

STATE OF NEBRASKA
Department of Banking & Finance

In the Matter of)	
)	
Envision Investment Advisors, LLC)	
1065 North 115th Street, Suite 150)	FINDINGS OF FACT
Omaha, Nebraska; and)	CONCLUSIONS OF LAW
)	AND
Ryan M. Jindra)	ORDER TO SHOW CAUSE
1065 North 115th Street, Suite 150)	
Omaha, Nebraska; and)	
)	
RESPONDENTS.)	

THIS MATTER comes before the Nebraska Department of Banking and Finance (“DEPARTMENT”), by and through its Director, pursuant to its authority under the Securities Act of Nebraska, Neb. Rev. Stat. §§ 8-1101 to 8-1124 (Reissue 2007; LB 113, 2009) (the “Act”). Pursuant to Neb. Rev. Stat. § 8-1115 (Reissue 2007), the DEPARTMENT has investigated the acts of Envision Investment Advisors, LLC, 1065 North 115th Street, Suite 150, Omaha, Nebraska; and Ryan M. Jindra, 1065 North 115th Street, Suite 150, Omaha, Nebraska (collectively “RESPONDENTS”). Based upon its investigation, the DEPARTMENT hereby finds as follows:

FINDINGS OF FACT

1. Envision Investment Advisors, LLC (“ENVISION”) is a limited liability company organized and existing under the laws of the State of Nebraska. ENVISION has its principal place of business at 1065 North 115th Street, Suite 150, Omaha, Nebraska. ENVISION is an investment adviser registered with the Securities and Exchange Commission (“SEC”) and with the DEPARTMENT. ENVISION is notice

filed in approximately 30 states and has investment adviser representatives in approximately 20 states.

2. Ryan M. Jindra (“JINDRA”) is President and Chief Executive Officer of ENVISION. Prior to April 2008, JINDRA was also the Chief Compliance Officer for ENVISION. JINDRA is registered with the DEPARTMENT as an investment adviser representative of ENVISION.

3. ENVISION withdraws its advisory fees directly from the accounts of its clients. The clients have consented in writing to the withdrawal of the fees. ENVISION does not provide a copy of its invoice to the custodian at the same time that it sends a copy to the client. Therefore, ENVISION has custody of client funds and securities and subject to heightened financial and record keeping requirements for investment advisers with custody of clients’ funds and securities.

4. ENVISION contracts with broker-dealers to hold customer funds in custodial accounts. Prior to December 2008, ENVISION contracted with Fidelity Brokerage Services LLC (“Fidelity”). From April 2008 through April 2009, ENVISION contracted with Pershing Advisor Solutions LLC (“Pershing”). ENVISION currently contracts with TD Ameritrade, Inc. (“TD Ameritrade”).

5. On or about June 30, 2008, the DEPARTMENT, JINDRA and ENVISION entered into Findings of Fact, Conclusions of Law and Consent Order (“Consent Order”). JINDRA signed the Consent Order personally and as President of ENVISION. JINDRA and ENVISION consented to the entry of the Consent Order, which required ENVISION, among other requirements, to:

a. register in Nebraska as a state registered investment adviser and to comply with all rules and regulations governing the conduct of registered investment advisers in Nebraska for a period of three (3) years;

b. conduct an internal audit of the office of each affiliated investment adviser representative within one year of the effective date of the Consent Order and to provide the DEPARTMENT with copies of the audit reports within thirty (30) days of the date such reports were completed; and

c. notify the DEPARTMENT of any written or oral complaint received by it or any of its investment adviser representatives, regardless of their registration status in Nebraska, concerning its advisory activities within 72 hours of the receipt of the complaint.

6. In the Consent Order, ENVISION and JINDRA agreed that the DEPARTMENT could initiate administrative action it deemed necessary and appropriate in the public interest in the event that ENVISION and/or JINDRA failed to comply with the provisions of the Consent Order.

7. Pursuant to the terms of the Consent Order, the DEPARTMENT undertook an examination of ENVISION beginning on or about April 1, 2009. Between June 8 and 11, 2009, the DEPARTMENT and the SEC conducted a joint examination of ENVISION.

8. As of the examination in April 2009, ENVISION had not conducted any internal audits of the offices of its investment adviser representatives.

9. As of the date of this Order, the DEPARTMENT has not received any reports of internal audits conducted by, or on behalf of, ENVISION.

10. During the course of the April and June examinations, the DEPARTMENT requested that JINDRA, as president of ENVISION, produce certain records for examination. The specific records requested are detailed below.

11. The DEPARTMENT requested that JINDRA, as president of ENVISION, produce order tickets for trades placed in client accounts, reconciliations of the order tickets and trade confirmations and a listing of all clients in each of the model investment portfolios. JINDRA and ENVISION could not provide the requested documents.

12. During the examination in April 2009, the DEPARTMENT had JINDRA, as president of ENVISION, retrieve a file regarding management fees from the computer of William Clabaugh (“Clabaugh”), the former Vice President - Operations and Adviser Services Group for ENVISION. During the June examination, JINDRA, as president of ENVISION, was interviewed. JINDRA informed the DEPARTMENT and the SEC that he had deleted all other files on the computer of Clabaugh after the April examination.

13. ENVISION did not have, or could not produce for the DEPARTMENT, written contracts with all its clients.

14. The DEPARTMENT asked JINDRA, as president of ENVISION, to produce the statements from a bank account maintained at Wells Fargo Bank, NA (“Wells Fargo”), for the years of 2007 and 2008 for examination. JINDRA informed the DEPARTMENT that the statements had been destroyed. JINDRA obtained copies of the bank account statements from Wells Fargo and provided them to the DEPARTMENT at a later date.

15. The DEPARTMENT asked JINDRA, as president of ENVISION, to produce client statements. JINDRA was unable to provide client statements for accounts at Fidelity prior to April 2008.

16. The DEPARTMENT asked JINDRA, as president of ENVISION, to produce the correspondence file for ENVISION. JINDRA was unable to produce the ENVISION correspondence file for the DEPARTMENT to review during the examinations. During an interview, JINDRA, as president of ENVISION, informed the DEPARTMENT and the SEC that ENVISION did not archive its electronic mail messages and, once the messages are deleted, they cannot be retrieved. JINDRA also stated that he deletes electronic messages he receives after he has read them.

17. JINDRA, as president of ENVISION, informed the DEPARTMENT that ENVISION did not have a system in place which would allow ENVISION to monitor and review either paper or electronic correspondence sent to clients by investment adviser representatives at its remote locations.

18. DEPARTMENT and SEC examiners interviewed JINDRA, as president of ENVISION, during the joint examination. During the interview, JINDRA was asked to provide copies of all complaints received by ENVISION. JINDRA, as president of ENVISION, stated that ENVISION had not received any complaints from clients.

19. In reviewing email folders and other records maintained by ENVISION, examiners determined ENVISION had received several complaints from clients, both directly and through investment adviser representatives of ENVISION who had direct contact with the client. For example:

a. On or about December 12, 2008, Michael Albertson (“Albertson”), Tradewell Tax & Financial, LLC, Fort Wayne, Indiana, sent an email entitled “Formal Complaints” to JINDRA, Ryan Borer, Clabaugh and Tim Gordon. Albertson is registered in Indiana as an investment adviser representative of Tradewell Tax & Financial, LLC, and an investment adviser representative of USA Tax & Insurance Services, Inc. The complaints related to fees charged to Albertson’s client for service purportedly provided by ENVISION.

b. Beginning in November 2008, JINDRA received, and responded to, numerous electronic mail messages from Mary Ann Maloney (“Maloney”), Maloney and Associates, LLC, Lino Lakes, Minnesota. At the time of the communication, Maloney was registered in Wisconsin as an investment adviser representative of ENVISION. The communication addressed issues relating to the withdrawal of fees by ENVISION from accounts of certain clients of Maloney. Maloney forwarded her complaint to the DEPARTMENT in March 2009.

20. Daniel S. Michonski (“Michonski”), chief compliance officer for ENVISION from approximately July 17, 2008, until approximately December 4, 2008, stated in a Declaration to the SEC that, while employed at ENVISION, he was aware that more than one investment adviser representative of ENVISION had complained about inaccurate statements and about inaccurate or inappropriate fee withdrawals from client accounts. Michonski also stated that JINDRA had instructed him that complaints from clients and investment adviser representatives were not to be sent to the DEPARTMENT.

21. Neither ENVISION nor JINDRA informed the DEPARTMENT that ENVISION had received complaints from its clients or from its investment adviser representatives, as required by the Consent Order.

22. Neither ENVISION nor JINDRA provided the DEPARTMENT with copies of complaints that ENVISION had received from its clients or from its investment adviser representatives, as required by the Consent Order.

23. ENVISION filed financial statements with the DEPARTMENT pursuant to its registration. These financial statements were not prepared in conformity with generally accepted accounting principles; were not examined in accordance with generally accepted auditing standards; were not audited by an independent public accountant or an independent certified public accountant; and were not accompanied by an opinion of the accountant as to the report of financial position and by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity. JINDRA was responsible for the filing made by ENVISION.

24. ENVISION filed false and misleading financial statements with the DEPARTMENT. JINDRA was responsible for the filing made by ENVISION. For example:

a. The December 31, 2008 Balance Sheet provided to the DEPARTMENT includes checking and savings accounts of affiliated entities as assets of ENVISION.

b. The Net Income shown on the Profit & Loss Statement submitted by ENVISION for January through December 2008 differs from the Net Income

shown on the Balance Sheet as being added to the Equity Section of the December 31, 2008 Balance Sheet.

25. ENVISION is insolvent in that it cannot, and in the past has not been able to, pay its obligations when due. For example, the examinations revealed that:

a. Beginning in at least March 2007, ENVISION has had insufficient funds in its bank accounts to cover checks it has written and has incurred significant bank charges in connection with overdrafts.

b. Beginning in at least March 2007, ENVISION has had checks it has written returned by the bank in which its accounts are held due to insufficient funds in the account and has incurred significant bank charges in connection with returned checks.

c. As of May 1, 2009, ENVISION has an unpaid balance due on the lease of its offices in the amount of \$21,282.32.

d. Payments by ENVISION to employees and investment adviser representatives were frequently not paid on the date due.

e. The statement issued by Wells Fargo to ENVISION on or about September 12, 2008, shows a charge off of fees in the amount of \$234.06 and a "Closeout Chargeoff Credit" of \$7,793.27.

26. ENVISION charged management fees to clients which were excessive. JINDRA was responsible for the fee charges and withdrawals of payments of fees from client accounts made by ENVISION. For example, on or about November 6, 2008, ENVISION withdrew approximately \$203,996.83 from the accounts of clients custodied

with Fidelity. According to the management fee report for November 2008, ENVISION was entitled to fees in the amount of \$46,174.85.

27. ENVISION charged clients fees in a manner which was not authorized by the client advisory contract. JINDRA implemented fee charges on behalf of ENVISION.

For example:

a. In approximately January 2009, ENVISION sent a letter to clients regarding the fee billing in November 2008. According to the letter, accounts at Fidelity were billed two advisory fees. One billing was purportedly for the “normal monthly billing” and was calculated based on the value of the account on November 3, 2008. The second fee was “billed on the same day, and was calculated on a quarterly basis to cover November, December and January fees.” The client advisory contract did not authorize ENVISION to bill management fees on a quarterly basis in advance for services.

b. On or about April 30, 2009, ENVISION withdrew management fees for May services from accounts held at Pershing in the amount of \$10,894.52. Pershing informed ENVISION by letters dated January 12, 2009, and January 27, 2009, that Pershing was terminating its relationship with ENVISION and would not allow ENVISION to access client accounts after April 30, 2009. The April 30 withdrawal of fees occurred prior to the date authorized by the client advisory contract and was taken when ENVISION knew that its access to client accounts would be terminated prior to date on which May fees would be withdrawn under the terms of client advisory contract.

28. During the period August 2008 through October 2008, ENVISION made unauthorized withdrawals of at least \$427,600.00 from client accounts held at Fidelity. JINDRA was responsible for the withdrawals by ENVISION. ENVISION did not notify the clients of the withdrawals and did not obtain the approval of the clients for the withdrawals.

29. ENVISION transferred the excessive and unauthorized fees taken from client accounts to its own accounts and to bank accounts of JINDRA and his wife. In or around January 2009, JINDRA admitted to an ENVISION employee that he used the misappropriated client funds to buy a Cadillac Escalade for himself. JINDRA is responsible for the use and transfer of fees by ENVISION.

30. ENVISION posted a November 28, 2008 article from the Midlands Business Journal on its website, www.envisionadvisors.com. In the article, JINDRA is quoted as stating that ENVISION exceeded a goal of obtaining \$100 million in new assets under management in 2008.

31. According to its records, ENVISION had approximately \$51 million in assets under management in 2008. According to its most recent Form ADV, ENVISION has only approximately \$25 million under management.

CONCLUSIONS OF LAW

1. The DEPARTMENT has jurisdiction in this matter under the Act.
2. The Consent Order entered into between the DEPARTMENT, ENVISION and JINDRA effective June 30, 2008, does not prohibit the DEPARTMENT from issuing this Order.

3. Neb. Rev. Stat. § 8-1103(9)(a)(ii) (Reissue 2007) provides, in part, that the Director may revoke or suspend the registration of an investment adviser or an investment adviser representative, may impose a fine pursuant to Neb. Rev. Stat. § 8-1108.01(4) (Reissue 2007), and/or may bar an individual from the securities industry, if the person has willfully violated or willfully failed to comply with any provision of the Securities Act of Nebraska or any rule, regulation, or order adopted and promulgated pursuant to the Act.

4. Neb. Rev. Stat. § 8-1102(2)(a) (Reissue 2007) provides, in part, it shall be unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise, to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

5. The actions described in Findings of Fact Nos. 1 through 31, above, constitute engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in violation of Neb. Rev. Stat. § 8-1102(2)(a).

6. Neb. Rev. Stat. § 8-1102(2)(a) (Reissue 2007) provides, in part, it shall be unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise, to engage in dishonest or unethical practices.

7. The actions described in Findings of Fact Nos. 1 through 31, above, constitute engaging in dishonest or unethical practices, in violation of Neb. Rev. Stat. § 8-1102(2)(a).

8. Neb. Rev. Stat. § 8-1102(2)(a) (Reissue 2007) provides, in part, it shall be unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading in the solicitation of advisory clients.

9. The actions described in Findings of Fact Nos. 30 and 31, above, constitute making untrue statements of a material fact or to omit to state material facts necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading in the solicitation of advisory clients, in violation of Neb. Rev. Stat. § 8-1102(2)(a).

10. Neb. Rev. Stat. § 8-1103(7)(a) (Reissue 2007) provides, in part, that every registered investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the Director prescribes by rule and regulation or order.

11. Pursuant to the Consent Order, JINDRA and ENVISION were required to conduct an internal audit of the offices of each affiliated investment adviser representative within one year of the effective date of the Consent Order, provide the DEPARTMENT with copies of the audit reports within thirty (30) days of the date such

reports were completed, and notify the DEPARTMENT of any written or oral complaint received by it or any of its investment adviser representatives, regardless of their registration status in Nebraska, concerning its advisory activities within 72 hours of the receipt of a complaint.

12. The actions described in Findings of Fact No. 5, Nos. 8 and 9, and Nos. 18 through 22, above, constitute violations of the Consent Order entered by the DEPARTMENT pursuant to the Act on June 30, 2008.

13. 48 NAC 10.003.03 requires registered investment advisers with custody or possession of client securities or funds to keep copies of confirmations of all transactions effected by or for the account of any such client. 48 NAC 10.006 requires that such records be maintained for a period of at least five (5) years and be maintained and preserved in the appropriate office of the investment adviser for the first two years.

14. The actions described in Findings of Fact Nos. 10 and 11, above, constitute failing to maintain required books and records, in violation of Neb. Rev. Stat. § 8-1103(7)(a), 48 NAC 10.003.03 and 48 NAC 10.006.

15. 48 NAC 10.002 requires registered investment advisers to make and keep true, accurate and current, records including, but not limited to, all checkbooks, bank statements, canceled checks and cash reconciliations of the investment adviser; all written communications received and sent by the investment adviser relating to recommendations and advice, disbursement or delivery of funds or securities, or the placement or execution of any order to purchase or sell any security; and all written agreements entered into by the investment adviser with any client relating to the business of such investment adviser. 48 NAC 10.006 requires that such records be maintained for a period of at least five (5)

years and be maintained and preserved in the appropriate office of the investment adviser for the first two years.

16. The actions described in Findings of Fact No. 10 and Nos. 12 through 17, above, constitute failing to maintain required books and records, in violation of Neb. Rev. Stat. § 8-1103(7)(a), 48 NAC 10.002 and 48 NAC 10.006.

17. 48 NAC 7.009.01 requires registered investment advisers with custody or possession of client securities or funds to file with the Director audited financial statements showing the assets, liabilities and net capital of the investment adviser as of the end of the investment adviser's fiscal year. Such financial statements are required to be examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles; audited by an independent public accountant or an independent certified public accountant; and accompanied by an opinion of the accountant as to the report of financial position, and by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity.

18. The actions described in Findings of Fact Nos. 3 and 23, above, constitute failing to file required financial statements with the DEPARTMENT, in violation of 48 NAC 7.009.01.

19. Neb. Rev. Stat. § 8-1113 (Reissue 2007) provides, in part, that it shall be unlawful for any person to cause to be made, in any document filed with the Director, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

20. The actions described in Finding of Fact No. 24, above, constitute making, or causing to made, a false statement in a document filed with the Director, in that ENVISION and JINDRA made false or misleading statements in financial statements filed with DEPARTMENT, in violation of Neb. Rev. Stat. § 8-1113.

21. Neb. Rev. Stat. § 8-1103(9)(a)(ii) (Reissue 2007) provides, in part, that the Director may revoke or suspend the registration of an investment adviser or an investment adviser representative, may impose a fine pursuant to Neb. Rev. Stat. § 8-1108.01(4) (Reissue 2007), and/or may bar an individual from the securities industry, if the investment adviser has failed to reasonably supervise its investment adviser representatives to assure their compliance with the Act.

22. The actions described in Finding of Fact No. 16, above, constitutes a failure by ENVISION to reasonably supervise its investment adviser representatives to assure their compliance with the Act, in violation of Neb. Rev. Stat. § 8-1103(9)(a)(ii). JINDRA, as president, is responsible for the actions of ENVISION in failing to supervise its investment adviser representatives.

23. Neb. Rev. Stat. § 8-1103(9)(a)(viii) (Reissue 2007) provides, in part, that the Director may revoke or suspend the registration of an investment adviser or an investment adviser representative, may impose a fine pursuant to Neb. Rev. Stat. § 8-1108.01(4) (Reissue 2007), and/or may bar an individual from the securities industry, if the person is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature.

24. Based on Finding of Fact No. 25, above, the Director hereby finds that ENVISION is unable to meet its obligations as they mature and become due and is, therefore, insolvent.

25. Neb. Rev. Stat. § 8-1103(9)(a)(vii) (Reissue 2007) provides, in part, that the Director may revoke or suspend the registration of an investment adviser or an investment adviser representative, may impose a fine pursuant to Neb. Rev. Stat. § 8-1108.01(4) (Reissue 2007), and/or may bar an individual from the securities industry, if the person has engaged in dishonest or unethical practices in the securities or commodities business.

26. 48 NAC 12.005.10 provides that it shall be a dishonest and unethical business practice for an investment adviser to charge a client an excessive advisory fee.

27. The actions described in Findings of Fact Nos. 26 and 28, above, constitute charging excessive advisory fees to clients, in violation of 48 NAC 12.005.10.

28. 48 NAC 12.005.06 provides that it shall be a dishonest and unethical business practice for an investment adviser to borrow money or securities from a client unless the client is a broker-dealer, an affiliate of the adviser, or a financial institution engaged in the business of loaning funds or securities.

29. The actions described in Findings of Fact Nos. 26 through 29, above, constitute borrowing money or securities from clients which are not broker-dealers, affiliates of the adviser, or financial institutions engaged in the business of loaning funds or securities, in violation of 48 NAC 12.005.06.

30. 48 NAC 12.005.18 provides that it shall be a dishonest and unethical business practice for an investment adviser to fail to disclose to any client or prospective

client all material facts with respect to a financial condition of the adviser that is reasonably likely to impair the ability of the adviser to meet contractual commitments to clients, if the adviser has custody over such client's funds or securities.

31. The actions described in Findings of Fact Nos. 22 through 31, above, constitute borrowing money or securities from clients which are not broker-dealers, affiliates of the adviser, or financial institutions engaged in the business of loaning funds or securities, in violation of 48 NAC 12.005.18.

32. 48 NAC 12.005.24 provides that it shall be a dishonest and unethical business practice for an investment adviser to engage in any act, practice, or course of business which is fraudulent, deceptive or manipulative.

33. The actions described in Findings of Fact Nos. 1 through 31, above, constitute engaging in any act, practice, or course of business which is fraudulent, deceptive or manipulative, in violation of 48 NAC 12.005.24.

34. The issuance of an Order to Cease and Desist is necessary in this matter and appropriate in the public interest and for the protection of investors, and is consistent with the purposes fairly intended by the policy and provisions of the Act.

ORDER TO SHOW CAUSE

IT IS THEREFORE ORDERED that Envision Investment Advisors, LLC, and Ryan M. Jindra shall appear before the Director, or his designated representative, to show cause why their registrations as an investment adviser and investment adviser representative, respectively, in Nebraska should not be revoked or suspended, why RESPONDENTS should not be permanently barred from conducting securities business in Nebraska under the Act, and/or why a fine, not to exceed \$25,000.00 per violation,

and/or the costs of the investigation incurred by the DEPARTMENT, including a reasonable amount for the time incurred by the DEPARTMENT staff, should not be imposed upon RESPONDENTS for violations of the Act or any rule, regulation, or order adopted and promulgated pursuant to the Act.

A hearing on this matter will be held at the office of the Department of Banking and Finance, Commerce Court, Suite 400, 1230 "O" Street, Lincoln, Nebraska, or at such other location as the Director may determine, on the 3rd day of September, 2009, at 9:30 a.m. CDT. Failure to appear at such time and place may result in a final order of revocation, a permanent bar from the securities industry in Nebraska, and/or the imposition of a fine and/or costs of investigation in this matter.

DATED this 1st day of July, 2009.

**STATE OF NEBRASKA
DEPARTMENT OF BANKING AND FINANCE**



By: _____

John Munn, Director

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