ADMINISTRATIVE PROCEEDING

BEFORE THE

SECURITIES COMMISSIONER OF SOUTH CAROLINA

IN THE MATTER OF:)
)
)
Advantage Advisory Services, Inc.,)
and)
Kenneth J. Pujdak,)
)
)
Respondents.)

NOTICE OF INTENT TO SEEK DENIAL OF PENDING
APPLICATIONS FOR REGISTRATION AS AN INVESTMENT ADVISER AND AN INVESTMENT ADVISER
REPRESENTATIVE

File Number 06041

The Securities Division of

6. Respondents have approximately seventy-five clients for whom they have discretionary authority to invest client funds in securities.

7. Most of Respondents' clients are either retired or approaching retirement.

8. Respondents manage less than $25 million in assets.

9. Respondent Advantage is not exempt under S.C. Code Ann. § 35-1-403(b) from registration as an investment adviser.

10. Respondent Pujdak is not exempt under S.C. Code Ann. § 35-1-404(b) from registration as an investment adviser representative.

11. Effective on or about June 23, 2004, Respondent Advantage initially registered in South Carolina as an investment adviser with the Division.

12. Respondent Advantage's registration as an investment adviser in South Carolina remained effective from the date of its initial registration through December 31, 2006.

13. Respondent Advantage has not been registered in South Carolina as an investment adviser since the expiration of its registration on December 31, 2006.

14. In 2006, Respondent Pujdak and Richard E. Benich ("Benich") were investment adviser representatives employed by or associated with Respondent Advantage. Each gave investment advice to clients regarding securities or managed client accounts or portfolios.

15. On or about December 4, 2006, as part of the 2007 registration process, Respondent Advantage completed its Form ADV Part I on the web site of the National Association of Securities Dealers.

16. On December 6, 2006, the Division received a letter and certain other documents from Regulatory Compliance, a company presumably hired by Respondent Advantage to assist Respondents in their registration for 2007. The other documents included Form ADV Part II, including a Schedule F, a Balance Sheet for Respondent Advantage as of September 30, 2006, a copy of Respondent Advantage's surety bond with The Ohio Casualty Insurance Company, and a sample investment advisory contract used by Respondents.

17. On or about December 11, 2006, as part of the 2007 registration process as an investment adviser representative, Respondent Pujdak filed his Form U4, Uniform Application for Securities Industry Registration or Transfer, on the web site of the National Association of Securities Dealers.

18. The Division has no record of Benich filing an application to register as an investment adviser representative for 2007.

19. On January 4, 2007, the Division sent a letter via facsimile to Regulatory Compliance about the documents received on December 6, 2006. In this letter, the Division stated that

2

Respondent Advantage's application for registration was incomplete and requested certain identified information.

20. On January 5, 2007, Regulatory Compliance sent via facsimile a revised Form ADV Part II and the information requested by the Division on January 4, 2007.

21. On or about January 9, 2007, the Division noted that in item 8(C) of its revised Form ADV Part II Respondent Advantage stated that it had a material relationship with a related person at an accounting firm but that Respondent Advantage had not identified the related person nor described the relationship and the arrangement between Respondent Advantage and the related person. On or about January 9, 2007, and on January 17, 2007, the Division notified Regulatory Compliance by telephone that Respondent Advantage's Form ADV Part II was incomplete because of this missing information. Respondents have not provided this information to the Division.

22. On January 9, 2006, the Division sent a letter via facsimile to Respondents, copying Regulatory Compliance, requesting answers to eight listed questions that the Division had regarding Respondent Advantage's September 30, 2006, Balance Sheet and requesting that Respondents certify in writing that this Balance Sheet is accurate and complete. The Division made these requests pursuant to S.C. Code Ann. § 35-l-406(a)(2). Respondents have not provided the answers to these questions and the certification to the Division.

23. The sample investment advisory contract that Respondents provided to the Division on December 6, 2006, does not include Respondents' "credit spread" strategy in the "Investment Allocation" section of the contract. However, three contracts, provided to the Division by Respondents on or about November 27, 2006, between Respondents and their investment advisory clients included the "credit spread" strategy.

24. On April 19 and 20, 2006, the Division conducted an audit of the investment advisory activities of Respondents and began to evaluate Respondents' compliance with the Act and the related Regulations.

25. On May 1, 2006, the Division sent an Exam Summary Report to Respondents, which included eleven audit findings. Finding 4 stated that Respondents' client files did not contain adequate suitability information. The Division required Respondents to ensure that updated suitability information is maintained for each client.

26. On May 26, 2006, Respondents answered the audit findings by sending the Division a letter. Regarding Finding 4, Respondents stated that they had created a new suitability form and would use it for new clients and update the files of current clients as the current clients visited Respondents. Respondents' new suitability form is titled "Client Information."

27. At some point subsequent to the April 2006 audit, Respondents began using the Client Information form to gather information, including risk tolerance and investment objective, about clients.

28. In a statement to the Division on November 28, 2006, which was taken under oath, Respondent Pujdak stated that clients select their risk tolerance and investment objective on the Client Information form. However, Respondent Pujdak also stated that Respondents are

3

"silent" when a client selects the investment objective, implying that Respondents do not discuss with clients the meaning of the different investment objective categories or ensure that Respondents understand how each client interprets his selected investment objective.

29. In his November 28, 2006, statement, Respondent Pujdak said that about 85% of the time he buys the same securities for all clients.

30. In his November 28, 2006, statement, Respondent Pujdak said that about 25% of his clients are in his "credit spread" strategy, which involves buying and selling put options. In its revised Form ADV Part II, Respondent Advantage describes this "credit spread" strategy as "a risky investment approach that may lose value."

31. The Division's audit of the Respondents, the subsequent correspondence about the audit findings, and Respondents' applications for registration for 2007 reveal at least the following four (4) reasons to deny Respondents' applications for registration:

a. Respondents filed an application for registration for Advantage that was incomplete in a material respect or contained a statement that was false or
misleading in a material respect;
b. Respondents willfully failed to comply with the Act by failing to provide the additional information requested by the Division on January 9, 2007;
c. Respondents have engaged in dishonest or unethical practices in securities by recommending to clients the purchase, sale, or transfer of securities without
making a reasonable inquiry concerning the clients' investment objectives,
financial situation, and needs; and
d. Respondents have engaged in nondisclosure, incomplete disclosure, or deceptive
practices by not discussing investment objectives with each client.

32. Specifically, the following omissions make incomplete Respondent Advantage's 2007 application for registration and the following statement makes the application false or misleading in a material respect:

a. In its revised Form ADV Part II, Respondent Advantage did not identify the
related person with whom it is associated in an accounting firm nor did it describe
Advantage's relationship and arrangement with the related person;
b. Respondent Advantage failed to provide the additional information requested by
the Division on January 9, 2007, pursuant to S.C. Code Ann. § 35-l-406(a)(2);
and
c. Respondent Advantage provided an investment advisory contract on December 6,
2006, which is not the current contract being used by the Respondents and does
not include the "credit spread" strategy in the "Investment Allocation" section of
the contract.

33. Based on the above-stated facts, it is in the public interest to deny Respondent Advantage's application for registration as an investment adviser and Respondent Pujdak's application for registration as an investment adviser representative.

4

APPLICABLE LAW

34. Pursuant to S.C. Code Ann. § 35-1-102(15), an investment adviser is a person, including a corporation, that for compensation engages in the business of advising others as to the value of securities or the advisability of investing in, purchasing, or selling securities.

35. Pursuant to S.C. Code Ann. § 35-1-403(a), it is unlawful for a person to transact business as an investment adviser unless that person is registered under the Act as an investment adviser or is exempt from registration.

36. Pursuant to S.C. Code Ann. § 35-1-102(16), an investment adviser representative is an individual employed or associated with an investment adviser and who makes recommendations or otherwise gives investment advice regarding securities or manages accounts or portfolios of clients, or performs certain other investment-related activities.

37. Pursuant to S.C. Code Ann. § 35-1-404(a), it is unlawful for an individual to transact business as an investment adviser representative unless that individual is registered under the Act as an investment adviser representative or is exempt from registration.

38. Pursuant to S.C. Code Ann. § 35-1-406(a), investment advisers and investment adviser representatives must register with the Division by filing an application and a consent to service of process, passing one or more required examinations, and paying the fee required by statute and any reasonable filing fee imposed by the Securities Commissioner.

39. Pursuant to S.C. Code Ann.§ 35-l-406(a), the application for registration must contain:

a. The information or record required for the filing of a uniform application; and
b. Upon request by the Securities Commissioner, any other financial or other information or record that the Securities Commissioner determines is appropriate.

40. Pursuant to S.C. Code Ann. § 35-1-412(a), the Securities Commissioner may issue an order to deny an application for registration or condition or limit registration of an applicant to be an investment adviser or investment adviser representative if the Securities Commissioner finds the order to be in the public interest and S.C. Code Ann. § 35-1-412(d) authorizes the action.

41. Pursuant to S.C. Code Ann. § 35-1-412(d)(l), (2), and (13), a person may be disciplined under S.C. Code Ann.§ 35-1-412(a) if the person:

a. Has filed an application for registration in South Carolina under the Act which
was incomplete in any material respect or contained a statement that in light of the circumstances was false or misleading with respect to a material fact;
b. Has willfully violated or willfully failed to comply with the Act or a rule adopted
or order issued under the Act; or
c. Has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten years.

5

42. Pursuant to S.C. Code of Regulations 13-502(A), each investment adviser and investment adviser representative shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their businesses. Acts and practices that are contrary to these principles may constitute grounds for denial, suspension, or revocation of registration, imposition of administrative fines, or such other action authorized by statute.

43. Pursuant to S.C. Code of Regulations 13-502(A)(l), one such act or practice is recommending to a client to whom investment supervisory, management, or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished to the client after reasonable inquiry concerning the client's investment objectives, financial situation, and needs, and any other information known or acquired by the adviser after reasonable examination of the client's records as may be provided to the adviser.

44. Pursuant to S.C. Code ofRegulations 13-502(B), engaging in conduct such as non-disclosure, incomplete disclosure, or deceptive practices shall also be grounds for denial, suspension, or revocation of registration, imposition of administrative fines, or such other action authorized by statute.

NOTICE AND OPPORTUNITY FOR A HEARING

NOTICE is hereby given that the Respondents shall have thirty (30) days from the date of

receipt of this Notice of Intent to Seek Denial of Pending Applications for Registration as an

Investment Adviser and an Investment Adviser Representative to give written notice requesting a

hearing on the matters contained herein to Thresechia Navarro, Securities Division, Post Office

Box 11549, Columbia, South Carolina, 29211-1549. Within fifteen (15) days of receipt of a

written notice requesting a hearing, this matter will be scheduled for a hearing. Respondents

may then appear, with or without the assistance of an attorney, at the hearing to present

testimony, evidence, and argument relating to the matters contained herein. In the event such

written notice requesting a hearing is not received within the above-stated thirty (30) day period

of time, an order denying Respondents' applications for registration may be entered in this

proceeding with no further notice.

By seeking denial of Respondents' pending applications for registration as an investment

adviser and an investment adviser representative, the Division is not waiving any rights it may

6

have to pursue additional remedies available to it for the above or other violations of the Act

committed by either or both of the Respondents.

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Executed and entered, this the~ day of January, 2007.

7

By:
Tracy

~~ A eyers Ct ~~ Assistant °µÍø½ûÇø General
Securities Division

Rembert C. Dennis Building
1 000 Assembly Street
Columbia, S.C. 29201
(803) 734-4731