



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

Docket No. 16-013619

In the matter of:

Agency No. 328598

J-THADDEUS P. MCGAFFEY
CRD# 3263062

Applicant.

FINAL ORDER

1. This matter came before the Department of Licensing and Regulatory Affairs, Corporations, Securities & Commercial Licensing Bureau ("Department") under the Michigan Uniform Securities Act (2002), 2008 PA 551, as amended, MCL 451.2101 *et seq.* (the "Act"), and associated administrative rules.
2. The Director of the Corporations, Securities & Commercial Licensing Bureau, who is the Administrator of the Act (the "Administrator"), received the Proposal for Decision (the "PFD") in accordance with MCL 451.2412 and the Administrative Procedures Act, 1969 PA 306; MCL 24.201 *et seq.*
3. The Administrator considered the attached Findings of Fact and Conclusions of Law in the PFD of Erick Williams, Administrative Law Judge, dated June 2, 2016, Applicant's Exceptions, dated June 13, 2016, and the Corporations, Securities & Commercial Licensing Bureau Staff's Notice of Taking Notice of Specific Documents in the Record under MCL 24.277 filed on or about June 22, 2016.
4. The Administrator makes the following Findings of Fact and Conclusions of Law:
 - a. J-Thaddeus P. McGaffey ("Applicant") submitted an application in Michigan for registration as an investment adviser representative on or about January 19, 2016.
 - b. On September 24, 2015, the Financial Industry Regulatory Authority (FINRA) accepted a Letter of Acceptance, Waiver, and Consent from Applicant setting forth FINRA's findings that Applicant, while employed as a securities agent and investment adviser representative with Waddell & Reed, Inc., borrowed \$35,000.00 from a customer, contrary to Waddell & Reed, Inc.'s policy and FINRA Rules 3240 and 2010. Applicant failed to repay the loan, resulting in a customer complaint. Applicant neither admitted nor denied FINRA's findings, and FINRA suspended his FINRA membership from September 24, 2015, to

December 24, 2015, fining him \$5,000.00 and ordering him to repay the customer \$35,000.00 plus interest upon re-association with a broker-dealer.

- c. On or about December 9, 2015, after notice and opportunity for hearing and based on FINRA's regulatory action, the State of Kentucky issued a Final Order Denying Applicant's application for registration as an investment adviser representative, because he engaged in dishonest and unethical business practices related to the conduct described above, and because he had been the subject of an action of a self-regulatory organization suspending him from membership in the self-regulatory organization.
 - d. On or about January 19, 2016, Applicant falsely stated on his Michigan application for registration that he had not been the subject of an investment-related customer complaint that settled for more than \$15,000.00 on or after May 18, 2009, contrary to MCL 451.2412(4)(a).
 - e. On or about January 19, 2016, Applicant falsely stated on his Michigan application for registration that he had not been the subject of an order, issued after notice and an opportunity for hearing by a securities regulator of a state denying registration as a securities agent or investment adviser representative, contrary to MCL 451.2412(4)(a).
 - f. Based on issuance of the Kentucky Final Order Denying Applicant's application for registration as an investment adviser representative, Applicant is the subject of an order, issued after notice and an opportunity for hearing by a securities regulator of a state denying registration as an investment adviser representative, contrary to MCL 451.2412(4)(e)(i).
 - g. Based on the above referenced conduct, Applicant engaged in dishonest or unethical practices in the securities business within the previous 10 years, contrary to MCL 451.2412(4)(m).
5. The PFD also found that the Administrator was authorized to deny Applicant's registration application under MCL 451.2412(1) based upon violations of MCL 451.2412(4)(e)(i) and MCL 451.2412(4)(m) when she issued a Notice of Intent to Deny Investment Adviser Representative Registration Application on March 11, 2016, in this matter.
6. To the extent that the Findings of Fact and Conclusions of Law in the PFD do not conflict with the above, the PFD is incorporated by reference.

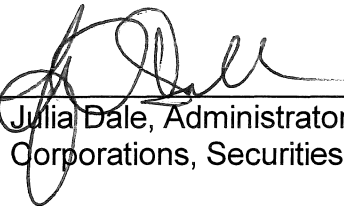
THEREFORE, IT IS ORDERED, that Applicant's Investment Adviser Representative Registration Application is **DENIED**.

This Final Order is effective immediately upon its mailing.

Given under my hand at Okemos, Michigan, this 18 day of

July, 2016.

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

By: 
Julia Dale, Administrator and
Corporations, Securities & Commercial Licensing Bureau Director

Date mailed: July 19, 2016

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

IN THE MATTER OF:**Docket No.: 16-013619**

**Corporations, Securities &
Commercial Licensing Bureau,
Petitioner**

Case No.: 328598

**Agency: Corp. Securities
Commercial Licensing
Bureau**

v

**J. Thaddeus P. McGaffey,
Respondent**

Case Type: Security Division**Filing Type: Sanction**

Issued and entered
this 2nd day of June, 2016
by:
Erick Williams
Administrative Law Judge

PROPOSAL FOR DECISION

BACKGROUND

On May 11, 2016, the Corporations, Securities & Commercial Licensing Bureau issued a complaint against Thaddeus McGaffey, under MCL 451.2412. A hearing convened under MCL 24.271 *et seq.* on May 31, 2016. Matthew K. Payok, Assistant Attorney General, represented the Corporations, Securities & Commercial Licensing Bureau. Mr. McGaffey participated. Mr. McGaffey and Brenda Schneider testified.

APPLICABLE LAW AND FINRA RULES

MCL 451.2412 reads:

(1) If the administrator finds that the order is in the public interest and subsection (4) authorizes the action, an order under this act may deny an application or condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, or director, or a person having a similar status or performing similar functions, or any person directly or indirectly in control of the broker-dealer or investment adviser.

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(2) If the administrator finds that the order is in the public interest and subsection (4) authorizes the action, an order under this act may revoke, suspend, condition, or limit the registration of a registrant and if the registrant is a broker-dealer or investment adviser, of a partner, officer, or director, or a person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser. However, the administrator may not do any of the following:

(a) Institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another state that is reported to the administrator or a designee of the administrator more than 1 year after the date of the order on which it is based.

(b) Under subsection (4)(e)(i) or (ii), issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which subsection (4) would authorize the action had the conduct occurred in this state.

(3) If the administrator finds that the order is in the public interest and subsection (4)(a) to (f), (i) to (j), or (l) to (n) authorizes the action, an order under this act may censure, impose a bar, or impose a civil fine in an amount not to exceed a maximum of \$10,000.00 for a single violation or \$500,000.00 for more than 1 violation on a registrant and, if the registrant is a broker-dealer or investment adviser, on a partner, officer, or director, a person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser.

(4) A person may be disciplined under subsections (1) to (3) if any of the following apply to the person:

(a) The person filed an application for registration in this state under this act or the predecessor act within the previous 10 years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the

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circumstances under which it was made, was false or misleading with respect to a material fact.

(b) The person willfully violated or willfully failed to comply with this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous 10 years.

(c) The person was convicted of any felony or within the previous 10 years was convicted of a misdemeanor involving a security, a commodity futures or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance.

(d) The person is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this act or the predecessor act, a state, the securities and exchange commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance.

(e) The person is the subject of an order, issued after notice and opportunity for hearing by any of the following:

(i) The securities or other financial services regulator of a state, or the Securities and Exchange Commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative.

(ii) The securities regulator of a state or the securities and exchange commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser.

(iii) The Securities and Exchange Commission or a self-regulatory organization suspending or expelling the registrant from membership in a self-regulatory organization.

(iv) A court adjudicating a United States postal service fraud.

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(v) The insurance regulator of a state denying, suspending, or revoking the license or registration of an insurance agent.

(vi) A depository institution or financial services regulator suspending or barring the person from the depository institution or other financial services business.

(f) The person is the subject of an adjudication or determination, after notice and opportunity for hearing, by the securities and exchange commission, the commodity futures trading commission, the federal trade commission, a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated the securities act of 1933, the securities exchange act of 1934, the investment advisers act of 1940, the investment company act of 1940, or the commodity exchange act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated.

(g) The person is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature. The administrator shall not enter an order against an applicant or registrant under this subdivision without a finding of insolvency as to the applicant or registrant.

(h) The person refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under section 411(4) or refuses access to a registrant's office to conduct an audit or inspection under section 411(4).

(i) The person has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous 10 years.

(j) The person has not paid the proper filing fee within 30 days after having been notified by the administrator of a deficiency. The administrator shall vacate an order under this paragraph when the deficiency is corrected.

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(k) After notice and opportunity for a hearing, 1 or more of the following have occurred within the previous 10 years:

(i) A court of competent jurisdiction has found the person to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated.

(ii) The person was found to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person.

(iii) The person was found to have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction.

(l) The person is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state.

(m) The person has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years.

(n) The person is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. If an application is made by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order shall not be based on this subdivision if the individual has successfully completed all examinations required by subsection (5). The administrator may require an applicant for registration under section 402 or 404 who has not been registered in a state within the 2 years preceding the filing of an application in this state to successfully complete an examination.

(5) A rule or order under this act may require that an examination, including an examination developed or

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approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order under this act may waive an examination as to an individual and a rule under this act may waive an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(6) The administrator may suspend or deny an application summarily, restrict, condition, limit, or suspend a registration, or censure, bar, or impose a civil fine on a registrant pending final determination of an administrative proceeding. On the issuance of the order, the administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that, within 15 days after the receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a hearing is not requested by a person subject to the order or is not ordered by the administrator within 30 days after the date of service of the order, the order is final. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(7) Except under subsection (6), an order shall not be issued under this section unless all of the following have occurred:

(a) Appropriate notice has been given to the applicant or registrant.

(b) Opportunity for hearing has been given to the applicant or registrant.

(c) Findings of fact and conclusions of law have been made on the record pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(8) A person who controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under subsections (1) to (3) to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care

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could not have known, of the existence of conduct that is a basis for discipline under this section.

(9) The administrator shall not institute a proceeding under subsection (1), (2), or (3) solely based on material facts actually known by the administrator unless an investigation or the proceeding is instituted within 1 year after the administrator actually knew the material facts. [2008 PA 551]

"FINRA Rule 3240, Borrowing From or Lending to Customers", (Financial Industry Regulatory Authority, 2010), accessed 31 May 2016 at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=9055, reads:

3240. Borrowing From or Lending to Customers

(a) Permissible Lending Arrangements; Conditions

No person associated with a member in any registered capacity may borrow money from or lend money to any customer of such person unless:

(1) the member has written procedures allowing the borrowing and lending of money between such registered persons and customers of the member;

(2) the borrowing or lending arrangement meets one of the following conditions:

(A) the customer is a member of such person's immediate family;

(B) the customer (i) is a financial institution regularly engaged in the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business and (ii) is acting in the course of such business;

(C) the customer and the registered person are both registered persons of the same member;

(D) the lending arrangement is based on a personal relationship with the customer, such that the loan would not have been solicited, offered, or given had the customer and

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the registered person not maintained a relationship outside of the broker-customer relationship; or

(E) the lending arrangement is based on a business relationship outside of the broker-customer relationship; and

(3) the requirements of paragraph (b) of this Rule are satisfied.

(b) Notification and Approval

(1) The registered person shall notify the member of the borrowing or lending arrangements described in paragraphs (a)(2)(C), (D), and (E) above prior to entering into such arrangements and the member shall pre-approve in writing such arrangements. The registered person shall also notify the member and the member shall pre-approve in writing any modifications to such arrangements, including any extension of the duration of such arrangements.

(2) With respect to the borrowing or lending arrangements described in paragraph (a)(2)(A) above, a member's written procedures may indicate that registered persons are not required to notify the member or receive member approval either prior to or subsequent to entering into such borrowing or lending arrangements.

(3) With respect to the borrowing or lending arrangements described in paragraph (a)(2)(B) above, a member's written procedures may indicate that registered persons are not required to notify the member or receive member approval either prior to or subsequent to entering into such borrowing or lending arrangements, provided that, the loan has been made on commercial terms that the customer generally makes available to members of the general public similarly situated as to need, purpose and creditworthiness. For purposes of this subparagraph, the member may rely on the registered person's representation that the terms of the loan meet the above-described standards.

(c) Definition of Immediate Family

The term "immediate family" means parents, grandparents, mother-in-law or father-in-law, husband or wife, brother or

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sister, brother-in-law or sister-in-law, son-in law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and any other person whom the registered person supports, directly or indirectly, to a material extent.

Supplementary Material:

.01 Record Retention. For purposes of paragraph (b)(1) of this Rule, members shall preserve the written pre-approval for at least three years after the date that the borrowing or lending arrangement has terminated or for at least three years after the registered person's association with the member has terminated.

"FINRA Rule 2010, Standards of Commercial Honor and Principles of Trade", (Financial Industry Regulatory Authority, 2010), accessed 31 May 2016 at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=5504, reads:

2010. Standards of Commercial Honor and Principles of Trade

A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

EXHIBITS

CSCLB Exhibit 1:	Michigan order, March 11, 2016, and attachments.
McGaffey Exhibit A:	Frieburger e-mail, August 20, 2015.

FINDINGS OF FACT

On January 19, 2016, Thaddeus McGaffey filed an application for registration as an investment advisor. Mr. McGaffey made several disclosures in connection with his application. However, the application is not in evidence. Accordingly, we do not know what questions he was asked and what statements he made.

One of the disclosures Mr. McGaffey made in connection with his January 19, 2016 application was a regulatory action by the Financial Industry Regulatory Authority (FINRA). The FINRA action involved a loan transaction.

Mr. McGaffey described the loan transaction as follows: In July 2013, he was working for Waddell and Reed, an investment firm. He operated the firm's Pinkney office. Mr. McGaffey took a loan from a customer, Elaine Woodworth, who lives in the Pinkney

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area and with whom he had a longstanding business relationship. He had plans to expand his office, and she agreed to lend him \$35,000. McGaffey testified that he told his district manager at Waddell and Reed, Terry Lindner, about the loan, and Lindner approved it. Subsequently, Mr. McGaffey failed to pay back the loan on schedule. In about December 2014, he and Ms. Woodworth and her lawyer worked out a payment plan. McGaffey is complying with the payment plan. The loan is about half paid off.

According to Brenda Schneider, an analyst for the Michigan Corporations Securities and Commercial Licensing Bureau (CSCLB), Ms. Woodworth complained to Waddell and Reed when Mr. McGaffey fell behind on his payments, and Waddell and Reed reported the incident to FINRA. Waddell and Reed also reported to FINRA that, on September 16, 2013, Mr. McGaffey had certified to Waddell that he had no outstanding loans from customers.

FINRA took action against Mr. McGaffey and on September 24, 2015, Mr. McGaffey and FINRA entered into a consent agreement. The agreement reads in part:

J. Thaddeus Peter McGaffey ("McGaffey") entered the securities industry in 1999 as a general securities representative with a FINRA registered firm. In May 2013, he joined FINRA registered firm Waddell and Reed ("Waddell"), where he worked in the same capacity until August 1, 2014. McGaffey is not currently employed by a FIMRA registered firm, but remains subject to FINRA jurisdiction ...

McGaffey has no disciplinary history...

On July 31, 2013, shortly after joining Waddell, McGaffey entered into a loan agreement with his customer, EW, for \$35,000. McGaffey agreed to pay the customer on a monthly basis beginning October 2013.

FIMRA Rule 3240 prohibits representatives from borrowing money from their customers unless the firm has written procedures allowing for the lending, the relationship with the customer meets enumerated criteria, and the representative follows the requirements for notice and pre-approval of the lending arrangement.

Waddell's procedures only allowed lending among representatives and customers where the customer was a member of the representative's immediate family and the representative received pre-approval of the loan from

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specified management on a conflict waiver form. The customer McGaffey borrowed from was not an immediate family member, and he did not notify his firm of the loan or seek prior approval of it.

On September 16, 2013, less than two months later, McGaffey certified to Waddell that he had no outstanding loans from customers and had not borrowed from a customer in the last twelve months.

McGaffey failed to make payment on the loan in October 2013 as required, and did not make any payment until the customer negotiated an amended loan agreement through her attorney in November 2014.

By borrowing from a customer in contravention of firm policy and without firm pre-approval, McGaffey violated FINRA Rules 3240 and 2010. [Exhibit 1, pp 6-7]

Mr. McGaffey signed the consent agreement. He testified that he was misinformed and told by people at FINRA and at his then-employer, Caitlin John, that the consent agreement would not lead to any negative consequences.

On October 13, 2015, Mr. McGaffey filed an application to register as an investment adviser office in Kentucky. He planned to open an office in Kentucky.

Mr. McGaffey testified that the arrangements to open an office in Kentucky fell through, and he withdrew his Kentucky application.

On December 9, 2015, the Commonwealth of Kentucky denied the application based on the FINRA action and the Woodworth loan. According to the Kentucky order, Mr. McGaffey had been employed by Waddell & Reed from May 10, 2013 to August 1, 2014 as a broker-dealer agent and as an investment adviser representative. As of December 2015, he was working as an investment adviser for the firm of Caitlin John. The Kentucky order found in part as follows:

On or about July 31, 2013, McGaffey, while working at Waddell & Reed, borrowed thirty-five thousand dollars from an individual who was his customer/client.

On August 14, 2014, the customer/client filed a written complaint with Waddell & Reed stating that McGaffey had failed to repay the loan. On November 5, 2014, Waddell & Reed filed an amended U-5 which stated that based on its

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internal review, Waddell & Reed concluded that McGaffey borrowed funds from a firm customer without obtaining prior written permission as required by the firm's written policies. [Exhibit 1, pp 13-14]

Mr. McGaffey testified that he did not receive the December 9, 2015 Kentucky order. The December 9, 2015 Kentucky order indicates that it was being mailed certified, return receipt requested, to Mr. McGaffey at his Pinkney address, 5115 Windwood Ct, Pinkney, MI 48169. There is no return receipt in evidence.

Kentucky reported its December 9, 2015 order to the data base managed by FINRA on January 26, 2016.

Mr. McGaffey formed a new investment adviser firm, Integrity Investment Solutions, based in Michigan. On January 19, 2016, he submitted an application to register as an investment adviser for his firm. The application itself is not in evidence; we do not know exactly what statements Mr. McGaffey made in connection with the application.

CONCLUSIONS OF LAW

The CSCLB alleges that Mr. McGaffey's registration application should be denied for the following five reasons:

Customer Complaint: On his January 19, 2016 Michigan application McGaffey made a false statement that he has had no customer complaints against him, a violation of MCL 451.2412 (4) (a).

FINRA Suspension: On his January 19, 2016 Michigan application, McGaffey made a false statement that he has never been suspended by a securities regulatory organization, a violation of MCL 451.2412 (4) (a).

Disclosure of Kentucky Order: On his January 19, 2016 Michigan application, McGaffey made a false statement that he has not had a securities application denied by another state, a violation of MCL 451.2412 (4) (a).

Issuance of Kentucky Order: McGaffey's application was denied in Kentucky, a violation of MCL 451.2412 (4) (e) (i).

Unethical Practice: McGaffey engaged in dishonest or unethical practices, that is, he took a loan from a customer contrary to FINRA rules and Waddell & Reed policies, a violation of MCL 451.2412 (4) (m).

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The elements of fraud are as follows:

(1) That defendant made a material representation; (2) that it was false; (3) that when he made it he knew that it was false, or made it recklessly, without any knowledge of its truth and as a positive assertion; (4) that he made it with the intention that it should be acted upon by plaintiff; (5) that plaintiff acted in reliance upon it; and (6) that he thereby suffered injury. Each of these facts must be proved with a reasonable degree of certainty, and all of them must be found to exist; the absence of any one of them is fatal to a recovery. *Titan Insurance v Hyten*, 491 Mich 547, 555; 817 NW2d 562, 567-68 (2012), citing *Candler v Heigho*, 208 Mich 115, 121; 175 NW 141 (1919).

Customer Complaint: CSCLB alleges that on his January 19, 2016 Michigan application, Mr. McGaffey violated MCL 451.2412 (4) (a) when he made a false statement that he has had no customer complaints against him. The preponderance of the evidence establishes that the customer did indeed complain. The FINRA consent order, signed by Mr. McGaffey, contains an admission by Mr. McGaffey that the customer made a complaint. However, Mr. McGaffey's application is not in evidence. Without being able to study the exact representations made in the application, it is impossible to determine if they are false. The MCL 451.2412 (4) (a) charge (relating to the customer complaint) is unproven.

FINRA Suspension: CSCLB alleges that on his January 19, 2016 Michigan application McGaffey made a false statement that he has never been suspended by a securities regulatory organization, a violation of MCL 451.2412 (4) (a). This allegation has been disproved. Ms. Schneider testified that Mr. McGaffey disclosed the FINRA action in connection with his application.

Disclosure of Kentucky Order: CSCLB alleges that on his January 19, 2016 Michigan application McGaffey made a false statement that he has not had a securities application denied by another state, a violation of MCL 451.2412 (4) (a). Mr. McGaffey testified that he did not receive the December 9, 2015 Kentucky order. The December 9, 2015 Kentucky order was mailed certified, return receipt requested, to Mr. McGaffey at his Pinkney address, 5115 Windwood Ct, Pinkney, MI 48169. There is no return receipt in evidence. Given Mr. McGaffey's statement that he did not receive the Kentucky order, and given the absence of a certified mail receipt, there is not enough evidence to establish that Mr. McGaffey knew about the Kentucky order and therefore had a duty to disclose it. The MCL 451.2412 (4) (a) relating to the Kentucky order is not proven.

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Issuance of Kentucky Order: CSCLB alleges that since McGaffey's application was denied in Kentucky, his Michigan application can be denied under MCL 451.2412 (4)(e)(i). That allegation is proven simply with a copy of the Kentucky order. Mr. McGaffey is the subject of the order; it was issued after notice and an opportunity for hearing by the securities regulator of Kentucky. Proof of receipt is not necessary. The MCL 451.2412 (4) (e) (i) violation is established.

Unethical Practice: CSCLB alleges that McGaffey engaged in dishonest or unethical practices when he took a loan from a customer contrary to FINRA rules and Waddell & Reed policies. The CSCLB allegation is supported by the FINRA consent agreement that, "By borrowing from a customer in contravention of firm policy and without firm pre-approval, McGaffey violated FINRA Rules 3240 and 2010. FINRA Rule 2010 reads:

A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

Mr. McGaffey signed the consent agreement and thereby admitted that he engaged in an unethical practice. Mr. McGaffey testified that he signed the consent agreement and admitted to unethical conduct even though it was false only because he was told that it would not lead to any bad consequences. But that argument does not save Mr. McGaffey, since it was dishonest to sign a statement knowing it to be false. The MCL 451.2412 (4) (m) allegation has been established.

DECISION

The March 11, 2016 notice of intent to deny investment adviser representative registration application is affirmed.

EXCEPTIONS

Pursuant to MCL 24.281 and 2015 AACR R 792.10132, the parties may file exceptions to this proposal for decision within 21 days after the proposal for decision is issued and entered. An opposing party may file a response to exceptions within 14 days after exceptions are filed. All exceptions and responses must be filed with the Michigan Administrative Hearing System, P.O. Box 30695, Lansing, Michigan 48909-8195, and served on all parties to the proceeding.



Erick Williams
Administrative Law Judge