

DENISE VOIGT CRAWFORD
SECURITIES COMMISSIONER



BETH ANN BLACKWOOD
CHAIR

JOHN R. MORGAN
DEPUTY SECURITIES COMMISSIONER

BRYAN K. BROWN
MEMBER

Mail: P.O. BOX 13167
AUSTIN, TEXAS 78711-3167

Texas State Securities Board

EDWARD ESCUDERO
MEMBER

Phone: (512) 305-8300
Facsimile: (512) 305-8310

208 E. 10th Street, 5th Floor
Austin, Texas 78701-2407
www.ssb.state.tx.us

DERRICK MITCHELL
MEMBER

E. WALLY KINNEY
MEMBER

IN THE MATTER OF THE
DEALER AND INVESTMENT ADVISER
REGISTRATION OF
MILKIE/FERGUSON INVESTMENTS, INC.

§
§
§
§

Order No. IC09-CAF-12

TO: Edward Milkie, President
Milkie/Ferguson Investments, Inc. (CRD #17606)
8750 N. Central Expressway, Suite 1700
Dallas, TX 75231

DISCIPLINARY ORDER

Be it remembered that Milkie/Ferguson Investments, Inc. ("Respondent"), by and through Edward Milkie, its President, appeared before the Securities Commissioner of the State of Texas ("Securities Commissioner") and consented to the entry of this Order and the Findings of Fact and 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 the Respondent by The Securities Act, TEX. REV. CIV. STAT. ANN. art. 581-1 et seq. (Vernon 1964 & Supp. 2008) ("Texas Securities Act"), and the Administrative Procedure Act, TEX. GOV'T CODE ANN. § 2001.001 et seq. (Vernon 2000 & Supp. 2008) ("Administrative Procedure Act").
2. On or about February 11, 1991, Respondent registered with the Securities Commissioner as a securities dealer and investment adviser, both of which are currently effective.
3. On or about January 27, 2004, Barbara Anne Boyce ("Boyce") registered with the Securities Commissioner as an agent of Respondent, which was terminated on or about March 2, 2009.
4. On or about June 15, 2006, Boyce registered with the Securities Commissioner as an investment adviser representative of Respondent, which was terminated on or about July 1, 2008.

5. From on or about March 12, 2007 to on or about March 14, 2007, the Staff of the Texas State Securities Board ("Staff") performed an inspection of the branch office of Respondent from which Boyce conducted business ("Branch Office")("Inspection").
6. During the course of the Inspection, Staff discovered that from on or about January 27, 2004 to on or about March 14, 2007, there were e-mail communications, correspondence, portfolio progress reports, website pages, and new account forms that were not approved by Respondent, which violated Respondent's written procedures, as follows, and Respondent failed to enforce such procedures:
 - A. "Advertisement. Any material, other than an independently prepared reprint and institutional sales material, that is published, or used in any electronic or other public media, including any web site,...or other periodical...All advertisements will be signed or initialed by the designated principal prior to first use...and kept in a file..."
 - B. "No representative will send correspondence or sales literature to any Customer unless it has been previously reviewed and approved by the CCO or DP."
 - C. "All outgoing correspondence including faxes, handwritten notes, e-mail, etc. should be reviewed and approved by the Branch DP prior to mailing or sending."
 - D. "Outgoing e-mail is drafted, printed, approved by the DP and then sent electronically to the customer."
 - E. "All new account forms must be signed by the Registered Representative. It will then be forwarded to the main office for the signature of the designated Branch DP or CEO."
7. During the course of the Inspection, Staff also discovered that from on or about January 27, 2004 to on or about March 14, 2007, Boyce used a prior employer's e-mail address and letterhead to communicate with clients and used advertising, stationary, and website pages that did not reference Respondent or Boyce's relationship with Respondent, which violated Respondent's written procedures, as follows, and Respondent failed to enforce such procedures:
 - A. "NO Registered Representative is authorized to communicate with any client with private email." *emphasis in original*
 - B. "Business cards/stationary for non-OSJ branch offices must prominently display the OSJ or main office address and telephone number."

8. During the course of the Inspection, Staff also discovered that from on or about July, 2004, to on about September, 2007, Boyce sold eleven clients notes issued by HR Financial Services, Inc., a Texas corporation, ("HR Notes"), that had not been registered with the Securities Commissioner pursuant to the Texas Securities Act, and facilitated such transactions without notice to or approval of the outside business activity by Respondent, which violated Respondent 's written procedures, as follows, and Respondent failed to enforce such procedures:
 - A. "No registered representative will effect any security transaction directly or indirectly outside the scope of the firm without: 1) notifying the firm in writing of the proposed security transaction, and 2) receiving written permission from the firm."
 - B. "No representative will sell...any applicable security unless the Firm has entered into a selling agreement with the issuer or has otherwise agreed to act as a participant...or the CCO or DP has previously approved such activity in writing."
 - C. "No person will act as an investment advisor except in transactions incidental to his activities for the Firm unless the CCO or DP has previously granted written permission..."
9. During the course of the Inspection, Staff also discovered that from on or about March, 2005, to on or about June 15, 2006, Boyce provided investment advisory services on behalf of Respondent without first being registered with the Securities Commissioner as an investment adviser representative.
10. During the course of the Inspection, Staff also discovered that from on or about April 17, 2006 to on or about March 14, 2007, Boyce retained a client's original stock certificate in her possession, which violated Respondent's written procedures, as follows, and Respondent failed to enforce such procedures:
 - A. "The Firm cannot take possession of customer funds and securities except to promptly forward them to the clearing firm, mutual fund, issuer or other broker/dealer. Promptly forward means no later than noon of the next business day."
 - B. "No representative will act as a trustee or custodian of money, securities, warrants or stock powers for any Customer, unless he(she) has received prior written approval from the CCO or DP."
 - C. "No representative will offer or agree to hold...possession of any security...on behalf of the Customer."
11. During the course of the Inspection, Staff also discovered that Boyce made the following unsuitable recommendation, which did not match the client's investment objectives, age, risk tolerance, and income levels, and Respondent approved such recommendation:

- A. On or about June 6, 2006, Boyce recommended an elderly client with a low risk tolerance, fixed income of less than \$25,000 a year, and stated concerns regarding income, margin a portion of her Exxon Mobil stock at an interest rate of 9.2% in order to invest in HR Notes paying interest of 12%.
12. During the course of the Inspection, Staff also discovered that from on or about October 2, 2007 to on or about June 18, 2008, Boyce indicated on her website that she was a Certified Financial Planner (“CFP”) when she had not been authorized to use the CFP designation since October 2, 2007, and Respondent did not require Boyce update her website.
 13. Respondent failed to perform audit and branch office reviews of the Branch Office as required by their written procedures, as follows, and the sole audit performed on August 5, 2005 was inadequate as it failed to note violations later discovered in the Inspection:
 - A. “The branch office will be reviewed on an annual basis by the home office to determine the branch’s compliance with the firm’s and regulators rules and procedures.”
 14. As of March 2, 2009, Respondent had not disclosed on Boyce’s Form U-4 the outside business activity related to the HR Notes or accurate employment history, both required by the Form U-4, which is a violation of Respondent’s written procedures, as follows:
 - A. “Whenever information changes, the RR will promptly notify the firm of the change. The firm will then amend the Form U-4 within 30 days receipt of notice.”
 15. Pursuant to §115.10(b)(1) of the Rules and Regulations of the State Securities Board (“Board Rules”), a dealer is required to establish, maintain, and enforce written procedures to supervise the activities of its agents that are reasonably designed to achieve compliance with the Texas Securities Act and Board Rules.
 16. Pursuant to §101.2(c) and §133.33(a)(3) of the Board Rules, certain forms required to be filed with the Securities Commissioner, including the Form U-4, have been adopted as Board Rules.
 17. Pursuant to §115.9(a)(6) and §116.9(a)(6) of the Board Rules, each dealer and investment adviser registered with the Securities Commissioner must report to the Securities Commissioner any change in information previously disclosed to the Securities Commissioner within thirty (30) days of such change.
 18. Pursuant to Section 14.A(3) of the Texas Securities Act, the Securities Commissioner may reprimand a person registered under the Texas Securities Act if the person has engaged in any inequitable practice in the sale of securities or in rendering services as an investment adviser.

19. Pursuant to Section 14.A(5)(b) of the Texas Securities Act, the Securities Commissioner may reprimand a person registered under the Texas Securities Act if the person has engaged in rendering services as an investment adviser in this state through a representative who is not registered to perform services for that investment adviser.
20. Pursuant to Section 14.A(6) of the Texas Securities Act, the Securities Commissioner may reprimand a person registered under the Texas Securities Act if the person has violated any of the provisions of the Texas Securities Act or Board Rules.
21. Pursuant to Section 23-1 of the Texas Securities Act, the Securities Commissioner may assess an administrative fine against any person found to have engaged in an act or practice that violates the Texas Securities Act or Board Rules.

CONCLUSIONS OF LAW

1. Respondent's failure to enforce its written supervisory procedures is a violation of §115.10(b)(1) of the Board Rules.
2. Respondent's failure to enforce its written supervisory procedures is an inequitable practice in rendering services as an investment adviser, which constitutes a basis for the issuance of an order reprimanding an investment adviser pursuant to 14.A(3) of the Texas Securities Act.
3. Respondent's failure to adequately supervise an agent and investment adviser representative is an inequitable practice in the sale of securities and in rendering services as an investment adviser, which constitutes a basis for the issuance of an order reprimanding a dealer or investment adviser pursuant to Section 14.A(3) of the Texas Securities Act
4. Respondent's providing investment advisory services through a representative who was not registered to perform such services for Respondent constitutes a basis for the issuance of an order reprimanding an investment adviser pursuant to Section 14.A(5)(b) of the Texas Securities Act.
5. Respondent's failure to disclose required information on Boyce's Form U-4 is a violation of §115.9(a)(6) and §116.9(a)(6) of the Board Rules.
6. Pursuant to Section 14.A(6) of the Texas Securities Act, the foregoing violations constitute bases for the issuance of an order reprimanding a registered dealer or investment adviser.
7. Pursuant to Section 23-1 of the Texas Securities Act, the foregoing violations constitute bases for the issuance of an order assessing an administrative fine against a person found to have engaged in an act or practice that violates the Texas Securities Act or Board Rules.

ORDER

1. It is therefore ORDERED that Milkie/Ferguson Investments, Inc. is hereby REPRIMANDED.
2. It is further ORDERED that Milkie/Ferguson Investments, Inc. is ASSESSED AN ADMINISTRATIVE FINE in the amount of Twenty-Five Thousand Dollars (\$25,000.00). Payment shall be made by delivery of a cashier's check to the Securities Commissioner in the amount of Twenty-Five Thousand Dollars (\$25,000.00), payable to the State of Texas, contemporaneously with the delivery of this Order.
3. It is further ORDERED that Milkie/Ferguson Investments, Inc. COMPLY with the terms of the Undertaking incorporated by reference herein.

SIGNED AND ENTERED by the Securities Commissioner this 19th day of May, 2009.


DENISE VOIGT CRAWFORD
Securities Commissioner

Respondent:

Milkie/Ferguson Investments, Inc.

Edward M. Milkie

Edward Milkie, President

Approved as to Form:

Benette L. Zivley

Benette L. Zivley
Director
Inspections and Compliance Division

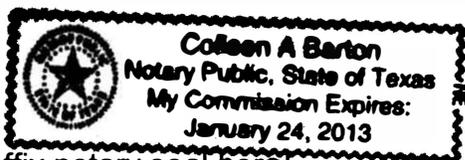
Will Montgomery

Will Montgomery
Attorney for Respondent

ACKNOWLEDGMENT

On the 18 day of MAY, 2009, Milkie/Ferguson Investments, Inc. ("Respondent"), by and through Edward Milkie, its President, appeared before me, executed the foregoing Order and acknowledged that:

1. Edward Milkie is duly authorized to enter into the foregoing Order on behalf of Respondent;
2. Edward Milkie has read the foregoing Order;
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 the Findings of Fact and Conclusions of Law contained therein; and,
5. Respondent, by consenting to the entry of the foregoing Order, has knowingly and voluntarily waived its rights as set forth therein.



[affix notary seal here]

Colleen A Barton
Notary Public in and for
the State of TEXAS

My commission expires on: 1/24/2013