



State of Tennessee
Department of State
Administrative Procedures Division
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Nashville, Tennessee 37243-1102
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June 23, 2017

Commissioner Julie Mix McPeak
Tennessee Department of Commerce &
Insurance
Office of Legal Counsel
12th Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243-5065

Clearpoint Capital Management, LLC
c/o Scott R. McCaghren, Registered Agent
for Service of Process
4513 Old Shell Road, Bldg. #1-B
Mobile, AL 36608

Jesse D. Joseph, Esq.
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Tennessee Department of Commerce and
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8th Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, TN 37243-0569

Clearpoint Capital Management, LLC
3601 Spring Hill Business Park #201
Mobile, AL 36608

RE: In the Matter of: Clarence Andrew Elcan and Clearpoint Capital
Management, LLC
Docket No. 12.06-142211J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

RECEIVED
JUN 27 2017
DEPT. OF COMMERCE AND INSURANCE
LEGAL OFFICE

BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF:

CLARENCE ANDREW ELCAN AND CLEARPINT
CAPITAL MANAGEMENT, LLC

DOCKET NO.: 12.06-142211J

NOTICE

ATTACHED IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE
JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL
ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES
A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES
DIVISION NO LATER THAN July 10, 2017.

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE
ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE
ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
WILLIAM R. SNODGRASS TOWER
312 ROSA PARKS AVENUE, 8th FLOOR
NASHVILLE, TENNESSEE 37243-1102

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE
PROCEDURES DIVISION, **615/741-7008 OR 741-5042, FAX 615/741-4472**. PLEASE
CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL
PROCEDURES.

STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE

TENNESSEE SECURITIES
DIVISION,

Petitioner,

vs.

CLEARPOINT CAPITAL
MANAGEMENT, LLC,

Respondent.

Docket No. 12.06-142211J
TSD No. 16-021

INITIAL ORDER

This matter was heard on May 22, 2017, in Nashville, Tennessee, before Administrative Judge Rachel L. Waterhouse, 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 May 22, 2017 hearing addressed the allegations contained in the NOTICE OF HEARING AND CHARGES pertaining to Respondent Clearpoint Capital Management, LLC (“CCM”). Jesse D. Joseph, Assistant General Counsel, the Tennessee Securities Division (“TSD”) of the Tennessee Department of Commerce and Insurance. Respondent CCM was not present for the hearing, and there was no attorney or representative present on behalf of this Respondent.

On May 19, 2017, the TSD filed a Notice of Voluntary Dismissal with Prejudice against former Respondent Clarence Andrew (“Cal”) Elcan, due to his entry into a separate settlement agreement with the TSD, which was approved by the Commissioner.

After consideration of the entire record in this matter, it is **ORDERED** that the Respondent CCM is **BARRED** from participation in the securities industry in Tennessee,

and from any further conduct as a broker-dealer, agent of a broker-dealer, investment adviser, or investment adviser representative from or in the State of Tennessee, which is in violation of the Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. §§ 48-1-101 to 48-1-201 (2012) (“Act”), and that this Respondent is assessed **CIVIL PENALTIES** in the total amount of ninety-nine thousand dollars (\$99,000) for violations of TENN. CODE ANN. §§ 48-1-109(f), and 48-1-121(a)(1) & (3). This decision is based upon the following.

ENTRY OF DEFAULT

Pursuant to TENN. CODE ANN. § 4-5-307, the Petitioner filed a NOTICE OF HEARING AND CHARGES on January 31, 2017, setting this matter for hearing initially on March 16, 2017. This matter was continued twice by orders entered and mailed to all parties on March 15 and April 18, 2017. The April 18, 2017 continuance order informed all parties that the case would be rescheduled for hearing on May 22, 2017 as to Respondent CCM, or as to both Respondents if the pending proposed settlement between Cal Elcan and the TSD was not accepted by the Commissioner.

On March 9, 2017, the Petitioner filed and served a MOTION TO DEEM SERVICE OF NOTICE COMPLETE AND SUFFICIENT as to Respondent CCM, based upon the January 31, 2017 certified mail attempted service of the NOTICE OF HEARING AND CHARGES sent to CCM’s registered agent according to the records of the Alabama Secretary of State at the time, Scott R. McCaghren, at CCM’s principal business address of 4513 Old Shell Road, Bldg. 1-B, Mobile AL 36608. This Motion was also based upon the receipt of service of the NOTICE OF HEARING AND CHARGES by the Commissioner as the agent appointed by CCM and authorized by law to receive service on behalf of CCM, pursuant to TENN. CODE ANN. § 48-1-124(e), and TENN. COMP. R. & REGS. (“RULES”) 1360-04-01-.06(2).

On April 10, 2017, Administrative Judge Mattielyn Williams entered an Order granting the Petitioner's MOTION TO DEEM SERVICE OF NOTICE COMPLETE AND SUFFICIENT as to Respondent CCM. The content of both the Petitioner's Motion in this regard and Judge Williams' ORDER DEEMING SERVICE SUFFICIENT entered on April 10, 2017, are incorporated into this INITIAL ORDER by reference.

It is determined that Petitioner properly served the NOTICE OF HEARING AND CHARGES on Respondent CCM in accordance with RULE 1360-04-01-.06(2). Based on the Petitioner's motion for default and the failure of this Respondent to appear for the May 22, 2017 hearing, pursuant to TENN. CODE ANN. § 4-5-309 and RULE 1360-04-01-.15, Respondent CCM was held in default. Pursuant to RULE 1360-04-01-.15(2)(b), the hearing was conducted as an uncontested proceeding.

In addition, at the outset of the hearing conducted on the morning of May 22, 2017, counsel for the Petitioner phoned Alabama counsel for CCM, J. Randall McNeill, Esq., as Mr. McNeill had requested, with the Court present. This phone call was made as a courtesy to Mr. McNeill, as he was not eligible to represent CCM in this proceeding given that he is not licensed to practice law in Tennessee, and given that he has not complied with TENN. CODE ANN. § 23-3-103(a) by filing the required motion seeking admission pro hac vice, and the required affidavit with the APD that are referred to in TENN. SUP. CT. R. 19, and in RULE 1360-04-01-.08(8). In any event, according to Mr. McNeill's support staff during this call, he was not in the office on the morning of May 22, 2017.

FINDINGS OF FACT

1. Cal Elcan is a resident of Tennessee, with a last known residential address of 125 Taggart Avenue, Nashville, TN 37205. He was last registered with the TSD and

with the Financial Industry Regulatory Agency (“FINRA”) as an investment adviser representative (Individual Central Registration Depository (“CRD”) # 4006999) employed by CCM, from August 12, 2014 through September 5, 2014, after he voluntarily terminated his official role as an investment adviser representative with CCM on August 26, 2014. Prior to his employment with CCM, Cal Elcan was previously registered with the TSD and with FINRA as a broker-dealer agent employed by UBS Financial Services, Inc. (“UBS”), from December 3, 2008 through May 2, 2014, after he resigned from UBS effective May 1, 2014.

2. According to records of the Alabama Secretary of State as of March 5, 2017, CCM is an active Alabama Foreign Limited Liability Company, with a listed business address of 4513 Old Shell Rd., Bldg. 1-B, Mobile, AL 36608, and with Scott R. McCaghren serving as its Registered Agent at the same listed address. CCM was formed in Florida in September 2012, and was registered in Alabama as an investment adviser on February 19, 2013. CCM was last registered by the TSD as an investment adviser from August 12, 2014, through the date of its termination/withdrawal of Tennessee registration on May 2, 2016.

3. On or about March 27, 2014, Cal Elcan was arrested in Davidson County, Tennessee, and charged with Conspiracy to Deliver Three Hundred (300) pounds or more of Marijuana in violation of Tenn. Code Ann. § 39-17-417(j), and Money Laundering in violation of Tenn. Code Ann. § 39-14-903.

4. Because of the pendency of these criminal charges, Cal Elcan resigned his position with UBS effective May 1, 2014, and was asked by his brother, Daniel G. Elcan, to transfer to CCM during the spring of 2014. At that time, CCM used T.D. Ameritrade as its trading platform. However, due to Cal Elcan’s legal issues pending in Davidson

County Criminal Court, T.D. Ameritrade would not allow Cal Elcan access on the trading platform.

5. Between May 2014 and October 2015, Cal Elcan used the T.D. Ameritrade access numbers of Paul Elcan, his nephew and a registered investment adviser representative employed with CCM, and of Richard Foster, an owner, President, and registered investment adviser representative employed with CCM, to access the trading platform on behalf of CCM's clients. According to Mr. Foster, Cal Elcan was the only member or employee of CCM who actively managed and traded clients' accounts during this time period.

6. On or about June 27, 2014, Cal Elcan entered a conditional guilty plea pursuant to Tenn. Code Ann. § 40-35-313 in Davidson County Criminal Court to amended felony charges of Attempting to Possess over Seventy (70) Pounds of Marijuana in violation of Tenn. Code Ann. § 39-17-417 and 39-12-101, and Facilitation of Money Laundering in violation of Tenn. Code Ann. § 39-14-903. He was placed on three (3) years of judicial diversion (probation) to expire on or about June 2017, if he successfully complies with all conditions. He also paid a \$100,000 fine and agreed to the judicial forfeiture of the residence located at 400 Hunt Club Road in Williamson County, Tennessee. If he successfully completes the term of judicial diversion, the pending criminal charges will be dismissed and he will be eligible to have the charges expunged from his official records.

7. Between August 21, 2014 and August 18, 2015, CCM paid Cal Elcan net compensation or fees of \$237,026.24, which is consistent with Mr. Foster's statement that Cal Elcan was compensated 85 basis points based on the 1% of management fees for total client assets with CCM.

8. As late as October 2, 2015, Cal Elcan used Mr. Foster's name and T.D. Ameritrade password to gain access to CCM client accounts, and the internet protocol address used to gain online access was listed for Nashville, Tennessee. During all relevant times, no officers, members, employees, or others associated with CCM who had investment adviser representative or broker-dealer agent responsibilities, other than Cal Elcan and his spouse, Pamela Elcan, had listed internet protocol or residential addresses in Tennessee. Further, Mr. Foster and Pamela Elcan have admitted that Cal Elcan was the individual accessing the CCM clients' online accounts at that time.

9. On September 30, 2015, the Alabama Securities Commission ("ASC") received information that CCM was using Cal Elcan as an unregistered investment adviser representative to manage clients' accounts.

10. On October 30, 2015, the ASC issued an order requiring Cal Elcan to cease and desist from all further securities activity in, from, or into the State of Alabama, and on November 24, 2015, the ASC issued a show cause order against Respondents CCM, Cal Elcan, Elcan Wealth Consulting, Paul Elcan, Daniel Elcan, Pamela Elcan, and Richard Foster.

11. At all relevant times, Elcan Wealth Consulting ("EWC") was a subsidiary of CCM with a business address of 3601 Springhill Business Park, Suite 201, Mobile, AL 36608, and Cal Elcan was listed as a Senior Vice President, Senior Portfolio Manager, and registered investment adviser with EWC.

12. On December 23, 2015, an informal hearing was conducted by the ASC with all of the above listed Alabama Respondents in attendance, and the ASC entered a final Consent Order agreed to by all such Respondents on March 18, 2016. All factual

matters set out above regarding Cal Elcan's actions have been conclusively determined by the ASC in this March 18, 2016 Consent Order.

13. All Respondents before the ASC (including Cal Elcan and CCM), had the right to further administrative proceedings, including the right to a contested case administrative hearing before the ASC, but voluntarily waived such rights and agreed to resolve the matter before the ASC by entering into the March 18, 2016 Consent Order.

14. CCM knew, or should have known, that Cal Elcan was not registered as a broker-dealer, broker-dealer agent, investment adviser, or investment adviser representative in Tennessee at all relevant times herein, except for a small window of time between August 12 and September 5, 2014, when he was registered as an investment adviser representative by the TSD. CCM has admitted it allowed Cal Elcan to trade and manage CCM's client accounts between May 2014 and October 2015.

15. Cal Elcan and CCM knew that T.D. Ameritrade would not allow Cal Elcan access on its trading platform beginning on or about early May 2014, but, by allowing Cal Elcan to use the names, and T.D. Ameritrade access numbers and passwords of other CCM employees or associates, Cal Elcan and CCM employed a deceptive scheme, artifice, and/or course of business that operated to deprive T.D. Ameritrade of the ability to enforce this ban.

CONCLUSIONS OF LAW

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

2. The Tennessee Securities Act of 1980, as amended, TENN. CODE ANN. §§ 48-1-101 to 48-1-201 (2012) (“Act”), places the responsibility for the administration of the Act on the Commissioner of the Department (“Commissioner”). The TSD is the lawful agent through which the Commissioner discharges this responsibility. Tenn. Code Ann. §§ 48-1-112 and 48-1-115 (2012).

3. It is unlawful for any investment adviser to employ an investment adviser representative unless the investment adviser representative is registered under this part. TENN. CODE ANN. §§ 48-1-109(f) (2012).

4. The Petitioner has shown, by a preponderance of the evidence that CCM employed Cal Elcan and associated with him as an unregistered investment adviser representative in Tennessee during 2014 and 2015, by allowing him to manage accounts or portfolios of CCM’s clients from Tennessee for a sixteen and one-half (16 ½) month period from May 2014 through August 11, 2014, and again from September 6, 2014 through October 2015. CCM’s actions in this regard have violated Tenn. Code Ann. § 48-1-109(f).

5. TENN. CODE ANN. § 48-1-109(e) provides:

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 regulation, rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation.

6. It is determined that the proof adduced at trial provides adequate grounds for the imposition of a civil penalty on CCM in the amount of forty-nine thousand, five hundred dollars (\$49,500) for its actions in using Cal Elcan as its portfolio manager to trade its client accounts for the above sixteen and one-half (16 ½) month period during which Cal

Elcan had no registration as an investment advisor representative in Tennessee, calculated at the rate of three thousand dollars (\$3,000) for each month of such violations.

7. It is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, to directly or indirectly employ any device, scheme, or artifice to defraud, or to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. TENN. CODE ANN. §§ 48-1-121(a)(1) & (3).

8. The Petitioner has shown, by a preponderance of the evidence, that CCM, in connection with the offer, sale, and purchase of securities for CCM's clients handled by Cal Elcan as portfolio manager, deceived T.D. Ameritrade, and employed fraudulent devices, schemes, and/or artifices to frustrate this company's ban of Cal Elcan from its trading platform as described above, given Cal Elcan's use, with CCM's knowledge and permission, of other CCM employees' names, and T.D. Ameritrade access numbers and passwords, to actively manage and trade CCM's client accounts online from Tennessee, over a sixteen and one-half (16 ½) month period from May 2014 through August 11, 2014, and again from September 6, 2014 through October 2015. CCM's actions in this regard have violated Tenn. Code Ann. §§ 48-1-121(a)(1) & (3).

9. TENN. CODE ANN. § 48-1-121(d) provides:

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 regulation, rule or order adopted or issued under this section, in an amount not to exceed five thousand dollars (\$5,000) per violation.

10. It is determined that the proof adduced at trial provides adequate grounds for the imposition of a civil penalty on CCM in the amount of forty-nine thousand, five hundred dollars (\$49,500) for its actions in deceiving T.D. Ameritrade, and employing

fraudulent devices, schemes, and/or artifices to frustrate T.D. Ameritrade's ban of Cal Elcan from its trading platform as described above, given Cal Elcan's use, with CCM's knowledge and permission, of other CCM employees' names, and T.D. Ameritrade access numbers and passwords, to actively manage and trade CCM's client accounts online from Tennessee for the above sixteen and one-half (16 ½) month period, calculated at the rate of three thousand dollars (\$3,000) for each month of such violations.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that:

1. Respondent CCM shall fully **COMPLY** with the Act, and all rules promulgated thereunder.
2. Respondent CCM is **BARRED** from any further conduct as a broker-dealer, agent of a broker-dealer, investment adviser, or investment adviser representative from, in, or into the State of Tennessee, which is in violation of the Act.
3. Respondent CCM is **BARRED** from conducting securities transactions on behalf of others from, in, or into the State of Tennessee, which are in violation of the Act.
4. All persons in any way assisting, aiding, or helping the aforementioned Respondent in any of the aforementioned violations of the Act shall **CEASE AND DESIST** all such activities in violation of the Act.
5. Respondent CCM is assessed and shall pay a total of ninety-nine thousand dollars (\$99,000) in **CIVIL PENALTIES** pursuant to TENN. CODE ANN. §§ 48-1-109(e) and 48-1-121(d), calculated as follows:
 - a) for the sixteen and one-half (16 ½) month period in which CCM employed Cal Elcan and associated with him as an unregistered investment adviser representative in Tennessee during 2014 and 2015, by allowing him to manage accounts or portfolios of CCM's clients from Tennessee, in violation of TENN. CODE ANN. § 48-1-109(f), as set forth in Count Two of the NOTICE OF HEARING AND CHARGES, a civil penalty of three thousand dollars (\$3,000) for each month of such violations, or a subtotal of forty-nine thousand, five hundred

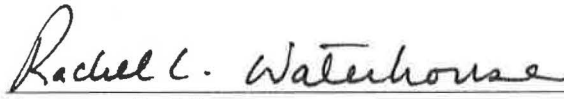
dollars (\$49,500) as to this Count, pursuant to TENN. CODE ANN. § 48-1-109(e); and

b) for the sixteen and one-half (16 ½) month period in which CCM deceived T.D. Ameritrade, in connection with the offer, sale, and purchase of securities for CCM's clients handled by Cal Elcan as portfolio manager, and in which CCM employed fraudulent devices, schemes, and/or artifices to frustrate T.D. Ameritrade's ban of Cal Elcan from its trading platform, in violation of TENN. CODE ANN. §§ 48-1-121(a)(1) & (3), as set forth in Count Three of the NOTICE OF HEARING AND CHARGES, a civil penalty of three thousand dollars (\$3,000) for each month of such violations, or a subtotal of forty-nine thousand, five hundred dollars (\$49,500) as to this Count, pursuant to TENN. CODE ANN. § 48-1-121(d).


8. This INITIAL ORDER, imposing sanctions against Respondent CCM, is entered to protect the public and investors in the State of Tennessee, consistent with the purposes fairly intended by policy and provisions of the Act.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the 23rd day of June, 2017.


RACHEL L. WATERHOUSE
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the 23 of JUNE 2017.


J. RICHARD COLLIER, DIRECTOR
CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

**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.