

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

In the Matter of:

STATE OF IDAHO, DEPARTMENT OF  
FINANCE, SECURITIES BUREAU

Complainant,

vs.

JAY LOUIS DEPEW

Respondent.

Docket No. 2016-07-05

AGREEMENT AND ORDER

The Director of the Department of Finance, State of Idaho (“Director”) has investigated the activities of Respondent Jay Louis Depew (“Depew”). Pursuant to said investigation, it appears that violations of the *Idaho Uniform Securities Act (2004)* (“Act”), Idaho Code §30-14-101 *et seq.* and the *Idaho Commodity Code*, Idaho Code §30-1501, *et. seq.* have occurred. The Director and Depew have 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. Depew consents to the entry of this Agreement and Order.

**RESPONDENT**

1. Depew is a 79-year-old male who resides at 622 Cedarbrook Drive, Twin Falls, Idaho. He has had two known wives: Sharon Linderman Depew (“Sharon”) and Barbara C. Depew (“Barbara”); and four daughters: Marcia Depew (“Marcia”), Paula Chapman (“Paula”), BB, and JH.
2. Depew provides tax services, sets up common law trusts, is the trustee of several trusts, has registered himself as a “Member” of various companies, and has opened bank accounts at JPMorgan Chase Bank (“Chase”) and Wells Fargo under these, and other names.
3. Depew is no longer a licensed CPA or lawyer, however he has represented himself as a CPA and/or a lawyer to at least two persons and his signature line on client correspondence lists

his title as “Inactive CPA/Attorney”. Both titles were revoked and Depew was disbarred 40 years ago as a result of disciplinary actions.

4. Depew has never been registered as an investment adviser nor has he ever held a securities license.

## **BACKGROUND**

### *Tradewind Investments Background*

5. DFH has known Depew since 1985. In approximately 1992, DFH asked Depew to set up a trust, named Tradewind Investments (“Tradewind”), for the benefit of DFH’s son. On April 24, 1992, the trust was set up as an unincorporated business organization and a *Certificate of Assumed Name* for Tradewind was filed in Jefferson County, Colorado.
6. Depew’s wife, Sharon, was recorded as the Trustee and acted in this capacity until her passing on March 21, 2001, at which time Depew took over as Trustee. A *Certificate of Assumed Name* was not updated to show Depew as the Trustee until April 3, 2014. The certificate was filed in Jerome County, Idaho and currently shows the trust as being a private unincorporated contractual organization.
7. The trust was funded with DFH’s wages and pension proceeds primarily from 1992-2004. From 2011-2015 additional funds were deposited into the trust from bankruptcy settlement payments and DFH’s ex-wife.
8. Depew opened bank accounts in Tradewind’s name with at least two banks, Wells Fargo and Chase, in order to carry out investment activities. The Chase account was opened in 2008 and lists Depew as a Partner. Depew added his wife, Barbara, as an authorized signer and Partner a few months after opening the account. In July and August 2014, Paula and Marcia, respectively, were added as authorized signers and Barbara was removed.

9. Depew's activity in Tradewind's bank account indicates that Depew commingled Tradewind funds with his personal funds.

*Tradewind investments included, but are not limited to:*

**Coadum Capital**

10. DFH gave approximately \$469,000 to Depew to invest in Coadum Capital ("Coadum"). The company filed for bankruptcy and Tradewind received three settlement payment checks in 2011, 2013, and 2015 totaling \$131,127. The bankruptcy trustee mailed the checks, written out to Tradewind in care of Depew, to Depew's residences in Colorado and Idaho.
11. Coadum bankruptcy settlement checks were deposited into Tradewind's Chase account and the funds were used for the following:
  - a. \$55,841 was deposited on April 26, 2011. DFH's ex-wife directed Depew to wire \$55,700 of the funds out of the Tradewind trust.
  - b. \$69,387 was deposited on August 9, 2013. \$48,275 was used to purchase fifty million Iraqi dinars, \$12,016 was transferred to Depew's bank accounts or withdrawn as cash, \$4,100 was sent to a dinar trader, \$2,529 was sent to M7 Corporation, and the remaining amount went to various personal purchases by Depew. The purchase of fifty million dinars, for \$48,275, was the only purchase authorized by DFH.
  - c. \$5,899 was deposited on January 21, 2015 when the Tradewind account balance was \$21.11. Jay transferred \$5,850 of these funds to his own account. DFH found out about this final check from Coadum a few months after the payment had been sent and questioned Depew about the disposition of the funds. Depew told DFH, on August 18, 2015, that he had deposited the check into his personal bank account in January and used the money for a note payment. Depew told DFH he would repay DFH in September 2015 but never provided the funds to DFH.

### Colorado Real Estate

12. Depew invested approximately \$200,000 in Colorado real estate. DFH's did not authorize this investment. The investment ultimately failed and DFH lost his entire investment.

### Iraqi Dinars

13. Depew purchased, in total, fifty-three million Iraqi dinars for \$51,057 as an investment in the Tradewind trust in 2011 and 2014. The expectation was that the currency would be revalued and the trust would receive a substantial return on the investment.

14. Depew was authorized to purchase seven million Iraqi dinars in 2011<sup>1</sup>. Three million dinars were to be held in the Tradewind trust and were purchased in July and August of 2011 for \$2,782 and held in Depew's possession. The dinars were purchased using Tradewind's investment funds held in Tradewind's Chase account.

15. DFH claims that he told Depew not to turn over possession of the dinars to anyone. Depew went against DFH's wishes and transferred control of the trust's three million dinars to a friend of Depew's named Joe in 2011. Depew told DFH, on April 28, 2016, that he had transferred control of the dinars.

16. On March 6, 2014, Depew purchased fifty million Iraqi dinars for \$48,275.00 from M7 Corporation to be held in the Tradewind trust. The dinars were purchased using Tradewind's investment funds. Depew kept possession of the dinars and represented to DFH that the fifty million dinars would be stored in a lockbox at his daughter's home in Buhl, Idaho.

17. In April 2016, DFH requested that the possession of the fifty million dinars be transferred to another trust. On April 28, 2016, Depew finally told DFH that the dinars were stolen out of his hotel room while he was in Reno, Nevada in November 2014. Depew claimed to have

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<sup>1</sup> Four million dinars were authorized as payments to Depew for his role as trustee.

made multiple trips to Reno with the dinars and acknowledged, on May 8, 2016, that the trips to Reno were against DFH's wishes.

*Anton Holdings, LLC & Client MMS Background*

18. MMS was introduced to Depew in approximately October 2015 through her financial advisor, Greg Erickson ("Erickson"). When they met, she was told that Depew was a lawyer and CPA who would provide financial planning, set up an irrevocable trust for MMS's various assets, and provide tax advice.
19. In November 2015, Depew registered Anton Holdings, LLC ("Anton") in Idaho and opened a checking account in Anton's name at Chase listing himself as a Member and MMS as an authorized signer.
20. Depew set himself up as Manager and Trustee of the trust. He told MMS that he would be making the investment decisions of the trust and recommended to MMS that she put all of her assets in the trust. MMS was billed \$6,000 for "Statement for Trust, assignments and financial planning". Depew transferred this amount out of the Anton account and into his own bank account.
21. In June 2016, MMS cashed out the Anton bank account and fired both Depew and Erickson. MMS accused Depew of illegal tax advice, falsifying that he was a CPA and a lawyer, failing to provide trust information, and running personal purchases through the Anton bank account.

**COMPLAINANT'S FINDINGS OF VIOLATIONS**

**I. IDAHO COMMODITY CODE FINDINGS**

22. Iraqi dinars are foreign currency and constitute a commodity under *Idaho Code §30-1501(3)* which defines "commodity" as including "foreign currency".

23. A “commodity contract” is defined in *Idaho Code §30-1501(4)(a)* as any account, agreement or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract or otherwise. Any commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes.

#### **Unlawful Commodity Transactions**

24. Pursuant to *Idaho Code §30-1502*, it is unlawful for a person to sell or purchase or offer to sell or purchase any commodity under any commodity contract or under any commodity option or offer to enter into or enter into as seller or purchaser any commodity contract or any commodity option.

25. Depew sold a commodity contract when he sold Iraqi dinars to DFH for investment purposes. Depew did not qualify for an exemption, nor did he provide physical delivery of the dinars to DFH at any time.

26. Depew conducted unlawful commodity transactions in violation of *Idaho Code §30-1502*.

#### **Misrepresentations & Omissions**

27. Pursuant to *Idaho Code §30-1506(1)*, it is unlawful for any person, directly or indirectly, in connection with a commodity contract or commodity option: (b) To make any false report, enter any false record or make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

## 28. Misrepresentations

- a. Depew assured DFH that the dinars were safe in a lockbox at Depew's daughter's house.

## 29. Omissions

- a. Depew failed to disclose to DFH that investment funds would be put in a bank account that would be used for Depew's own personal use.
- b. Depew failed to disclose to DFH that three million dinars would be placed with Depew's personal friend, Joe.
- c. Depew failed to disclose to DFH that the fifty million dinars would be transported repeatedly to Reno, Nevada.
- d. Depew failed to disclose to DFH that he was not registered with the Commodity Futures Trading Commission or any other regulatory body.

30. Depew misrepresented and omitted material facts in violation of *Idaho Code §30-1506(1)(b)*.

### **Fraudulent & Deceitful Conduct**

31. Pursuant to *Idaho Code §30-1506(1)*, it is unlawful for any person, directly or indirectly, in connection with a commodity contract or commodity option: (c) To engage in any transaction, act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

32. Against DFH's specific wishes, custody of three million dinars were given to Depew's friend, Joe, in 2011 and fifty million dinars were transported, multiple times, to Reno, Nevada and were allegedly stolen in November 2014. DFH was not notified about these events until April 28, 2016.

33. Depew's actions operated as a fraud or deceit upon DFH in violation of *Idaho Code §30-1506(1)(c)*.

### **Misappropriation of Funds**

34. Pursuant to *Idaho Code §30-1506(1)*, it is unlawful for any person, directly or indirectly, in connection with a commodity contract or commodity option: (d) To misappropriate or convert the funds, security or property of any other person.

35. Depew used funds from the Tradewind bank account for his own personal use.

36. Depew misappropriated DFH's funds in violation of *Idaho Code §30-1506(1)(d)*.

## **II. IDAHO SECURITIES ACT FINDINGS**

37. *Idaho Code §30-14-102(28)* defines a "security" as including "investment contracts".

38. *Idaho Code §30-14-102(15)* defines an "investment adviser" as a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

### **Unregistered Security**

39. Pursuant to *Idaho Code §30-14-301*, it is unlawful for a person to offer or sell a security in this state unless: (a) The security is a federal covered security; (b) The security, transaction or offer is exempted from registration under sections 30-14-201 through 30-14-203, Idaho Code; or (c) The security is registered under this chapter.



40. Depew sold securities to DFH in the form of undocumented investment contracts for trading in foreign currency.

41. Depew sold an unregistered security in violation of *Idaho Code §30-14-301*.

**Unregistered Investment Advisor**

42. Pursuant to *Idaho Code §30-14-403(a)*, it is unlawful for a person to transact business in Idaho as an investment adviser unless the person is registered or qualifies for an exemption.

43. Depew provided investment advice or planning for the following individuals:

- a. DFH discussed investments with Depew and Depew set up the Chase account to carry out the investment activities of the trust. Investments were purchased by Depew using the trust's funds.
- b. MMS paid \$6,000 for "Statement for Trust, assignments and financial planning."

44. Depew provided investment advice and planning without being registered to do so in violation of *Idaho Code §30-14-403(a)*.

**Misrepresentations & Omissions**

45. Pursuant to *Idaho Code §30-14-501*, it is unlawful for any person, in connection with the offer, sale, or purchase of a security, directly or indirectly: (2) To make an untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

#### 46. Misrepresentations

- a. Depew assured DFH that the dinars were safe in a lockbox at Depew's daughter's house.

#### 47. Omissions

- a. Depew failed to disclose DFH that investment funds would be put in a bank account that would be used for Depew's own personal use.
- b. Depew failed to disclose DFH that three million dinars would be placed with Depew's personal friend, Joe.
- c. Depew failed to disclose DFH that the fifty million dinars would be transported repeatedly to Reno, Nevada.
- d. Depew failed to disclose DFH that that the security being offered was not registered as required under the Idaho Uniform Securities Act.
- e. Depew failed to disclose DFH and MMS that that he was not registered as an investment advisor as required by the Idaho Uniform Securities Act.

48. Depew misrepresented and omitted material facts in violation of *Idaho Code §30-14-501(2)*.

#### *Misappropriation of Funds*

49. Pursuant to *Idaho Code §30-14-502(a)*, it is unlawful for any person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities: (3) To divert investor money to the personal use of the issuer, offer or seller, or to pay prior investors without specifically disclosing that use before receiving the investor's money.

50. Depew used funds from the Tradewind bank account for his own personal use.

51. Depew misappropriated DFH's funds in violation of *Idaho Code §30-14-501(4)*.

## ACKNOWLEDGEMENTS & REMEDIES

52. Depew neither admits nor denies the allegations contained in this Agreement and Order. This Agreement is contractual and it has been entered into in order to compromise disputed claims and to avoid the uncertainty and expense of litigation.
53. Depew agrees to pay restitution of \$56,956, made payable to the order of "Idaho Department of Finance", for the following Tradewind investments:
- a. Coadum bankruptcy settlement payment of \$5,899.
  - b. Fifty-three million dinar investment of \$51,057.
54. Depew agrees to pay restitution of \$6,000, made payable to the order of "Idaho Department of Finance", for Anton's payment for financial planning.
55. Depew will permanently refrain from referencing a CPA, attorney, or any other non-active license or credential, regardless of the status being alluded to. This applies to both verbal and written communications. Depew may reference any active licenses or credentials he obtains.
56. Depew will permanently refrain from engaging in any act or practice that violates any provision of *Idaho's Uniform Securities Act (2004)*, any rule promulgated thereunder.
57. Depew agrees to pay a civil penalty of twenty thousand dollars (\$20,000) for the violations of *Idaho's Uniform Securities Act (2004)*, pursuant to *Idaho Code §30-14-604(d)*. Payment shall be made payable to the order of "Idaho Department of Finance".
58. Depew acknowledges that if he fails to comply with this Agreement and Order, the Department may institute further proceedings against him.
59. In the event that Depew commits future violations of the Idaho Uniform Securities Act or the Idaho Commodity Code or fails to adhere to the terms of this Order, he acknowledges that

Complainant can incorporate the allegations giving rise to this Order in any future proceeding.

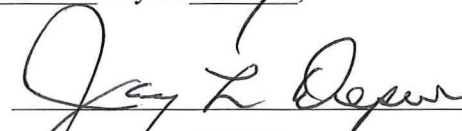
60. Depew agrees to the entry of the Order against him and to pay restitution and fines to the Idaho Department of Finance in the total amount of \$82,956.00.

61. Depew agrees to make payments on said Order as follows:

- a. Payment of \$6,000.07, as a good faith initial payment, shall be remitted on or before July 15, 2017.
- b. Payment of \$3,345.91 per month, for a period of twenty-three (23) months, shall be remitted on or before the 15<sup>th</sup> of each month, starting August 15, 2017, until the \$82,956.00 has been paid in full.
- c. Payment of restitution and penalty will be paid in full no later than June 15, 2019.

62. Should Depew fail to make payments as set forth in this Agreement, he agrees that all legal methods of collection may be utilized to collect said sums.

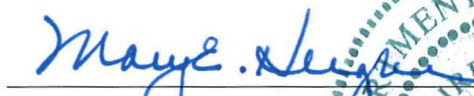
AGREED TO and ACKNOWLEDGED this 5<sup>th</sup> day of July, 2017.

  
\_\_\_\_\_  
JAY LOUIS DEPEW

IT IS SO ORDERED

DATED this 7<sup>th</sup> day of July 2017.

STATE OF IDAHO  
DEPARTMENT OF FINANCE

  
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MARY E. HUGHES, Acting Director of Finance

