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AUG 10 2021
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COMMISSIONERS OFFICE

**COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2021-AH-0014**

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

AGREED ORDER

WITTER & WESTLAKE INVESTMENTS, INC.
and RODNEY WESTLAKE

RESPONDENTS

STATEMENT OF FACTS

1. The Kentucky Department of Financial Institutions (hereinafter, the "Department") is responsible for administering the provisions of Kentucky Revised Statutes (KRS) Chapter 292, the Securities Act of Kentucky, as well as any applicable rules, regulations, and orders enacted pursuant to the Code.

2. Witter & Westlake Investments, Inc. is a corporation incorporated in Alabama, with a principal address at 8517 Brownsboro Rd, Louisville, KY 40241 and a certificate of authority to transact business in Kentucky and Rodney Westlake is Chief Compliance Officer of the corporation and a registered investment adviser representative on behalf of the corporation.

3. Mr. Westlake and Witter & Westlake Investments, Inc. are referenced hereinafter as "Respondents."

4. On September 16 through 17, 2019, the Department performed a routine compliance examination of Respondents.

5. The Department discovered several instances of Respondents failing to maintain records, making misleading statements on its website, and failing to file a corrective amendment to Mr. Westlake's Form U4.

STATUTORY AUTHORITY

6. 808 KAR 10:200 Section 3(6) states,

An adviser shall compute its net worth at least once every month at the end of the month and shall maintain a record of each computation along with supporting documentation for a period of two (2) years. Each computation shall be accompanied by documentation of the assets under management for the adviser at that point in time.

7. 808 KAR 10:110 Section 1(1)(a) and 808 KAR 10:110 Section 1(1)(b) state,

Pursuant to KRS 292.336(1)(a), an investment adviser who maintains his principal place of business in Kentucky shall:

- (a) Meet the recordkeeping requirements established in 15 U.S.C. 80b-3; and
- (b) Maintain his books and records in accordance with the applicable federal regulations, including 17 C.F.R. 275.204-2.

8. 808 KAR 10:030 Section 2 states,

A broker-dealer, agent, investment adviser, or investment adviser representative who recommends to a customer the purchase, sale or exchange of a security shall have reasonable grounds to believe that the recommendation is not unsuitable for the customer on the basis of:

- (1) Information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs; and
- (2) Other information known by the broker-dealer, agent, investment adviser or investment adviser representative.

9. 808 KAR 10:450 Section 2(14), 808 KAR 10:450 Section 2(15)(b), and 808 KAR 10:450 Section 2(15)(f) state, in pertinent part,

A person who is 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. Violations may result in a fine, suspension, or revocation in proportion to the seriousness of the offense:

...
(14) Guaranteeing a client that a specific result will be achieved with advice which will be rendered;

...
(15) Using any advertisement that does any of the following:

- (b) Refers to past specific recommendations of the adviser or representative that were or would have been profitable...

...
(f) Contains any untrue statement or omission of a material fact, or that is otherwise false or misleading;...

10. KRS 292.336(3) states,

If the information contained in any document filed is or becomes inaccurate or incomplete in any material respect, then the broker-dealer, investment adviser, or firm employing issuer agents, as applicable, shall promptly file a correcting amendment. In the case of a covered adviser, the adviser shall file only copies of those documents required to be filed with the Securities and Exchange Commission.

11. KRS 292.470 states, in pertinent 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).

VIOLATIONS

12. Respondent Witter & Westlake Investments, Inc. failed to maintain an accurate net worth computation each month and failed to provide supporting documentation of the assets under management for the adviser at that time, which is in violation of 808 KAR 10:200 Section 3(6). The Department has noted Respondent's violation of this regulation during six (6) previous examinations.

13. Respondent Witter & Westlake Investments, Inc. failed to maintain true, accurate, and current books and records, which include the general and auxiliary ledgers reflecting assets,

liabilities, reserves, capital, income and expense accounts, which is in violation of 808 KAR 10:110 Section 1(1)(a). The Department has noted Respondent's violation of this regulation during four (4) previous examinations.

14. Respondent Witter & Westlake Investments, Inc. failed to maintain its trade blotter to be true and accurate by not identifying the person that recommended transactions to the client, the person who placed the order, and if discretionary power was utilized, which is in violation of 808 KAR 10:110 Section 1(1)(b). The Department has noted Respondent's violation of this regulation during two (2) previous examinations.

15. Respondent Witter & Westlake Investments, Inc. failed to maintain an accurate record of the suitability information of client objectives, financial situation, needs, and other information necessary for its advisers to have reasonable grounds to believe the recommendations were suitable for each client, which is in violation of 808 KAR 10:030 Section 2. The Department has noted Respondent's violation of this regulation during six (6) previous examinations.

16. Respondent Witter & Westlake Investments, Inc. guaranteed that a specific result could be achieved through its advice, the guarantee appearing on the Respondent's website, "Bear Market Strategy" document, "Wealth Management Program" document, and "Wealth Management in the 21st Century" document, which is in violation of 808 KAR 10:450 Section 2(14).

17. Respondent Witter & Westlake Investments, Inc. made statements on its website, "Bear Market Strategy" document, "Wealth Management Program" document, and "Wealth Management in the 21st Century" document that omit material information or are otherwise false and misleading to the efficacy of investment strategies or the speculative nature of investment, which is in violation of 808 KAR 10:450 Section 2(15)(f).

18. Respondent Witter & Westlake Investments, Inc. referred to past returns of the adviser being profitable on its website without appropriate limitation, which is in violation of 808 KAR 10:450 Section 2(15)(b).

19. Respondents both failed to promptly file a corrective amendment to Mr. Westlake's Form U4 upon a change in his residential address, which is in violation of KRS 292.336(3).

AGREEMENT AND ORDER

20. To resolve this matter without litigation or other adversarial proceedings, the Department and Respondents agree to compromise and settle all claims arising from the above-referenced factual background in accordance with the terms set forth herein.

21. In the interest of economically and efficiently resolving the violations described herein, it is hereby **AGREED** and **ORDERED**:

i. Respondent Witter & Westlake Investments, Inc. agrees to pay a civil fine in the amount of six thousand seven hundred and fifty dollars (\$6,750.00) for the violations described herein, which shall be due and payable within thirty (30) days of the entry of this Order;

ii. All payments under this Order shall be in the form of an ACH payment made via secure website, pursuant to instructions provided to Respondents, or by a certified check or money order made payable to "Kentucky State Treasurer" and mailed to the Department of Financial Institutions, Securities Division, 2021-AH-0014, 500 Mero Street, Frankfort, Kentucky 40601;

iii. Respondents shall cease and desist from any future violations of the Securities Act of Kentucky;

iv. Respondents waive the 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 Agreed Order;

v. Respondents consent to and acknowledge the jurisdiction of the Department over this matter and that this Agreed Order is a matter of public record and may be disseminated as such;

vi. In consideration of execution of this Agreed Order, Respondents for themselves, and for their successors and assigns, hereby release and forever discharge the Commonwealth of Kentucky, the Department, 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 have, 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 settlement or its administration;

vii. 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; and

viii. This Agreed Order shall constitute the Final Order in this matter.

SO ORDERED on this the 5th day of August, 2021.

Charles
A. Vice

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: 2021.08.05 09:40:34 -04'00'

/s/ Charles A. Vice
CHARLES A. VICE
COMMISSIONER

Consented to:
On behalf of the Department of Financial Institutions,

This 18th day of July, 2021.

Marni Rock Gibson
Digitally signed by: Marni Rock Gibson
DN: CN = Marni Rock Gibson email =
marni.gibson@ky.gov C = US
Date: 2021.07.18 17:13:47 -0400

Director, Division of Securities
Department of Financial Institutions

AND
On behalf of himself and Witter & Westlake Investments, Inc.,

This 14 day of July, 2021.



Rodney Westlake
Witter & Westlake Investments, Inc.

ACKNOWLEDGEMENT

STATE OF ILLINOIS)
)
COUNTY OF DeWitt)

On this the 14th day of July, 2021, Rodney Westlake, in my presence, acknowledged himself to be the authorized representative of himself and Witter & Westlake Investments, Inc. and, being authorized to do so, did enter into and execute the foregoing instrument, on behalf of himself and Witter & Westlake Investments, Inc., for the purposes therein contained, acknowledging the same.

My Commission Expires: 3/01/22



Notary Public



CERTIFICATE OF SERVICE

10th I certify that a true and correct copy of the foregoing Agreed Order was sent on this the day of August, 2021 by certified mail, return receipt requested to:

Rodney Westlake, Chief Compliance Officer
WITTER & WESTLAKE INVESTMENTS, INC.
8517 Brownsboro Road
Louisville, KY 40241
Representative on behalf of Witter & Westlake Investments, Inc.

and by messenger mail or electronic delivery to:

Brandon Adcock, Staff Attorney III
DEPARTMENT OF FINANCIAL INSTITUTIONS
500 Mero Street
Frankfort, KY 40601
brandon.adcock@ky.gov
Counsel for Department of Financial Institutions

Kentucky Department of Financial Institutions

Name: Alison Reed

Title: Executive Staff Advisor