

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

:
IN THE MATTER OF: :
:
Richard M. Muhlberg :
 (CRD # 2242640), :
:
 Respondent. :

ADMINISTRATIVE CONSENT
ORDER

BEFORE LAURA H. POSNER, BUREAU CHIEF

The New Jersey Bureau of Securities (the “Bureau”) is the State agency with the responsibility to administer and enforce the Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq. (“Securities Law”). The Bureau Chief, Laura H. Posner (“Bureau Chief”), pursuant to N.J.S.A. 49:3-67, is authorized to issue such Orders as are 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.

Pursuant to the authority granted to the Bureau Chief under the Securities Law, and after investigation, careful review, and due consideration of the facts and statutory provisions set forth herein, the Bureau Chief hereby finds that there is good cause, it is in the public interest, and it will preserve resources to enter into an Administrative Consent Order (“Consent Order”) with Richard M. Muhlberg (“Muhlberg”) (CRD # 2242640), and Muhlberg hereby agrees to resolve any and all issues in controversy regarding the specific conduct described herein on the terms set forth in this Consent Order.

The Bureau Chief makes the following findings of fact and conclusions of law, which Muhlberg admits:

FINDINGS OF FACT

1. Richard M. Muhlberg (“Muhlberg”) residing in Cherry Hill, New Jersey, has been registered with the Bureau as an agent of Sigma Financial Corporation (CRD #14303) (“Sigma”) since September 30, 1997. Muhlberg has also been registered with the Bureau as an investment adviser representative of Sigma Planning Corporation (CRD #110692) (“SPC”) since July 19, 2002.

2. After receiving a complaint from a client of Muhlberg in March 2015, the Bureau began communications with Sigma and SPC regarding Muhlberg’s activities. At the Bureau’s request, Sigma and SPC then began an internal investigation into Muhlberg’s activities. The firms’ internal investigation led to Muhlberg’s admission that he had borrowed funds from the client.

3. On June 5, 2015, Muhlberg was discharged from both Sigma and SPC for borrowing money from a client in contravention of firm policy.

Muhlberg Improperly Borrowed Money from a Client

4. Section IV (“Rules Regarding the Sale of Securities”) of the Sigma Registered Representative Compliance Manual, in effect between 2008 and 2014, states, “Registered Representatives or any associated person may not make or accept personal loans from customers” under the subheading “Borrowing From or Lending Money to Customers.”

5. The SPC Policies and Procedures Manual (effective April 20, 2010) states under Section 10.3.11.7, labeled “Prohibitions,” that, “[a]n Associated Person may not accept any form of loan from a client.”

6. Sigma's Policies and Procedures Manual (effective December 22, 2008) states under Section 2.15.7 that loans from clients are prohibited unless specific circumstances are met. Section 2.15.7 goes on to state that, even if the circumstances are met, "[a]ny proposed loan with the RR's customer...requires the PRIOR review and approval by Compliance."

7. Between April 2009 and June 2010, Muhlberg directly or through his wife borrowed at least \$7,500 from Customer A, a Sigma and SPC customer on whose account Muhlberg served as the representative.

8. An accounting of the loans was handwritten on a single sheet of notepad paper (the "Promissory Note"). The total amount to be repaid was at some later point in time changed from the original \$2,000 to \$4,000.

9. The loans were made on three separate occasions and all amounts were withdrawn by Customer A from a personal bank account in cash and then deposited into the Muhlbergs' personal bank account. The Promissory Note appears to have been written on April 15, 2010 and set a repayment date of "approximately 1/21/2011."

10. Muhlberg did not receive prior approval from Sigma's Compliance department to take the loan from Customer A.

11. In or around 2011, Muhlberg repaid the monies received from Customer A in connection with the loans referenced in this Consent Order.

12. Upon investigation by Sigma and SPC, Muhlberg acknowledged having written and signed the Promissory Note himself and having borrowed a total of \$7,500 from Customer A.

13. Muhlberg was terminated by SPC and Sigma effective June 5, 2015 for violation of the firms' policy prohibiting taking loans from customers.

14. During branch examinations administered by Sigma on July 7, 2009, May 18, 2011, April 9, 2012, and March 5, 2014, Muhlberg answered “yes” to the Branch Office Examination & Representative Questionnaire question “Are you aware that you may not borrow or loan money to or from a customer?”

15. Sigma issues an Annual Regulatory Questionnaire to its Registered Representatives. Despite the fact that Muhlberg borrowed money from Customer A, on at least six separate occasions between 2009 and 2014, he answered “no” to every Sigma Annual Regulatory Questionnaire question regarding whether he had borrowed money from customers.

CONCLUSIONS OF LAW

Muhlberg Engaged In Dishonest or Unethical Business Practices in the Securities Business by Borrowing Money from his Client

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

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

N.J.A.C. 13:47A-6.3(a)

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

17. Pursuant to N.J.S.A. 49:3-58:

[t]he 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....

18. Pursuant to N.J.A.C. 13:47A-6.3(a):

“Dishonest or unethical practices” as used in N.J.S.A. 49:3-47 et. seq., specifically in N.J.S.A. 49:3-58(a)(2)(vii), shall include (42.) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of an investment adviser, or a financial institution engaged in the business of loaning funds....

19. By borrowing money from his client, Muhlberg engaged in dishonest and unethical practices in the securities business. This is cause pursuant to N.J.S.A. 49:3-58(a)(2)(vii) to suspend Muhlberg's registration with the Bureau as both an agent and an investment adviser representative.

20. Based upon the foregoing, and pursuant to N.J.S.A. 49:3-58(a)(1), the suspension of Muhlberg's registration as an agent and investment adviser representative and certain exemptions is in the public interest.

IT IS on this 16^m day of December, 2015 **ORDERED AND AGREED** that:

21. The agent and investment adviser representative registrations of Richard M. Muhlberg be and hereby are **SUSPENDED** for a period of six (6) months commencing with the date this order is entered;

22. Richard M. Muhlberg is assessed a civil monetary penalty in the amount of Three Thousand Five Hundred Dollars (\$3,500.00);

23. The civil monetary penalty is due and payable within thirty (30) days of the date this order is entered to "State of New Jersey, Bureau of Securities," 153 Halsey Street, 6th Floor, Newark, NJ 07102. The civil monetary penalty payment shall be deposited in the Securities Enforcement Fund, pursuant to N.J.S.A. 49:3-66.1;

24. Muhlberg is **DENIED** all exemptions contained in N.J.S.A. 49:3-50 subsections (a) paragraph 9, 10, and 11 and subsection (b); and

25. The exemptions to the registration requirements provided by N.J.S.A. 49:3-56(b), N.J.S.A. 49:3-56(c) and N.J.S.A. 49:3-56(g) are hereby **REVOKED**.

ADDITIONAL PROVISIONS

27. Respondent agree that for purposes 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.

28. New Jersey law shall govern this Consent Order and enforcement thereof.

29. Nothing contained herein shall in any manner be construed to limit or affect any position that the Bureau or any other governmental agency, or any person may take in any future or pending action not specifically encompassed herein.

30. This Consent Order shall not bind any person not a party hereto, except as provided herein.

31. Respondent has read this Consent Order, understands it, and agrees to be bound by its terms. Muhlberg represents that he has consulted with counsel before entering into this Consent Order.

32. This Consent Order is fully integrated and contains the entire settlement terms between Respondents and the Bureau. No employee, attorney, official or representative of the Bureau or the State of New Jersey has made any additional promise or representation to Respondents regarding this Consent Order.

33. This Consent Order shall be deemed the final decision as to Respondent.

34. Respondent consents to the entry of this Consent Order and voluntarily waives an opportunity for a hearing after reasonable notice within the meaning of N.J.S.A. 49:3-58(c)(2).

35. Respondent voluntarily waives any right to assert any defense or to raise any challenge that they otherwise may have had to this Consent Order.

36. This Consent Order may be signed in counterparts and/or by facsimile, each of which shall be deemed an original.

NEW JERSEY BUREAU OF SECURITIES



LAURA H. POSNER
BUREAU CHIEF

Richard M. Muhlberg, the undersigned, has read this Administrative Consent Order, understands it, and agrees to be bound by its terms.


Richard M. Muhlberg

Date: December 7, 2015

