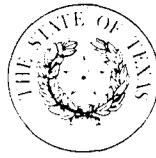


DENISE VOIGT CRAWFORD
SECURITIES COMMISSIONER



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JOSE ADAN TREVINO
MEMBER

DOCKET NO. 312-98-0717
(SSB 98-021)

IN THE MATTER OF THE DENIAL
OF THE AGENT REGISTRATION OF
WILLIAM JACK HAWKINS

§
§
§

ORDER NO. DOR-1358

TO: William Jack Hawkins
3405 Winding Creek Drive
Austin, Texas 78735

ORDER DENYING AGENT REGISTRATION

STATEMENT OF THE CASE

A Notice of Hearing was directed to William Jack Hawkins ("Respondent") on April 22, 1998, for the purpose of determining whether the Respondent's application for registration as an agent should be denied. Following a hearing, the Administrative Law Judge ("ALJ") issued a proposal for decision ("PFD") on October 21, 1998, which was subsequently amended on January 19, 1999.

The Securities Commissioner, after consideration of the amended PFD, adopts the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On or about January 19, 1998, Josephthal & Co. Inc. ("Josephthal"), a securities dealer registered with the Securities Commissioner of the State of Texas ("Securities Commissioner"), acquired the Austin, Texas branch office of Crispin Koehler Securities ("Crispin"). Josephthal filed an application with the Securities Commissioner to register William Jack Hawkins ("Respondent") as an agent of Josephthal on February 24, 1998. The Staff of the State Securities Board ("Staff") conducted an investigative proceeding pursuant to Section 28 of the Texas Securities Act ("Act") on March 30, 1998.

2. On March 30, 1998, Respondent requested a hearing pursuant to Section 24.A of the Act to determine why his registration should not be granted.
3. On April 22, 1998, the Staff sent a Notice of Hearing to the Respondent by certified mail, return receipt requested, and to Respondent's attorney Roy Mouer by fax and certified mail, return receipt requested. The notice stated the time and place of the hearing, the legal authority and jurisdiction under which it was to be held, the particular sections of the statutes and rules involved, and the matters asserted.
4. The Staff sought to deny Respondent's application for registration and to impose an administrative fine against Respondent based on allegations that Respondent violated provisions of the Act and the Rules and Regulations of the State Securities Board ("Board Rules").
5. A hearing in this matter was held at the State Office of Administrative Hearings ("SOAH"), 1700 N. Congress Avenue, Suite 1100, Austin, Texas, on June 4, 5, and 8, 1998. Respondent appeared and was represented by Mr. Jim Parker. Staff appeared and was represented by Mr. Charles Neal and Ms. Sonia Mayo of the Enforcement Division of the State Securities Board.
6. Respondent was registered with the Securities Commissioner as a securities agent of the following securities dealers during the time periods indicated:
 - J.W. Gant & Associates, Inc. -- 11/20/90 - 7/22/92
 - Dickinson & Co. -- 7/15/92 - 8/6/92 and 9/18/92 - 2/24/95
 - Merrill Lynch, Pierce, Fenner & Smith -- 3/15/95 - 4/30/96
 - Rickel & Associates, Inc. ("Rickel") -- 5/10/96 - 4/18/97
 - Crispin Koehler Securities ("Crispin") -- 4/7/97 - 12/31/97 and 1/13/98 - 2/9/98.
7. Respondent was the branch manager of the Crispin branch office located at 100 Congress Avenue, Suite 900, Austin, Texas. Respondent was responsible for reviewing and approving new account forms and transactions for the office, supervising the office, and ensuring compliance with securities regulations.
8. On September 23, 1997, Joseph Ollie West, Respondent's 19 year-old nephew submitted a new account form to Respondent to open a securities brokerage account in his name at Crispin so that he could trade in options. Mr. West represented that his approximate annual income was \$100,000 and his net worth was \$150,000.
9. As a branch manager of Crispin, Respondent approved the new account form and Mr. West's ability to trade options, even though he knew that Mr. West's annual income was not \$100,000 and his net worth was not \$150,000.

10. Respondent submitted the new account form for approval to the registered options principal with Crispin without disclosing the falsity of the information. Mr. West's new account form for trading in options was approved by a registered options principal with Crispin.
11. Mr. West's new account form was maintained by Crispin.
12. Respondent began working at Josephthal after Josephthal acquired Crispin's Austin, Texas office on January 19, 1998. Between January 19, 1998, and February 19, 1998, Respondent instructed Josephthal agents to take indications of interest on Snowdance, Inc. stock in anticipation of its initial public offering ("IPO").
13. Respondent subsequently called a meeting of the agents who had taken indications of interest in the IPO. At the meeting, Respondent informed the agents that the IPO had been canceled. He instructed the agents to delay disclosure of the cancellation to allow any investor's money coming in to arrive. Respondent instructed the agents to encourage their clients to invest any money that arrived in other securities.
14. On March 23, 1998, Staff requested that Respondent appear for a sworn examination under Section 28 of the Act and that he produce, among other things, his "broker's book" used at Crispin. On March 30, 1998, Respondent appeared at the examination with his attorney, Roy Mouer. He produced his "broker's book," which consisted of 102 new account forms with the names, addresses, and telephone numbers of his customers redacted.
15. The Staff requested unredacted copies of all of the new account forms. Respondent and his attorney offered to provide ten unredacted account forms chosen at random by the Staff. The Staff advised Respondent that his failure to produce the requested documents was grounds for the Securities Commissioner to deny his application pursuant to Section 14.A.(7) of the Act. Respondent did not produce unredacted copies of all the new account forms.
16. On July 29, 1997, representatives of the Securities Commissioner attempted to conduct an on-site examination of the Crispin's Austin branch office. The Staff representatives were admitted into the office. Respondent gave the Staff representatives a tour of the office and told the Staff that dealer records were located in file cabinets in Mary Grove's office and in the agents' desks. Staff sought access to where the records were kept.
17. Respondent and Mr. Mouer, an attorney representing Crispin, offered to make a conference room available to the Staff and to bring documents that the Staff requested to the conference room. Respondent and Mr. Mouer refused the Staff direct access to where the records were kept. Respondent did not deny Staff access to Crispin's California office.

18. During the Staff's attempted examination of the Austin Crispin office on July 29, 1997, Respondent instructed the agents to conceal their cold call scripts, but he did not instruct any agents to destroy their cold call scripts. The cold call scripts were maintained.
19. Respondent sold 100 shares of Premier Technology Inc. stock belonging to Mark Sells and Jennifer Johnson on December 13, 1996, based on his understanding of Mark Sells' instruction.
20. Betty Vaughn began working at Crispin on May 8, 1997. She became registered to sell securities as an agent of Crispin on June 5, 1997. During the time Ms. Vaughn was not registered, Respondent held sales meetings in which he provided Ms. Vaughn with sales scripts and instructed her to solicit indications of interest on the AeroCentury IV secured note offering and to qualify investors for the offering by determining their annual income, net worth, and investment experience. During the period of time that Ms. Vaughn was not registered she solicited indications of interest in the AeroCentury IV offering. Respondent monitored Ms. Vaughn's solicitations and critiqued her performance.
21. Respondent failed to disclose to potential investors that Ms. Vaughn was not registered with the Securities Commissioner when she sold securities from May 8 to June 5, 1997.
22. Michael Windeguth began working at Crispin in August, 1997. He became registered to sell securities as an agent of Crispin on September 9, 1997. During the period of time Mr. Windeguth was not registered, he sold bonds to potential investors. Respondent instructed the other agents to listen to Mr. Windeguth while he was on the phone to learn from him. Respondent encouraged and permitted Mr. Windeguth to offer and sell bonds while he was not registered with the Securities Commissioner.
23. Respondent did not encourage Arnold Wells to sell or offer to sell securities at Crispin.
24. Joseph Ollie West began working at Crispin in May 1997. He was not registered with the Securities Commissioner as an agent of Crispin until November 5, 1997. During the period of time he was not registered, Respondent encouraged and permitted Mr. West to offer the AeroCentury IV secured note, the Church bond offering, and other stocks. During the time he was not registered, Mr. West qualified investors by determining their income, net worth, and investment experience.

25. Respondent agreed with the decision to allow Mark Elsea to work out of his home from September to December 1997. Crispin failed to register Mark Elsea's home as a branch office.
26. The Staff has incurred \$4,748.70 in court reporting fees in this proceeding as detailed in the Staff's Bill of Costs filed July 9, 1998.

CONCLUSIONS OF LAW

1. The State Securities Board has jurisdiction over this matter pursuant to Sections 14, 23-1, and 24 of the Texas Securities Act ("Act"), TEX. REV. CIV. STAT. ANN. art. 581-1 et seq. (Vernon 1964 & Supp. 1998).
2. The State Office of Administrative Hearings has jurisdiction over this matter pursuant to TEX. GOV'T. CODE ANN. §2003.021(b) (Vernon 1998).
3. Service of proper and timely notice of the hearing was effected upon Respondent pursuant to TEX. GOV'T CODE ANN. ch. 2001 (Vernon 1998) and 7 TEX. ADMIN. CODE (TAC) §105.2 (1998).
4. Qualifying potential investors with respect to their annual income, net worth, and investment experience, and soliciting indications of interest in and offering securities constitute "a sale" pursuant to Section 4.E of the Act. A person performing such acts must be registered with Securities Commissioner pursuant to Section 12 of the Act.
5. Based on Findings of Fact Nos. 8-10, 12-13, 20-22, and 24, Respondent engaged in inequitable practices in the sale of securities in violation of Section 14.A(3) of the Act.
6. Based upon Findings of Fact Nos. 8-10, 12-13, 20-22, and 24, Respondent engaged in fraudulent business practices in violation of Section 14.A(3) of the Act.
7. The Securities Commissioner may delegate authority to Staff.
8. Based on Findings of Fact Nos. 14-15, Respondent refused to furnish information deemed necessary by the Securities Commissioner or the Board to determine a dealer's financial responsibility or salesman's repute or qualifications in violation of Section 14.A.(7) of the Act.
9. Based on Findings of Fact Nos. 16-18, Respondent denied representatives of the Securities Commissioner immediate and free access to all records required to be maintained pursuant to Board Rules in violation of 7 TAC § 115.7(b).

10. Based on Findings of Fact Nos. 11 and 18, documents were maintained pursuant to 7 TAC § 115.5(a)(4)(C)(iii) and (vi) and Form 133.16.
11. Based on Finding of Fact No. 17, Respondent did not violate Form 133.16.
12. Based on Findings of Fact Nos. 20-22 and 24, Respondent violated Section 14.A.(5) of the Act when he knowingly caused Crispin to violate Section 14.A.(5) of the Act when it sold securities through unregistered salesmen.
13. Based on Findings of Fact No. 25, Respondent did not violate 7 TAC § 115.1(a)(5).
14. Based upon Conclusions of Law Nos. 5 and 6, Respondent is subject to discipline pursuant to Section 14.A.(3) of the Act.
15. Based upon Conclusion of Law No. 8, Respondent is subject to discipline pursuant to Section 14.A.(7) of the Act.
16. Based upon Conclusions of Law Nos. 9 and 12, Respondent is subject to discipline pursuant to Section 14.A.(6) of the Act.
17. Based upon the foregoing, Respondent is subject to discipline pursuant to Section 14.A of the Act.
18. The foregoing violations of Section 14.A.(3),(5),(6), and (7) of the Act constitute grounds for the issuance of an order to Respondent, pursuant to Section 23-1 of the Act, to pay an administrative penalty.
19. Expenses in the amount of \$4,748.70, incurred by Staff in bringing this proceeding are reasonable and should be assessed against the Respondent, pursuant to 7 TAC § 105.14 and 1 TAC § 155.43(e)(1)(1998).

MODIFICATIONS TO THE AMENDED PROPOSAL FOR DECISION

Technical errors in the proposed findings of fact and conclusions of law have been changed without being detailed below. Such non-substantive modifications include corrections for grammatical errors, clarifications for continuity of party references, and conforming citations to the format used by the State Securities Board. Substantive changes to conclusions of law are detailed below, along with a recitation of the specific reasons and legal bases for the changes.

Conclusion of Law No. 3

As submitted by the ALJ in the Amended PFD, proposed Conclusion of Law No. 3 read as follows:

Service of proper and timely notice of the hearing was effected upon Respondent pursuant to TEX. GOV'T CODE ANN. § 2003.1 (Vernon 1998) and 7 TEX. ADMIN. CODE (TAC) § 105.2 (1998).

It has been modified to correct the reference to the Texas Government Code. Chapter 2001 of the Texas Government Code is the authority for providing proper and timely notice of an administrative hearing, not § 2003.1. The legal basis for the change is found in TEX. GOV'T CODE ANN. §2001.058(e)(1), which allows a change if the ALJ did not properly apply or interpret applicable law.

Conclusions of Law Nos. 14-18

As submitted by the ALJ in the Amended PFD, proposed Conclusion of Law No. 14 read as follows:

Based upon Conclusions of Law Nos. 5 and 6, Respondent's application for registration should be granted, except that his registration should be suspended for two years with such suspension probated, pursuant to §14.A.(3) of the Securities Act.

As submitted by the ALJ in the Amended PFD, proposed Conclusion of Law No. 15 read as follows:

Based upon Conclusion of Law No. 8, Respondent's application for registration should be granted, except that his registration should be suspended for two years with such suspension probated, pursuant to §14.A.(7) of the Securities Act.

As submitted by the ALJ in the Amended PFD, proposed Conclusion of Law No. 16 read as follows:

Based upon Conclusions of Law Nos. 9 and 12, Respondent's application for registration should be granted, except that his registration should be suspended for two years with such suspension probated, pursuant to §14.A.(6) of the Securities Act.

As submitted by the ALJ in the Amended PFD, proposed Conclusion of Law No. 17 read as follows:

Based upon the foregoing, Respondent's registration should be suspended for two years with such suspension probated, during which time Respondent shall not act

in any supervisory capacity at any securities dealer. He shall also make all records available upon request by the Securities Board and be subject to random inspections by the Staff.

As submitted by the ALJ in the Amended PFD, proposed Conclusion of Law No. 18 read as follows:

The foregoing violations of §14.A.(3), (5), (6), and (7) of the Act constitute grounds for the issuance of an order to Respondent pursuant, to §23-1 of the Texas Securities Act, to pay an administrative penalty of \$40,000.

Conclusions of Law Nos. 14-17 have been changed to state that based upon the specified conclusions, Respondent is subject to discipline pursuant to Section 14.A. of the Act. The finding of the ALJ that the Respondent should be subject to a sanction of suspension and probation is a "recommendation," not a "conclusion of law." Section 14.A of the Texas Securities Act clearly requires that the Securities Commissioner, rather than an ALJ, make the determination to "... deny, revoke, or suspend a registration, place on probation a dealer, agent, or salesman whose registration has been suspended, or reprimand a person registered..." under the Act. While there appears to be no prohibition for the ALJ, as the official who conducted the hearing, to *recommend* a sanction or range of sanctions for violation of the Act, the ALJ is not authorized to make such a *determination*. Such a recommendation, not being a conclusion of law, should not appear in the Conclusions of Law section of the PFD.

Conclusion of Law No. 18 has been changed to delete the fine recommended by the ALJ to be imposed on Respondent pursuant to Section 23-1 of the Act. As stated above, an ALJ's recommendation regarding a sanction should be in the form of a recommendation, not a conclusion of law. Section 23-1 clearly requires that the Securities Commissioner, rather than an ALJ, make the determination to "... issue an order which assesses an administrative fine against any person or company found to have violated any provision of this Act, Board rule, or Board order." The Securities Commissioner has determined that a fine is not an appropriate sanction in this case.

The legal basis for the changes in Conclusions of Law Nos. 14-17 is found in Government Code §2001.058(e)(1): the ALJ did not properly apply or interpret the applicable law, being Section 14 of the Act. Final decision authority for actions arising out of the Texas Securities Act rests with the Securities Commissioner, pursuant to Sections 3 and 14 of the Act.

The legal basis for the change in Conclusion of Law No. 18 is found in Government Code §2001.058(e)(1): the ALJ did not properly apply or interpret the applicable law, being Section 23-1 of the Act. The authority to assess an administrative fine for violation of the Act or Board Rules rests with the Securities Commissioner, pursuant to Sections 3 and 23-1 of the Act.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Securities Commissioner concludes that the Respondent has violated Board Rule 115.7(b) (7 TAC §115.7(b)) and Section 14.A.(3), (5), (6), and (7) of the Texas Securities Act, TEX. REV. CIV. STAT. ANN. art. 581-1 *et seq.*, providing grounds for sanctions under Sections 14 and 23-1 of the Act. An order should be issued denying the agent registration of Respondent, assessing an administrative fine, and assessing the costs of the proceeding.

IT IS THEREFORE ORDERED pursuant to TEX. REV. CIV. STAT. ANN. art. 581-14, that the registration of WILLIAM JACK HAWKINS is hereby DENIED.

It is further ORDERED pursuant to 7 TAC 105.14, that expenses of the proceeding be ASSESSED against Respondent in the amount of \$4,748.70. Payment shall be made by delivery of a cashier's check to the Securities Commissioner in the amount of Four Thousand Seven Hundred Forty-Eight Dollars and Seventy Cents (\$4,748.70), payable to the State of Texas, for reimbursement of Agency expenses, within 15 days after this order becomes final.

SIGNED and ENTERED BY THE SECURITIES COMMISSIONER this 15th day of April, 1999.


DENISE VOIGT CRAWFORD
Securities Commissioner