

DENISE VOIGT CRAWFORD
SECURITIES COMMISSIONER

DON A. RASCHKE
DEPUTY SECURITIES COMMISSIONER

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Texas State Securities Board

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KENNETH W. ANDERSON, JR.
MEMBER

JACK D. LADD
MEMBER

BRYAN K. BROWN
MEMBER

BETH ANN BLACKWOOD
MEMBER

WILLIAM R. SMITH
MEMBER

IN THE MATTER OF THE
DEALER REGISTRATION OF
E. S. MARKS & COMPANY, INC.

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Order No. IC04-CAF-17

TO: Eugene Anthony Profit, President
E. S. Marks & Company, Inc. (CRD No. 41466)
8720 Georgia Avenue, Suite 808
Silver Spring, MD 20910

DISCIPLINARY ORDER

Be it remembered that E. S. Marks & Company, Inc. ("Respondent") by and through Eugene Anthony Profit, its President, appeared before the Securities Commissioner of the State of Texas ("Securities Commissioner") and consented to the entry of this order ("Order") and Undertaking, and the Findings of Fact and the Conclusions of Law contained herein.

FINDINGS OF FACT

1. Respondent has waived (a) Respondent's right to notice and hearing in this matter; (b) Respondent's right to appear and present evidence in this matter; (c) Respondent's right to appeal this Order; and (d) all other procedural rights granted to Respondent by The Securities Act, TEX. REV. CIV. STAT. ANN. art. 581-1 et seq. (Vernon 1964 & Supp. 2004-2005) ("Texas Securities Act") and the Administrative Procedure Act, TEX. GOV'T CODE ANN. § 2001.001 et seq. (Vernon 2000 & Supp. 2004-2005) ("Administrative Procedure Act").
2. On or about November 16, 1999, Respondent registered with the Securities Commissioner as a securities dealer, which is currently effective.
3. Pursuant to Section 115.2(b) of the Rules and Regulations of the Texas State Securities Board ("Board Rules"), a dealer must file a Uniform Application for Securities Industry Registration or Transfer ("Form U-4") to register an officer or partner ("Designated Officer") in connection with the registration of the dealer. The Designated Officer must be a control person of the dealer who has completed the necessary registration and examination requirements. If the Designated Officer resigns or is otherwise removed from his or her position with the dealer, then the dealer must file a Form U-4 with the Securities Commissioner to register another qualified Designated Officer within 30 days.

4. Pursuant to Section 115.4(a) of the Board Rules, a certificate of registration is issued to each registered securities dealer reflecting the dealer's Designated Officer.
5. Pursuant to Section 115.4(b)(1) of the Board Rules, any changes in the information reflected on the certificate of registration must be submitted to the Securities Commissioner within thirty (30) days of such change by the registered securities dealer, in order that amendments may be made to the certificate of registration. The fee for such submission to amend the certificate of registration is Twenty-Five Dollars (\$25.00).
6. On or about December 31, 2003, the registration with the Securities Commissioner of Respondent's Designated Officer, John Robert Heisley (CRD No. 2414057), was terminated.
7. From on or about January 31, 2004 to the present, Respondent has not had a qualified Designated Officer registered with the Securities Commissioner, and has not submitted to the Securities Commissioner the information concerning the change in its Designated Officer as reflected on its certificate of registration, with the fee.
8. On or about June 18, 2004, the staff of the Texas State Securities Board ("Staff") issued a letter to Respondent requesting submission of another qualified Designated Officer, and the fee to amend the certificate of registration. On or about August 27, 2004, the Staff issued a second request letter to Respondent.

UNDERTAKING

1. Respondent undertakes and agrees to file a Form U-4 application with the Securities Commissioner to register a qualified officer as required by Section 115.2(b) of the Board Rules, within thirty (30) days of the date of this Order.
2. Respondent further undertakes and agrees to submit in writing to the Securities Commissioner, any change in the information which is currently reflected on its certificate of registration, accompanied by the fee for amendment of its certificate of registration, within thirty (30) days of the date of this Order.

CONCLUSIONS OF LAW

1. Respondent's failure to file a Form U-4 application to register a qualified Designated Officer with the Securities Commissioner within thirty (30) days of the date that the previous Designated Officer resigned or was otherwise removed from their position with Respondent, constitutes a violation of Section 115.2(b) of the Board Rules.
2. Respondent's failure to submit to the Securities Commissioner within thirty (30) days, change in the Designated Officer information reflected on its certificate of registration, with such fee for amending the certificate of registration, constitutes a violation of Section 115.4(b)(1) of the Board Rules.

3. Pursuant to Section 14.A(6) of the Texas Securities Act, the foregoing violations of the Board Rules constitute bases for the issuance of an order reprimanding a registered securities dealer.
4. Pursuant to Section 23-1 of the Texas Securities Act, the foregoing violations of the Board Rules constitute bases for the issuance of an order assessing an administrative fine against a securities dealer.

ORDER

1. It is therefore ORDERED that E. S. Marks & Company, Inc. is hereby REPRIMANDED.
2. It is further ORDERED that E. S. Marks & Company, Inc. is hereby ASSESSED AN ADMINISTRATIVE FINE in the amount of One Thousand Five Hundred Dollars (\$1,500.00). Payment shall be made by delivery of a cashier's check to the Securities Commissioner in the amount of One Thousand Five Hundred Dollars (\$1,500.00), payable to the State of Texas, contemporaneously with the delivery of this Order.
3. It is further ORDERED that E. S. Marks & Company, Inc. COMPLY with the terms of the Undertaking contained herein.

SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this 24th day of November, 2004.

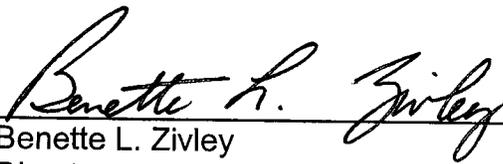

DENISE VOIGT CRAWFORD
Securities Commissioner

Respondent:

E. S. Marks & Company, Inc.


By: Eugene Anthony Profit, President

Approved as to Form:


Benette L. Zivley
Director
Inspections and Compliance Division

ACKNOWLEDGMENT

On the 16 day of November, 2004, E. S. Marks & Company, Inc. ("Respondent") a securities dealer, by and through Eugene Anthony Profit, its President, appeared before me, executed the foregoing Order and Undertaking, and acknowledged that:

1. Eugene Anthony Profit is duly authorized to enter into the foregoing Order and Undertaking on behalf of Respondent;
2. Eugene Anthony Profit has read the foregoing Order and Undertaking;
3. Respondent has been fully advised of its rights under the Texas Securities Act and the Administrative Procedure Act;
4. Respondent knowingly and voluntarily consents to the entry of the foregoing Order and Undertaking, and the Findings of Fact and Conclusions of Law contained herein; and,
5. Respondent, by consenting to the entry of the foregoing Order and Undertaking, has knowingly and voluntarily waived its rights as set forth therein.

[affix notary seal here]

Wanda Wilmore
Notary Public in and for
The State of Maryland

My commission

