



**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
FOR THE STATE OF TENNESSEE**

TENNESSEE SECURITIES DIVISION,)
)
 Petitioner,)
)
 v.)
)
 GIBSON GAITHER WEALTH)
 MANAGEMENT ADVISORS, LLC AND)
 MISTY WILLHOIT,)
)
 Respondents.)

APD No. 12.01-201539J
TSD No.: 20-036

AGREED ORDER

The Securities Division of the Tennessee Department of Commerce and Insurance (“Division”), Gibson Gaither Wealth Management Advisors, LLC, and Misty Willhoit (collectively “Respondents”) agree to the entry and execution of this Agreed Order in accordance with Tennessee Code Annotated (“Tenn. Code Ann.”) § 48-1-116 of the Tennessee Securities Act of 1980 (“Act”), as amended, and Tenn. Code Ann. §§ 48-1-101 to 48-1-201, subject to the approval of the Commissioner of the Department (“Commissioner”).

I. PARTIES

1. Gibson Gaither Wealth Management Advisors, LLC (“GGWMA”) is a registered investment adviser with Central Registration Depository number (“CRD #”) 121375. Its principal place of business is located at: 6148 Lee Highway, Suite 210, Chattanooga, Tennessee 37421.

2. GGWMA’s sole investment adviser representative and owner is Misty Willhoit (“Willhoit”), whose assigned CRD # is: 6493117.

3. The Division is the lawful agent through which the Commissioner discharges the administration of the Act pursuant to Tenn. Code. Ann. § 48-1-115.

II, GENERAL STIPULATIONS

4. It is expressly understood that this Agreed Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry and execution of this Agreed Order by the Commissioner. Entry and execution of this Agreed Order by the Commissioner shall occur when the Commissioner signs and dates this Agreed Order.

5. It is expressly understood that this Agreed Order is in the public interest, necessary for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

6. This Agreed Order is executed by the Commissioner, the Division, and the Respondents to avoid further administrative action with respect to the findings of fact described herein. Should this Agreed Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Agreed Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

7. The Respondents fully understand that this Agreed Order will in no way preclude additional proceedings by the Commissioner against the Respondents for acts and/or omissions not specifically addressed in this Agreed Order nor for facts and/or omissions that do not arise from the facts or transactions herein.

8. The Respondents fully understand that this Agreed Order will in no way preclude proceedings by state government representatives, other than the Commissioner, for acts or omissions addressed specifically in this Agreed Order, violations of law under statutes, rules, or regulations of the State of Tennessee that arise out of the facts, acts, or omissions contained in this

Agreed Order, or acts or omissions addressed specifically herein that result from the execution of this Agreed Order.

9. The Respondents waive all further procedural steps and all rights to seek judicial review of, or otherwise challenge the validity of this Agreed Order, the stipulations and imposition of discipline contained herein, or the consideration and entry and execution of this Agreed Order by the Commissioner.

III. FINDINGS OF FACT

10. On or about September 16, 2019, Ms. Willhoit purchased GGWMA from Mr. John Gaither. This agreement was memorialized in a contract titled "Business Purchase Agreement", and it stated that the agreement was made and entered into on September 16, 2019.

11. Ms. Willhoit asserts that there was a verbal agreement that she would not execute the purchase agreement until after Mr. Gaither passed away. Mr. Gaither subsequently passed away on October 25, 2019. There is no mention of such assertion in the Business Purchase Agreement and without further evidence of the verbal agreement, the Division must look to the four corners of the Business Purchase Agreement as the date of the transfer of control of the business.

12. On November 15, 2019, a Securities Examiner for the Division opened an examination of the books and records of the Respondents pursuant to Tenn. Code Ann. § 48-1-111, contacted the Respondents, and scheduled an onsite examination for December 17, 2019.

13. In response to the communication from the Securities Examiner, on November 25, 2019, the Respondents e-mailed the Securities Examiner about the change of ownership of GGWMA; however, as set forth below in sub-section IV Conclusions of Law, proper notice must be provided to the Division by amending the firm's Form ADV.

14. On December 17, 2019, the onsite examination occurred as scheduled and multiple deficient items were found; most notably, but not exclusively, the Respondents never amended the firm's Form ADV to reflect the change of ownership of the firm and no client agreements were executed between the new ownership and the forty-two (42) clients of GGWMA.

15. On or about December 24, 2019, the Respondents amended the Form ADV for GGWMA to reflect the new ownership.

16. Soon thereafter, another Securities Examiner took over the examination and it took numerous communications and a surprise on-site examination of the Respondents' books and records to be able to conclude the examination.

17. As of April 1, 2020, the Respondents provided the Division with fourteen (14) newly executed client agreements while it continues to have twenty-one (21) clients. The Respondents previously informed the Division that that they would provide the Division with the remaining outstanding client agreements by the end of March 2020; however, no additional agreements were provided and the remaining client agreements still remain outstanding.

18. The Division and the Respondents attempted to settle this matter with an Agreed Order; however, a settlement could not be reached. As a result, the Division filed the Notice of Hearing and Charges in this matter on May 1, 2020.

19. Settlement communications continued after the filing of the Notice of Hearing and Charges. The Division then learned that Ms. Willhoit, after attempting to manage and own her own firm, decided that it was in her clients' best interests for her to join another firm, in which she would have no management over or ownership interest. Furthermore, the new firm will handle all compliance matters and will provide guidance and supervision of Ms. Willhoit.

20. Once this current matter is settled and this Agreed Order is filed and approved by the Administrative Law Judge presiding over this case, Ms. Willhoit will immediately terminate Gibson Gaither Wealth Management Advisors, LLC and join the other firm. The Respondents also agree that they will file the firm's Form ADV-W to reflect the termination and closure of Gibson Gaither Wealth Management Advisors, LLC within thirty (30) calendar days after this Agreed Order is granted, as evidenced by the Administrative Judge's signature below.

IV. CONCLUSIONS OF LAW

21. Pursuant to Tenn. Code Ann. § 48-1-115(a), the responsibility for the administration of the Act is vested in the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility pursuant to Tenn. Code Ann. § 48-1-115(b).

22. Tenn. Code Ann. § 48-1-116 sets forth that the Commissioner may make, promulgate, amend, and rescind such orders as are necessary to carry out the provisions of the Act upon a finding that such order is in the public interest, necessary for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

23. Tenn. Code Ann. § 48-1-111(a) provides that "[e]very investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the Commissioner by rule prescribes."

24. Pursuant to Tenn. Code Ann. § 48-1-111(d)(1), all records referred to in Tenn. Code Ann. § 48-1-111(a) are subject to such reasonable examinations by representatives of the Commissioner, as the Commissioner deems necessary or appropriate in the public interest or for the protection of investors.

25. Tenn. Comp. Rules & Regs. 0780-04-03-.02(4)(c)1. and 2. set forth: “each investment adviser, registered in this state, shall file with the Division a notice of transfer of control or change of name not more than thirty (30) days after the date on which the transfer of control or change of name becomes effective. Such notice of transfer of control or change of name shall be submitted directly to the Division or through a central registration depository designated by the Division, whichever is appropriate.”

26. Tenn. Comp. Rules & Regs. 0780-04-03-.02(4)(c)3. prescribes that “such notice of transfer of control or change of name shall be filed as an amendment to an investment adviser’s existing Form ADV or as a complete new Form ADV from the successor to a registered investment adviser as provided under T.C.A. § 48-1-110(c).”

27. Tenn. Comp. Rules & Regs. 0780-04-03-.02(3)(a)8. requires every investment adviser to maintain and keep “[c]opies of all agreements entered into by the investment adviser with respect to any account, which agreements shall set forth the fees to be charged and method of payment thereof, and copies of all communications, correspondence, and other records relating to securities transactions.”

28. Tenn. Code Ann. § 48-1-112(a)(2)(G) provides that the Commissioner may by order deny, suspend, or revoke any registration if the Commissioner finds that the investment adviser “[h]as engaged in dishonest or unethical practices in the securities business[.]”

29. Pursuant to Tenn. Comp. Rules & Regs. 0780-04-03-.02(6)(a)19. and Tenn. Comp. Rules & Regs. 0780-04-03-.02(6)(c)26., failing to provide information requested by the Division pursuant to the Act or the Rules constitutes dishonest or unethical business practices by an investment adviser or investment adviser representative under Tenn. Code Ann. § 48-1-112(a)(2)(G).

30. The Findings of Fact detailed above show that the Respondents failed to notify the Division of the transfer of control of GWMA within the required thirty (30) days, which is in violation of Tenn. Comp. Rules & Regs. 0780-04-03-.02(4)(c)1. and 2. The Respondents notified the Division via an e-mail.

31. Additionally, the Findings of Fact detailed above show that the Respondents failed to provide proper notice to the Division of the transfer of control of GWMA by amending its form ADV in violation of Tenn. Comp. Rules & Regs. 0780-04-03-.02(4)(c)3. It finally did so, but only after approximately three (3) months had passed and after the Division informed the Respondents of the deficiency.

32. The Findings of Fact detailed above exhibit that the GWMA failed to make and keep the client agreements that it is required to maintain pursuant to Tenn. Code Ann. § 48-1-111 and Tenn. Comp. Rules & Regs. 0780-04-03-.02(3)(a)8.

33. Additionally, the Findings of Fact detailed above show that the Division requested the client agreements and the Respondents failed to provide them to the Division in violation of Tenn. Code Ann. § 48-1-112, Tenn. Comp. Rules & Regs. 0780-04-03-.02(6)(a)19., and Tenn. Comp. Rules & Regs. 0780-04-03-.02(6)(c)26.

34. The Commissioner finds the following relief appropriate, in the public interest, and necessary for the protection of investors.

V. ORDER

NOW, THEREFORE, based on the foregoing, including the Respondents' waiver of the right to a hearing and appeal under the Act and the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 *et seq.*, and the Respondents' admission to the jurisdiction of

the Commissioner, the Commissioner finds that the Respondents agree to the entry and execution of this Agreed Order to settle this matter as evidenced by the Respondents' signature.

IT IS ORDERED, pursuant to Tenn. Code Ann. § 48-1-116, that the Respondents shall:

1. **COMPLY** with the Act, as amended, and all rules promulgated thereunder;
2. **FILE** the firm's Form ADV-W to reflect the termination and closure of Gibson Gaither Wealth Management Advisors, LLC within thirty (30) business days after this Agreed Order is granted, as evidenced by the signature of the Administrative Judge below;
3. **COMPLETE** the ten (10) courses outlined in "Attachment B", attached hereto, no later than July 1, 2021. The Respondents shall also provide proof of completion of each course to the Division via e-mail to both April.X.Odom@tn.gov and Ethan.Rosenberg@tn.gov; and
4. **PAY A CIVIL PENALTY** to the State of Tennessee of four thousand dollars (\$4,000.00) on behalf of the Respondents. The payment of such civil penalty shall be made by check payable to the Tennessee Department of Commerce and Insurance. Page one (1) of this Agreed Order must accompany the payment for reference. Payment shall be remitted within thirty (30) days after the entry and execution of this Agreed Order, as evidenced by the Commissioner's signature, and mailed to the attention of:

**State of Tennessee
Department of Commerce and Insurance
Attn: Virginia Smith
Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243**

5. The Respondents' failure to comply with the terms of this Agreed Order, including the manner and method of payment of the civil penalty described above, shall result in further administrative disciplinary action, which may include the assessment of additional civil penalties.

7. **IT IS FURTHER ORDERED** that this Agreed Order represents the complete and final resolution of and discharge of all administrative and civil claims, demands, actions, and causes of action by the Commissioner against the Respondents for violations of the Act with respect to the transactions involved in the above-referenced facts. However, excluded from and not covered by this paragraph, are any claims by the Division arising from or relating to the enforcement of the Agreed Order provisions contained herein.

8. This Agreed Order is in the public interest and the best interests of the Parties. It represents a settlement of the controversy between the Parties and is for settlement purposes only. By the signatures affixed below, or in two (2) or more counterparts, the Respondents affirmatively state the following: the Respondents freely agree to the entry and execution of this Agreed Order; the Respondents waive the right to a hearing on, or a review of, the matters, the Findings of Fact, and the Conclusions of Law underlying this Agreed Order or the enforcement of this Agreed Order; and the Respondents encountered no threats or promises of any kind by the Commissioner, the Division, or any agent or representative thereof.

9. By signing this Agreed Order, the Commissioner, Division, and the Respondents affirmatively state their agreement to be bound by the terms of this Agreed Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement as set forth in this Agreed Order, are binding upon them.

10. This Agreed Order may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. The facsimile, email or other electronically delivered signatures of the parties shall be deemed to

constitute original signatures, and facsimile or electronic copies shall be deemed to constitute duplicate originals.

ENTERED AND EXECUTED by the Commissioner on this 10th day of July, 2020.


Hodgen Mainda (Jul 10, 2020 13:33 EDT)

Hodgen Mainda, Commissioner
Department of Commerce and Insurance


This Agreed Order is entered and effective this _____ day of _____, 2020.


Once signed by the Administrative Law Judge presiding over this matter, this matter is **DISMISSED** as there are no issues remaining to be resolved.

It is so **ORDERED**.

Rachel L. Waterhouse
Administrative Judge
Administrative Procedures Division
Office of the Secretary of State

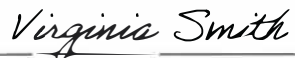
APPROVED FOR ENTRY AND EXECUTION:


Misty Willhoit
Individually, and on behalf of,
Gibson Gaither Wealth Management
Advisors, LLC


Buddy Presley, BPR #013921
Counsel for the Respondents


EB (Jul 9, 2020 15:20 CDT)

Elizabeth Bowling
Assistant Commissioner for Securities
Department of Commerce and Insurance


Virginia Smith, BPR #31248
Associate General Counsel
Department of Commerce and Insurance

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the _____ day of _____, 2020.

Stephanie Shackelford, Director
Administrative Procedures Division

ATTACHMENT B

Courses can be accessed via this website:

<https://www.finra.org/events-training/purchase-finra-e-learning-courses-and-library-subscriptions>

Compliance Series

10 Courses 30 minutes to 1-hour courses

1. Annual Compliance Reminders for Registered Representatives – Vol. 1

EL-ELC190 | 1.0 CE Credit

This course uses scenarios adapted from actual disciplinary actions to remind registered representatives about their compliance obligations. Volume 1 covers outside business activities, private securities transactions, Form U4 disclosures, responding to compliance requests, providing accurate customer information, customer complaints and settlements, email, handling customer and firm funds, trade authorizations and conflicts of interest related to borrowing money from customers.

2. Annual Compliance Reminders for Registered Representatives – Vol. 2

EL-ELC203 | 1.0 CE Credit

This course uses scenarios adapted from actual FINRA disciplinary actions to remind registered representatives about their compliance obligations. Volume 2 covers social media and public communications, trade authorizations, Form U4 disclosures, outside business activities, private securities transactions, handling customer funds related to borrowing money from customers, and maintaining ethical behavior when fulfilling continuing education requirements.

3. Annual Compliance Reminders for Registered Representatives – Vol. 3

EL-ELC218 | 1.0 CE Credit

This course uses scenarios adapted from actual FINRA disciplinary actions to remind registered representatives about their compliance obligations. Volume 3 covers communications with the public, suitability, ethical behavior and more.

4. Annual Compliance Reminders for Registered Representatives – Vol. 4

EL-ELC227 | 1.0 CE Credit

This course uses scenarios adapted from actual FINRA disciplinary actions to remind registered representatives about their compliance obligations. Volume 4 covers handling customer accounts and funds properly, unauthorized transactions, outside business activities, suitability and more.

5. Annual Compliance Reminders for Registered Representatives – Vol. 5

EL-ELC237 | 0.5 CE Credits

This course uses scenarios adapted from actual FINRA disciplinary actions to remind registered representatives about their compliance obligations. Volume 5 covers responding to regulatory requests in a timely manner, recognizing red flags, maintaining ethical behavior when fulfilling continuing education requirements, suitability, proper handling of customer accounts and observing high standards commercial honor.

6. Annual Compliance Reminders for Registered Representatives – Vol. 6

EL-ELC244 | 0.5 CE Credits

This course uses scenarios adapted from actual FINRA disciplinary actions to remind registered representatives about their compliance obligations. Volume 6 covers borrowing from clients, completing and amending Form U4s, conducting business using approved communication channels, disclosing participation in outside business activities, exercising discretion in customer accounts, falsifying documents related to customer accounts, maintaining accurate books and records, responding to FINRA requests for information, responding to firm compliance requests and submitting business expense reimbursements.

7. Annual Compliance Reminders for Registered Representatives – Vol. 7

EL-ELC249 | 0.5 CE Credits

This course uses scenarios adapted from actual FINRA disciplinary actions to remind registered representatives about their compliance obligations. Volume 7 covers suitability, communications with the public, outside business activities, concealing the improper receipt of customer funds, falsifying documents related to customer accounts, misuse of discretionary power, unauthorized trading and more.

8. Annual Compliance Reminders for Registered Representatives – Vol. 8

EL-ELC257 | 0.5 CE Credits

This course uses scenarios adapted from actual FINRA disciplinary actions to remind registered representatives about their compliance obligations. Volume 8 covers cybersecurity, Form U4 disclosures, insider trading and private securities transactions.

9. Annual Compliance Reminders for Registered Representatives – Vol. 9 – NEW

EL-ELC260 | 1.0 CE Credit

This course uses scenarios adapted from actual FINRA disciplinary actions to remind registered representatives about their compliance obligations. Volume 9 covers cybersecurity, ethics, financial exploitation of seniors, outside business activities and private securities transactions, professional designations and suitability, and 529 savings plans.

10. Communications With the Public: Compliance Issues for Independent Registered Representatives

EL-ELC212 | 0.5 CE Credits

This course helps independent registered representatives understand their compliance responsibilities when communicating with clients. It covers the consequences of noncompliance with requirements for communicating with the public.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this Agreed Order upon the Respondents via e-mail to their counsel below, on this 10th day of July, 2020.

Buddy Presley
Presley Law Firm
bpresley@presleylawfirm.com

Virginia Smith

Virginia Smith