 2016, TWHMS filed for bankruptcy protection. Respondents, after receiving notice of the bankruptcy filing, offered to investors the opportunity to transfer the properties from TWH to RPB and sign new promissory notes. Respondents presented this transfer as a way to mitigate issues with the bankruptcy filing. Respondents failed to disclose the material risks involved in this transfer, or register the new promissory notes with DFI, and failed to inform

clients of all the material facts related to the bankruptcy filing of TWHMS as it applied to their investments.

14. During this transfer process, Hawkins opened additional business accounts related to RPB, and the rental property investments, and subsequently placed investor money in these accounts. However, rather than use the proceeds to buy, rehabilitate, repair, and rent the properties, as disclosed to investors, the Respondents used substantial portions of these investor funds to pay other investors. The Respondents failed to disclose this fraudulent and deceptive course of business concerning the use of investor funds and misled investors to believe the applied funds were earmarked exclusively to renovate their properties. In addition, Respondents failed to fully disclose the status of the properties and investments, both in the investors' financial and ownership positions related to the rental properties and the physical states of the properties.

15. Respondents, from April 2016 to present, are alleged to have sold an estimated sixty-two (62) promissory notes to forty-one (41) clients of DHI/RITE Financial and Hawkins's law practice totaling an estimated \$2.66 million in proceeds to RPB, in violation of KRS 292.340. In addition, through email exchanges and other communications with investors, Respondents are alleged to have misrepresented or omitted material facts. These facts include but are not limited to the value of the properties; the types of investments in which the clients participated; the current conditions of the underlying property assets; material facts related to TWHMS's bankruptcy; use of investors' proceeds to pay other investors; and the risk to the investors from the real estate rental programs offered by RPB in violation of KRS 292.320.

16. On March 3, 2020, the Department filed an Administrative Complaint. Respondents submitted Answers and requested a hearing. A prehearing conference ("PHC") was held on June 9, 2020, in the matter. Avery entered into discovery and settlement negotiations with DFI after the PHC.

17. Over the next several months, Avery cooperated with the DFI and engaged in very productive discussions, which ultimately resulted in a resolution of issues involving Avery in this matter. Avery also cooperated with federal law enforcement officials, including multiple proffer and witness preparations sessions, plus trial testimony in United States District Court for the Eastern District of Kentucky, Case 5:21-CR-110-KKC, *United States v. Douglas Hawkins*. Hawkins was ultimately convicted on various felony fraud charges, including mail fraud, securities fraud, and investment advisor fraud. Hawkins received a total of one hundred twenty (120) months imprisonment and was ordered to pay \$1,703,070.15 in restitution to investors named in the federal criminal judgment. See Exhibit A—Douglas Hawkins Criminal Judgment (DE 92, 5:21-CR-110-KKC).

18. To resolve the instant matter without further litigation or adversarial proceedings, the DFI and Avery agreed to compromise and settle all claims arising from the above-referenced factual background in accordance with the terms set forth in a Partial Agreed Order filed with the Commissioner's Office on January 11, 2021. See Exhibit B—Partial Agreed Order file-stamped January 11, 2021. Importantly, because Hawkins' administrative, criminal, and restitution liabilities had not been fully established at the time of Avery's Partial Agreed Order with the DFI, Avery and the DFI agreed at Paragraph 24 of the January 11, 2021 Partial Agreed Order that, "Avery agrees to pay restitution in this matter, to be determined cooperatively by the parties at a later date, in conjunction with the submission of verifying documents related to the transactions upon the final resolution of this Administrative Action."

19. All the conditions precedent having now occurred, and the parties now being in better positions to assess and apportion Avery's comparative restitution liability, the parties now file the instant Agreed Order.

ACTIONS FOR COMPLIANCE AND SETTLEMENT

The DFI and Avery, in the interest of economically and efficiently resolving this matter, agree as follows:

20. The provisions of Paragraph 24 of the January 11, 2021 Partial Agreed Order are hereby set aside, modified, and replaced by the provisions contained herein, below. All other provisions of the January 11, 2021 Partial Agreed Order shall remain in effect.

21. Avery and the DFI agree that Avery shall pay \$400,000.00 in restitution to the investors listed in Attachment A and Avery shall receive credit for \$75,070.43 already paid to date to investors listed in Attachment A as "J.M. and D.M.," leaving Avery's outstanding restitution obligation at \$324,929.57.

22. Avery shall make eighty (80) equal, interest-free quarterly payments of \$4,061.62 toward the \$324,929.57 in outstanding restitution. The first payment shall be due on September 15, 2024. The second payment shall be due on December 15, 2024. Subsequent payments shall be due every succeeding quarter, no later than the 15th day of March, June, September, and December, respectively, of each successive calendar year until Avery's restitution obligation is paid in full. Avery may make additional payments toward or entirely pay off the restitution obligation at his discretion without penalty or premium. Payments shall be made to the United States District Court Clerk with check memo lines stating, "Restitution—5:21-CR-110-KKC". Avery shall maintain receipts of all his restitution payments and shall provide those to DFI no later than 5 days after the payment has been made.

23. The parties expect and agree that Avery's restitution payments will be dispersed to the investors listed in Attachment A by the United States District Court Clerk according to the Clerk's standard restitution disbursement practices and procedures, subject to the oversight of the United States District Court.

24. If any amended criminal judgment is entered in 5:21-CR-110-KKC that changes the number of investors or their respective restitution entitlements, the parties agree that the United States District Court Clerk will make individual investor restitution payouts pursuant to any such amended judgment but in no event shall Avery's total restitution obligation called for in the instant Agreed Order be increased. If the judgment in 5:21-CR-110-KKC is ever invalidated or otherwise set aside, Avery will cooperate with the DFI in formulating an alternative logistical restitution payment methodology apart from the United States District Court Clerk but in no event shall Avery's total restitution obligation called for in the instant Agreed Order be increased.

25. In the event that Avery fails to timely make any of the above-described quarterly restitution payments ("Default"), the DFI shall provide a written Notice of Default and Avery shall have an opportunity to cure such Default within fourteen (14) calendar days from the date of his receipt of the Notice of Default by making the payment(s) then due under the above-described payment schedule. Notice of Default will be delivered to Avery or to such other representative as Avery shall designate in advance in writing. If Avery fails to cure the Default within fourteen (14) calendar days of receiving the Notice of Default, and in the absence of an agreement with the DFI to a modified payment schedule ("Uncured Default"), the remaining unpaid restitution obligation shall become immediately due and payable.

26. In the event of Uncured Default, Avery agrees that the DFI, at its sole discretion, may take any action to enforce this Agreement in a new action against Avery and may exercise any other right granted by law, or under the terms of this Agreed Order and the Partial Agreed Order (Exhibit B), or recognizable at common law or in equity. In the event of Uncured Default, Avery hereby specifically consents to and waives his right to challenge on grounds of jurisdiction and venue the filing of any action to enforce the instant Agreed Order brought by the DFI in Franklin Circuit Court, Frankfort, Kentucky.

27. Avery waives his right to pursue a hearing at which he would be entitled to legal representation, to confront and cross-examine witnesses, and to present evidence on his behalf, or to otherwise appeal or set aside this Agreed Order. Other than his waiver of challenges to venue and jurisdiction set out in the preceding paragraph of this Agreed Order, Avery reserves his rights to contest or otherwise litigate or participate in any enforcement action described in the preceding paragraph.

28. Avery consents to and acknowledges the jurisdiction of the DFI over this matter. This Agreed Order is a matter of public record and may be disseminated as such.

29. The terms of this Agreed Order and the recitation of factual allegations made by the DFI do not constitute an admission on behalf of Michael Todd Avery.

30. In consideration of the execution of this Agreed Order, Avery 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 action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, that Avery 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 settlement.

31. 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. This Agreed Order shall constitute the final resolution of this matter.

AGREED on this the 17th day of July, 2024.

Isl Marni Rock Gibson

MARNI ROCK GIBSON
COMMISSIONER

Consented to:

This 29th day of July, 2024.

Chad K. Har *Chad K. Har*
Marni Gibson, Director
Division of Securities
Department of Financial Institutions

AND

This 17th day of July, 2024.

[Signature]
Michael Todd Avery

ACKNOWLEDGEMENT

STATE OF KENTUCKY)
COUNTY OF Fayette)

On this the 17 day of July, 2024, before me JODIE LYNN CULVER, the undersigned, MICHAEL AVERY, did personally appear and acknowledge himself/herself or to be the authorized representative of the Respondent and that being authorized to do so did enter into and execute the foregoing instrument for the purposes therein contained.

In witness whereof I hereunto set my hand.

My Commission Expires: 07-07-2026



Jodie Lynn Culver
Notary Public

Certificate of Service

I, Victoria Ward, hereby certify that a copy of the foregoing Agreed Order was sent on this the 19 day of August, 2024, by email and first class mail to:

Via email and certified mail, postage prepaid, to:

RITE Financial Group, LLC
c/o Michael Todd Avery – registered agent
1795 Alysheba Way, Suite 3206
Lexington, KY 40509

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KY Department of Financial Institutions
KY Department of Financial Institutions

Name: Allison Reed by Victoria Ward

Title: Executive Staff Advisor