

BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE
OF THE STATE OF IDAHO

STATE OF IDAHO, Department of
Finance, Securities Bureau,
Complainant,

vs.

CRAIG WHITE and FEE ONLY
FINANCIAL PLANNING
Respondent.

Docket No. 1999-7-55

AGREEMENT AND ORDER

The Director of the Department of Finance has instituted an investigation into the conduct of Respondent. Pursuant to said investigation it appears to the Director that violations of the Idaho Securities Act, Idaho Code 30-1401 *et seq.* have occurred. The Director and Respondent has agreed to resolve this matter without a public hearing or other adjudication of this matter. Therefore, the Director deems it appropriate and in the public interest that this Agreement and Order be entered, and Respondent consents to the entry of this Agreement and Order.

RESPONDENTS

1. Respondent has been registered as an investment adviser with the SEC since October 18, 1991 and in Idaho since January 31, 1992.
2. On March 9 and 10, 1999, the Complainant conducted a routine examination of Respondent's office located at 404 S. 8th St., Ste 310, Boise, Idaho.

During the examination, Complainant noted extensive compliance deficiencies with regard to the recordkeeping requirements of investment advisers.

FINDINGS OF FACT

3. Complainant's examination revealed that Respondent had failed to accurately disclose, within the Form ADV, the management fee charged by Respondent for investment advisory services. Complainant requested that the disclosure reflect that Mr. White has discretion in the amount charged for investment advisory services, and that Mr. White has, in practice, waived fees for certain clients.

4. Respondent failed to provide a copy of the Part II of Form ADV to clients during the initial meeting and failed to make an annual offer, to existing clients, of the Part II of Form ADV.

5. Respondent was unable to readily produce, during Complainant's examination, financial statements (personal financial statements are required since Fee Only Financial Planning is a sole proprietorship) and a list of transactions in Mr. White's personal securities account. Respondent produced this information soon after the examination, on March 15, 1999.

6. Complainant's examination noted that Respondent's client files lacked complete suitability information. In addition, the suitability information that was available was not dated and therefore provided no reference point for evaluation of the clients' suitability for the product. Furthermore, client suitability information was not updated as needed to remain current.

7. Respondent submitted a client contract in the initial investment advisory application with our office. However, this contract was not used in practice. Clients were not advised that the contract was not assignable without the consent of the client, and there was no evidence of disclosure of fees that were to be charged to the client.

8. Respondent failed to develop a procedures manual for use in conducting investment advisory business.

9. Complainant scheduled a follow-up examination for August 4 and 5, 1999 in order to verify that the above compliance requirements were in place. Respondent requested an extension to August 30 and 31, 1999 for the follow-up examination. Complainant views the time allowed, approximately five months, as sufficient time to remedy the noted compliance deficiencies. Respondent is allowed the extension pursuant to this Agreement and Order.

VIOLATIONS

10. IDAPA 12.01.08.101 of the Rules pursuant to the Idaho Securities Act requires every investment adviser to make and keep records in compliance with 17 CFR 275.204-2 under the Investment Advisers Act of 1940. Section 207 of the Investment Advisers Act of 1940 states that it is unlawful for any investment adviser to willfully make any untrue statement of material fact in any registration application or report. Respondent is in violation of Section 207 for failure to update the Form ADV to reflect accurately the fees that are being charged to clients, and the fact that some fees are waived for certain clients. Respondent's current Form ADV reflects a set fee which is not necessarily the actual fee charged to the client.

11. Rule 204-3 of the Investment Advisers Act of 1940 reflects that the investment adviser is responsible for providing a copy of Part II of Form ADV to clients during the initial meeting . Furthermore, Rule 204-3 requires that Part II of Form ADV is offered to clients on an annual basis. Respondents are in violation of Rule 204-3 since Part II of Form ADV was not part of Respondent's initial disclosure to clients, and Respondent failed to make an annual offer to clients of Part II of Form ADV.

12. Rule 206-2(a) of the Investment Advisers Act of 1940 requires that investment advisers maintain records relating to personal transactions, trial balances, and financial statements. Respondent was unable to readily produce, during the Complainant's examination, a report relating to personal securities transactions, a trial balance, and financial statements. As such, Respondent, at the time of Complainant's examination, was in violation of Rule 206-2(a). Subsequent to the examination Respondent produced the items required by Rule 206-2.

13. The Investment Advisers Act of 1940, Release #1406, requires that an investment adviser determine that the advice given to a client is suitable. Respondent is in violation of Release #1406 in that there was minimal suitability information maintained and it was not evident that Respondent White was aware of the complete and current suitability considerations of his clients.

14. Section 205(a) of the Investment Advisers Act of 1940 requires that certain disclosures are made within the contract with clients. Respondent failed to make the required disclosures within the contract entered into with his clients and is, therefore, in violation of Section 205(a).

15. Rule 119.04 of the Idaho Securities Act requires that investment advisers develop and maintain a written procedures manual. Respondent is in violation of Rule 119.04 since he has not developed a procedures manual.

REMEDIES

16. Respondent agrees to comply with all the provisions of the Investment Advisers Act of 1940 and the Idaho Securities Act and Rules promulgated thereunder in the future.

17. Respondent admits the respective violations contained in this Order.

18. Respondent agrees to bring his investment advisory activities into substantial compliance with the Investment Advisers Act of 1940 and the Idaho Securities Act and promulgated Rules by August 30, 1999. Respondent's failure to come into compliance by the aforementioned date will result in immediate suspension of Respondent's investment adviser registration without need for further notice or hearing, until compliance is achieved. Respondent specifically consents to suspension of his license under these terms.

19. Respondent agrees to remit a fine of ~~\$4,000~~ ^{\$2,000 MIS} to the Complainant within thirty (30) days of the date of this Order.

20. Respondent acknowledges and agrees that the violations contained herein may be used by Complainant against Respondent in subsequent proceedings in the event that Respondent violates this Order in the future.

DONE AND DATED at Boise, Idaho this 3RD ^{August} day of ~~July~~, 1999.

FEE ONLY FINANCIAL PLANNING

BY: Craig A White

NAME: CRAIG A WHITE

Title: SOLE PROPRIETOR

Craig A White
CRAIG WHITE

Marilyn T Scanlan
MARILYN T. SCANLAN
Bureau Chief, Securities Bureau
Department of Finance
State of Idaho

IT IS SO ORDERED This 3RD ^{August} day of ~~July~~, 1999.

Gavin M. GEE
GAVIN M. GEE
Director of Finance

