

STATE OF NEW JERSEY
BUREAU OF SECURITIES
153 Halsey Street
P.O. Box 47029
Newark, New Jersey 07101

IN THE MATTER OF: :

: :
KEVIN P. BRENNAN :
(CRD #3009014) :
: :

CONSENT ORDER

Pursuant to the authority granted to the Chief of the New Jersey Bureau of Securities (“Bureau Chief”) by the Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq. (“Securities Law”), and after investigation, review, and due consideration of the facts and statutory provisions set forth below, the Bureau Chief has determined that civil monetary penalties and other remedies be assessed against Kevin P. Brennan. (“Brennan”).

WHEREAS, the New Jersey Bureau of Securities (“Bureau”) is the State agency with the responsibility to administer and enforce the Securities Law; and

WHEREAS, N.J.S.A. 49:3-67 authorizes the Bureau Chief from time to time to issue such Orders as are reasonably necessary to carry out the provisions of the Securities Law, upon a finding that the action is necessary and appropriate in the public interest for the protection of investors or consistent with the purposes fairly intended by the provisions of the Securities Law; and

WHEREAS, Brennan is an agent registered with the Bureau; and

WHEREAS, the Bureau has conducted an investigation into certain activities by

Brennan, during the period from April 24, 2009 until October 2011 with the full cooperation of Brennan; and

WHEREAS, Brennan and the Bureau Chief wish to resolve these issues in accordance with the terms of the settlement and without the expense and delay that formal administrative proceedings would involve; and

WHEREAS, Brennan consents to the form and entry of this Consent Order.

Accordingly, Brennan waives the following rights:

- a. To be afforded an opportunity for a hearing on the Bureau Chief's findings and conclusions of law in this Consent Order after reasonable notice within the meaning of N.J.S.A. 49:3-58(c)(2) ; and
- b. To seek judicial review of, or otherwise challenge or contest, the validity of this Consent Order; and

WHEREAS, Brennan agrees that solely for the purpose of settling this matter, or any future proceedings by the Bureau, this Consent Order shall have the same effect as if proven and ordered after a full hearing held pursuant to N.J.S.A. 52:14B-1 et seq., with respect to this Consent Order; and

WHEREAS, this Consent Order concludes the investigation by the Bureau Chief and any civil or administrative action that could be commenced, pursuant to the Securities Law, on behalf of the Bureau Chief, as it relates to seeking civil monetary penalties or other relief against Brennan for the conduct described herein.

FINDINGS OF FACT

The Bureau Chief makes the following findings of fact:

1. Andrew Garrett, Inc. (“Garrett”) (CRD # 29931) is a registered broker-dealer whose primary business address is 140 East 45th Street, 11th Floor, New York, New York 10017. Garrett has been registered with the Bureau since December 9, 1996.

2. Kevin P. Brennan (“Brennan”) (CRD # 3009014), residing in Garden City, New York, has been registered with the Bureau as an agent of various firms at various times since August 13, 1998. He is currently registered with the Bureau as an agent of Garrett.

A. Heightened Supervision Agreements with Brennan

3. The Bureau approved an agent registration for Brennan with Garrett on May 1, 2009 , contingent upon his signing a heightened supervisory agreement (“First Brennan Agreement”) pursuant to N.J.A.C. 13:47A-3.1(d), which he signed on April 24, 2009.

4. John McHoul (CRD # 2073969) (“McHoul”), as Branch Supervisor of Garrett, signed the First Brennan Agreement on behalf of Garrett on April 24, 2009, and Mark Maurer (CRD # 1496683) (“Maurer”), as Chief Compliance Officer of Garrett, signed the First Brennan Agreement on behalf of Garrett on April 27, 2009.

5. Paragraph 12 of the First Brennan Agreement stated that “Brennan shall not be permitted to have any joint brokerage and/or commission accounts with any other registered representative nor shall he/she be permitted to share commissions with any individual.”

6. On August 18, 2010, the Bureau revoked Brennan’s agent registration pursuant to a Summary Revocation and Penalty Consent Order for failure to abide by the First Brennan Agreement in that he failed to notify the Bureau of 1) the updated status of two investor

complaints, 2) a Letter of Acceptance, Waiver, and Consent with the Financial Industry Regulatory Authority, and 3) an Administrative Consent Order entered by the State of Nevada.

7. The Order was settled in a May 10, 2011 Consent Order wherein he agreed to pay a \$5,000 penalty, and was allowed to register with the Bureau as an agent subject to certain conditions.

8. The Bureau approved an agent registration for the second time with Garrett on May 27, 2011 for Brennan, contingent upon his signing a new heightened supervisory agreement (“Second Brennan Agreement”) pursuant to N.J.A.C. 13:47A-3.1(d), which he signed on May 5, 2011.

9. Jamie Mercado (CRD # 2863760) (“Mercado”), as a Supervisor employed by Garrett, signed the Second Brennan Agreement on behalf of Garrett on May 4, 2011, and Albert Akerman (CRD # 1496683) (“Akerman”), as Chief Compliance Officer of Garrett, signed the Second Agreement on behalf of Garrett on May 4, 2011 as well.

10. Paragraph 14 of the Second Brennan Agreement states that “Brennan shall not be permitted to have any joint brokerage and/or commission accounts for New Jersey customers with any other registered representative nor shall he be permitted to share commissions with any individual.”

11. Both Brennan Agreements state that “[f]ailure to comply with this agreement shall be deemed to be a violation of N.J.A.C. 13:47A-14.16, which entitles the Bureau to impose sanctions.”

B. Commissions from Activity in New Jersey Client Accounts since April 27, 2009

12. From April 27, 2009 until October 2011, in contravention of all of the aforementioned Heightened Supervisory Agreements, Garrett failed to ensure compliance with the terms of the

Agreements relating to commissions. Garrett apportioned to Brennan and Conroy commissions from New Jersey client account activity from numerous other agents by having the agents apportion to Brennan and Conroy the difference between their gross commissions from all client account activity, reduced by the 25% payment to Garrett, and their personal representative payout rate.

13. Commissions were apportioned or paid from activity in the accounts of multiple New Jersey clients during the course of the First Brennan Agreement, the course of the Second Brennan Agreement, and, because it includes the entire period, the Conroy Agreement. They were also apportioned or paid during the period in which Brennan was revoked.

14. Each month, after the commissions were calculated, these amounts were apportioned or paid to an "office" consisting of Brennan, Conroy, six to ten agents paying commissions to Brennan and Conroy from client activity, and additional clerical staff. Expenses were deducted from the total commission amount, with the rest either being entered into a reserve account or being apportioned or paid to Brennan and Conroy.

15. In July 2011, Garrett withheld from Conroy and Brennan the payment of commissions from New Jersey accounts in the amount of \$9,450. In addition, pursuant to the month end October 2011 review, Garrett withheld from Conroy and Brennan commissions in the amount of \$6,870. However, as set forth in paragraph 18, Garrett failed to withhold the payment of other commissions.

16. According to Garrett, it paid commissions attributable to Conroy and Brennan in the amount of \$18,238.95 during the heightened supervision period, and a portion of this was paid during the revocation period. However, recognizing the payment of these commissions was not permitted, Garrett charged the entire amount back from Conroy and Brennan. Garrett contends

the apportionment of the commissions charged back was \$855.45 for Conroy and \$17,473.50 for Brennan.

17. Andrew Garrett has made certain changes to its supervisory and compliance procedures that include:

a) A daily trade review that is sent to the branch manager and compliance department identifying any trades for New Jersey clients transacted in the branch where Brennan and Conroy are located;

b) A monthly trade review by the operations department that is conducted to identify any ineligible overrides with a report that is sent to the branch manager;

c) Creating separate representative codes for New Jersey clients that have been created: 1.) to facilitate the review and analysis of trades; 2.) to ensure compliance with applicable rules and regulations; 3.) and to ensure compliance with the heightened supervision agreements.

CONCLUSIONS OF LAW

BRENNAN HAS FAILED TO COMPLY WITH THE TERMS OF A SUPERVISORY AGREEMENT

N.J.A.C. 13:47A-14.16

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. During the period of the First and Second Brennan Agreements, Brennan received commissions from activity in New Jersey client accounts, even though this practice was explicitly prohibited by his agreements.

20. Both Brennan Agreements state that “[f]ailure to comply with this agreement shall be deemed to be a violation of N.J.A.C. 13:47A-14.16, which entitles the Bureau to impose sanctions.”

21. This is cause, pursuant to N.J.S.A. 49:3-58(a)(2)(ii) to revoke Brennan’s registration. Further, this is cause, pursuant to N.J.S.A. 49:3-70.1 to assess civil monetary penalties against Brennan.

24th

THEREFORE, IT IS on this ~~24~~²⁴ day of January, 2013, **HEREBY**

ORDERED that Brennan cease and desist from further violations of the Securities Law and will comply with the Securities Law; and it is further

ORDERED that Brennan is hereby assessed a civil monetary penalty in the amount of \$30,000, payable to the Bureau on or before January 31, 2013, to “State of New Jersey, Bureau of Securities,” 153 Halsey Street, 6th Floor, Newark, NJ 07102. The civil monetary penalty shall be deposited into the Securities Enforcement Fund pursuant to N.J.S.A. 49:3-66.1.

GENERAL PROVISIONS

1. Pursuant to N.J.A.C. 1:1-19.1(d) this Consent Order shall be deemed the final decision as to Brennan.
2. Nothing in this Consent Order is intended to limit or supersede any authority or remedy available to the Bureau Chief under the Securities Law.
3. No employee or official of, or person representing, the Bureau or the State of New Jersey has made any additional promise or representation to Brennan regarding this Consent Order.

4. This Consent Order shall not bind any person not a party thereto. Each of the undersigned has read this Consent Order, understands it, and agrees to be bound by its terms.

5. Brennan agrees that solely for the purpose of this matter or future proceedings to enforce this Consent Order that this Consent Order shall have the same effect as if proven and ordered after a full hearing pursuant to N.J.S.A. 52:14B-1 et seq.

By: Abbe Tiger

Abbe Tiger, Chief
New Jersey Bureau of Securities

By: Kevin P. Brennan

Kevin P. Brennan

DATED: