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RE: TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE V. ESTATE & FINANCIAL STRATEGIES, INC. AND HENRY LEE PARROTT, APD Case No. 12.06-223065J

Enclosed is an *Initial Order,* including a *Notice of Appeal Procedures,* rendered in this case.

Administrative Procedures Division
Tennessee Department of State

Enclosure(s)

BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF: **TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE,** ***Petitioner,*** ***v.*** **ESTATE & FINANCIAL STRATEGIES, INC., and HENRY LEE PARROTT,** ***Respondents.***	**APD Case No. 12.06-223065J**

INITIAL ORDER

This matter was heard on November 14, 2022, before Administrative Judge Elizabeth D. Cambron, sitting on behalf of the Commissioner of the Tennessee Department of Commerce and Insurance (the Department). The Department was represented by Associate Counsel Samuel Moore and Jacob Strait, and Chief Counsel Anthony Glandorf; the Respondents were represented by attorneys Frank Borger-Gilligan and Stephen Montgomery. At the conclusion of the hearing, post-hearing deadlines were set: the transcript was due to be filed on December 2, 2022, and the parties were given until December 9, 2022, to file proposed findings of fact and conclusions of law. Both sides filed proposed findings of fact and conclusions of law on December 9, 2022, thereby closing the record and making this Initial Order due on March 9, 2023.

Based on the testimony of witnesses and exhibits entered at the hearing, it is determined that the Department failed to meet its burden of proof to show that revocation of the Respondents' registrations is in the public interest and necessary for the protection of investors.

Accordingly, the June 16, 2022, Order of Denial of Respondents' registration renewals is **REVERSED.**

However, the Department met its burden of proof to show that the Respondents violated:

(1) TENN. CODE ANN. § 48-1-111(a) and TENN. COMP. R. & REG. 0780-04-03-.02(3)(a)(1) and (3) due to inaccurate balance sheets from December 2018 to December 2020 showing a repeated accounts receivable balance of $124,934,

(2) TENN. CODE ANN. § 48-1-112(a)(2)(B) and TENN. COMP. R. & REG. 0780-04-03-.02(3)(a)(8) by failing to maintain client agreements for 49 clients, and

(3) TENN. COMP. R. & REG. 0780-04-03-.02(6)(c)(19) by failing to include discretionary authority authorization in its client agreements prior to March 2019.

Based on these violations, **a civil penalty of $30,000.00 is ASSESSED** against the Respondents. This decision is based on the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Estate & Financial Strategies, Inc., (EFS) is a Tennessee corporation, located in Brentwood, Tennessee, that provides clients with comprehensive retirement and financial planning services. From 2004 until December 31, 2021, EFS was registered as an investment adviser in Tennessee.

2. Mr. Hank Parrott is a resident of Tennessee who is the sole owner of EFS and, until December 31, 2021, was registered in Tennessee as an investment adviser representative with EFS. Mr. Parrott has been registered as an investment adviser, investment adviser representative or a broker-dealer representative for over 32 years and has never been the subject of any prior administrative actions, civil actions, or any other legal proceeding by any regulatory agency or private party.

3. The Department of Commerce and Insurance – and the Tennessee Securities Division (the Division) within it – is the regulatory agency charged with, among other things, overseeing investment advisers in Tennessee. In such capacity, the Division conducts routine books and records examinations of investment adviser firms.

4. On November 13, 2020, the Division opened a books and records examination of EFS. The examination was assigned to Securities Examiner Devlyn Simon. The examination was initiated through a letter, dated November 13, 2020, from Ms. Simon to the Respondents, which included an initial request for documents and an initial phone interview.

5. On or about January 13, 2021, Ms. Simon delivered to the Respondents a follow-up request for additional documents and information. The Respondents provided the requested documents and information on February 12, 2021. Ms. Simon did not reply to the Respondents' response, and the Division had no further communication with Respondents from January 13, 2021, to May 17, 2021 – a period of approximately four months.

6. On May 17, 2021, Ms. Simon sent the Respondents a request for additional information as a follow up to the Division's January 13, 2021, letter. The Respondents provided the requested documents and information on June 1, 2021, and provided a supplemental response on July 9, 2021. Ms. Simon did not reply to either the Respondents' initial response or their supplemental response, and the Division had no further communication with the Respondents from May 17, 2021, until December 20, 2021– a period of approximately seven months.

7. On December 20, 2021, Ms. Simon emailed Mr. Parrott to inform him that the Division has experienced "a significant delay in the conducting of examinations" and was picking up the exam again. Ms. Simon requested a call with the Respondents to discuss the

examination.

8. The call took place on December 22, 2021, between Mr. Parrott and Ms. Simon. In a follow up email later that day, Ms. Simon requested additional information, and gave Mr. Parrott a deadline of January 7, 2022, to provide the requested materials.

9. The Respondents provided an initial response to the Division's December 22 request by the deadline and a supplemental response on January 10, 2022.

10. Just two days later on January 12, 2022, Ms. Simon produced a "findings letter" outlining alleged deficiencies found pursuant to the exam that she had reopened just three weeks earlier. She further requested a call with Mr. Parrott to review the findings.

11. A "findings letter" is produced at the conclusion of an examination and outlines alleged deficiencies and corrective measures that may need to be taken. A call to discuss the findings was scheduled for January 13, 2022, with Ms. Simon; the Division's Registration Director, Ms. April Odom; Mr. Parrott; and Mr. Craig Watanabe, Director of IA Compliance at RIA Compliance Firm. At no point in that conversation was the possibility of revocation of the Respondents' registrations mentioned.

12. As investment advisers, the Respondents are required to renew their Tennessee securities registrations annually. To renew, advisers must file annual amendments and pay a nominal renewal fee. If the filing is complete and the fees are paid, the renewal in Tennessee is automatic.

13. The Financial Industry Regulatory Authority (FINRA) established the "E-Bill" system that enables registered investment advisers to authorize electronic payment directly from a designated bank account to pay annual renewal registration fees. The Respondents' Tennessee renewal fees were set up to pay each year through the E-Bill system. On December 31, 2021,

the Respondents' renewal registrations failed to renew because they were unaware that there were insufficient funds in EFS' E-Bill account.

14. On or about January 20, 2022, after discovering that Respondents failed to renew, Ms. Simon emailed Mr. Parrott to ask whether or not the Respondents intended to renew their applications and, if so, when they intended to do so.

15. Upon realizing that they failed to renew, Mr. Parrott immediately attempted to register. Within two days of realizing the renewal problem, Mr. Parrott submitted everything that was required to re-register in Tennessee to Securities Examiner Steven Patterson.

16. Despite having submitted everything that was required, the Respondents' registration applications were not approved.

17. In the course of the Division's examination, EFS submitted balance sheets from September 2018 through November 2020, which contained an entry of $124,934 that remained unchanged each month. The Respondents' balance sheets are maintained on a cash basis and reconciled annually for the purpose of tax preparation.

18. The entry of $124,934 had been entered on the balance sheet at some point by EFS' accountant and had inadvertently not been removed. When it was brought to Mr. Parrott's attention, the error was corrected. Mr. Parrot was unaware of the repeated entry until it was brought to his attention during the Division's examination.

19. The Respondents' balance sheets were internal documents, prepared for tax purposes, and were never presented to any EFS clients.

20. In the Division's May 17, 2021, letter to the Respondents, Ms. Simon asked the Respondents to explain why the listed accounts receivable value on the monthly balance sheets remained unchanged from September 2018 through November 2020, to which Mr. Parrott

responded, "Error. We do not track the accounts receivables. See new balance sheet reports attached." The Respondents included revised balance sheets, which removed the $124,934 but added a TD Ameritrade account receivable, which had not previously been listed. The Division had no concern that the revised balance sheets, which included the TD Ameritrade entry, were inaccurate.

21. EFS maintains files for approximately 400 clients, each of which consists of hundreds of pages of documents. Some of the documents are maintained in paper form; others are stored electronically. EFS' paper files are maintained by one of Mr. Parrott's assistants and are stored in four large filing cabinets, each four or five drawers high.

22. When asked to produce client agreements, the Respondents were unable to do so for 49 clients. Mr. Parrott was not aware that any agreements were missing prior to the examination.

23. In 2018, Mr. Parrott asked a friend who owned a broker-dealer and registered investment adviser firm in Michigan for recommendations for someone to review EFS' documents and make suggestions to make sure everything was in order. Mr. Parrott delivered multiple documents to the recommended compliance team who suggested certain changes to EFS' client agreement.

24. EFS implemented the recommendations to its client agreements in March 2019 to specifically include the sentence, "This investment advisory agreement is a discretionary managed agreement (the "Agreement") by and between Estate & Financial Strategies, Inc. ("EFS, Inc.") and _____ (the "Client")". Mr. Parrott was not informed in previous examinations that the older agreements did not contain discretionary language and that he needed

to obtain new agreements from clients with agreements executed prior to March 2019. The revised agreements have been used exclusively by EFS since March 2019.

25. The Division had no concerns with any agreements executed after March 2019.

26. As of the Division's examination, 320 client agreements had not been updated to the March 2019 version of the client agreement.

27. All EFS discretionary accounts are held with TD Ameritrade. Mr. Parrott obtains TD Ameritrade account applications and institutional client agreements from all EFS clients with discretionary accounts. TD Ameritrade requires all investment advisers who trade on behalf of clients on the TD Ameritrade institutional platform to obtain applications and institutional client agreements, signed and initial by the adviser's clients, before opening an institutional account.

28. Mr. Parrott personally obtains the TD Ameritrade account applications and institutional client agreements from all EFS clients for which EFS has discretionary authority. The TD Ameritrade account applications contain two sections – each required to be initialed by clients – entitled "Discretionary Trading Authorization" and "Fee Deduction and Payment Authorization." The "Discretionary Trading Authorization" section further states: "I authorize TD Ameritrade to effectuate trades in my Account at the direction of my Advisor as provided in the TD Ameritrade Institutional Client Agreement."

29. The TD Ameritrade Institutional Client Agreement is delivered together with the application to each EFS client upon the opening of an account. Mr. Parrott reviews the applications and client agreements with each client during the onboarding process. In relevant part, the "Advisor Authorizations" section of the client agreement states:

> If I have so indicated in the Advisor Authorization section of the TD Ameritrade Institutional Account Application, that my Advisor will have trading authorization, I hereby constitute and appoint my Advisor named therein as my agent and attorney-in-fact to buy, sell,

> and trade in stocks, bonds, mutual funds, debentures, notes, subscription warrants, stock purchase warrants, mutual fund shares, Exchange Traded Funds, alternative investments, evidences of indebtedness, and any other securities, instruments, or contracts relating to securities in accordance with TD Ameritrade's terms and conditions in my name or number on TD Ameritrade's books for any Account in which I have indicated on the Application that my Advisor will have authority to direct TD Ameritrade to execute trades. In all such purchases, sales, or trades, TD Ameritrade is authorized to follow the instructions of Advisor in every respect concerning my Account and my Advisor is authorized to act for me and on my behalf in the same manner and with the same force and effect as I might do or could do with respect to such purchases, sales, or trades as well as with respect to all other things necessary or incidental to the execution of such instructions, including, but not limited to, the provision of securities cost-basis method selection and/or information for purposes of cost-basis or tax reporting.

30. Ms. Simon did not ask for, nor did she review, the TD Ameritrade Institutional Client Agreement during the examination.

31. The TD Ameritrade application and Institutional Client Agreement allowed EFS to conduct discretionary trading on behalf of their clients on TD Ameritrade's institutional platform. All EFS discretionary accounts are conducted through the institutional platform.

32. The Respondents delivered or offered to deliver annual brochures to clients in 2018, 2019, and 2020 in meetings held with its clients.

33. The Respondents had no material changes to its business in 2018 and 2020. There were changes in 2019, which included certain changes to advisory services, fees, custodian information and the addition of a third-party money manager.

34. In response to a request by the Division, the Respondents provided a list of clients who were offered the annual brochures in 2018, 2019, and 2020. Mr. Parrott understood Ms. Simon to be asking whether Respondents mailed the annual brochures to their clients.

35. Mr. Parrott meets with EFS clients at least a couple of times a year to review their accounts and provide any updated materials, including annual brochures.

36. Mr. Parrott's practice has been to deliver and review the annual brochures to all EFS clients during their annual reviews.

ANALYSIS

I. VIOLATIONS

A. Exercise of Discretion Without Obtaining Written Authority.

The Department has alleged that the Respondents exercised discretionary authority without first obtaining written authority to do so from their clients in violation of TENN. CODE ANN. § 48-1-112(a)(2)(G) and TENN. COMP. R. & REG. 0780-04-03-.02(6)(c)(1). The Department has failed to meet its burden of proof on this allegation.

The Tennessee Securities Act provides:

> (a) The commissioner may by order deny, suspend, or revoke any registration under this part if the commissioner finds that:
>
> (1) The order is in the public interest and necessary for the protection of investors; and
>
> (2) The applicant or registrant or, in the case of a broker-dealer or investment adviser, any affiliate, partner, officer, director, or any person occupying a similar status or performing similar functions:
>
> …
>
> (G) Has engaged in dishonest or unethical practices in the securities business.

TENN. CODE ANN. § 48-1-112(a)(1) and (a)(2)(G).

The rules implementing this statute provide:

> (6) Prohibited Business Practices.
>
> (c) The following are deemed "dishonest or unethical business practices" by an investment adviser or an investment adviser representative under TENN. CODE ANN. § 48-1-112(a)(2)(G), to the

> extent permitted under Section 203A of the Investment Advisers Act, without limiting those terms to the practices specified herein:
>
> 1. Exercising any discretionary power in placing an order for the purchase or sale of securities for the account of a customer without first obtaining written discretionary authority from the customer.

TENN. COMP. R. & REG. 0780-04-03-.02(6)(c)(1).

The Respondents conduct all securities trading through TD Ameritrade and all discretionary accounts are held with TD Ameritrade. Mr. Parrott obtains both TD Ameritrade account applications and institutional client agreements from his clients with discretionary accounts. Mr. Parrott reviews the account application and institutional client agreement with the client upon the opening of an account, and the client signs the account application. The institutional client agreement states:

> **If I have so indicated in the Advisor Authorization section of the TD Ameritrade Institutional Account Application, that my Advisor will have trading authorization, I hereby constitute and appoint my Advisor named therein as my agent and attorney-in-fact to buy, sell, and trade in stocks, bonds, mutual funds, debentures, notes, […] in my name or number on TD Ameritrade's books for any Account in which I have indicated on the Application that my Advisor will have authority to direct TD Ameritrade to execute trades.** In all such purchases, sales, or trades, TD Ameritrade is authorized to follow the instructions of Advisor in every respect concerning my Account and my Advisor is authorized to act for me and on my behalf in the same manner and with the same force and effect as I might do or could do with respect to such purchases, sales, or trades […].
>
> My Advisor is authorized to effect such transactions in my Account via any available medium, electronic access or otherwise, including, but not limited to, electronic access via personal computer, mobile device, application, and/or touch-tone phone. […]

EXHIBIT 26, p. 2 (emphasis added).

The TD Ameritrade account applications have two sections – each of which were initialed by clients – entitled "Discretionary Trading Authorization" and "Fee Deduction and Payment Authorization." The Discretionary Trading Authorization section reads: "I authorize TD Ameritrade to effectuate trades on my Account at the direction of my Advisor as provided in the TD Ameritrade Institutional Client Agreement." EXHIBIT 8, p. 3. The TD Ameritrade account applications are signed by the client. While the TD Ameritrade agreements do not contain Mr. Parrott's signature, his routine practice was to review both agreements with clients and obtain client signatures on the account applications.

TENN. COMP. R. & REG. 0780-04-03-.02(6)(c)(1) requires that an investment adviser obtain written discretionary authority prior to exercising trades on behalf of a client; such authority is not limited to the adviser's client agreements. The TD Ameritrade institutional client agreements unequivocally grant the Respondents with trading authority – i.e., discretion – over client accounts. Further, the institutional client agreement sets forth the authority granted to the adviser in far greater detail than in the Respondents' post-March 2019 client agreements – which simply states "this investment advisory agreement is a discretionary managed agreement" – and which the Division deems acceptable. Thus, there is abundant evidence that the Respondents obtained written discretionary authority form their clients prior to exercising discretion. The Department has failed to meet its burden to prove this allegation.

B. Written Client Agreements.

1. Inclusion of discretionary authority in client agreement.

The Department also alleges that the Respondents' client agreements were insufficient because, prior to March 2019, they did not include a statement as to whether the contract grants

discretionary power to the adviser in violation of TENN. COMP. R. & REG. 0780-04-03-.02(6)(c)(19).

The rules relating to client agreements provide:

> (6) Prohibited Business Practices.
>
> (c) The following are deemed "dishonest or unethical business practices" by an investment adviser or an investment adviser representative under TENN. CODE ANN. § 48-1-112(a)(2)(G), to the extent permitted under Section 203A of the Investment Advisers Act, without limiting those terms to the practices specified herein:
>
> …
>
> 19. Entering into, extending, or renewing any investment advisory contract, unless such contract is in writing and, in substance, discloses:
>
> (i) The services to be provided;
> (ii) The term of the contract;
> (iii) The advisory fee;
> (iv) The formula for computing the fee;
> (v) The amount of prepaid fee to be returned in the event of contract termination or non-performance;
> (vi) Whether the contract grants discretionary power to the adviser; and
> (vii) That no assignments of such contract shall be made by the investment adviser without the consent of the other party to the contract.

TENN. COMP. R. & REG. 0780-04-03-.02(6)(c)(19).

Prior to March 2019, the Respondents' client agreement provided only that "[t]his investment advisor agreement is between …." These client agreements were revised in March 2019 to read "[t]his investment advisory agreement is a discretionary management agreement …." There is no evidence that the failure to include specific discretionary language in the earlier version of the client agreements was deliberate or intentional. Moreover, it is clear given the unequivocal language in the TD Ameritrade institutional client agreement, that the Respondents' clients were well aware that they were granting discretionary authority to the Respondents.

However, the failure to include specific discretionary language in the client agreement is a violation of the rules regulating investment advisers and investment adviser representatives. As of the time of the Division's examination, the Respondents had updated client agreements to the post-March 2019 version with some of its clients. However, there were still 320 clients who had not signed updated client agreements. Thus, the Department proved a violation of TENN. COMP. R. & REG. 0780-04-03-.02(6)(c)(19) by a preponderance of the evidence.

2. Maintenance of executed written client agreements.

Next, the Department alleges that the Respondents failed to maintain client agreements for 49 clients in violation of TENN. CODE ANN. § 48-1-112(a)(2)(B) and TENN. COMP. R. & REG. 0780-04-03-.02(3)(a)(8), which provides:

> (a) Except as provided in subparagraph (3)(c) of this Rule, every registered investment adviser shall maintain and keep current the following books and records relating to its business, unless waived by order of the commissioner:
>
> …
>
> 8. Copies 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 the manner of computation and method of payment thereof, and copies of all communications, correspondence, and other records relating to securities transactions.

The Respondents presented the Division with a list of approximately 291 clients. Of these, the Respondents were unable to produce signed client agreements for 49 of those clients. This amounts to less than 17% of the Respondents' clients for whom there were not signed agreements on file. The Respondents were not aware of these missing agreements prior to the Division's examination. It is unclear whether these agreements were never signed or had been misplaced at some point after having been signed. Thus, the Department has shown by a

preponderance of the evidence that the Respondents failed to maintain executed client agreements for all of their clients.

C. Delivery or Offer to Deliver Written Disclosures to Clients.

The Department further alleges that the Respondents failed to deliver or offer to deliver written disclosures to their clients in violation of TENN. CODE ANN. § 48-1-112(a)(2)(B) and TENN. COMP. R. & REG. 0780-04-03-.10(3)(a). This rule provides:

> An investment adviser, except as provided in subparagraph (3)(b) of this Rule, annually shall, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required by this Rule.

TENN. COMP. R. & REG. 0780-04-03-.10(3)(a).

It is Mr. Parrott's practice to meet with each of his clients at least a couple of times per year. At these meetings, Mr. Parrott reviews the required disclosures with his clients. In answering the Division's written inquiries during the examination, Mr. Parrott mistook the Division's use of the word "delivery" in its correspondence to mean annual delivery by mail. Because these documents were not mailed to clients, he answered the Division by saying that the documents had not been delivered in 2018, 2019, or 2020. The rule requires that the annual disclosures be delivered or offered to be delivered to clients annually. Mr. Parrott's reviewing and providing disclosures to his client at in person meetings clearly satisfies the requirements of the rule. Accordingly, the Department has not met its burden of proof as to this allegation.

D. Accuracy of Monthly Balance Sheets.

Finally, the Department alleges that the Respondents failed to maintain accurate monthly balance sheets in violation of TENN. CODE ANN. § 48-1-111(a), TENN. COMP. R. & REG. 0780-04-03-.02(3)(a)(1), and TENN. COMP. R. & REG. 0780-04-03-.02(3)(a)(3). The Department has proven this allegation by a preponderance of the evidence.

The Tennessee Securities Act requires:

> Every registered broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the commissioner by rule prescribes. All records so required shall be preserved for three (3) years unless the commissioner by rule prescribes otherwise for particular types of records.

TENN. CODE ANN. § 48-1-111(a).

The rules implementing this provision state:

> (3) Investment Adviser Required Records.
>
> (a) Except as provided in subparagraph (3)(c) of this Rule, every registered investment adviser shall maintain and keep current the following books and records relating to its business, unless waived by order of the commissioner:
>
> 1. Ledgers (or other records) reflecting assets and liabilities, income and expenses, and capital accounts;
>
> …
>
> 3. A record showing all receivables and payables.

TENN. COMP. R. & REG. 0780-04-03-.02(3)(a)(1) and (3).

As part of the Division's examination, it requested monthly balance sheets from the Respondents. In response, the Respondents presented balance sheets for each month between December 2018 and December 2020, which reflected an accounts receivable value of $124,934.68 for each month. When brought to his attention, Mr. Parrott submitted revised balance sheets which reflected a TD Ameritrade account that had not been included on the previous balance sheets.

The Respondents kept their books on a cash basis, which was reconciled annually for tax preparation purposes. There is no requirement that the Respondents maintain balance sheets on an accrual basis, in accordance with generally accepted accounting principles or even that they keep monthly balance sheets. However, when requested by the Division, the Respondents

presented inaccurate balance sheets. While the discrepancies in the balance sheets show an inattention to detail, the Respondents kept balance sheets only for internal tax-preparation purposes, and the balance sheets were never presented to any of the Respondents' clients. Moreover, the securities statutes contemplate that information in documents may be inaccurate or incomplete, by providing "[i]f the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment." TENN. CODE ANN. § 48-1-111(c). Based on the Respondents failure to include the TD Ameritrade account and the inaccurate accounts receivable value, the Department has proven this allegation.

II. CIVIL PENALTIES[1]

TENN. CODE ANN. § 48-1-112(d) authorizes the Commissioner to impose civil penalties:

> In any case in which the commissioner is authorized to deny, revoke, or suspend the registration of a broker-dealer, agent, investment adviser, investment adviser representative, or applicant for broker-dealer, agent, investment adviser, or investment adviser representative registration, the commissioner may, in lieu of or in addition to such disciplinary action, 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.

The Tennessee Securities Act does not establish factors to be considered when assessing civil penalties. However, other Tennessee statutes – such as the Tennessee Insurance Producer Licensing Act – that similarly regulate the conduct of commerce in this state provide guidance, with factors including the following:

> (h) In determining the amount of penalty to assess under this section, the commissioner shall consider:

[1] While the Notice of Hearing and Charges requests the maximum allowable civil penalties, neither party's Proposed Findings of Fact and Conclusions of Law address the issue of civil penalties.

> (1) Whether the person could reasonably have interpreted such person's actions to be in compliance with the obligations required by a statute, rule or order;
> (2) Whether the amount imposed will be a substantial economic deterrent to the violator;
> (3) The circumstances leading to the violation;
> (4) The severity of the violation and the risk of harm to the public;
> (5) The economic benefits gained by the violator as a result of noncompliance;
> (6) The interest of the public; and
> (7) The person's efforts to cure the violation.

TENN. CODE ANN. § 56-6-112(h); *see also* TENN. CODE ANN. § 63-1-134 (applying nearly identical factors to civil penalties assessed by the Health Related Boards of the Tennessee Department of Health).

Because these are helpful, common-sense factors, they will be applied as guidelines in evaluating the assessment of civil penalties in this situation. Here, the Department has proven three violations – that the Respondents failed to maintain client agreements with 49 clients, that the Respondents' pre-March 2019 client agreement was insufficient, and that the Respondents' monthly balance sheets were inaccurate. These violations clearly show an inattention to detail, which is of utmost importance when members of the public entrust their financial resources to a securities adviser. However, this must be balanced against the facts that (1) these were unintentional mistakes and (2) Mr. Parrott was unaware of these deficiencies prior to the Division's examination. Further, he took action to rectify the deficiencies immediately upon being made aware of them and promptly provided supplemental information to the Division, when requested.

In assessing the relevant factors, the risk of harm to the public (factor 4) and the public interest (factor 6) require that some civil penalty be assessed. That Mr. Parrott believed he was running his company in compliance with the rules and regulations governing the securities industry (factor 1) and that he made immediate efforts to cure the violations (factor 7) weigh in

favor of moderating the amount of that penalty. There is no evidence that the Respondents gained economic benefit as a result of the violation (factor 5). Finally, the violations that the Department proved were less severe as compared to the most serious allegation – exercising discretion without any written authority to do so – which was not proven (factor 4).

In addition to these factors, the majority of the Respondents' clients were over the age of 65, making them designated adults as defined by TENN. CODE ANN. § 48-1-102(9)(A), and authorizing a civil penalty up to $10,000.00 per violation. **Weighing these factors, it is determined that one $10,000.00 civil penalty for each of the three violations, for a total civil penalty of $30,000.00, is reasonable and hereby ASSESSED.** This amount is sufficient to act as a substantial economic deterrent to future violations.

III. DENIAL OF RENEWAL APPLICATIONS

When the Respondents' annual registration failed to renew at the end of 2021 due to an insufficient balance in the Respondents' FINRA account, Mr. Parrott took immediate steps to rectify the situation. All necessary documentation was submitted to the Department within two business days. However, the Department refused to renew the Respondents' registrations over concerns raised by the Division's recently closed examination.

TENN. CODE ANN. § 48-1-112 authorizes the denial or revocation of a registration:

> (a) The commissioner may by order deny, suspend, or revoke any registration under this part if the commissioner finds that:
>
> (1) The order is in the public interest and necessary for the protection of investors; **and**
>
> (2) The applicant or registrant or, in the case of a broker-dealer or investment adviser, any affiliate, partner, officer, director, or any person occupying a similar status or performing similar functions:
>
> …
>
> (B) Has willfully violated or willfully failed to comply with any provision of this part or a predecessor chapter or any rule or order

> under this part or a predecessor chapter, including, without limitation, any net capital requirements; [or]
>
> …
>
> (G) Has engaged in dishonest or unethical practices in the securities business.

TENN. CODE ANN. § 48-1-112(a)(1), (2)(B) and (G) (emphasis added).

The Department has presented no evidence that revocation of the Respondents' registrations was in the public interest or necessary for the protection of investors. The Department has also failed to present any evidence that any of the Respondents' actions were willful. Thus, there was no basis for the Division's June 16, 2022, Order of Denial of the Respondents' registration renewal applications.

One of the violations that has been found is defined as a dishonest or unethical business practice –the violation of TENN. COMP. R. & REG. 0780-04-03-.02(6)(c)(19) for the failure to include language in its' pre-March 2019 client agreement that disclosed whether the contract grants discretionary authority. However, TENN. CODE ANN. § 48-1-112 requires both a finding that an applicant has engaged in dishonest and unethical practices AND that it is in the public interest and necessary for the protection of investors. The Department has met only one of these prongs; thus, it has failed to prove by a preponderance of the evidence that the Order of Denial of the Respondents' registration renewals was appropriate. Accordingly, the June 16, 2022, Order of Denial is **REVERSED.**

CONCLUSIONS OF LAW

1. The Department has failed to meet its burden to prove violations of Tennessee's securities laws sufficient to justify the June 16, 2022, Order of Denial of Respondents' registration renewal applications. None of the Respondents' actions or inactions were willful,

and denial of the renewal applications is not in the public interest or necessary for the protection of investors. Accordingly, the June 16, 2022, Order of Denial is **REVERSED.**

2. The Department has met its burden of proof that the Respondents violated the following provisions:

a. TENN. CODE ANN. § § 48-1-111(a) and TENN. COMP. R. & REG. 0780-04-03-.02(3)(a)(1) and (3) due to inaccurate balance sheets from December 2018 to December 2020 showing a repeated accounts receivable balance of $124,934,

b. TENN. CODE ANN. § 48-1-112(a)(2)(B) and TENN. COMP. R. & REG. 0780-04-03-.02(3)(a)(8) by failing to maintain client agreements for 49 clients, and

c. TENN. COMP. R. & REG. 0780-04-03-.02(6)(c)(19) by failing to include discretionary authority authorization in its client agreements prior to March 2019.

3. Based on these violations, a civil penalty totaling $ 30,000.00, **to be paid within 90 days** of the entry of this Initial Order, is **ASSESSED** against the Respondents as follows:

a. $10,000.00 for violation of TENN. CODE ANN. § § 48-1-111(a) and TENN. COMP. R. & REG. 0780-04-03-.02(3)(a)(1) and (3),

b. $10,000.00 for violation of TENN. CODE ANN. § 48-1-112(a)(2)(B) and TENN. COMP. R. & REG. 0780-04-03-.02(3)(a)(8), and

c. $10,000.00 for the violation of TENN. COMP. R. & REG. 0780-04-03-.02(6)(c)(19).

4. While the Department requested that the costs of this action up to $5,000.00 be assessed against the Respondents, it cited no authority for the imposition of such costs. Further, no authority for the requested costs has been found in reviewing TENN. CODE ANN. § 48-1-101,

et seq. Thus, the Department's request that the Respondents pay the costs of the investigation and hearing of this matter is **DENIED.**

This Initial Order imposing civil penalties against the Respondents is entered to protect the public and investors in the State of Tennessee, consistent with the purposes fairly intended by the policy and provisions of the Tennessee Securities Act.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the **27th day of January, 2023**.

ELIZABETH D. CAMBRON
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 **27th day of January, 2023.**

IN THE MATTER OF: **APD CASE No. 12.06-223065J**
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE V. ESTATE & FINANCIAL STRATEGIES, INC. AND HENRY LEE PARROTT

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

The Administrative Judge's decision in your case **BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE (COMMISSIONER)**, called an Initial Order, was entered on **January 27, 2023.** The Initial Order is not a Final Order but shall become a Final Order unless:

1. **A Party Files a Petition for Reconsideration of the Initial Order:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration with the Administrative Procedures Division (APD). A Petition for Reconsideration should include your name and the above APD case number and should state the specific reasons why you think the decision is incorrect. APD must **receive** your written Petition no later than 15 days after entry of the Initial Order, which is no later than **February 13, 2023**. A new 15 day period for the filing of an appeal to the **COMMISSIONER** (as set forth in paragraph (2), below) starts to run from the entry date of an order ruling on a Petition for Reconsideration, or from the twentieth day after filing of the Petition if no order is issued. Filing instructions are included at the end of this document.

   The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph (2), below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied, you may file an Appeal, which must be **received** by APD no later than 15 days after the date of denial of the Petition. *See* TENN. CODE ANN. §§ 4-5-317 and 4-5-322.

2. **A Party Files an Appeal of the Initial Order:** You may appeal the decision to the **COMMISSIONER** by filing an Appeal of the Initial Order with APD. An Appeal of the Initial Order should include your name and the above APD case number and state that you want to appeal the decision to the **COMMISSIONER**, along with the specific reasons for your appeal. APD must **receive** your written Appeal no later than 15 days after the entry of the Initial Order, which is no later than **February 13, 2023**. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.

3. **The COMMISSIONER decides to Review the Initial Order:** In addition, the **COMMISSIONER** may give written notice of the intent to review the Initial Order, within 15 days after the entry of the Initial Order.

   If either of the actions set forth in paragraphs (2) or (3) above occurs prior to the Initial Order becoming a Final Order, there is no Final Order until the **COMMISSIONER** renders a Final Order.

   If none of the actions in paragraphs (1), (2), or (3) above are taken, then the Initial Order will become a Final Order. **In that event, YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER.**

STAY

In addition, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Initial Order. A Petition for Stay must be **received** by APD within 7 days of the date of entry of the Initial Order, which is no later than **February 3, 2023**. *See* TENN. CODE ANN. § 4-5-316. A reviewing court also may order a stay of the Final Order upon appropriate terms. *See* TENN. CODE ANN. §§ 4-5-322 and 4-5-317.

IN THE MATTER OF:
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE V. ESTATE & FINANCIAL STRATEGIES, INC. AND HENRY LEE PARROTT

APD CASE No. 12.06-223065J

NOTICE OF APPEAL PROCEDURES

IN THE MATTER OF:
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE V. ESTATE & FINANCIAL STRATEGIES, INC. AND HENRY LEE PARROTT

APD CASE No. 12.06-223065J

NOTICE OF APPEAL PROCEDURES

REVIEW OF A FINAL ORDER

When an Initial Order becomes a Final Order, a person who is aggrieved by a Final Order in a contested case may seek judicial review of the Final Order by filing a Petition for Review "in the Chancery Court nearest to the place of residence of the person contesting the agency action or alternatively, at the person's discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County," within 60 days of the date the Initial Order becomes a Final Order. *See* TENN. CODE ANN. § 4-5-322. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.

FILING

Documents should be filed with the Administrative Procedures Division by email *or* fax:

Email: APD.Filings@tn.gov

Fax: 615-741-4472

In the event you do not have access to email or fax, you may mail or deliver documents to:

Secretary of State
Administrative Procedures Division
William R. Snodgrass Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, TN 37243-1102