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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES 2017 MAY 30 PM 1:02

PA DEPARTMENT OF
BANKING AND SECURITIES

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

Docket No.: 160007 (SEC-OSC)

v.

PETER L. WORKMAN
FINANCIAL TRIUMPH ASSOCIATES
PETER L. WORKMAN d/b/a FINANCIAL
TRIUMPH ASSOCIATES

FINAL ORDER

AND NOW, this 17th day of May, 2017, having duly reviewed and considered the record and based upon the Findings of Fact, Conclusions of Law and Discussion of the proposed report of Christopher K McNally (McNally) issued the 15th day of November, 2016, the Banking and Securities Commission ("Commission") adopts the proposed report issued by McNally as hereby modified: In consideration of the fact that consumer harm is not a factor or relevant in determining a violation of the Pennsylvania Securities Act of 1972 (Act) where a Respondent has unlawfully transacted business in the Commonwealth of Pennsylvania as an investment advisor or an investment adviser representative without securities registration in violation of Section 301(c) of the Act, 70 P.S. §1-301(c); or, a Respondent has engaged in transactions, acts, practices or course of business which operates as a fraud or deceit upon another person in violation of Section 404(a)(2) of the Act, 70 P.S. § 1-404(a)(2), the Commission does not find evidence of financial loss to a consumer to be relevant or material to the proceedings and as such serves no mitigating or aggravating value. In short, evidence of financial loss is irrelevant to the

current proceedings. In that Respondents have demonstrated flagrant disregard for the Act as well as past orders of Department of Banking and Securities, the Commission determines that this willful disregard of the Act and Commonwealth administrative orders is relevant in finding that Respondents should be assessed the maximum penalty of \$100,000 as authorized by Section 602 of the Act, 70 P.S. § 1-602. **THE COMMISSION HEREBY ORDERS THAT** Respondents Peter. L. Workman, individually and doing business as Financial Triumph Associates, and Financial Triumph Associates are **PERMANENTLY AND UNCONDITIONALLY BARRED FROM:**

1. Representing an issuer offering or selling securities in this State;
2. 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;
3. Being registered as a broker-dealer, agent, investment adviser or investment adviser representative under Section 301 of the Act;
4. Being an affiliate of any person registered under Section 301 of the Act; or
5. Relying upon an exemption from registration contained in Section 202, 203 or 302 of the Act.

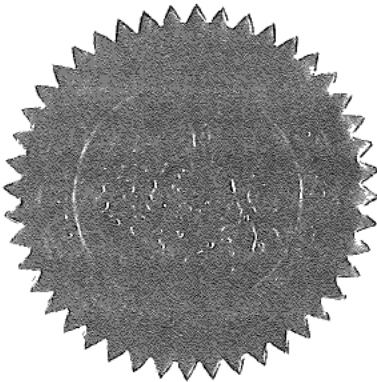
IT IS FURTHER ORDERED that Respondents Peter L. Workman, individually and doing business as Financial Triumph Associates, and Financial Triumph Associates, shall pay an administrative assessment of One Hundred Thousand Dollars (\$100,000.00) as authorized by section 602.1(c) of the 1972 Act.

IT IS FURTHER ORDERED that Respondents Peter L. Workman, individually and doing business as Financial Triumph Associates, and Financial Triumph Associates, shall jointly

and severally be assessed costs of investigation in an amount verifiable by the Bureau as authorized by section 602.1(b) of the 1972 Act.

Payment of the administrative assessment and costs of investigation shall be by certified check, attorney's check or U.S. Postal Service money order, made payable to the "Commonwealth of Pennsylvania," and shall be mailed within thirty (30) days of the effective date of the Commission's Final Order in this matter, to:

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



BY ORDER OF THE COMMISSION:

Redacted _____

James Biery
Chair
Department of Banking and Securities Commission

So ORDERED this 30th day of May, 2017

Peter L Workman
d/b/a Financial Triumph Associates
345 Main Street
Suite 109
Harleysville, PA 19438

Peter L Workman
d/b/a Financial Triumph Associates
PO Box 346
Harleysville, PA 19438

Peter L Workman
d/b/a Financial Triumph Associates
Redacted

Dated this 30th day of May, 2017

Redacted

Fran Book, 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

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PA DEPARTMENT OF
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING & SECURITIES
BANKING AND SECURITIES COMMISSION

Commonwealth of Pennsylvania, }
Department of Banking & Securities, }
Bureau of Bureau of Securities }
Licensing, Compliance & Examinations }

v. }

Docket Number 160007 (SEC)

Peter L. Workman, }
Financial Triumph Associates }
Peter L. Workman, d/b/a Financial }
Triumph Associates, }
Respondents }

PROPOSED REPORT

Christopher K. McNally
Hearing Examiner

Commonwealth of Pennsylvania
Governor's Office of General Counsel
Department of State
Office of Hearing Examiners
P.O. Box 2649
Harrisburg, PA 17105-2649
(717) 772-2686

HISTORY

This case comes before the Office of Hearing Examiners for the Department of Banking & Securities (DBS) to determine whether Peter L. Workman (Workman), individually and trading and doing business as Financial Triumph Associates (FTA), and collectively referred to as "Respondents," should be barred from the authority to offer or sell securities in this Commonwealth under Section 512 of the Pennsylvania Securities Act of 1972 (Act),¹ and whether to impose other sanctions under the Act.

On January 28, 2016, DBS issued a Summary Order to Cease and Desist pursuant to Section 606(c.1) of the Act, 70 P.S. § 1-606(c.1). On February 9, 2016, the Commonwealth filed an Order to Show Cause.² The Commonwealth alleged that Respondents violated Section 301(c) of the Act, 70 P.S. § 1-301(c), and Section 404(a)(2) of the Act, 70 P.S. § 1-404(a)(2). The Commonwealth also alleged that Respondent violated a Final Order issued by the Pennsylvania Securities Commission on August 13, 2014 that revoked FTA's investment adviser registration and imposed an administrative assessment and costs of investigation.

On March 9, 2016, Workman filed an Answer in the form of a letter which referred to paragraphs 13 through 16 of the Order to Show Cause and requested a hearing. On March 18, 2016, the Commonwealth filed a Motion for More Definite and Certain Answer, pursuant to 1 Pa.Code § 35.55. Workman did not file an objection or amend the Answer.

On August 26, 2016, the Secretary of Banking and Securities, Robin L. Weissmann (Secretary), delegated this matter to Hearing Examiner Christopher K. McNally, Esq. The Secretary directed the Hearing Examiner to conduct the proceedings in accordance with the

¹ The act of December 5, 1972 (P.L. 1280, No. 284). 70 P.S. §§ 1-101 – 1-703.1.

² The Commonwealth filed the Order to Show Cause on February 8, 2016, then re-filed the Order to Show Cause on February 9, 2016.

Administrative Agency Law³ and the General Rules of Administrative Practice and Procedure (GRAPP).⁴ The Hearing Examiner must issue a proposed report and a copy of the record. On August 30, 2016, the Hearing Examiner issued an Order Granting Motion to More Definite and Certain Answer, and scheduled a prehearing conference for September 13, 2016.

On September 13, 2016, Workman did not contact the Hearing Examiner to participate in the prehearing conference, did not provide a means for the Hearing Examiner to contact him, and did not request a continuance or provide an explanation for his absence. On September 15, 2016, the Hearing Examiner issued an Order Scheduling Second Prehearing Conference for September 27, 2016. Workman did not participate in the prehearing conference, provide a means of contacting him, request a continuance, or explain his absence.

On October 14, 2016, the Commonwealth filed a Motion to Deem Facts Admitted and Enter Default (MDFA). As of the date of this adjudication, Respondents has not filed a response to the Order to Show Cause or the Motion to Deem Facts Admitted and Enter Default (MDFA).

The Office of Hearing Examiners now issues this proposed report as directed by the Secretary. The Banking and Securities Commission has expressed the intent to review this proposed report pursuant to 1 Pa. Code § 35.226(a)(2), and is not bound by the Hearing Examiner's proposed report. The parties have the right to file a brief on exceptions, and any error not raised by a brief on exceptions will be deemed waived. 1 Pa. Code §§ 35.211 – 35.213.

³ The act of April 28, 1978, P.L. 202, No. 53, § 5, *as amended*. 2 Pa.C.S. §§ 501 – 508.

⁴ 1 Pa. Code §§ 31.1 – 35.251.

FINDINGS OF FACT

1. Peter L. Workman (Workman) is an adult individual with a business address of 345 Main Street, Suite 109, Harleysville, PA 19438, and a post office box address of P. O. Box 346, Harleysville, PA 19438. (*Order to Show Cause, at ¶ 5.*)

2. Workman resides at Redacted
(*Order to Show Cause, at ¶ 5.*)

3. The Department of Banking and Securities is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the Act. (*Order to Show Cause, at ¶ 1.*)

4. Financial Triumph Associates (FTA) is a Pennsylvania sole proprietorship with business addresses of 345 Main Street, Suite 109, Harleysville, PA 19438 and post office box address of P. O. Box 346, Harleysville, PA 19438. (*Order to Show Cause, at ¶ 4.*)

5. Workman is the President, proprietor and operator of FTA, and exercises sole control over FTA. (*Order to Show Cause, at ¶¶ 5, 10.*)

6. From May 1988 through August 2014, FTA (CRD #123507) was registered and transacting business pursuant to Section 301(c) of the Act, 70 P.S. § 1-301(c) as an investment adviser in Pennsylvania. (*Order to Show Cause, at ¶ 6.*)

7. From May 1988 through August 2014, Workman (CRD #1183061) transacted business as FTA. (*Order to Show Cause, at ¶ 7.*)

8. On August 13, 2014, the Commission issued a final order ("Final Order") against Respondents that revoked FTA's investment adviser registration, ordered FTA and Workman to pay, jointly and severally, an administrative assessment of \$50,000; and ordered FTA and Workman to pay, jointly and severally, the costs of the investigation of \$1,000. (*Order to Show*

Cause, at ¶ 8.)

9. Respondents did not file exceptions to the Final Order and did not appeal the Final Order. *(Order to Show Cause, at ¶ 9.)*

10. Respondents have not paid the administrative assessment or the investigative costs assessed in the Final Order. *(Order to Show Cause, at ¶ 17.)*

11. After August 13, 2014 and continuing through 2015, Respondents assessed an investment adviser or management fee, during which time FTA and Workman had no registration in Pennsylvania to transact business as an investment adviser or as an investment adviser representative. *(Order to Show Cause, at ¶¶ 11, 12.)*

12. From August 13, 2014 through November 2015, FTA and Workman unlawfully transacted business as an investment adviser or an investment adviser representative in at least eighty (80) accounts of at least eighteen (18) Pennsylvania residents without an investment adviser and/or an investment adviser representative registration and in wilful violation of the Final Order. *(Order to Show Cause, at ¶ 13.)*

13. From August 13, 2014 through November 2015, FTA and Workman unlawfully collected approximately \$65,000 in investment adviser fees from Pennsylvania residents without an investment adviser or an investment adviser representative registration in Pennsylvania and in wilful violation of the Final Order. *(Order to Show Cause, at ¶ 14.)*

14. From August 13, 2014 through December 2015, FTA and Workman, despite the Final Order and in violation of Section 301(c) of the Act, continued to transact business as an investment adviser or an investment adviser representative in Pennsylvania and hold themselves out to the public as a full service investment adviser through a website for FTA at <https://www.financial-triumph.com/index2.html> (Website). *(Order to Show Cause, at ¶ 15.)*

15. In December 2015, the Website stated:

- (a) “FTA is a ‘Full Service FEE ONLY Financial Planning Firm’ established in 1986;”
- (b) “FTA is a comprehensive financial services business;”
- (c) “Our company was established in 1986 and had been responsible for providing outstanding Client service and access to new and innovative financial products ever since;”
and
- (d) “A detailed analysis and discussion of alternative strategies help our Clients understand the short and long term implications of their financial decisions.”

(Order to Show Cause, at ¶ 16.)

16. FTA and Workman have wilfully violated the Final Order by transacting business as an investment adviser or as an investment adviser representative in Pennsylvania without securities registrations. *(Order to Show Cause, at ¶ 18.)*

17. On February 9, 2016, the Commonwealth filed an Order to Show Cause against Workman, FTA, and Workman doing business as FTA. *(Docket entries; Motion to Deem Facts Admitted, at ¶ 1.)*

18. On March 9, 2016, Workman filed an Answer to the Order to Show Cause in the form of a letter. *(Docket entries; Motion to Deem Facts Admitted, at ¶ 2.)*

19. On March 18, 2016, the Commonwealth filed a Motion for a More Definite and Certain Answer. *(Docket entries; Motion to Deem Facts Admitted, at ¶ 3.)*

20. The Commonwealth mailed copies of the Motion for a More Definite and Certain Answer to Workman and FTA at their principal business address and at Workman’s last known residential address by Certified Mail and by First Class Mail. *(Docket entries, Motion For More Definite and Certain Answer, at Certificate of Service.)*

21. On August 30, 2016, the Hearing Officer issued an Order Granting Motion for More Definite and Certain Answer. (*Docket entries; Motion to Deem Facts Admitted, at ¶ 4.*)

22. The Hearing Officer mailed a copy of the Order Granting Motion for More Definite and Certain Answer to Respondents at their principal business address. (*Docket entries.*)

23. Workman has not amended his Answer, filed a more specific Answer, or otherwise responded to the Order to Show Cause or the Order dated August 30, 2016. (*Docket entries; Motion to Deem Facts Admitted, at ¶ 5.*)

24. On October 14, 2016, the Commonwealth filed a Motion to Deem Facts Admitted and Entry of Default Judgment. (*Docket entries.*)

25. The Commonwealth mailed copies of the Motion to Deem Facts Admitted and Entry of Default Judgment to Respondents at their principal business address and at Workman's last known residential address by Certified Mail and by First Class Mail. (*Docket entries.*)

26. As of the date of this proposed report, Respondents have not responded to the Motion to Deem Facts Admitted and Entry of Default Judgment, amended their Answer or filed anything of record with the Agency Clerk. (*Docket entries.*)

27. Respondents have received all pleadings, motions, notices and orders filed in this matter. (*Docket entries.*)

CONCLUSIONS OF LAW

1. DBS has jurisdiction in this matter. (*Finding of Fact Numbers 1 – 8.*)
2. Respondent had adequate notice of the charges and was given an opportunity to be heard in accordance with the Administrative Agency Law, 2 Pa.C.S. § 504. (*Findings of Fact Numbers 17 - 27.*)
3. Respondents have unlawfully transacted business in the Commonwealth of Pennsylvania as an investment adviser or an investment adviser representative without securities registration in wilful violation of Section 301(c) of the Act. 70 P.S. § 1-301(c). (*Findings of Fact Numbers 1 – 16.*)
4. Respondents have engaged in transactions, acts, practices or courses of business which operate as a fraud or deceit upon another person in violation of Section 404(a)(2) of the Act. 70 P.S. § 1-404(a)(2). (*Findings of Fact Numbers 1 – 16.*)
5. Section 512(a) of the Act, 70 P.S. § 1-512(a) authorizes DBS to issue an order which bars Respondents unconditionally and permanently from engaging in activity under the Act. (*Findings of Fact Numbers 1 – 16.*)
6. Section 602(b) and (c) of the Act authorizes DBS to order Respondents to pay the costs of the investigation an administrative assessment of up to \$100,000 for each act or omission constituting a wilful violation of the Act. 70 P.S. § 1-602.1(b) and (c). (*Findings of Fact Numbers 1 – 16.*)

DISCUSSION

Procedural Due Process

The Commonwealth filed and served Respondents with the Order to Show Cause which provides notice of both the legal and factual grounds on which the Commonwealth based this disciplinary action. The notice also advised Respondents of the procedures for appealing and to request a hearing before DBS. The notice further explained and summarized Respondents' other procedural rights under the Administrative Agency Law and GRAPP. The Order to Show Cause was mailed to Respondents at their principal business address and Workman's last known residential address.

All administrative proceedings conducted by DBS pursuant to the Act shall be subject to the requirements of the Administrative Agency Law. 70 P.S. § 1-607(e). "Due process requires notice, reasonably calculated to inform a party of the pending action so that the party will have an opportunity to present objections." *Goetz v. Dep't of Env'tl. Res.*, 149 Pa.Cmwlth. 230, 234, 613 A.2d 65, 67 (1992), *citing Celane v. Insurance Commission*, 51 Pa.Cmwlth. 633, 415 A.2d 130 (1980). Service by mail to a respondent's last known address is reasonable and in accord with GRAPP. 1 Pa. Code § 33.31.

On March 9, 2016, Workman filed an Answer, which contained only general admissions or denials. Workman's Answer made no particular statement with respect to paragraphs 1 through 12 of the Order to Show Cause. With respect to paragraphs 13 through 16, Workman alleged that the allegations were incorrect, but it is ambiguous whether he is only disputing the allegations insofar as they specify a date, the amount of \$65,000 collected in fees, or statements made on FTA's website, or whether he is denying other aspects of those paragraphs. Therefore, the Answer

does not comport with GRAPP's requirements that the "...answer shall be drawn so as specifically to admit or deny the allegations or charges which may be made...." of 1 Pa.Code 35.37.

On March 18, 2016, the Commonwealth filed a Motion for More Definite and Certain Answer to obtain specific admissions or denials to the allegations of the Order to Show Cause. The Commonwealth's motion was filed timely, within 10 days of the filing of the Answer, as required by GRAPP. 1 Pa.Code § 35.55. The Commonwealth mailed a copy of the motion to Respondents. They did not object. On August 30, 2016, the Hearing Officer issued an order, a copy of which was mailed to Respondents at their principal business address.

The essential requirements of due process are notice and a meaningful opportunity to be heard. *Department of Transportation v. Clayton*, 546 Pa. 342, 684 A.2d 1060, 1064 (1996); *Gombach v. Dep't of State*, 692 A.2d 1127, 1129-30 (Pa.Cmwlth. 1997). Due process is a flexible notion, however, and only requires such procedural safeguards as the particular situation warrants. *Clayton*, 684 A.2d at 1064; *Flanders v. Ford City Borough Council*, 986 A.2d 964, 972 (Pa.Cmwlth. 2009). Respondents' failure to follow procedures under the Administrative Agency Law and GRAPP and to timely respond to an order to show cause justify denial of a hearing request. *Fountain Capital Fund, Inc. v. Pennsylvania Securities Commission*, 948 A.2d 208, 214 (Pa.Cmwlth. 2008), citing *Cresco, Inc. v. Pa. Public Utility Comm'n.*, 154 Pa.Cmwlth. 27, 622 A.2d 997 (1993). The Hearing Officer concludes that Respondents had adequate notice of their rights and the factual and legal grounds for this action, as well as an opportunity to be heard regarding the the merits of the issues in this matter.

Governing Law

The Commonwealth alleges three separate counts.⁵ First, the Commonwealth alleges that

⁵ The counts are unnumbered in the Order to Show Cause. For purposes of this proposed report, each count is referred to as Count 1, Count 2 and Count 3 in the order that each appears in the pleading.

Respondents violated Section 301(c) of the Act. 70 P.S. § 1-301(c). Second, the Commonwealth alleges that Respondents violated Section 404(a)(2) of the Act. 70 P.S. § 1-404(a)(2). Finally, the Commonwealth alleges that Respondents violated the Final Order of the Commission.

Section 301(c) of the Act provides that it is unlawful for a person to transact business in this Commonwealth as an investment adviser or investment adviser representative, unless the person is registered or exempt under the Act.⁶ 70 P.S. § 1-301(c). Section 404(a)(2) of the Act prohibits fraud or deceit in any transaction, act, practice, or course of business.⁷

The Act also provides for penalties for persons who commit wilful violations. As defined in the Act, "wilful" means that the person acted intentionally in the sense that the person intended to do the act and was aware of what the person was doing. Proof of evil motive or intent to violate the act or knowledge that the person's conduct violated the act is not required. 70 P.S. § 1-102. Section 512 authorizes DBS to issue an order that bars a person, conditionally or unconditionally,

⁶ The pertinent part of Section 301 provides:

Section 301. Registration requirement

Unless exempted under section 302 hereof:

* * * * *

(c) It is unlawful for any person to transact business in this State as an investment adviser unless he is so registered or registered as a broker-dealer under this act or unless he is exempted from registration. It is unlawful for any person to transact business in this State as an investment adviser representative unless he is so registered or exempted from registration.

* * * * *

70 P.S. § 1-301(c).

⁷ Section 404(a)(2) provides:

Section 404. Prohibited advisory activities

(a) It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise, in this State:

* * * * *

(2) To engage in any transaction, act, practice, or course of business which operates as a fraud or deceit upon any other person.

* * * * *

70 P.S. § 1-404(a)(2).

permanently or for a fixed period of time, from enumerated activities.⁸ Section 602.1(b) of the Act authorizes DBS to assess the costs of examination, audit, investigation or prosecution. 70 P.S. § 1-602.1(b). Subsection (c) authorizes administrative assessments of up to \$100,000 for each violation.⁹ The Act requires that DBS consider several factors in its determination of the amount

⁸ Section 512(a) provides in pertinent part:

Section 512. Statutory bars

(a) After giving notice and opportunity for a hearing, the department, where it has determined that a person wilfully violated this act or any rule or order thereunder or knowingly aided in the act or transaction constituting such violation, may issue an order accompanied by written findings of fact and conclusions of law which bars, conditionally or unconditionally and either permanently or for such period of time as the department shall determine, such person from:

- (1) Representing an issuer offering or selling securities in this State;
- (2) Acting as 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;
- (3) Being registered as a broker-dealer, agent, investment adviser or investment adviser representative under section 301;
- (4) Being an affiliate of any person registered under section 301; or
- (5) Relying upon an exemption from registration contained in section 202, 203 or 302.

* * * * *

70 P.S. § 1-512(a).

⁹ Section 602.1 provides in pertinent part:

Section 602.1. Assessments

* * * * *

(b) A ... person upon whom the department has conducted an examination, audit, investigation or prosecution and who has been determined by the department to have violated this act or rule or order of the department under this act shall pay for all the costs incurred in the conduct of such examination, audit, investigation or prosecution. These costs shall include, but not be limited to ... the actual amount of expenses reasonably incurred by such personnel and the department in the conduct of such examination, audit, investigation or prosecution, including a pro rata portion of the department's administrative expenses.

(c) After giving notice and opportunity for a hearing, the department may issue an order accompanied by written findings of fact and conclusions of law which imposes an administrative assessment in the amounts provided in paragraph (1) ... against any other person if the department determines that the person wilfully violated section ... 404....

(1) The department, in issuing an order under this subsection, may impose the administrative assessments set forth below. Each act or omission that provides a basis for issuing an order under this subsection shall constitute a separate violation.

of an assessment, including, but not limited to, the seriousness and scope of the violation, the amount of restitution that has been made, and past violations. 70 P.S. § 1-602(c)(2).

Facts

Workman is the President, proprietor and operator of FTA, and exercises sole control over FTA. From May 1988 through August 2014, FTA was registered and transacting business as an investment adviser in Pennsylvania.

On August 13, 2014, the Commission issued a Final Order against Respondents that

(i) In issuing an order against any broker-dealer, agent, investment adviser or investment adviser representative registered under section 301 or an affiliate of any broker-dealer or investment adviser, the department may impose a maximum administrative assessment of up to one hundred thousand dollars (\$100,000) for each act or omission that constitutes a violation of the act or rule or order issued under this act or that constitutes a dishonest or unethical practice in the securities business, taking unfair advantage of a customer, or failure to reasonably supervise its agents or employees.

(ii) In issuing an order against a person for wilful violation of section ... 404 ..., the department may impose a maximum administrative assessment of up to one hundred thousand dollars (\$100,000) for each act or omission that constitutes a violation of any of those sections.

* * * * *

(2) For purposes of determining the amount of administrative assessment to be imposed in an order issued under this subsection, the department shall consider:

(i) The circumstances, nature, frequency, seriousness, magnitude, persistence and wilfulness of the conduct constituting the violation.

(ii) The scope of the violation, including the number of persons in and out of this Commonwealth affected by the conduct constituting the violation.

(iii) The amount of restitution or compensation that the violator has made and the number of persons in this Commonwealth to whom the restitution or compensation has been made.

(iv) Past and concurrent conduct of the violator that has given rise to any sanctions or judgment imposed by, or pleas of guilty or nolo contendere or settlement with, the department or any securities administrator of any other state or other country, any court of competent jurisdiction, the Securities and Exchange Commission, the Commodity Futures Trading Commission, any other Federal or State agency or any national securities association or national securities exchange as defined in the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.).

(v) Any other factor that the department finds appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this act.

(3) An administrative assessment imposed by an order issued under this subsection is not mutually exclusive of any other remedy available under this act.

* * * * *

70 P.S. § 1-602.1(b), (c).

revoked FTA's investment adviser registration, ordered FTA and Workman to pay, jointly and severally, an administrative assessment of \$50,000; and ordered FTA and Workman to pay, jointly and severally, the costs of the investigation of \$1,000. Respondents did not file exceptions to the Final Order and did not appeal the Final Order. Respondents have made not paid the administrative assessment or the investigative costs assessed in the Final Order.

From 2014 to 2015, Respondents assessed an investment adviser or management fee, during which time FTA and Workman had no registration in Pennsylvania to transact business as an investment adviser or as an investment adviser representative. From August 13, 2014 through November 2015, FTA and Workman unlawfully transacted business as an investment adviser or an investment adviser representative in at least 80 accounts of at least 18 Pennsylvania residents without an investment adviser or an investment adviser representative registration and in wilful violation of the Final Order. During the same period, FTA and Workman unlawfully collected approximately \$65,000 in investment adviser fees from Pennsylvania residents without an investment adviser or an investment adviser representative registration in Pennsylvania and in wilful violation of the Final Order.

From August 13, 2014 through December 2015, FTA and Workman, despite the Final Order and in violation of Section 301(c) of the Act, continued to transact business as an investment adviser or an investment adviser representative in Pennsylvania and hold themselves out to the public as a full service investment adviser through a website for FTA at <https://www.financial-triumph.com/index2.html>, (Website). The Website stated, *inter alia*, "FTA is a 'Full Service FEE ONLY Financial Planning Firm' established in 1986"; "FTA is a comprehensive financial services business"; "Our company was established in 1986 and had been responsible for providing outstanding Client service and access to new and innovative financial products ever since"; and

“A detailed analysis and discussion of alternative strategies help our Clients understand the short and long term implications of their financial decisions.”

FTA and Workman have wilfully violated the Final Order by transacting business as an investment adviser and as an investment adviser representative in Pennsylvania without securities registrations.

Analysis

The facts established by Respondents' admissions in this case establish that the Final Order resulted in the revocation of Respondents' registration in this Commonwealth. The facts have also been deemed admitted that Respondents assessed an investment adviser or management fee after their registration was revoked by the Final Order. Through a website Respondents offered financial and investment advice for a fee.

The Act defines an investment adviser as “any person who, for compensation, engages in the business of advising others, either directly or through publications, writings or electronic means, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.” 70 P.S. § 1-102(j). Respondents' website clearly advertises investment advice in exchange for a fee. Therefore, the Commonwealth satisfied its burden of proof with respect to Count 1, which prohibits an unregistered person from acting wilfully as an investment adviser or investment adviser representative. The same admissions also satisfy the burden of proof for Count 3, because they establish that Respondents' wilfully violated the Final Order.

The facts also establish that Respondents collected investment adviser fees, which they were not lawfully permitted to charge or accept. Therefore, the charge or acceptance of investment

adviser fees which Respondents were not permitted to charge or accept is an act of deceit in violation of Section 404(a)(2). The Commonwealth has satisfied its burden of proof for Count 2.

Sanctions

The Commonwealth has satisfied its burden of proof for all counts, and the Act authorizes a range of sanctions. The Commonwealth has requested an order that grants the statutory bar under Section 512 of the Act, as well as an administrative assessment of up to \$100,000, and costs of investigation.

In consideration of the factors required to be considered under Section 602.1(c)(2), the Hearing Examiner regards the violations to be very serious. Respondents are engaged in offering investment advice without registration. Consumers would not be aware that the services that they accept are unlawfully offered and Respondents expose consumers to substantial financial risk. Compounding and aggravating this violation is the fact that it follows the Final Order which revoked Respondents' registrations. Thus, Respondents' conduct is not only wilful as defined in the Act, but brazen in its disregard of the authority of the Banking and Securities Commission and their own legal responsibilities. There is no evidence of restitution. The Banking and Securities Commission previously assessed \$50,000.

Based upon these factors, the Commonwealths' request for an order under Section 512 is appropriate. Since Respondents disregarded the previous revocation, the Hearing Officer recommends that the statutory bar be permanent and unconditional.¹⁰

In addition, Respondents must pay all costs of investigation. Finally, there is no evidence of financial loss to a consumer as of the date of this proposed report. Therefore, the Hearing Office is reluctant to impose the maximum penalty of \$100,000. However, an increased penalty is clearly

¹⁰ The Hearing Officer interprets the term "conditional" in this context to mean that the statutory bar may be stayed in favor of probation or other conditions. "Unconditional" therefore means that the statutory bar may not be stayed.

necessary to deter Respondents' and others from flagrant disregard of past orders. Therefore, the Hearing Officer recommends an administrative assessment in the amount of \$75,000.

Accordingly, based upon the foregoing findings of fact, conclusions of law, and discussion, the following proposed order shall issue: