



COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DIVISION OF SECURITIES
ADMINISTRATIVE ACTION NO. 2019-AH-00067

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

vs.

TACTICAL WEALTH MANAGEMENT, LLC; and
SCOTT TYLER SULLIVAN

RESPONDENTS

FINAL ORDER OF DEFAULT

Comes now the Department of Financial Institutions (DFI), by counsel, pursuant to Kentucky Revised Statute (KRS) 292.470, KRS 292.500 and 808 Kentucky Administrative Regulation (KAR) 10:225, and hereby enters this **Final Order of Default** against Tactical Wealth Management, LLC, and Scott Tyler Sullivan. In support thereof, DFI states as follows:

PARTIES

1. 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. Respondent Tactical Wealth Management, LLC, (TWM or “the Firm”) is a Kentucky limited liability company, and was registered with the Department as an investment adviser with Firm CRD #161609 until December 31, 2019. TWM’s principal office is located at 4305.5 Decoursey Avenue, Covington, Kentucky 41015.

3. Respondent Scott Tyler Sullivan (Sullivan) was TWM’s sole registered investment adviser representative, the Firm’s registered agent for service of process, and the only member of the Firm. Sullivan is not currently registered in any capacity. Sullivan is a citizen of the Commonwealth, and his address is 3411 Winchester Avenue, Latonia, Kentucky 41015.

4. On December 27, 2019, the Department filed an Administrative Complaint in the above-styled action, alleging numerous violations of the Act by Respondents.

SERVICE OF THE ADMINISTRATIVE COMPLAINT

5. On December 27, 2019, DFI sent, via certified mail, copies of the Administrative Complaint to TWM's address above, and to Sullivan at his last known residential address. When these deliveries proved unsuccessful, DFI attempted to serve the Complaint several more times over the following months. The Department made a final attempt to serve the Complaint on the Respondents on May 14, 2020. DFI received confirmation that the Complaint was successfully delivered to Mr. Sullivan on May 28, 2020. On July 2, 2020, Mr. Sullivan confirmed via email that he had received the Complaint.

6. As the Complaint was successfully served on Sullivan in his personal capacity and his capacity as the agent for the Firm, and as the Respondents have not filed a response to the Complaint despite multiple attempts to correspond with Respondents, this Final Order of Default is appropriate.

STATEMENT OF FACTS AND VIOLATIONS

7. Since TWM's inception in 2012, the Department has conducted five routine compliance examinations at TWM's principal office. The results of each examination were memorialized in a Statement of Findings letter sent to the Firm upon the completion of each examination.

8. Since 2012, the Department's examinations have revealed a number of recurring violations by TWM. The Department sent Statement of Findings letters to TWM on November 28, 2012; December 23, 2014; June 22, 2016; December 27, 2017; and September 4, 2019. The

contents of these letters, and the resulting correspondence between TWM and the Department, form the factual basis for the allegations herein.

I. Failure to Maintain Books and Records

9. As first noted in the Department's Statement of Findings letter from 2012, TWM repeatedly failed to maintain its accounting books and records on an accrual basis in accordance with generally accepted accounting principles (GAAP) as required by KRS 292.500(5).

10. During a routine compliance examination of TWM in 2012, the Department discovered that the Firm failed to maintain the following: GAAP-compliant balance sheets for the months of June through November, 2012; a GAAP-compliant income statement; and a GAAP-compliant general ledger for the period of June 1, 2012 through November 30, 2012.

11. During a routine compliance examination of TWM in 2014, the Department discovered that the Firm failed to maintain GAAP-compliant balance sheets for the months of January 2013 through September 2014.

12. During a routine compliance examination of TWM in 2016, the Department discovered that the Firm failed to maintain GAAP-compliant balance sheets for the months of January 2015 through March 2016.

13. During a routine compliance examination of TWM in 2017, the Department discovered that the Firm failed to maintain the following: GAAP-compliant balance sheets for the months of August 2016 through December 2016; a GAAP-compliant general ledger for August 2016 through December 2016; and GAAP-compliant income statements for the months of August 2016 through December 2016, as well as January 2017 through October 2017.

14. During a routine compliance examination of TWM in 2019, the Department discovered that the Firm failed to maintain the following: GAAP-compliant balance sheets; a

GAAP-compliant income statement and a GAAP-compliant general ledger for January 2019 through August 2019.

II. Failure to Execute and Maintain Written Contracts

15. As first noted in the Department's Statement of Findings letter from 2012, TWM repeatedly failed to execute written advisory contracts with its clients prior to providing investment advisory services to those clients, as required by 808 KAR 10:450.

16. During a routine compliance examination of TWM in 2012, the Department discovered that the Firm was providing investment advisory services to clients R.S., I.S., and one incorporated entity, without having first entered into a written advisory contract with each of them.

17. During a routine compliance examination of TWM in 2014, the Department discovered that the Firm was providing investment advisory services to client C.M. without having entered into a written advisory contract.

18. During a routine compliance examination of TWM in 2017, the Department discovered that the Firm was providing investment advisory services to clients V.B., R.B., and A.P. without having first entered into a written advisory contract with these clients.

19. During a routine compliance examination of TWM in 2019, the Department discovered that the Firm was providing investment advisory services to a trust client without having first entered into a written contract for advisory services with that client.

III. Failure to Provide Disclosures to Clients

20. First noted in the Department's Statement of Findings letter from 2014, TWM repeatedly failed to provide its clients with important information, such as changes to the Firm's principal office, or itemized fee invoices as required under 808 KAR 10:200.

21. During a routine compliance examination of TWM in 2014, examiners for the Department noted that although the Firm's primary address had changed, the Firm failed to file annual updating amendments to the Firm's Form ADV Part 2 (the "brochure"), and that the Firm had not provided annual informational updates to its clients as required under the Act. Additionally, DFI's examiners found that the Firm deducted advance advisory fees from managed client accounts without providing itemized fee invoices to those clients.

22. During a routine compliance examination of TWM in 2016, examiners for the Department found that TWM's brochure still contained several misleading or inaccurate pieces of information, and that the Firm failed to provide annual copies to its clients. Additionally, DFI's examiners noted that the Firm deducted advance advisory fees from managed client accounts without providing itemized fee invoices to the impacted clients.

23. During a routine compliance examination of TWM in 2017, examiners for the Department discovered that the Firm had failed to maintain fee invoices for the January 15, 2017, billing cycle, and that TWM did not provide bills to its clients for this period. DFI's examiners further observed that TWM again failed to provide an updated brochure to its clients.

24. During a routine compliance examination of TWM in 2019, examiners for the Department discovered that the Firm failed to file annual updating amendments to the Firm's brochure, and that the Firm had not provided the required annual information updates to its clients.

IV. Failure to Provide Documents to DFI

25. During a routine compliance examination in 2017, examiners for the Department requested that TWM produce account statements for several clients for the month of March 2017, but the Firm failed to do so. Monthly statements for March 2017, were not provided for:

- A. C.M. (Rollover IRA, Individual, and Roth accounts);

- B. E.D. (Roth IRA account);
- C. V.B. (Individual account);
- D. R.B. (Individual account);
- E. V.B. and R.B. (Joint-Tenant account); and
- F. K.S. (Individual account).

V. Failure to Respond to DFI

26. Further, the Department conducted a routine compliance examination of TWM on May 15, 2019. A Statement of Findings letter containing the results of this examination was sent to TWM on September 5, 2019; a response was requested by October 7, 2019. The Firm failed to respond in any way to this letter.

STATUTORY AUTHORITY

27. Pursuant to KRS 292.500(5), “[t]he commissioner may by administrative regulation or order prescribe the form and content of financial statements required under this chapter and the circumstances under which consolidated financial statements shall be certified by certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting standards.”

28. The Commissioner’s authority to conduct investigations and issue subpoenas is set forth in KRS 292.460, which states “(2) For the purpose of any investigation or proceeding under this chapter, the commissioner or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.”

29. 808 KAR 10:450 (2), established in part pursuant to the authority of KRS 292.336, states “an investment adviser or an investment adviser representative shall be a fiduciary and shall have a duty to act primarily for the benefit of its clients. An investment adviser or investment adviser representative shall not engage, either directly or indirectly, in unethical or dishonest practices. The following acts and practices shall be considered either a breach of fiduciary duty or a dishonest and unethical practice...

- (18) Entering into, extending, or renewing an advisory contract unless the contract is in writing and discloses the following:
 - (a) The nature of the advisory services to be provided;
 - (b) The time period that the contract remains in effect;
 - (c) The advisory fee and the formula for computing the fee;
 - (d) The amount of the prepaid fee to be returned if there is contract termination or nonperformance;
 - (e) Whether the contract grants discretionary power to the adviser and, if so, the terms of the discretionary power;
 - (f) Whether the contract grants custody of client funds to the adviser and, if so, the terms of the custody; and
 - (g) That the adviser shall not assign the contract without the prior written consent of the client...

- (25) Failing to make requested records available to or otherwise impeding a representative of the Department of Financial Institutions conducting an authorized examination or investigation...

- (26) Failing to respond in a timely manner to a written request from an authorized representative of the Department of Financial Institutions for:
 - ...
 - (d) A response to a written statement of findings from an examination.

30. 808 KAR 10:030 governs the conduct of investment advisers and their representatives, and requires in part that:

Section 5. Brochure and Brochure Supplement.

- (1) An investment adviser shall:
 - (a) Deliver to a client or prospective client a current brochure and, if applicable, current brochure supplement for a supervised person. The current brochure and current brochure supplement shall:

1. Contain all information required by Part 2 of Form ADV as incorporated by reference in 808 KAR 10:010; and
 2. Be delivered before or at the time of entering into an investment advisory contract with that client;
- (b) Deliver to each client annually, within 120 days after the end of the investment adviser's fiscal year and without charge:
1. A current brochure; or
 2. The summary of material changes to the brochure as required by Item 2 of Form ADV, Part 2A that offers to provide the current brochure without charge, accompanied by the Web site address (if available) and an e-mail address (if available) and telephone number by which a client may obtain the current brochure, and the Web site address for obtaining information about the investment adviser through the Investment Adviser Public Disclosure (IAPD) system; and
- (c) Deliver the following to each client promptly after creating an amended brochure or brochure supplement, as applicable, if the amendment constitutes a material revision:
1. The amended brochure or brochure supplement, as applicable, along with a statement describing the material revision; or
 2. A statement describing the material revision.

31. KRS 292.470 (3) states, in relevant 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).

32. KRS 292.500 describes the Commissioner's authority to administer the provisions of Chapter 292, and provides in part that:

(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. The fine shall not exceed twenty thousand dollars (\$20,000) per violation, except when the violation is directed at or results in monetary damage to one (1) or more individuals who are sixty (60) years of age or older, the commissioner may impose an additional fine not to exceed twenty thousand dollars (\$20,000) per violation. Each act or transaction which violates this chapter or administrative regulation, or orders or agreements entered into under this chapter, shall constitute a separate violation. Any employer or principal shall be jointly and severally liable for fines imposed in connection with the conduct of employees or agents.

33. KRS 292.337 sets forth the authority of the Commissioner to regulate licenses, and provides in part:

(1) The commissioner may deny, refuse to renew, suspend, or revoke the registration of any broker-dealer, agent, investment adviser, or investment adviser representative. The commissioner may bar, censure, or place on probation any registrant or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant, or restrict, condition, or limit a registrant as to any function or activity of the business for which registration is required in this state. The commissioner may take any of the foregoing actions for any reason set forth in subsection (2) of this section.

(2) For actions taken in subsection (1) of this section, the commissioner shall find that it is in the public interest and further find that the applicant or registrant or, in the case of a broker-dealer, or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

...

(b) Has violated or failed to comply with this chapter or any administrative regulation promulgated or order issued under this chapter or a predecessor law;

FINDINGS OF FACT AND CONCLUSIONS OF LAW

34. At all times relevant to this Complaint, Sullivan was an officer, director, or a person directly or indirectly controlling TWM as contemplated under KRS 292.337;

35. When it failed to maintain its books and records in accordance with generally accepted accounting principles, TWM violated KRS 292.500(5).

36. When it failed to execute or maintain written contracts with several investment advisory clients, TWM violated 808 KAR 10:450§2(18).

37. When it charged advance fees to client accounts without providing itemized fee invoices to those clients, TWM violated 808 KAR 10:200§2(2)(b)(2).

38. When it failed to distribute updated brochures to its clients within one hundred and twenty (120) days of the end of its fiscal year, TWM violated 808 KAR 10:200§5(b).

39. When it failed to submit a response to the Department by October 7, 2019, as requested, TWM violated 808 KAR 10:450§2(26)(d).

40. This Order is in the public interest.

ORDER

In light of the foregoing, the Commissioner hereby **ORDERS** that:

41. Respondents cease and desist from committing any future violations of the Act;

42. Respondent TWM pay a fine in the amount of Five Thousand dollars (\$5,000) for the violations described herein;

43. Respondents shall pay DFI's costs and attorney's fees; and

44. This Order shall be final and appealable.

IT IS SO ORDERED on this the 30th day of November, 2020.

**Charles A.
Vice**

CHARLES A. VICE
COMMISSIONER

Digitally signed by: Charles A. Vice
DN: CN = Charles A. Vice email =
Charles.Vice@ky.gov C = US O = KY
DFI OU = Commissioner's Office
Date: 2020.11.30 11:08:01 -05'00'

NOTICE OF APPEAL RIGHTS

Pursuant to KRS 292.490 and 13B.140, as applicable, you are hereby notified that any person aggrieved by the FINAL ORDER of the Commissioner may obtain a review of the Order by the Franklin Circuit Court. 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, in the Franklin Circuit Court within thirty (30) days after the entry of the Order. A copy of the petition must be served on the Commissioner.

CERTIFICATE OF SERVICE

I, Allison Reed, hereby certify that a copy of the foregoing Administrative Complaint was sent on this the 3rd day of December, 2020, by certified mail, return receipt requested, to the following:

Tactical Wealth Management, LLC
Attention: Scott Sullivan
4304.5 Decoursey Avenue
Covington, Kentucky 41015
RESPONDENT

Scott Sullivan
3411 Winchester Avenue
Latonia, Kentucky 41015
RESPONDENT

AND

Hand delivered to:

Stuart D. Michael
Public Protection Cabinet
Department of Financial Institutions
500 Mero Street 2 SW 19
Frankfort, Kentucky 40601
COUNSEL FOR COMPLAINANT

Allison Reed
Department of Financial Institutions

Name: Allison Reed

Title: Executive Staff Advisor