

**BEFORE THE COMMISSIONER
OF THE TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE**

**TENNESSEE DEPARTMENT OF
COMMERCE AND INSURANCE
SECURITIES DIVISION,**

Petitioner,

v.

**CLIFTON ALEXANDER *and*
HUGEROI.COM,**

Respondents.

DOCKET NO: 12.06-129948J

INITIAL ORDER

**PERTAINING TO ALLEGATIONS AGAINST
RESPONDENT CLIFTON ALEXANDER**

This matter was heard on September 3, 2015, in Nashville, Tennessee before Administrative Judge Mary M. Collier, assigned by the Secretary of State, Administrative Procedures Division ("APD"), to sit for the Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner"). The September 3, 2015, hearing addressed the allegations contained in the NOTICE OF HEARING AND CHARGES pertaining to Respondent Clifton Alexander. Charles S. Herrell and Jesse D. Joseph, Assistants General Counsel, represented the Petitioner, the Tennessee Department of Commerce and Insurance Securities Division ("TSD"). Neither Respondent was present for the hearing, nor was an attorney or representative present on either Respondent's behalf.

On September 18, 2015, TSD filed a proposed INITIAL ORDER. On October 26, 2015, TSD filed the Transcript from the hearing. Neither Respondent has filed anything since the September 3, 2015, hearing. In addition, since September 3, 2015, TSD has not set a new

pursuant to TENN. CODE ANN. § 4-5-309. The MOTION FOR DEFAULT was GRANTED with regard to Respondent Clifton Alexander and DENIED with regard to Respondent HUGEROI.COM.

In support of the motion for default, the Petitioner presented evidence demonstrating that the Respondent Clifton Alexander was personally served with notice of the hearing. Specifically, the Petitioner presented a packet of documents reflecting personal service on the Respondent Clifton Alexander of the following items by the Shelby County Sheriff's office:

1. a Letter from Assistant General Counsel Sarah Branch dated July 10, 2015, enumerating contents of document package and stating that the hearing is set for September 3, 2015, at 9:00 a.m.;
 2. a copy of the NOTICE OF HEARING AND CHARGES filed on May 14, 2015;
 3. a copy of the NOTICE OF WITNESSES AND EXHIBITS filed on May 14, 2015;
 4. a copy of the NOTICE OF INTENT TO INTRODUCE AFFIDAVIT filed on May 14, 2015;
 5. a copy of the MOTION TO CONTINUE HEARING filed on June 11, 2015;
 6. a copy of the ORDER OF CONTINUANCE AND RESETTING entered on June 15, 2015;
- and
7. a copy of the ORDER entered on July 1, 2015.

These documents were personally served by the Shelby County Sheriff's office on Respondent Clifton Alexander on August 14, 2015. (HRG Ex. 2). Personal service upon Respondent Clifton Alexander was legally sufficient in accordance with TENN. CODE ANN. § 4-5-307 and TENN. R. & REGS. 1360-4-01-.06. It is determined that the Petitioner properly served the NOTICE OF HEARING AND CHARGES on the Respondent Clifton Alexander in compliance with RULE 1360-04-01-.06 of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies, TENN. COMP. R. & REGS. ch. 1360-4-01-.06 (June 2004 (Revised)).

Respondent Clifton Alexander said that investors could expect to receive approximately three thousand two hundred dollars (\$3,200) per month as a return on their \$20,000 investment.

4. Based on these recommendations and representations, Mr. Taylor invested in the private investment club by wiring twenty thousand dollars (\$20,000) to HUGEROI.COM's bank account on April 28, 2008.

5. Mr. Taylor inquired about the status of his investment shortly following the wire transfer and, when he did not receive information, he demanded the return of his money.

6. Instead of investing Mr. Taylor's funds as Respondent Clifton Alexander represented, bank records indicate that Respondent Clifton Alexander used the funds to pay for his own personal expenses.

7. The HUGEROI.COM investments were not registered securities in Tennessee.

8. The Respondent Clifton Alexander sold a security in Tennessee to Mr. Taylor that was not registered with the TSD to be sold in Tennessee.

9. Respondent Clifton Alexander was not registered with the TSD to engage in the offering and selling of securities from or in Tennessee.

CONCLUSIONS OF LAW

1. In accordance with RULES 1360-04-01-.02(7) and 1360-04-01-.15(3), the Petitioner has proven by a preponderance of the evidence that the facts alleged in the NOTICE OF HEARING AND CHARGES pertaining to Respondent Clifton Alexander are true and that the issues raised therein should be resolved in its favor.

2. The Tennessee Supreme Court has held that "[t]he appropriate test for defining an 'investment contract' under Tennessee law is the *Hawaii Market* test . . ." *King v. Pope*, 91 S.W.3d 314, 322 (Tenn. 2002). Under this test, an investment contract is a security if the

7. It is determined that the proof adduced at trial provides adequate grounds for the imposition of a civil penalty on Respondent Clifton Alexander in the amount of seven thousand five hundred dollars (\$7,500) for the sale of the unregistered security to Mr. Taylor.

8. It is unlawful for any person to transact business from or in this state as a broker-dealer or agent unless such person is registered as a broker-dealer or agent under the Act. TENN. CODE ANN. § 48-1-109(a). In addition, it is unlawful for any person to transact business from or in this state as an investment adviser or investment adviser representative unless such person is registered as an investment adviser or investment adviser representative under the Act. TENN. CODE ANN. § 48-1-109(c).

9. TSD has shown by a preponderance of the evidence that Respondent Clifton Alexander recommended for sale, offered to sell, and sold a security in Tennessee without being registered under the Act to recommend, offer to sell, or to sell securities in Tennessee.

10. Respondent Clifton Alexander's offer to sell and sale of a security without being registered with the TSD to engage in the offering and selling of securities from or in Tennessee and the rendering of investment advisory services without being registered to provide such services from or in Tennessee provides adequate grounds for the imposition of a civil penalty on Respondent Clifton Alexander not to exceed ten thousand dollars (\$10,000) per violation under TENN. CODE ANN. § 48-1-109(e). It is determined that the proof adduced at trial provides adequate grounds for the imposition of a civil penalty on Respondent Clifton Alexander in the amount of seven thousand five hundred dollars (\$7,500) for not being registered to offer or sell securities at the time of the sale.

11. It is unlawful for any person, in connection with the offer or sale of any security

15. TSD has shown by a preponderance of the evidence that there are adequate grounds for the imposition of a civil penalty on Respondent Alexander not to exceed five thousand dollars (\$5,000) per violation. TENN. CODE ANN. § 48-1-121(d). It is determined that the proof adduced at trial provides adequate grounds for the imposition of a civil penalty on Respondent Clifton Alexander in the amount of five thousand dollars (\$5,000) for committing securities fraud.

IT IS THEREFORE ORDERED that:

1. The Respondent Clifton Alexander shall fully **COMPLY** with the Act, and all rules promulgated thereunder.

2. The Respondent Clifton Alexander shall **BE PERMANENTLY BARRED** from any conduct as a broker-dealer, agent of a broker-dealer, investment adviser, or investment adviser representative from or in the State of Tennessee.

3. The Respondent Clifton Alexander shall **BE PERMANENTLY BARRED** from conducting securities transactions on behalf of others from, in, or into the State of Tennessee.

4. All persons in any way assisting, aiding, or helping the Respondent Clifton Alexander in any of the aforementioned violations of the Act shall **CEASE AND DESIST** all such activities in violation of the Act.

5. The Respondent Clifton Alexander shall pay **CIVIL PENALTIES** as deemed warranted by the evidence as presented: seven thousand five hundred dollars (\$7,500) for the sale of the unregistered security; seven thousand five hundred dollars (\$7,500) for not being registered to offer or sell securities at the time of the sale; and five thousand dollars (\$5,000) for committing securities fraud, for a total of civil penalties in the amount of twenty thousand dollars (\$20,000) for conduct prohibited by TENN. CODE ANN. §§ 48-1-104, 48-1-109 & 48-1-121.

APPENDIX A TO INITIAL ORDER
NOTICE OF APPEAL PROCEDURES

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, Nashville, Tennessee, 37243-1102. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.