

STATE OF NEW JERSEY
BUREAU OF SECURITIES
153 Halsey Street
P.O. Box 47029
Newark, New Jersey 07101
(973) 504-3600

IN THE MATTER OF: :

John H. Kelly, :
(CRD NO. 2489408) :

Respondent :

SUMMARY
REVOCATION ORDER

John H. Kelly

Kovack Securities, Inc.
6451 N. Federal Highway
Suite 1201
Fort Lauderdale, Florida 33308

Pursuant to the authority granted to the Chief of the New Jersey Bureau of Securities ("Bureau") under the Uniform Securities Law, as amended, L. 1997, c. 276, N.J.S.A. 49:3-47 *et seq.* ("Law"), more particularly, N.J.S.A. 49:3-58 and after careful review and due consideration of the Bureau's records and certain documents provided to the Bureau, the Bureau Chief has determined that the agent registration of John H. Kelly with Kovack Securities Inc., shall be REVOKED for the reasons that follow:

1. John H. Kelly ("Kelly"), CRD # 2489408, residing in New Jersey was registered with the Bureau as an agent of Kovack Securities Inc. ("Kovack"), CRD# 44848, of 6451 N. Federal Highway Suite 1201, Fort Lauderdale, Florida 33308, at the location of New Jersey from May 9, 2003 through March 15, 2006.

2. On March 15, 2006, Kovack submitted a Uniform Notice of Termination of Securities Registration, Form U-5, for full termination of Kelly's agent registration. The Central Registration Depository ("CRD") indicated that Kelly was discharged by Kovack because he failed to advise Kovack of certain actions taken by the State of New Jersey, Department of Banking and Insurance ("DOBI") in 2002, which included a \$20,000.00 fine and restitution in the approximate amount of \$43,000.00.

3. From May 19, 1994 through March 15, 2003, Kelly had been registered with the Bureau as an agent of W. S. Griffith Securities ("Griffith") CRD #10410.

4. On September 11, 2000, the Commissioner of DOBI directed that an Order to Show Cause be entered against Kelly alleging that Kelly was in violation of various statutory and regulatory provisions applying to the insurance industry.

5. On October 6, 2000, Kelly filed a request for a hearing, and on October 10, 2000, Kelly's Form U-4 was updated on the CRD to reflect an Order to Show Cause in pending status.

6. On November 28, 2000, Kelly's request for a hearing was granted and the matter was transmitted to the Office of Administrative Law ("OAL") as a contested Case. On that same date, DOBI filed a two count Order to Show Cause, which alleged in count one, that because Kelly placed health insurance coverage on behalf of New Jersey risks with Atlantic Healthcare Benefit Trust ("AHBT"), an issuer not authorized or eligible to transact business in the State of New Jersey, in violation of N.J.S.A. 17:22-6.37, N.J.S.A. 17:22A-17(a)(1), (9) and (20), and N.J.A.C. 11:17A-4.10, that Kelly had failed to exercise reasonable skill, care and diligence in selecting a financially secure issuer with sufficient financial strength to provide for indemnity, in violation of N.J.S.A. 17:22-A-17(a)(1) and (20), and N.J.A.C. 11:17A-4.10. The Order to Show Cause further

alleged in count two that Kelly failed to maintain accurate books and records reflecting all insurance-related transactions in which he took part, in violation of N.J.S.A. 17:22A-17(a)(15) and (20), and N.J.A.C. 11:17C-2.5. DOBI therefore sought either the suspension or revocation of Kelly's insurance producer license, as well as fines pursuant to N.J.S.A. 17:22A-17(a) and (b) and full restitution of more than \$346,000.00.

7. On September 4, 2002, the Administrative Law Judge issued an Initial Decision, following which both sides filed exceptions.

8. On November 12, 2002, the Commissioner of DOBI issued a Final Decision against Kelly for having sold an unlicensed plan in violation of N.J.S.A. 17:22-6.37; willful violation of N.J.S.A. 17:22-6.37 in violation of N.J.S.A. 17:22A-17(a)(1); aiding abetting or assisting another with the sale of an unlicensed plan in violation of N.J.S.A. 17:22A-17 (a)(9); having demonstrated unworthiness, financial irresponsibility and incompetency to transact business as an insurance producer in violation of N.J.S.A. 17:22A-17(a)(20); failing to meet fiduciary responsibilities in violation of N.J.A.C. 11:17A-4.10; failing to maintain and produce books and records in violation of N.J.S.A. 17:22-A-17(a)(15) and N.J.A.C. 11:17C-2.5, and for having demonstrated financial irresponsibility and general incompetence in violation of N.J.S.A. 17:22A-17(a)(20).

9. Pursuant to the Final Decision, Kelly was to pay fines in the amount of \$20,000.00, restitution to in the total amount of \$43,325.10, and his insurance producer license was suspended for a period of two (2) years from the date of the Final Decision of the Commissioner of DOBI dated November 12, 2002 and Kelly would continue to be ineligible for relicensure until he had paid full restitution to Mildred Powell.

10. The Final Decision, was appealed to the Superior Court, Appellate Division, and on November 24, 2004, the Appellate Division issued a per curiam opinion affirming the Final Decision of the Commissioner of DOBI.

11. To date, Kelly's insurance producer license remains suspended and Kelly has failed to update the CRD to disclose the actions taken against him by DOBI, the Initial Decision, and Final Decision of the Commissioner of DOBI.

KELLY HAS ENGAGED IN DISHONEST OR UNETHICAL PRACTICES

N.J.S.A. 49:3-58(a)(1)

N.J.S.A. 49:3-58(a)(2)(vii)

12. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

13. Pursuant to N.J.S.A. 49:3-58(a) "The bureau chief may by order deny, suspend, or revoke any registration if he finds: (1) that the order is in the public interest; and (2) that the applicant or registrant . . . (vii) . . . has engaged in dishonest or unethical practices in the securities, commodities, banking, insurance or investment advisory business . . ."

14. The foregoing conduct by Kelly constituted dishonest or unethical practices in the insurance industry that were demonstrative of poor character, which is good cause, pursuant to N.J.S.A. 49:3-58(a)(2)(vii) and (ix), within the public interest pursuant to N.J.S.A. 49:3-58(a)(1), and necessary for the protection of investors to revoke Kelly's registration as a securities agent of Kovak.

**KELLY HAS ENGAGED IN PRACTICES THAT ARE DEMONSTRATIVE OF
POOR CHARACTER**

N.J.S.A. 49:3-58(a)(1)

N.J.S.A. 49:3-58(a)(2)(ix)

15. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

16. Pursuant to N.J.S.A. 49:3-58(a) “The bureau chief may by order deny, suspend, or revoke any registration if he finds: (1) that the order is in the public interest; and (2) that the applicant or registrant . . .(ix) . . . is not qualified on the basis of such factors as character. . .”

17. The foregoing conduct by Kelly constituted dishonest or unethical practices in the insurance industry that were demonstrative of poor character, which is good cause, pursuant to N.J.S.A. 49:3-58(a)(2)(vii) and (ix), within the public interest pursuant to N.J.S.A. 49:3-58(a)(1), and necessary for the protection of investors to revoke Kelly’s registration as a securities agent of Kovak.

KELLY HAS WILLFULLY VIOLATED OR WILLFULLY FAILED TO COMPLY WITH A
PROVISION OF THE UNIFORM SECURITIES LAW (1997) OR A RULE OR ORDER
AUTHORIZED BY THE UNIFORM SECURITIES LAW (1997)
N.J.S.A. 49:3-58(a)(1)
N.J.S.A. 49:3-58(a)(2)(ii)

18. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

19. Pursuant to N.J.S.A. 49:3-58(a) “The bureau chief may by order deny, suspend, or revoke any registration if he finds: (1) that the order is in the public interest; and (2) that the applicant or registrant . . . (ii) . . . has willfully violated or willfully failed to comply with any provision of this act or any rule or order authorized by this act . . .”

20. N.J.A.C. 13:47A 1.1 *et seq.* contains the rules and regulations pursuant to the statute that regulates the sale of securities.

21. Pursuant to N.J.A.C. 13:47A-3.2(a), “A registered agent shall file an amendment with the CRD, by filing or updating a Form U-4 Uniform Application for Securities Industry Registration

or Transfer, or its successor form, along with the fee, if any prescribed by the CRD, . . . whenever a change in the answers on his or her original application for registration occurs, as to . . . disciplinary actions by any administrative body, restraints, injunctions, suspensions, revocation or judgments based on fraud, or any other information contained in answers to Item 23 and the Disclosure Reporting Page of the Form U-4 . . . The amendments must be filed within 20 days of the occurrence identified therein.”

22. Although Kelly was registered with the Bureau at the time, he failed to file a Form U-4 updating his original application for registration to include the Initial Decision of November 11, 2002 and the Final Decision of November 28, 2002. More than 20 days have elapsed since the Initial Decision was filed or since the Final Decision was filed.

23. The foregoing acts by Kelly constitute a willful failure to comply with N.J.A.C. 13:47A-3.2(a), which is good cause, pursuant to N.J.S.A. 49:3-58(a)(2)(ii), N.J.S.A. 49:3-58(a)(2)(vii) and N.J.S.A. 49:3-58(a)(2)(xi) within the public interest pursuant to N.J.S.A. 49:3-58(a)(1), and necessary for the protection of investors to revoke Kelly’s registration as a securities agent of Kovak.

For the reasons stated above, it is on this 8th DAY of November 2006 ORDERED that the agent registration of Kelly (CRD #2489408) with Kovack Securities Inc. be REVOKED pursuant to N.J.S.A. 49:3-58(a)(1) and N.J.S.A. 49:3-58(a)(2)(ii), N.J.S.A. 49:3-58(a)(2)(vii) and N.J.S.A. 49:3-58(a)(2)(xi).

Dated: November 8, 2006

By: Franklin L. Widmann
Franklin L. Widmann
Chief, Bureau of Securities

NOTICE OF RIGHT TO HEARING

Pursuant to the uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq., specifically N.J.S.A. 49:3-58 (c). The Bureau Chief shall, entertain on no less than three (3) days' notice, a written application to lift the summary postponement, suspension or revocation on written application of the applicant or registrant and in connection therewith may, but need not, hold a hearing and hear testimony, but shall provide to the applicant or registrant a written statement of the reasons for the summary postponement, suspension or revocation.

The matter will be set down for a hearing if a written request for such hearing is filed with the bureau within fifteen (15) days after the respondent receives this Order. A request for a hearing must be accompanied by a written response, which addresses specifically each of the allegations set forth in the Order. A general denial is unacceptable. At any hearing involving this matter, an individual respondent may appear on his/her own behalf or be represented by an attorney.

Orders issued pursuant to this subsection to suspend or revoke any registration shall be subject to an application to vacate upon ten (10) days' notice, and a preliminary hearing on the order to suspend or revoke any registration shall be held in any event within twenty (20) days after it is requested, and the filing of a motion to vacate the order shall toll the time for filing an answer and written request for a hearing.

If no hearing is requested, the Order shall be entered as a Final Order and will remain in effect until modified or vacated. If a hearing is held, the bureau chief shall affirm, vacate or modify the order in accord with the finding made at the hearing.

NOTICE OF OTHER ENFORCEMENT REMEDIES

You are advised that the Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq., provides several enforcement remedies which are available to be exercised by the Bureau Chief, either alone or in combination. These remedies include, in addition to this action, the right to seek and obtain injunctive and ancillary relief in a civil enforcement action, N.J.S.A. 49:3-69.

You are further advised that the entry of this Order does not preclude the Bureau Chief from seeking and obtaining other enforcement remedies against you in connection with the claims made against you in this action.