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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

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PA DEPARTMENT OF
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND
SECURITIES, BUREAU OF SECURITIES
COMPLIANCE AND EXAMINATIONS

Docket No. : 16 0059 (SEC-OSC)

v.

JOHN FRANK BARNYAK
STONEHOUSE ASSET
MANAGEMENT, INC.

NOTICE TO ANSWER AND REQUEST A HEARING

You, Stonehouse Asset Management, Inc. and John Frank Barnyak have the right to challenge the attached Order to Show Cause ("Order") by filing an Answer, in writing, with the Banking and Securities Commission ("Commission") within 30 days of the date of this Order as required by 1 Pa. Code § 35.37. If you do not file an Answer within 30 days, then you will waive your right to a hearing and the Commission may enter a final order against you.

Your Answer must be in writing, specifically admit or deny the allegations in the Order, set forth the facts you rely upon and state concisely the law you rely upon. General denials of the allegations set forth in the Order are not sufficient; you must support your denials with specific facts. Failure to support your denials with specific facts may cause the Commission to deem the facts in the Order as admitted and to enter a final order against you, without a hearing.

The Answer and any other documents must be filed with:

Linnea Freeberg
Docket Clerk
Department of Banking and Securities
17 N. Second Street, Suite 1300
Harrisburg, PA 17101

Further, you must serve a copy of the Answer and any other documents on the person who signed the Order by providing a copy to his or her counsel indicated below:

Carolyn Mendelson
Assistant Counsel
Office of the Chief Counsel
Attorney ID # 74601
FOR: Commonwealth of Pennsylvania
Department of Banking and Securities
301 5th Avenue, Suite 290
Pittsburgh, PA 15222
(412) 565-5084

Once you file your Answer, you will be notified of pertinent information such as the name of the presiding officer designated by the Commission to hear this matter and, if a hearing is scheduled, the date, time and location of the hearing. You have the right to be represented by an attorney.

All procedural matters will be governed by the Pennsylvania Administrative Agency Law, 2 Pa. C.S. §§ 501-508, 701-704, and the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.1.-35.251.

matter directly, or may designate a hearing officer to issue a recommended decision prior to the Commission issuing a final order.

**STATEMENT OF THE PARTICULARS AND MATTERS
CONCERNING WHICH THE BUREAU IS INQUIRING**

PARTIES

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the 1972 Act.

2. The Bureau is primarily responsible for administering and enforcing the 1972 Act for the Department.

3. The Bureau operates from the Department's main office located at 17 North Second Street, Suite 1300, Harrisburg, PA 17101.

4. Respondent Stonehouse was, at all times material herein, a Pennsylvania corporation with a business address of 500 East Beau Street, Washington, PA 15301.

5. Respondent Barnyak was, at all times material herein, an individual with a business address of 500 East Beau Street, Washington, PA 15301. At all times material herein, Barnyak had a residential address of Redacted

FACTUAL ALLEGATIONS

6. From on or about April 2005 through the present, Respondent Stonehouse (CRD #132143) has been registered and has transacted business pursuant to Section 301(c) of the 1972 Act, 70 P.S. § 1-301(c) as an investment adviser in Pennsylvania.

7. From on or about April 2005 through the present, Respondent Barnyak (CRD #3029889) has been registered and has transacted business as an investment adviser representative

of Stonehouse pursuant to Section 301(c) of the 1972 Act, 70 P.S. § 1-301(c). At all times material herein, Respondent Barnyak held the Series 6, 7, 31, 63, and 65 securities licenses.

8. From on or about April 2005 through the present, Respondent Barnyak has been the President of Respondent Stonehouse.

9. At all times material herein, Respondent Barnyak has solely “controlled” Stonehouse, as that term is defined by Section 102(g) of the 1972 Act, 70 P.S. § 1-102(g), and as such, has caused Respondent Stonehouse to commit the herein alleged acts which violate the 1972 Act, 70 P.S. §1-101, et. seq., and its regulations.

10. At all times material herein, the Respondents have held themselves out to the public in Pennsylvania as an investment adviser and investment adviser representative. Their services listed on Respondent Stonehouse’s Form ADV Part 2a include financial planning, portfolio management for individuals and small businesses, and selection of other advisers. At all times material herein, Respondent Barnyak has operated a blog for Respondent Stonehouse with an Internet address of <http://stonehouseasset.blogspot.com/>.

11. On or about August 4, 2016, Staff of the Bureau (“Staff”) conducted an examination (“Exam”) of the Respondents’ business office. During the Exam, Staff discovered that the Respondents’ investment adviser business operation was deficient in several areas.

12. On or about August 23, 2016, Staff issued a deficiency letter (“Deficiency Letter”) to the Respondents which contains allegations of certain violations of the 1972 Act and its regulations.

13. On or about August 4, 2016, the Exam determined that the Respondents’ ADV Parts 1 and 2 dated 2013 have not been updated with certain material changes. At the time of the

Exam, the Respondents' ADV was inaccurate and outdated in several ways, including, but not limited to, the following:

(a) The ADV Part 1A, Item 5E states Respondent Stonehouse is compensated by a percentage of assets under management and fixed fees, when in fact, Respondent Stonehouse does not charge fixed fees;

(b) The ADV Parts 1A, Item 5F and 2A, Item 4 state Respondents have \$15,000,000 of non-discretionary assets under management. However, at the time of the Exam, Barnyak told Staff that the current assets under management for Respondent Stonehouse were \$3,349,436.37;

(c) Stonehouse's ADV and brochure state that client assets are managed on a non-discretionary basis. However, the Respondents could not provide Staff with proof of any client trade approvals for trades; and

(d) Respondent Barnyak told Staff during the Exam that he has not provided continuous and regular investment supervisory services and investment advice to his clients, (but for one out-of-state client), during the last twelve to eighteen months and has not informed his clients that he is not performing these services.

14. On or about August 4, 2016, Staff determined that Respondent Barnyak's Form U-4 was inaccurate. At the time of the Exam, the U-4 was inaccurate in several ways, including, but not limited to, the following:

(a) Respondent Barnyak's U-4, Item 1 states Stonehouse's name as Financial Advisors, Inc., when in fact, the investment adviser's name is Stonehouse Asset Management, Inc.;

(b) Respondent Barnyak's U-4, Item 1 states an inaccurate business address of 312 Boulevard of the Allies, Pittsburgh, PA 15222, when in fact, Stonehouse's current business address is 500 East Beau Street, Washington, PA 15301;

(c) Respondent Barnyak's U-4, Item 3 states Respondent Barnyak maintains a registration with a broker-dealer when, in fact, Respondent Barnyak is not currently registered with any broker-dealer; and

(d) Respondent Barnyak's U-4, Item 12 states that Respondent Barnyak is currently employed with "Hefron-Tillotson, Inc." and "Financial Advisors, Inc.", when in fact, Barnyak's only current employment and affiliation in the securities business is with Stonehouse.

15. On or about August 4, 2016, the Exam established that the Respondents failed to keep true, accurate and current its books, ledgers and records in several ways, including, but not limited to, the following:

(a) The Respondents failed to maintain and/or to provide to Staff any required cash receipts and disbursement records;

(b) The Respondents failed to maintain and/or to provide to Staff any required ledgers relating to advisory services;

(c) The Respondents failed to maintain and/or to provide to Staff any books and records related to instances wherein non-discretionary clients provided oral authorization to the firm in placing an order for the purchase or sale of securities for their accounts;

(d) The Respondents failed to maintain and/or to provide check books, bank statements, canceled checks and cash reconciliations of Respondent Stonehouse;

(e) The Respondents failed to maintain and/or to provide to Staff, bills or statements (or copies of), paid or unpaid, relating to Respondent Stonehouse's business as an investment adviser;

(f) The Respondents failed to maintain and/or to provide to Staff trial balances, financial statements, net worth computations, and internal audit working papers relating to Respondent Stonehouse's business as an investment adviser;

(g) The Respondents could not provide any tax returns for Stonehouse; and

(h) The Respondents failed to maintain and/or provide to Staff written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to the client.

16. On or about August 4, 2016, the Exam established the factual basis that the Respondents were failing to uphold their fiduciary duties and to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. At the time of the Exam, these duties and principles of trade were not upheld in several ways, including, but not limited to, the following:

(a) Respondent Barnyak told Staff that the Respondents have not been actively managing client accounts and/or providing investment advice to clients (who are

Pennsylvania residents) for the last year and a half (with the exception of one out-of-state client) despite the fact that the Respondents maintain investment advisory contracts with such clients which states such services will be performed;

(b) Respondent Barnyak admitted to Staff that the Respondents have failed to notify such clients that their accounts have not been actively managed despite the terms of the investment advisory contracts; and

(c) Respondent Stonehouse's Form ADV, Item 5, F(1), states that the firm "provides continuous and regular investment supervisory or management services to securities portfolios." However, Barnyak has failed to do so.

17. At all times material herein, upon information and belief based on Barnyak's admissions to Staff during the Exam, the clients of the Respondents did not know that their securities portfolios and assets were, in fact, not being managed on a continuous and regular basis despite the terms of their investment advisory contracts with the Respondents and the terms specified on Respondent Stonehouse's Form ADV.

18. The August 4, 2016 Exam established that the Respondents committed fraudulent, deceptive or manipulative acts in their business practices and courses.

19. On or about August 4, 2016, the Respondents told Staff that a current brochure has not been delivered to or offered to its advisory clients. This is despite the fact that Pennsylvania regulation requires that an investment adviser deliver, at least once a year, without charge, or offer in writing to deliver to each of its clients a current brochure and any current brochure supplements. *See Regulation 404.011(e), 10 Pa. Code § 404.011(e).*

20. On or about August 23, 2016, through the Deficiency Letter, Staff requested that the Respondents resolve the above-referenced deficiencies and come into compliance with the 1972 Act and its regulations.

21. On or about October 17, 2016, Staff for the Bureau sent an additional letter to the Respondents advising that should the issues noted in the Deficiency Letter not be resolved

immediately, that this Order to Show Cause would be filed on November 1, 2016. *See* Exhibit “A”.

22. As of the date of this Order to Show Cause, the Respondents have not responded in any manner to the above-referenced deficiencies.

23. As of the filing of this Order to Show Cause, upon information and belief, the Respondents have failed to resolve the above-referenced deficiencies and/or to have come into compliance with the 1972 Act and its regulations.

COUNTS

Post-registration Provisions

Section 304(c), 70 P.S. § 1-304(c)

Regulation 303.012(d), 10 Pa. Code § 303.012(d)

24. Paragraphs 1 through 23 are incorporated herein by reference as if set forth in their entirety.

25. By engaging in the acts and conduct set forth in paragraphs 6 through 23 of the Factual Allegations, Respondent Stonehouse has violated Section 304(c) of the 1972 Act, 70 P.S. § 1-304(c) and Regulation 303.012(d), 10 Pa. Code § 303.012(d) which require that an investment adviser and an investment adviser representative take necessary steps to ensure that material information contained in its Form ADV remains current and accurate.

26. By engaging in the acts and conduct set forth in paragraphs 6 through 23 of the Factual Allegations, Respondent Barnyak has violated Section 304(c) of the 1972 Act, 70 P.S. § 1-304(c) and Regulation 303.012(d), 10 Pa. Code § 303.012(d) which require that an investment adviser and an investment adviser representative take necessary steps to ensure that material information contained in its Form ADV remains current and accurate.

Post-registration Provisions
Section 304(c), 70 P.S. § 1-304(c)
Regulation 303.014(b), 10 Pa. Code § 303.014(b)

27. Paragraphs 1 through 23 are incorporated herein by reference as if set forth in their entirety.

28. By engaging in the acts and conduct set forth in paragraphs 6 through 23 of the Factual Allegations, Respondent Barnyak has violated Section 304(c) of the 1972 Act, 70 P.S. § 1-304(c) and Regulation 303.014(b), 10 Pa. Code § 303.014(b) which requires that an investment adviser and an investment adviser representative take necessary steps to ensure that material information contained on a Form U-4 remains current and accurate.

29. By engaging in the acts and conduct set forth in paragraphs 6 through 23 of the Factual Allegations, Respondent Stonehouse has violated Section 304(c) of the 1972 Act, 70 P.S. § 1-304(c) and Regulation 303.014(b), 10 Pa. Code § 303.014(b) which requires that an investment adviser and an investment adviser representative take necessary steps to ensure that material information contained on a Form U-4 remains current and accurate.

Post-registration Provisions
Books and Records Requirements
Section 304, 70 P.S. § 1-304(a) and (c)
Regulation 304.012(a), 10 Pa. Code § 1-304.012(a)

30. Paragraphs 1 through 23 are incorporated herein by reference as if set forth in their entirety.

31. By engaging in the acts and conduct set forth in paragraphs 6 through 23 of the Factual Allegations, Respondent Stonehouse has violated Section 304(a) of the 1972 Act, 70 P.S. § 1-304(a) and Regulation 304.012(a), 10 Pa. Code § 304.012(a) which requires that an investment adviser make and keep true, accurate and current all accounts, correspondence, memoranda, papers, books, ledgers, and records.

Dishonest or Unethical Practices
Section 305(a)(ix), 70 P.S. § 1-305(a)(ix)
Regulation 305.019(a), 10 Pa. Code § 305.019(a)

32. Paragraphs 1 through 23 are incorporated herein by reference as if set forth in their entirety.

33. By engaging in the acts and conduct set forth in paragraphs 6 through 23 of the Factual Allegations, Respondent Stonehouse has committed dishonest or unethical business practices and has failed to observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business.

34. By engaging in the acts and conduct set forth in paragraphs 6 through 23 of the Factual Allegations, Respondent Barnyak has committed dishonest or unethical business practices and has failed to observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business.

Prohibited Advisory Activities
Violation of Section 404(a)(2), 70 P.S. § 1-404(a)(2)
Regulation 404.011(e), 10 Pa. Code § 404.011(e)

35. Paragraphs 1 through 23 are incorporated herein by reference as if set forth in their entirety.

36. By engaging in the acts and conduct set forth in paragraphs 6 through 23 of the Factual Allegations, Respondent Stonehouse has engaged in an act, practice or course of business which operates as a fraud for an investment adviser registered under the act by failing to, at least once a year, without charge, deliver or offer in writing to deliver to each of its clients the current brochure and any current brochure supplements required.

37. By engaging in the acts and conduct set forth in paragraphs 6 through 23 of the Factual Allegations, Respondent Barnyak has engaged in an act, practice or course of business

which operates as a fraud for an investment adviser registered under the act by failing to, at least once a year, without charge, deliver or offer in writing to deliver to each of its clients the current brochure and any current brochure supplements required.

SANCTIONS AND REMEDIES

WHEREAS, the Bureau respectfully requests the penalties and relief pursuant to its authority under the 1972 Act:

1. That an order be issued pursuant to Section 305(a) of the 1972 Act, 70 P.S. § 1-305(a) that the registration of Respondent John Frank Barnyak be suspended, revoked or censured.

2. That an order be issued pursuant to Section 305(a) of the 1972 Act, 70 P.S. § 1-305(a) that the registration of Respondent Stonehouse Asset Management, Inc. be suspended, revoked or censured.

3. That an order be issued pursuant to Section 512 of the 1972 Act, 70 P.S. § 1-512, permanently barring Respondent John Frank Barnyak from:

(a) Representing an issuer offering or selling securities in this State;

(b) Acting as a promoter, officer, director or partner of an issuer (or an individual occupying a similar status or performing similar functions) offering or selling securities in this State or of a person who controls or is controlled by such issuer;

(c) Being registered as a broker-dealer, agent, investment adviser or investment adviser representative under Section 301 of the 1972 Act;

(d) Being an affiliate of any person registered under Section 301 of the 1972 Act; or

(e) Relying upon an exemption from registration contained in Section 202, 203 or 302 of the 1972 Act;

4. That an order be issued pursuant to Section 512 of the 1972 Act, 70 P.S. § 1-512, permanently barring Respondent Stonehouse Asset Management, Inc. from:

- (a) Representing an issuer offering or selling securities in this State;
- (b) Acting as a promoter, officer, director or partner of an issuer (or an individual occupying a similar status or performing similar functions) offering or selling securities in this State or of a person who controls or is controlled by such issuer;
- (c) Being registered as a broker-dealer, agent, investment adviser or investment adviser representative under Section 301 of the 1972 Act;
- (d) Being an affiliate of any person registered under Section 301 of the 1972 Act; or
- (e) Relying upon an exemption from registration contained in Section 202, 203 or 302 of the 1972 Act;

5. That Respondents John Frank Barnyak and/or Stonehouse Asset Management, Inc. be ordered to pay the costs of the investigation conducted by Staff pursuant to Section 602.1(b) of the 1972 Act, 70 P.S. § 1-602.1(b);

6. That Respondent John Frank Barnyak and/or Stonehouse Asset Management, Inc. be ordered to pay an administrative assessment of up to \$100,000 for each act or omission constituting a wilful violation of the 1972 Act, pursuant to Section 602.1(c) of the 1972 Act, 70 P.S. § 1-602.1(c);

7. That Respondents be ordered to comply in the future with the 1972 Act and its regulations, 70 P.S. § 1-101, et. seq.

IT IS SO ORDERED.



FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES
BUREAU OF SECURITIES
COMPLIANCE AND EXAMINATIONS:

Redacted

Joseph J. Mirysi
Deputy Secretary of Securities

Dated: 11/3/16

Exhibit “A”



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

October 17, 2016

**SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED
AND BY REGULAR MAIL**

John Barnyak, President
Stonehouse Asset Management, Inc.
500 East Beau Street
Washington, PA 15301

Re: Stonehouse Asset Management, Inc.
Examination No. 2380

Dear Mr. Barnyak:

The Department of Banking and Securities, Bureau of Securities, Compliance and Examinations ("Bureau") conducted an examination of Stonehouse Asset Management, Inc. ("Stonehouse") and you ("Barnyak") (collectively, hereinafter "SAM") on August 4, 2016. On August 23, 2016, a deficiency letter was issued to you regarding the findings of that examination. The deficiency letter provided you with an opportunity to respond to the findings; correct the deficiencies; and provide the Bureau with proof of SAM's compliance with the Pennsylvania Securities Act of 1972, 70 P.S. § 1-101 *et. seq.*, and the regulations promulgated thereunder.

To date, SAM has failed to respond in any manner to the deficiency letter. For your convenience, I am attaching another copy of it to this correspondence. *See Attachment "1"*.

Please be advised that the Office of General Counsel will file an Order to Show Cause on behalf of the Bureau and will initiate an administrative lawsuit against SAM on October 31, 2016 should you continue to fail to respond to the deficiency letter and/or if a response that SAM may choose to file to the deficiency letter is determined to be inadequate by the Bureau. The Order to Show Cause will include, among other things, a proposed sanction to revoke and bar SAM from the securities and investment advisory

business in Pennsylvania. The Order to Show Cause also will seek an administrative assessment against SAM along with the costs of the investigation.

Should you have any questions regarding this matter, please do not hesitate to contact the undersigned regarding this matter at (412) 565-7519.

On Behalf of the Commonwealth
Department of Banking and Securities:

Redacted

Carolyn Mendelson, Assistant Counsel
Office of the Chief Counsel

Attachment

cc: James Klutinoty, Chief, Western Region, Bureau of Securities,
Compliance and Examinations
Amber Nicklow, Securities Compliance and Enforcement Administrator
Dawn Majernik, Securities Compliance Examiner

FILED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES 2016 NOV -3 AM 9:17

COMMONWEALTH OF PENNSYLVANIA	:	PA DEPARTMENT OF
DEPARTMENT OF BANKING AND	:	BANKING AND SECURITIES
SECURITIES, BUREAU OF SECURITIES	:	
COMPLIANCE AND EXAMINATIONS	:	
	:	Docket No. : 16 <u>0059</u> (SEC-OSC)
v.	:	
	:	
JOHN FRANK BARNYAK	:	
STONEHOUSE ASSET	:	
MANAGEMENT, INC.	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Order to Show Cause upon the parties below, who constitute the only parties of record in this proceeding, in accordance with the requirements of 1 Pa. Code §§ 33.35, 33.36 and 33.37:

BY CERTIFIED AND FIRST CLASS MAIL

John Frank Barnyak
Redacted

Stonehouse Asset Management, Inc.
c/o John Frank Barnyak
500 East Beau Street
Washington, PA 15301

Dated this 3rd day of November, 2016.

Redacted

Fran Beers, Administrative Officer
Office of Chief Counsel
FOR: Commonwealth of Pennsylvania
Department of Banking and Securities
Market Square Plaza
17 North Second Street, Suite 1300
Harrisburg, PA 17101
(717) 787-1471