

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:

Jesse T. Hill
741 Sunset Boulevard
Palmyra, Nebraska

CRD # 6085813

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FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
CONSENT ORDER

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 8-1123 (Reissue 2012; Cum. Supp. 2016; Supp. 2017) (“Act”). Pursuant to Neb. Rev. Stat. § 8-1115 (Reissue 2012), the Department has investigated the acts of Jesse T. Hill, 741 Sunset Boulevard, Palmyra, Nebraska (CRD # 6085813) (“Hill”). As a result of such investigation, and being fully advised and informed in the matter, the Director and Hill enter into the following Findings of Fact, Conclusions of Law and Consent Order (“Order”).

FINDINGS OF FACT

1. JT Equity Trading, LLC (“JT Equity”) is a Nebraska limited liability company formed on April 10, 2013. At all times material hereto, Hill was the sole member of JT Equity. JT Equity operated a private, pooled investment fund (“Fund”) trading in options.

2. Hill is a resident of Nebraska. Hill was formerly registered as a broker-dealer agent of Princor Financial Services Corporation from 2012-13 and Onyx Financial Corporation in 2015.

3. Hill, on behalf of JT Equity, sold Pooled Investment Agreements (“Agreements”) to forty-seven investors, including forty-two Nebraska residents. In total, JT Equity raised over \$4 million from investors.

4. Pursuant to the terms of the Agreements, the investors' initial capital investments were pooled to form the Fund. The Agreements vested Hill, the Fund's manager, with sole authority to make trading decisions on behalf of the Fund.

5. The Agreements contained a "Returns Chart" which outlined the return that investors could receive from their investment in the Fund. The investors would receive the capital gains received by the Fund up to the percentage established in the Returns Chart.

6. According to the Agreements, Hill was to receive compensation based upon performance. As Fund's manager, Hill was entitled to receive any gains produced that were greater than those required to be credited to investors by the Returns Chart.

7. JT Equity entered into an agreement with Onyx Equity Traders, Inc., ("Onyx"). The moneys representing the Fund were deposited into Onyx's account at Interactive Brokers, Inc. ("Interactive"). JT Equity's deposits were credited to a subaccount in Onyx's account at Interactive. Hill had authority to execute trades and liquidate positions in this Onyx subaccount; however, Onyx retained the sole control over disbursements from this subaccount.

8. Interactive has represented to the Department that it was unaware that JT Equity's subaccount contained funds that had been obtained from individual investors. Upon learning of this fact, Interactive froze the account and prevented further trading. As of the date of this Order, JT Equity's funds remain in the subaccount at Interactive.

9. JT Equity also maintains bank accounts at two banks with branches located in Nebraska, which contain some investor funds.

10. At all times relevant hereto, the Agreements were not registered for sale in Nebraska, nor was any claim of exemption filed in Nebraska.

11. At all times relevant hereto, neither JT Equity nor Hill were registered as an investment adviser in Nebraska. In addition, neither Hill nor JT Equity has made the required filing to claim the exclusion from the definition of investment adviser as provided in 48 NAC 42.

CONCLUSIONS OF LAW

1. Neb. Rev. Stat. § 8-1101(15) (Supp. 2017) defines the term “Security” to include an investment contract.

2. In determining whether an instrument is an investment contract, Nebraska follows the test first established in *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293 (1946). *See, e.g., State v. Jones*, 235 Neb. 1, 4-5, 453 N.W.2d 447, 451 (1990). The elements of an investment contract are (1) an investment (2) in a common enterprise (3) with a reasonable expectation of profits (4) to be derived from the entrepreneurial or managerial efforts of others. *Id.*

3. The Agreements constitute securities, as defined by Neb. Rev. Stat. § 8-1101(15) (Supp. 2017), and are required to be registered or exempt from registration under Neb. Rev. Stat. § 8-1104 (Cum. Supp. 2016).

4. The facts recited in Findings of Fact No. 3 through No. 5 above, constitute the sale of unregistered securities.

5. Neb. Rev. Stat. 8-1101(7) (Supp. 2017) defines investment adviser as any person who for compensation engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who for compensation and as a part of a regular business issues or promulgates analyses or reports concerning securities. Investment adviser also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who

hold themselves out as providing the foregoing investment advisory services to others for compensation.

6. By advising the Fund regarding securities, Hill acted as an investment adviser and was required to be registered pursuant to Neb. Rev. Stat. § 8-1103 or operate pursuant to an available exemption or exclusion.

7. Neb. Rev. Stat. § 8-1108.01(4) (Supp. 2017) provides that the Director may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed twenty-five thousand dollars per violation, in addition to costs of the investigation, upon a person found to have engaged in any act or practice which would constitute a violation of the Act or any rule, regulation, or order issued under the Act.

8. Under the Act's statutory framework, the Director has legal and equitable authority to fashion significant protective remedies.

9. It is in the best interest of Hill, and it is in the public's best interest, for Hill and the Director to resolve the issues included herein.

STIPULATIONS

In connection with this Order, Hill and the Director stipulate to the following:

1. The Department has jurisdiction as to all matters herein.
2. An Order should be entered in this matter, which shall be in lieu of other proceedings by the Department against Hill, except as specifically referenced in this Order.

Hill further represents as follows:

1. Hill is aware of his right to a hearing on this Order at which he may be represented by counsel, present evidence, and cross-examine witnesses. The right to such a hearing and any related appeal on all matters covered by this Order, is irrevocably waived.
2. Hill is acting free from any duress or coercion of any kind or nature.
3. This Order is executed to avoid further proceedings and constitutes an admission of violations of the Act solely for the purposes of this Order and for no other purposes.

CONSENT ORDER

IT IS THEREFORE ORDERED as follows:

1. The transactions with each individual investor in the Fund shall be rescinded. Each investor's initial investment, plus a pro rata share of any profits since the investment shall be refunded to each investor as provided below.
2. The funds in the Onyx account at Interactive shall be transferred to a bank account acceptable to the Director no later than thirty days after the effective date of this Consent Order.
3. Hill shall prepare an accounting for the Fund showing the amount to be refunded to each investor and shall provide a copy of such accounting to the Director no later than thirty days after the effective date of this Order.
4. Hill shall make such refunds to investors and shall provide signed receipts or cancelled checks documenting each refund to the Director no later than sixty days after the effective date of this Order.
5. Hill shall not establish another pooled investment fund until ninety days after the date that Hill issues the refund checks to investors.

6. Should Hill elect to establish another pooled investment fund, Hill shall (a) register its securities with the Department or shall obtain the Department's approval of any exemption claim prior to offering securities for sale, (b) register as an investment adviser or receive the Department's approval of any exemption or exclusion from such registration requirement, and (c) receive the Department's prior approval of any disclosure document provided to potential investors.

7. Within ten days after the effective date of this Consent Order, Hill shall pay a fine of five thousand dollars (\$5,000.00) for his violations of the Act.

8. Within ten days after the effective date of this Consent Order, Hill shall pay the investigation costs of the Department in the amount of Two Thousand Five Hundred Dollars (\$2,500.00).

9. The total amount of the fine and investigation costs, Seven Thousand Five Hundred Dollars (\$7,500.00) shall be paid by one check payable to the Department within ten days after the effective date of this Consent Order.

10. The Director may in his sole discretion elect to extend the deadlines established in Paragraph No. 2 through 4 of this Consent Order if he determines that such extension is in the best interest of the investors in the Fund.

11. In the event Hill fails to comply with any of the provisions of this Consent Order, the Department may commence such action regarding Hill as it deems necessary and appropriate in the public interest.

12. The effective date of this Order will be the date of the Director's signature.

DATED this 9th day of October, 2018.

JESSE T. HILL

By: 

Jesse T. Hill

741 Sunset Boulevard
Palmyra, Nebraska 68418
(402) 369-3562

DATED this 11 day of Oct, 2018.

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

By: 

Mark Quandahl, Director

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Lincoln, Nebraska 68508
(402) 471-2171

