



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)
)
ELITE INVESTMENT ADVISORS, LLC,)
CRD No. 118389; and BRIAN T. BINGHAM) Case No.: AP-16-49
CRD No. 4530526,)
)
Respondents.)

CONSENT ORDER

SUMMARY OF ENFORCEMENT SECTION’S ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division of the Office of Secretary of State (“Enforcement Section”), through the Director of Enforcement, Sandra J. McDowell, has alleged that Respondents Elite Investment Advisors, LLC (“Elite”) and Brian T. Bingham (“Bingham”) violated Missouri securities laws by: (a) failing to file required financial reports as to Elite; (b) engaging in dishonest and unethical practices as to Elite and Bingham; and (c) engaging in prohibited conduct in providing investment advice as to Elite and Bingham. This constitutes grounds to issue an order pursuant to Section 409.6-604, RSMo. (2016)¹.
2. Respondents and the Enforcement Section desire to settle the allegations and matters raised by the Enforcement Section relating to the Respondents’ alleged violations of Sections 409.4-411(b), 409.412(d)(13), and 409.5-502.

CONSENT TO JURISDICTION

3. Respondents and the Enforcement Section stipulate and agree that the Missouri Commissioner of Securities (“Commissioner”) has jurisdiction over the Respondents in these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, *et seq.*

¹ Unless otherwise noted, all statutory references are to the 2016 Revised Statutes of Missouri.

4. Respondents and the Enforcement Section stipulate and agree that the Commissioner has authority to enter this Order pursuant to Section 409.6-604(h), which provides:

“The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act.”

WAIVER AND EXCEPTION

5. Respondents waive Respondents’ right to a hearing with respect to this matter.
6. Respondents waive any rights that Respondents may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondents specifically forever release and holds harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner, and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter.
7. Respondents stipulate and agree with the Enforcement Section that, should the facts contained herein prove to be false or incomplete in a material way, the Enforcement Section reserves the right to pursue any and all legal or administrative remedies at its disposal.

CONSENT TO COMMISSIONER’S ORDER

8. Respondents and the Enforcement Section stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
9. Respondents agree not to take any action or to make or permit to be made any public statement creating the impression that this Order is without factual basis. Nothing in this paragraph affects Respondents’ (a) testimonial obligations; (b) right to take legal or factual positions in connection with litigation, arbitration, regulatory review or other legal proceedings in which the Commissioner is not a party; or (c) right to make public statements that are factual.
10. Respondents agree that Respondents are not the prevailing party in this action since the parties have reached a good faith settlement.
11. Respondents neither admit nor deny the allegations made by the Securities Division, but consent to the Commissioner’s Findings of Fact, Conclusions of Law, and Order as set forth below solely for the purposes of resolving this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.

12. Respondents are settling this matter to close this proceeding without any further cost or expense. All issues through the date of this Consent Order have been resolved with Respondents, and the current investigation with the Enforcement Section related to this matter is being closed with this Consent Order.

COMMISSIONER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

I. FINDINGS OF FACT

13. Elite is a Missouri registered investment adviser since November of 2001, and has an address of 382-H Autumn Creek Drive, Manchester, Missouri 63088. Elite is registered in Missouri through the Central Registration Depository (“CRD”) with number 118389.
14. Bingham has been a Missouri registered investment adviser representative with Elite since November of 2001, and maintains a business address of 382-H Autumn Creek Drive, Manchester, Missouri 63088. Bingham is registered in Missouri through the CRD with number 4530526.
15. A Ballwin, Missouri resident (“MR1”), who was 63 years-old when MR1 became acquainted with Bingham in or around October 2014, by attending an investment course entitled “Preserving Capital and Making It Grow,” which was taught by Bingham at St. Louis Community College in Saint Louis, Missouri. The investment course used the *Investor's Business Daily* stock selection model for capital conservation and growth, founded by Bill O’Neill as part of a beginning investment course.
16. In December 2014, MR1 transferred \$589,233.59 to an IRA that was to be managed by Elite. MR1’s suitability form stated that the investment objectives were growth and income, with a conservative risk tolerance. MR1’s anticipated withdrawals were set to begin on or around February 1, 2017.
17. The spouse of MRI, another Missouri resident (“MR2”), who was 60 years-old at the time, also invested through Bingham. MR2 transferred \$143,216.82 to an IRA that was to be managed by Elite. MR2’s stated investment objectives were growth and income, also with a conservative risk tolerance. At the time of transfer, MR2 had been retired since August 2013. MR1 and MR2’s combined investments totaled \$732,450.71.
18. Elite’s Investment Advisory Agreement required Bingham to have discretionary management of MR1 and MR2’s IRA accounts as is customary for all Elite’s customer accounts.

19. Not long after MR1 and MR2 transferred funds to Elite, the accounts began to decline in value. Within four and one-half months of the account inceptions, the combined accounts declined a total of less than 9%, a total of \$62,392.58. Bingham invested in 67 stocks in MR1 and MR2's portfolios in about a four and one-half month period of time. Month-end cash levels in the accounts ranged from 52% in cash to 93% in cash.
20. Part of MR1 and MR2's losses stemmed from Bingham's management fees, which were not waived in spite of the decline in account values. Of the \$62,392.58 decline in the investments, \$13,309.78 consisted of Elite's management fees.
21. According to information received during the course of the investigation, accounts for MR1 and MR2 were not performing in tandem with the S&P 500 during the period December 2014, through April 2015 ("Relevant Period"). Had Bingham invested MR1 and MR2 in the S&P 500, or a similar investment vehicle, MR1 and MR2 would have experienced gains in their portfolios rather than losses over that particular four and one-half month period.
22. Prior to making the investment, Bingham failed to disclose to MR1 and MR2, among other things:
 - a. that while his investment course may have indicated it was a conservative approach to investing, Bingham's trading methodologies were inconsistent with a conservative approach; and
 - b. that Elite does not make all financial disclosures for generally accepted accounting principles ("GAAP") on his financial statements.
23. On June 22, 2016, the Enforcement Section conducted an on-the-record ("OTR") statement of Bingham. On that day Bingham testified, among other things, that:
 - a. Bingham attempts to craft his trading methodologies around Bill O'Neill, founder of *Investor's Business Daily* and numerous other investment professionals;
 - b. At that time, Bingham did not have any active investment accounts of his own;
 - c. Bingham was aware that his management fees added to the losses for his clients;
 - d. his investment course is entitled, "Preserving Capital and Making It Grow," Bingham's management approach is to invest strictly in stocks;
 - e. Bingham only manages investment accounts on a discretionary basis;
 - f. Bingham does not consider himself a financial planner so he does not have a formal system in place to determine if he is looking at a client's entire financial picture;
 - g. Bingham is aware of his fiduciary duty to his clients;

- h. Bingham did not ask MR1 and MR2 to change their suitability forms to reflect conversations that addressed how much downside risk Bingham believed MR1 and MR2 were willing to tolerate;
 - i. Bingham uses the same investment approach for all investors, regardless of a client's age, investment history, risk tolerance, and station in life;
 - j. if a client wants Bingham to manage money, that client must give Bingham complete control of all buy and sell decisions;
 - k. Bingham only invests in stocks and will rarely, if ever, offer products from any other asset class;
 - l. Bingham considers trading as a necessary way to minimize downside risk;
 - m. Bingham charges his full fees to clients, even if those clients' portfolios consist entirely of cash as disclosed in Elite's Form ADV;
 - n. Bingham does not know of anyone in Missouri who charges similar fees to their clients;
 - o. Bingham does not have any performance-based fees; and
 - p. Bingham's accountant is not independent of Elite.
24. On January 29, 2016, the Examinations Section of the Missouri Securities Division ("Exams Section") conducted an examination of Elite, in which financial statements were requested for review. The Exams Section found the accountant for Elite was a Certified Public Accountant (CPA) but was not independent and that the accountant did not audit or review Elite's Financial Statements. The accountant stated that he only compiled financial statements and did not express an opinion regarding compliance with Generally Accepted Accounting Principles ("GAAP") as required by law.
25. Bingham's Form ADV Part 2 states:
- a. "We are a trading oriented firm, and do not believe in large diversified portfolios";
 - b. "We use various criteria to generate buy and sell decisions, and at some times the accounts may be completely in cash in an effort to avoid downside risk and at other times may be fully invested";
 - c. Elite and Bingham tailor their services only to the extent that clients may choose either a margin account, IRA or other retirement or type of cash account;

- d. Bingham offers Investment Education Services including the “Preserving Capital and Make it Grow Series”;
- e. Bingham and Elite use the following investment strategies:
 - i. Fundamental Analysis — “gathering and processing data on individual companies which are believed to be indicators of potential growth in stock price”;
 - ii. Charting Analysis — gathering and processing of price and volume information for a particular security, using mathematical equations to analyze the data and applying it to graphic charts to predict future price movements based on patterns and trends; and
 - iii. Technical Analysis — studying past price patterns and trends in the financial markets to predict the direction of both the overall market and specific stocks. **“The risk of market timing based on technical analysis is that charts may not accurately predict future price movements...”** **“[C]hanges in market prices of securities may follow random patterns and may not be predictable with any reliable degree of accuracy”** [emphasis added];
- f. “We may use short-term trading (in general, selling securities within 30 days of purchasing the same securities, at times even exiting a position the day it is purchased if market conditions warrant) as an investment strategy when managing your account(s) **when we determine that it is suitable given your stated investment objectives and risk tolerance.** This may include buying and selling securities frequently in an effort to capture significant market gains and avoid significant losses during a volatile market. However, **frequent trading can negatively affect investment performance,** particularly through increased brokerage and other transactional costs and taxes” [emphasis added];
- g. “[W]e believe we are able to achieve better results than a simple buy-and-hold-approach. We believe that while less-time consuming, a buy and hold approach is far riskier for most to employ”; and
- h. “In general, the longer your time horizon, the better chances for success.”

II. CONCLUSIONS OF LAW

- 26. The Commissioner finds that Respondents failed to file required financial reports in violation of Section 409.4-411(b); engaged in dishonest and unethical practices in violation of Section 409.4-412(d)(13); and engaged in prohibited conduct in providing investment advice in violation of Section 409.5-502, and this conduct constitutes grounds to issue and order and discipline Respondents pursuant to Section 409.6-604(a).

27. The Commissioner, after consideration of the stipulations set forth above and on the consent of Respondents and the Securities Division, finds and concludes that the Commissioner has jurisdiction over Respondents and this matter and that the following Order is in the public's interest, necessary for the protection of public investors and consistent with the purposes intended by Chapter 409.

III. ORDER

NOW, THEREFORE, it is hereby Ordered that:

28. Respondents, their agents, employees and servants, and all other persons participating in the above-described violations with knowledge of this Order are permanently enjoined and restrained from violating Sections 409.4-411(b), 409.4-412(d)(13); and 409.5-502.
29. Respondents are hereby CENSURED.
30. Respondents shall:
- a. amend Elite's Form ADV along with any related disclosure documents, its new account client suitability form, and its investment advisory agreement in form reasonably satisfactory to the Enforcement Section, to reflect a trading and volatility management style with a five-year time horizon for all clients, all pre-approved by the Enforcement Section prior to the effective date of this Consent Order; and
 - b. engage, for a period of no less than 24 months following the date of the execution of this Consent Order, a securities industry consultant satisfactory to the Enforcement Section to oversee all Elite documentation and procedures to remain in compliance with all applicable securities laws, all pre-approved by the Enforcement Section prior to the effective date of this Consent Order.
31. Respondents shall provide to the Enforcement Section within 30 days of the effective date of this Consent Order:
- a. Elite's amended forms described above; and
 - b. confirmation of hiring a securities industry consultant that will be overseeing all Elite documentation and procedures for the next 24 months, along with the credentials and contact information of said consultant.

32. Respondents shall provide written confirmation of compliance to the Enforcement Section in the form of an Affidavit that states: (1) Respondents have complied with hiring a compliance consultant; (2) Respondents have maintained that compliance consultant for the 24-month period of time referenced in paragraphs 30 and 31; and (3) Respondents have maintained financial statements in accordance with GAAP over the same 24-month period of time. This Affidavit shall be provided to the Enforcement Section during the month of February 2020 along with supporting documentation that is not unacceptable to the Enforcement Section.
33. Respondents shall pay, jointly and severally, restitution in the amount of \$20,000. This amount shall be paid in four installments of \$5,000. The first installment shall be paid no later than June 1, 2018. The second installment shall be paid no later than December 1, 2018. The third installment shall be paid no later than June 1, 2019. The fourth and final installment shall be paid no later than December 2019. These payments shall be made payable to the Missouri Secretary of State's Investor Restitution Fund and sent to the Missouri Securities Division at 600 West Main Street, Jefferson City, Missouri 65101. The Commissioner will take reasonable and necessary actions to distribute such funds to the investors.
34. Respondents shall pay, jointly and severally, \$15,000 to the Investor Education and Protection Fund. This amount shall be suspended provided Respondents comply with the terms of this Consent Order and Respondents do not violate the Missouri securities laws for a period of five years from the date of execution of this Consent Order. This suspended amount shall become due immediately upon the sooner of (1) Respondent's noncompliance with the terms of this Consent Order, or (2) a finding, after notice and opportunity for a hearing, by the Commissioner or a court of competent jurisdiction, that Respondent has violated the Missouri Securities Act. Such immediately due payments shall be in addition to all other penalties then available under the law. The payment shall be made payable to the Missouri Investor Education and Protection Fund and sent to the Missouri Securities Division at 600 West Main Street, Jefferson City, Missouri 65101.
35. Respondents shall pay, jointly and severally, \$2,700.00 for the cost of this investigation. This amount shall be suspended provided Respondents comply with the terms of this Consent Order and Respondents do not violate the Missouri securities laws for a period of five years from the date of execution of this Consent Order. This suspended amount shall become due immediately upon the sooner of (1) Respondent's noncompliance with the terms of this Consent Order, or (2) a finding, after notice and opportunity for a hearing, by the Commissioner or a court of competent jurisdiction, that Respondent has violated the Missouri Securities Act. Such immediately due payments shall be in addition to all other penalties then available under the law. The payment shall be made payable to the Missouri Investor Education and Protection Fund and sent to the Missouri Securities Division at 600 West Main Street, Jefferson City, Missouri 65101.

36. After five years from the date of this Consent Order, provided Respondents have complied with all terms of this Consent Order, all suspended payments referenced in paragraphs 34 and 35 above shall be waived.
37. Respondents shall pay their own costs and attorneys' fees with respect to this matter.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,
MISSOURI THIS 30th DAY OF JANUARY, 2018.



JOHN R. ASHCROFT
SECRETARY OF STATE

David M. Minnick
DAVID M. MINNICK
COMMISSIONER OF SECURITIES

Consented to by:

THE ENFORCEMENT SECTION OF THE
MISSOURI SECURITIES DIVISION

SJ McDowell
Saundra J. McDowell
Director of Enforcement
Counsel for Petitioner

ELITE INVESTMENT ADVISORS, LLC

By: Brian T. Bingham
Brian T. Bingham, Manager

Brian T. Bingham
Brian T. Bingham, Individually

RESPONDENTS