

FILED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES 2018 NOV 30 AM 8:48

PA DEPARTMENT OF
BANKING AND SECURITIES

| | | |
|----------------------------------|---|---------------------------------------|
| COMMONWEALTH OF PENNSYLVANIA | : | |
| DEPARTMENT OF BANKING AND | : | |
| SECURITIES, BUREAU OF SECURITIES | : | |
| COMPLIANCE AND EXAMINATIONS | : | Docket No. : 18 <u>0099</u> (SEC-OSC) |
| | : | |
| v. | : | |
| | : | |
| TRICKLING SPRINGS CREAMERY, LLC | : | |
| PHILIP ELVIN RIEHL | : | |
| GERALD A. BYERS | : | |
| ELVIN M. MARTIN | : | |
| DALE L. MARTIN | : | |

NOTICE TO ANSWER AND REQUEST A HEARING

You have the right to challenge the attached Order to Show Cause (“Order”) by filing an Answer, in writing, with the Docket Clerk **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 Banking and Securities Commission (“Commission”) may enter a final order against you.**

Your Answer must be in writing. Your Answer must specifically admit or deny the allegations in the Order, set forth the facts you rely upon, and state concisely the law upon which you rely. 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 the Docket Clerk:

Linnea Freeberg, Docket Clerk
Department of Banking and Securities
17 North 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:

David Murren
Assistant Counsel
Department of Banking and Securities

17 North Second Street, Suite 1300
Harrisburg, PA 17101

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.

The hearing and all other 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.

FILED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

2018 NOV 30 AM 10:48

PA DEPARTMENT OF
BANKING AND SECURITIES

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

Docket No. : 18 0099 (SEC-OSC)

v.

TRICKLING SPRINGS CREAMERY, LLC
PHILIP ELVIN RIEHL
GERALD A. BYERS
ELVIN M. MARTIN
DALE L. MARTIN

ORDER TO SHOW CAUSE

You, Trickling Springs Creamery, LLC (“Respondent TSC”), Philip Elvin Riehl (“Respondent Riehl”), Gerald A. Byers (“Respondent Byers”), Elvin M. Martin (“Respondent E. Martin”), and Dale L. Martin (“Respondent D. Martin”) (collectively, “Respondents”), are notified that the Department of Banking and Securities (“Department”), through the Bureau of Securities Compliance and Examinations (“Bureau”), hereby **ORDERS YOU TO SHOW CAUSE** why the Banking and Securities Commission (“Commission”) should not impose the sanctions and remedies described below. Specifically, this proceeding is instituted pursuant to 1 Pa. Code § 35.14 to determine:

- (1) whether the allegations set forth below are true; and
 - (2) if these allegations are true, whether there has been a violation of the Pennsylvania Securities Act of 1972 (“1972 Act”) or of the regulations promulgated thereunder;
- and

- (3) if so, whether the sanctions and remedies proposed by the Bureau should be imposed by the Commission.

The Bureau alleges the following facts and violations of law for the purpose of tentatively framing the issues for consideration by the Commission. The Commission may consider this 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, Pennsylvania 17101.

4. Respondent TSC was, at all times material herein, a Pennsylvania limited liability company with an address at 2330 Molly Pitcher Highway, Chambersburg, Pennsylvania 17202. Respondent TSC is engaged in the business of processing and selling dairy products.

5. Respondent Riehl was, at all times material herein, an individual with addresses at
Redacted and 2330 Molly Pitcher Highway,
Chambersburg, Pennsylvania 17202, and Respondent Riehl is the majority owner and a member of Respondent TSC.

6. Respondent Byers was, at all times material herein, an individual with addresses at Redacted and 2330 Molly Pitcher Highway, Chambersburg, Pennsylvania 17202, and Respondent Byers is an owner and member of Respondent TSC.

7. Respondent E. Martin was, at all times material herein, an individual with addresses at Redacted and 2330 Molly Pitcher Highway, Chambersburg, Pennsylvania 17202, and Respondent E. Martin is an owner and member of Respondent TSC.

8. Respondent D. Martin was, at all times material herein, an individual with addresses at Redacted and 2330 Molly Pitcher Highway, Chambersburg, Pennsylvania 17202, and Respondent D. Martin is an owner and member of Respondent TSC.

FACTUAL ALLEGATIONS

9. Beginning in or about February 2015, Respondent TSC offered for sale promissory notes (“Notes”) to investors throughout the United States. Purportedly, the proceeds from the sale of the Notes were to be used to fund the operations of Respondent TSC.

10. From in or about February 2015 until October 2017, Respondent TSC offered and sold at least 175 Notes to at least 110 investors (“Investors”) within the United States for an aggregate amount of at least \$7,803,829.

11. From in or about November 2015 until October 2017, Respondent TSC offered and sold at least 20 Notes to at least 15 Pennsylvania residents (“PA Residents”) for an aggregate amount of at least \$963,104.

12. Investors could purchase a simple demand Note which offered a 4.5% interest rate, or Investors could purchase a Note with a one-year term which offered a 5% interest rate.

13. Respondent TSC failed to provide some or all of the Investors with financial statements regarding Respondent TSC, which disclosure would have been material for a reasonable investor to make an informed investment decision. To the extent that Respondent TSC did not have disclosure documents, Respondent Riehl failed to disclose their nonexistence, which would have been material for a reasonable investor to make an informed investment decision.

14. Respondent TSC failed to disclose the following information concerning Respondent TSC to some or all of the Investors:

- a. The financial condition of Respondent TSC;
- b. The financial risk of Respondent TSC's Notes;
- c. The identity and relevant background of the corporate officers of Respondent TSC;
- d. Respondent TSC's operating history;
- e. From in or about December 2015 until February 2018, Respondent Riehl received a total of at least \$954,250 in checks from Respondent TSC's bank accounts;
- f. From in or about September 2015 until February 2018, Respondent Byers received a total of at least \$31,688 in checks from Respondent TSC's bank accounts;
- g. In or about August 2016, Respondent E. Martin received a total of at least \$40,000 in checks from Respondent TSC's bank accounts;

- h. From in or about December 2015 until January 2018, Respondent D. Martin received a total of at least \$379,930 in checks from Respondent TSC's bank accounts;
- i. From in or about July 2015 until March 2018, at least \$1,184,318 was withdrawn in cash from Respondent TSC's bank accounts; and
- j. At all times material herein, Respondent TSC was insolvent and was unable to fulfill its financial obligations stemming from the sale of the Notes.

15. To date, Respondent TSC has been unable to fulfill its financial obligations to some or all of the Investors, and Respondent TSC has consequently defaulted on payments to some or all of the Investors.

16. At all times material herein, Respondent TSC was insolvent and was unable to fulfill its financial obligations stemming from the sale of the Notes.

17. As the majority owner and a member of Respondent TSC, Respondent Riehl acted as an "affiliate" of Respondent TSC within the meaning of Section 102(b) of the 1972 Act, 70 P.S. § 1-102(b), and, as such, caused Respondent TSC to commit the herein stated acts which violated the 1972 Act.

18. As an owner and member of Respondent TSC, Respondent Byers acted as an "affiliate" of Respondent TSC within the meaning of Section 102(b) of the 1972 Act, 70 P.S. § 1-102(b), and, as such, caused Respondent TSC to commit the herein stated acts which violated the 1972 Act.

19. As an owner and member of Respondent TSC, Respondent E. Martin acted as an "affiliate" of Respondent TSC within the meaning of Section 102(b) of the 1972 Act, 70 P.S. § 1-

102(b), and, as such, caused Respondent TSC to commit the herein stated acts which violated the 1972 Act.

20. As an owner and member of Respondent TSC, Respondent D. Martin acted as an “affiliate” of Respondent TSC within the meaning of Section 102(b) of the 1972 Act, 70 P.S. § 1-102(b), and, as such, caused Respondent TSC to commit the herein stated acts which violated the 1972 Act.

21. The Notes described above are “securities” within the meaning of Section 102(t) of the 1972 Act, 70 P.S. § 1-102(t).

22. Respondent TSC is the “issuer” of the Notes described above within the meaning of Section 102(l) of the 1972 Act, 70 P.S. § 1-102(l).

23. The records of the Department disclose that the Notes are: (a) not registered under Section 201 of the 1972 Act, 70 P.S. § 1-201; (b) not exempt from registration under Section 202 of the 1972 Act, 70 P.S. § 1-202; (c) not federally covered securities under Section 211 of the 1972 Act, 70 P.S. § 1-211; and (d) that the offer relating to the Notes was not exempt under Section 203 of the 1972 Act, 70 P.S. § 1-203.

COUNTS

Violation of Section 201 of the 1972 Act, 70 P.S. § 1-201

20 Counts

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 9 through 12 and 17 through 23 above, Respondent TSC, Respondent Riehl, Respondent Byers, Respondent E. Martin, and Respondent D. Martin offered and sold the Notes to Pennsylvania residents in willful violation of Section 201 of the 1972 Act, 70 P.S. § 1-201.

Violation of Section 401(b) of the 1972 Act, 70 P.S. § 1-401

175 Counts

26. Paragraphs 1 through 25 are incorporated herein by reference as if set forth in their entirety.

27. By engaging in the acts and conduct set forth in paragraphs 9 through 14 and 17 through 23 above, Respondent TSC, Respondent Riehl, Respondent Byers, Respondent E. Martin, and Respondent D. Martin, in connection with the offer and sale of the Notes, omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in willful violation of Section 401(b) of the 1972 Act, 70 P.S. § 1-401(b).

Violation of Section 401(c) of the 1972 Act, 70 P.S. § 1-401(c)

175 Counts

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

29. By engaging in the acts and conduct set forth in paragraphs 9 through 23 above, Respondent TSC, Respondent Riehl, Respondent Byers, Respondent E. Martin, and Respondent D. Martin, in connection with the offer and sale of the Notes, engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person, in willful violation of Section 401(c) of the 1972 Act, 70 P.S. § 1-401(c).

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 of the 1972 Act, 70 P.S. § 1-305, that the registration of Respondent TSC, Respondent Riehl, Respondent Byers, Respondent E.

Martin, and Respondent D. Martin be suspended, revoked, or conditioned, or that Respondent TSC, Respondent Riehl, Respondent Byers, Respondent E. Martin, and Respondent D. Martin be censured.

2. That an order be issued pursuant to Section 512 of the 1972 Act, 70 P.S. § 1-512, which bars, conditionally or unconditionally, and either permanently or for such period of time as may be determined, Respondent TSC, Respondent Riehl, Respondent Byers, Respondent E. Martin, and Respondent D. Martin 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.

3. That Respondent TSC, Respondent Riehl, Respondent Byers, Respondent E. Martin, and Respondent D. Martin be ordered to effect a rescission offer pursuant to Section 513 of the 1972 Act, 70 P.S. § 1-513.

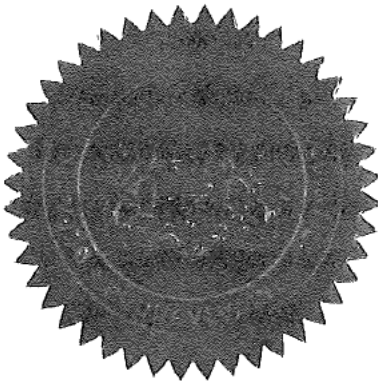
4. That Respondent TSC, Respondent Riehl, Respondent Byers, Respondent E. Martin, and Respondent D. Martin be ordered to return to purchasers of securities in this

Commonwealth, in cash, the amount of compensation received for effecting those securities transactions pursuant to Section 514 of the 1972 Act, 70 P.S. § 1-514.

5. That Respondent TSC, Respondent Riehl, Respondent Byers, Respondent E. Martin, and Respondent D. Martin be ordered to pay the costs of the investigation pursuant to Section 602.1(b) of the 1972 Act, 70 P.S. § 1-602.1(b).

6. That Respondent TSC, Respondent Riehl, Respondent Byers, Respondent E. Martin, and Respondent D. Martin be ordered to pay an administrative assessment of up to \$100,000.00 for each act or omission constituting a willful violation of the 1972 Act, pursuant to Section 602.1(c) of the 1972 Act, 70 P.S. §1-602.1(c).

IT IS SO ORDERED.



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

Redacted

Joseph J. Minisi
Deputy Secretary of Securities

Dated: 11/30/18

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

FILED

2018 NOV 30 AM 8:49

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

PA DEPARTMENT OF
BANKING AND SECURITIES

Docket No. : 18 0099 (SEC-OSC)

v.

TRICKLING SPRINGS CREAMERY, LLC
PHILIP ELVIN RIEHL
GERALD A. BYERS
ELVIN M. MARTIN
DALE L. MARTIN

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 MAIL

Trickling Springs Creamery, LLC
c/o Norman Greenspan
Starfield & Smith, P.C., Fort Washington, PA Office
1300 Virginia Drive, Suite 325
Fort Washington, PA 19034

Philip Elvin Riehl c/o Norman Greenspan
Starfield & Smith, P.C., Fort Washington, PA Office
1300 Virginia Drive, Suite 325
Fort Washington, PA 19034

Gerald A. Byers c/o Norman Greenspan
Starfield & Smith, P.C., Fort Washington, PA Office
1300 Virginia Drive, Suite 325
Fort Washington, PA 19034

Elvin M. Martin c/o Norman Greenspan
Starfield & Smith, P.C., Fort Washington, PA Office
1300 Virginia Drive, Suite 325
Fort Washington, PA 19034

Dale L. Martin c/o Norman Greenspan
Starfield & Smith, P.C., Fort Washington, PA Office
1300 Virginia Drive, Suite 325
Fort Washington, PA 19034

Dated this 30th day of November, 2018

Redacted

David Murren
Assistant Counsel
Attorney ID # 323692
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