



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

TENNESSEE SECURITIES DIVISION,)	
)	
Petitioner,)	
)	
v.)	TSD No.: 21-015
)	
PFM MANAGEMENT SERVICES, INC.,)	
)	
Respondent.)	

CONSENT ORDER

The Securities Division of the Tennessee Department of Commerce and Insurance (“Division”) and PFM Management Services, Inc. (“Respondent”), by and through undersigned counsel, agree to the entry and execution of this Consent 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. The Division is the lawful agent through which the Commissioner discharges the administration of the Act pursuant to Tenn. Code Ann. § 48-1-115.
2. The Respondent is a registered investment adviser firm (“RIA”) with Central Registration Depository number (“CRD #”) 109780. Its principal place of business is 3100 West End Avenue, Suite 1290, Nashville, TN 37203.

II. GENERAL STIPULATIONS

3. It is expressly understood that this Consent 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 Consent Order by the Commissioner. Entry and execution of this Consent Order by the Commissioner shall occur when the Commissioner signs and dates this Consent Order.

4. It is expressly understood that this Consent 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.

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

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

7. The Respondent fully understands that this Consent Order will in no way preclude proceedings by state government representatives, other than the Commissioner, for acts or omissions addressed specifically in this Consent 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 Consent Order, or acts or omissions addressed specifically herein that result from the execution of this Consent Order.

8. The Respondent waives all further procedural steps and all rights to seek judicial review of, or otherwise challenge the validity of this Consent Order, the stipulations and imposition of discipline contained herein, or the consideration and entry and execution of this Consent Order by the Commissioner.

III. FINDINGS OF FACT

9. In June 2020, Devlyn Simon (“Simon”), Securities Examiner II for the Division, conducted an examination of the books and records of the Respondent pursuant to Tenn. Code Ann. § 48-1-111, throughout which the Respondent remained cooperative.

10. During the course of her investigation, Ms. Simon discovered a number of discrepancies in her review of the Respondent’s records.

11. Between the years of 2015 and 2018, the Respondent failed to disclose advisory fees to three (3) clients. The Respondent states the fees were verbally discussed with clients; however, they were not disclosed in writing within the client agreements nor in the Respondent’s Form ADV Part 2A in 2016 or 2017.

12. Between June 2018 and June 2020, the Respondent overcharged fees to seventeen (17) clients. Three (3) of the clients overcharged were sixty-five (65) years of age or older. The Respondent concedes that this overcharging occurred and cites a transition from quarterly to monthly billing. Additionally, an incorrect manual fee input in the AssetBook software began in 2018.

13. Between January 2019 and June 2019, the Respondent failed to maintain a minimum net capital calculation of fifteen thousand dollars (\$15,000) for a period of six (6) months.

14. The Division informed the Respondent that the structuring of the Respondent's books to maximize personal tax benefits did not suffice to remedy the net capital deficits borne by the corporation.

15. In July 2020, the Division commenced an investigation of the Respondent for possible violations of the Act.

16. In October 2020, Ms. Simon informed the Respondent that the issues found constituted violations of the Tennessee securities rules.

17. In January 2021, Ms. Simon completed her examination and referred the matter to the Office of Legal Counsel for the Division.

IV. CONCLUSIONS OF LAW

18. 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).

19. 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.

20. Tenn. Comp. R. & Regs. 0780-04-03-.02(6)(c) states:

The following are deemed "dishonest or unethical business practices" by an investment adviser or an investment adviser representative under T.C.A. § 48-1-112(a)(2)(G) . . . :

...

11. Misrepresenting to any advisory client, or prospective advisory client . . . the nature of the advisory services being offered or fees to

be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading; [and]

...

19. Entering into, extending, or renewing any investment advisory contract, unless such contract is in writing and, in substance, discloses:

...

- (iii) The advisory fee; [and]
- (iv) The formula for computing the fee[.]

21. Tenn. Comp. R. & Regs. 0780-04-03-.01(6)(a) provides, "Except as provided under subparagraph (6)(d) of this Rule, every investment adviser registered or to be registered shall have and maintain a minimum net capital of fifteen thousand dollars (\$15,000)." The exception only provides an allowance for investment advisers with a principal place of business outside the State of Tennessee.

22. Tenn. Comp. R. & Regs. 0780-04-03-.01(6)(b) states:

"[N]et capital" shall be defined as total assets less total liabilities (net worth) as computed in accordance with generally accepted accounting principles consistently applied minus the following non-allowable assets:

...

2. In the case of a corporation: advances or loans to stockholders, officers, or affiliates, and uncollateralized receivables from stockholders, officers, or affiliates[.]

24. Tenn. Code Ann. § 48-1-112(b) prescribes, "The commissioner may not institute a revocation or suspension proceeding . . . based solely on material facts actually known by the commissioner unless an investigation or the revocation or suspension proceeding is instituted within one (1) year after the commissioner actually acquires knowledge of the material facts."

25. Tenn. Code Ann. § 48-1-112(d) authorizes the Commissioner to, in lieu of or in addition to a denial, revocation, or suspension of a registration, “impose a civil penalty in an amount not to exceed five thousand dollars (\$5,000) for all violations for any single transaction, or in an amount not to exceed ten thousand dollars (\$10,000) per violation if an individual who is a designated adult is a victim.”

26. Per Tenn. Code Ann. § 48-1-121(d):

The commissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation, or in an amount not to exceed twenty thousand dollars (\$20,000) per violation if an individual who is a designated adult is a victim.

27. Pursuant to Tenn. Code Ann. § 48-1-104(b):

The commissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation, or in an amount not to exceed twenty thousand dollars (\$20,000) per violation if an individual who is a designated adult is a victim.

28. The Findings of Fact detailed above prove that the Respondent failed to maintain the required minimum net capital from January 2019 through June 2019, in violation Tenn. Comp. R. & Regs. 0780-04-03-.01(6)(a) and (b).

29. Additionally, the Findings of Fact detailed above show that the Respondent failed to disclose advisory fees to three (3) clients between the years of 2015 and 2018, and overcharged fees to seventeen (17) clients in violation of Tenn. Code Ann. § 48-1-112(a)(2)(B) and Tenn. Comp. R. & Regs. 0780-04-03-.02(6)(c).

30. 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 Respondent's 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 Respondent's admission to the jurisdiction of the Commissioner, the Commissioner finds that the Respondent agrees to the entry and execution of this Consent Order to settle this matter as evidenced by the Respondent's signature.

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

1. **COMPLY** with the Act, as amended, and all rules promulgated thereunder; and
2. **PAY A CIVIL PENALTY** to the State of Tennessee of ten thousand dollars (\$10,000). 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 Consent Order must accompany the payment for reference. Payment shall be remitted within thirty (30) days after the entry and execution of this Consent Order, as evidenced by the Commissioner's signature, and mailed to the attention of:

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

3. **TERMINATE** its existing RIA registration, CRD number 109780. Compliance may be established by providing proof of termination to the Division's Director of Registration, April X. Odom, at April.X.Odom@tn.gov, within sixty (60) days after the entry and execution of

this Consent Order, as evidenced by the Commissioner's signature, or the Respondent's registrations with the Division shall be automatically **REVOKED** without hearing.

4. The Respondent's failure to comply with the terms of this Consent Order shall be considered in the review of any future license or registration application filed with the Commissioner of Commerce and Insurance, and may result in administrative action, including but not limited to denial, probation, or the assessment of additional civil penalties.

5. **IT IS FURTHER ORDERED** that this Consent 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 Respondent 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 Consent Order provisions contained herein.

6. This Consent 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 Respondent affirmatively states the following: the Respondent freely agrees to the entry and execution of this Consent Order; the Respondent waives the right to a hearing on, or a review of, the matters, the Findings of Fact, and the Conclusions of Law underlying this Consent Order or the enforcement of this Consent Order; and the Respondent encountered no threats or promises of any kind by the Commissioner, the Division, or any agent or representative thereof.

7. By signing this Consent Order, the Commissioner, Division, and the Respondent affirmatively state their agreement to be bound by the terms of this Consent 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 Consent Order, are binding upon them.

8. This Consent 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 May 12, 2021.


Carter Lawrence (May 12, 2021 16:07 CDT)

Carter Lawrence, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY AND EXECUTION:



Charles E. Nash
Individually, and on behalf of,
PFM Management Services, Inc.


E B (May 11, 2021 08:58 CDT)

Elizabeth Bowling
Assistant Commissioner for Securities
Department of Commerce and Insurance


Erin E. Tatum (May 11, 2021 10:35 CDT)

Erin Tatum, BPR #034806
Associate General Counsel
Department of Commerce and Insurance