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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES 2019 MAY -2 AM 9:46

PENNSYLVANIA DEPARTMENT OF	:	PA DEPARTMENT OF
BANKING AND SECURITIES, BUREAU	:	BANKING AND SECURITIES
OF SECURITIES COMPLIANCE AND	:	
EXAMINATIONS	:	
	:	DOCKET No. 180083 (SEC-OSC)
v.	:	
	:	
FREDERICK JOHN AMREIN,	:	
d/b/a AMREIN FINANCIAL	:	

NOTICE OF RIGHT TO APPEAL

You are hereby notified that you have the right to appeal the attached Final Order ("Order") issued by the Pennsylvania Banking and Securities Commission.

If you wish to appeal the attached Order you may file a petition for review with the Prothonotary of the Commonwealth Court of Pennsylvania that complies with the format and timing requirements of the applicable Pennsylvania Rules of Appellate Procedure. Pa. R.A.P. 1511-1561. Failure to file a petition for review within 30 days of the mailing date of this Order will result in the attached Order becoming final and unappealable. You may reach the Commonwealth Court at 717-255-1650.

Please be advised that this Notice of Right to Appeal is not intended to and does not constitute legal advice. You may consult an attorney regarding your legal rights including your right to appeal the attached Order or your right to file an application for rehearing or reconsideration under the General Rules of Administrative Practice and Procedure. 1 Pa. Code § 35.241.

Department of Banking and Securities (“Department”) for the fiscal year ending December 31, 2017, which is required under a regulation promulgated under the authority of the Pennsylvania Securities Act of 1972 (“1972 Act”). Accordingly, the Commission concludes that the Bureau has adequately proven that Amrein willfully violated the 1972 Act and its applicable regulation.

Accordingly, the Commission **ORDERS** that Amrein’s investment adviser registration, CRD # 125263, is **INDEFINITELY SUSPENDED** pursuant to section 305(a)(v) and (xiii) of the 1972 Act, 70 P.S. §1-305(a)(v) and (xiii). The Commission further **ORDERS** that, pursuant to section 1-512(a) of the 1972 Act, 70 P.S. §1-512(a), Amrein is **TEMPORARILY BARRED** from each of the following activities:

1. Representing an issuer offering or selling securities in this Commonwealth;
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 Commonwealth, 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 1972 Act;
4. Being an affiliate of any person registered under Section 301 of the 1972 Act; or
5. Relying upon an exemption from registration contained in Section 202, 203 or 302 of the 1972 Act.

The Commission further **ORDERS** Amrein to pay an administrative assessment in the amount of Two Thousand Dollars (\$2,000.00), pursuant to section 602.1 (c) of the 1972 Act, 70 P.S. §1-602.1(c).

Finally, the Commission adds an additional sanction to that proposed by the hearing officer; specifically, it **ORDERS** Amrein to pay the assessed costs of investigation, in any, in an amount to be verified by the Bureau, pursuant to section 602.1(b) of the 1972 Act. 70 P.S. §1-602.1(b). This sanction

Upon payment by Amrein of the administrative assessment and costs of investigation in full and his submission to the Department of balance sheets for the fiscal year ending December 31, 2017, and December 31, 2018, and every subsequent fiscal year as applicable, the Department at Amrein's request will lift the suspension of his registration and remove the temporary bar.

Amrein shall pay the assessments by mailing to the following official a certified check, attorney's check, or U.S. Postal Service money order, made payable to the "Commonwealth of Pennsylvania," within thirty (30) days of the effective date of this Order:

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 R. Biery
Chair
Pennsylvania Banking and Securities Commission

So ORDERED this 2nd day of May, 2019

HISTORY

On October 26, 2018, the Commonwealth of Pennsylvania, Department of Banking and Securities (“Department”), through the Bureau of Securities Compliance and Examinations (“Bureau”), issued and served upon Frederick John Amrein, d/b/a Amrein Financial (hereinafter, “Respondent Amrein”) a *Notice to Answer and Request a Hearing* (“Notice”) and an *Order to Show Cause* (“OTSC”) why the Banking and Securities Commission (“Commission”) should not impose the sanctions and remedies described in the OTSC pursuant to the Pennsylvania Securities Act of 1972, 70 P.S. § 1-101 *et. seq.* (“1972 Act”) based upon a *Statement of the Particulars and Matters Concerning Which the Bureau is Inquiring* contained within the OTSC.

On his Uniform Application for Investment Adviser Registration (Form ADV), Respondent Amrein indicates a principal place of business at Redacted (“ADV Address”).

The Notice and OTSC were served upon Respondent Amrein by certified and first-class mail at his ADV address on file with the Bureau, Redacted, on October 26, 2018.

The certified mailing was returned to the Bureau as unclaimed on November 26, 2018.

The first-class mailing sent to Respondent Amrein at his ADV address was not returned to the Bureau as undeliverable within 15 days of mailing and, accordingly, Respondent was served with the first-class mailing on November 10, 2018.

Service of the Notice and OTSC upon Respondent Amrein in the foregoing manner was in accordance with the requirements of § 33.31 of the General Rules of Administrative Practice and Procedure (“GRAPP”), 1 Pa. Code § 33.31.

The *Notice* advised Respondent Amrein of the right to challenge the OTSC by filing an Answer within 30 days, and notified him that:

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.

Respondent Amrein did not file an Answer to the OTSC.

On December 5, 2018, Secretary of Banking and Securities Robin L. Weissmann designated the undersigned to serve as the hearing officer for the Department in this matter.

On December 12, 2018, the Bureau filed and served upon Respondent Amrein a *Motion to Deem Facts Admitted and Entry of Default Judgment* ("MDFA") at his ADV address. The MDFA alleged that on October 26, 2018, the Bureau issued the Notice and OTSC to Respondent Amrein, advising him that he had 30 days to file his answer; that the certified mailing was returned to the Bureau as unclaimed on November 26, 2018; that the first-class mailing sent to him at his ADV address was not returned to the Bureau as undeliverable within 15 days of mailing; that Respondent Amrein did not file an answer; and that given that more than thirty days have passed since the date of service of the OTSC with no answer having been filed, the facts as set forth in the OTSC should be deemed admitted. Respondent Amrein failed to respond to the MDFA.

On December 27, 2018, the hearing officer issued an *Order Granting Motion to Deem Facts Admitted and Entry of Default Judgment*. ("December 27, 2018 Order"). The December 27, 2018 Order entered judgment by default against Respondent Amrein; deemed the factual allegations of Paragraphs 1 through 14 of the *OTSC* admitted; and advised Respondent Amrein that a Proposed Report recommending appropriate sanctions would be issued forthwith. As of the date of this Proposed Report, Respondent has not filed an answer to the OTSC or the MDFA. This proposed report is issued in accordance with the Secretary's letter of December 5, 2018.

FINDINGS OF FACT

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the Pennsylvania Securities Act of 1972 ("1972 Act"). (OTSC, Paragraph 1; December 27, 2018 Order).

2. The Bureau of Securities Compliance and Examinations ("Bureau") is primarily responsible for administering and enforcing the 1972 Act for the Department. (OTSC, Paragraph 2; December 27, 2018 Order).

3. The Bureau operates from the Department's main office located at 17 North Second Street, Suite 1300, Harrisburg, PA 17101. (OTSC, Paragraph 3; December 27, 2018 Order).

4. At all times material to the OTSC, Frederick John Amrein, d/b/a Amrein Financial (CRD # 125263) ("Respondent Amrein") was a Pennsylvania sole proprietorship with an address of Redacted (OTSC, Paragraph 4; December 27, 2018 Order).

5. On his Uniform Application for Investment Adviser Registration (Form ADV), Respondent Amrein indicates a principal place of business at Redacted ("ADV address"). (MDFA, paragraph 5).

6. From in or about September 2004 until the present, Respondent Amrein has been registered as an investment adviser, pursuant to Section 301(c) of the 1972 Act, 70 P.S. § 1-301(c). (OTSC, Paragraph 5; December 27, 2018 Order).

7. At all pertinent times, Respondent Amrein has had discretionary authority over client funds or securities. (OTSC, Paragraph 6; December 27, 2018 Order).

8. Pursuant to Regulation 304.022(b), an investment adviser with discretionary authority over client funds or securities shall file with the Department a balance sheet, prepared in accordance with generally accepted accounting principles. 10 Pa. Code § 304.022(b). The balance sheet shall be

filed with the Department within 120 days of the investment adviser's fiscal year end. 10 Pa. Code § 304.022(d). (OTSC, Paragraph 7; December 27, 2018 Order).

9. Respondent Amrein's fiscal year ended on December 31, 2017. (OTSC, Paragraph 8; December 27, 2018 Order).

10. On September 4, 2018, Erin Pestilli, Chief of the Department's Securities Licensing Office, sent Respondent Amrein a letter via first-class mail ("September 4 letter") to his ADV address, notifying him that the Department had not received a balance sheet for the fiscal year ending on December 31, 2017, and if he had not submitted a balance sheet prepared in accordance with generally accepted accounting principles within 120 days of the end of his fiscal year, "the Department may take immediate administrative action." (OTSC, paragraph 9 and Exhibit A thereto; December 27, 2018 Order).

11. To date, Respondent Amrein has not filed with the Department a balance sheet prepared in accordance with generally accepted accounting principles, within 120 days of the end of his fiscal year, for the fiscal year ending on December 30, 2017, as required by Regulation 304.022. 10 Pa. Code § 304.022(b), (d). (OTSC, Paragraph 10; December 27, 2018 Order).

12. On October 26, 2018, the Bureau issued against Respondent Amrein a *Notice to Answer and Request Hearing* ("Notice") and *Order to Show Cause* ("OTSC"), directing that he show cause why the Commission should not impose sanctions and remedies against him for his violations of the 1972 Act. (MDFA, paragraph 6; Official Notice – Department records)¹.

¹ Official notice of such matters as might be judicially noticed by courts is permissible under the General Rules of Administrative Practice and Procedure, 1 Pa. Code §31.1 *et seq.*, at §35.173, which provides, in pertinent part, as follows:

§35.173. Official notice of facts.

Official notice may be taken by the agency head or the presiding officer of such matters as might be judicially noticed by the courts of this Commonwealth, or any matters as to which the agency by reason of its functions is an expert...

1 Pa. Code §35.173.

13. On October 26, 2018, the Bureau mailed the Notice and OTSC to Respondent Amrein at his ADV address, both via certified mail, return receipt and first-class mail, postage prepaid. (Department records; MDFA, paragraphs 6, 7 and Exhibits A and B thereto).

14. The Notice and OTSC served via certified mail, return receipt were returned to the Bureau as unclaimed on November 26, 2018. (Department records; MDFA, paragraph 6 and Exhibit A thereto).

15. The Notice and OTSC served via first-class mail, postage prepaid were not returned as undeliverable within 15 days after mailing and are presumed delivered. (Department records; MDFA, paragraph 8 and Exhibit B thereto).

16. Respondent Amrein was notified that his Answer must be filed in writing within 30 days of the date of the October 26, 2018 OTSC; that his Answer must specifically admit or deny the allegations in the OTSC; that general denials of the allegations set forth in the OTSC are not sufficient; and that a failure to support his denials with specific facts may cause the Commission to deem the facts in the Order as admitted and to enter a final order against him without a hearing. (Notice and OTSC; Official Notice – Department records).

17. Respondent Amrein did not file an Answer to the OTSC within 30 days of the date of the OTSC. (MDFA, paragraphs 10-12; Official Notice – Department records).

Official notice is also permitted under case law. *See, for example, Falasco v Commonwealth of Pennsylvania Board of Probation and Parole*, 521 A. 2d 991 (Pa. Cmwlth. 1987), in which the Commonwealth Court explained:

“Official notice” is the administrative counterpart of judicial notice and is the most significant exception to the exclusiveness of the record principle. The doctrine allows an agency to take official notice of facts which are obvious and notorious to an expert in the agency’s field and those facts contained in reports and records in the agency’s files, in addition to those facts which are obvious and notorious to the average person. Thus, official notice is a broader doctrine than is judicial notice and recognizes the special competence of the administrative agency in its particular field and also recognizes that the agency is a storehouse of information on that field consisting of reports, case files, statistics and other data relevant to its work.

521 A. 2d at 994 n. 6.

18. On December 12, 2018, the Bureau filed a *Motion to Deem Facts Admitted and Entry of Default Judgment* (“MDFA”), a copy of which was served upon Respondent Amrein that same date by first-class mail postage prepaid, at his ADV address. (Department records; MDFA at certificate of service)

19. Respondent Amrein did not file a response to the MDFA. (Official Notice – Department records).

20. On December 27, 2018, the MDFA was granted via an *Order Granting [MDFA] and Entry of Default Judgment*, which was sent by first-class mail to Respondent Amrein at his ADV address. (Official Notice – Department records; December 27, 2018 Order).

21. Respondent Amrein has been served with the OTSC, MDFA and all subsequent orders, notices, documents and pleadings filed in this matter. (Department records)

CONCLUSIONS OF LAW

1. The Department has jurisdiction in this matter under sections 304(a) and 601(a) of the 1972 Act, 70 P.S. §§ 1-304(a) and 1-601(a), and sections 1122-A and 1141-A of the Department of Banking and Securities Code², 71 P.S. §§ 733-1122-A and 733-1141-A. (Findings of Fact 1-11).

2. Respondent Amrein received adequate notice of this proceeding and was afforded, but declined, an opportunity to be heard, in accordance with section 4 of the Administrative Agency Law, 2 Pa. C.S. § 504. (Findings of Fact Nos. 12-21).

3. Respondent Amrein has failed to file with the Department a balance sheet, prepared in accordance with generally accepted accounting principles, within 120 days of Respondent Amrein's December 31, 2017 fiscal year end, which acts and conduct constitute a willful violation of Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation 304.022(b), (d), 10 Pa. Code § 304.022(b), (d) and form a basis to deny, suspend, revoke, censure or condition the registration of Respondent Amrein or impose other sanctions upon him under the 1972 Act. (Findings of Fact Nos. 6-11).

4. Respondent Amrein has refused to furnish information reasonably requested by the Department, which acts and conduct constitute a willful violation of Section 305(a)(xiii) of the 1972 Act, 70 P.S. § 1-305(a)(xiii), and Regulation 304.022(b), (d), 10 Pa. Code § 304.022(b), (d) and form a basis to deny, suspend, revoke, censure or condition the registration of Respondent Amrein or impose other sanctions upon him under the 1972 Act. (Findings of Fact Nos. 6-11).

² Act of May 15, 1933 (P.L. 565, No. 111), *as amended*, 71 P.S. §§ 733-1 – 733-1203.

DISCUSSION

Service/Default

On October 26, 2018, the Bureau mailed the Notice and OTSC to Respondent Amrein at his ADV address by certified mail, return receipt requested and also by first-class mail, postage prepaid. Although the certified mailing was returned as unclaimed, the first-class mailing of the Notice and OTSC was not returned to the Bureau as undeliverable. (Findings of Fact Nos. 12-15). This created the presumption of delivery of the OTSC to Respondent. (*Id.*). See, *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment, Appeal and Review*, 645 A.2d 944, 946 (Pa. Cmwlth. 1994); *John Kenneth, Ltd. v. Com., U.C.B.R.*, 444 A.2d 824, 826 (Pa. Cmwlth. 1982) (“[w]here notice, mailed to a party’s last known address, is not returned by the postal authorities as undeliverable, the party is presumed to have received notice”). “Notice of administrative action which is mailed to the interested party’s last known address has been found to be reasonable notice.” *Kobylski v. Milk Marketing Board*, 516 A.2d 75, 77 (Pa. Cmwlth. 1984) (citing *Yarbrough v. Department of Public Welfare*, 478 A.2d 956 (Pa. Cmwlth. 1984)). Accordingly, Respondent Amrein was properly served with the Notice and the OTSC and all other subsequent filings sent to him by first-class mail to his ADV address. (Findings of Fact Nos. 12-21).

The OTSC directed Respondent Amrein to file an answer to the allegations therein within 30 days, and advised him that failure to file a timely answer to the OTSC could result in a final order against him without a hearing. The OTSC further notified Respondent Amrein that he could be barred from certain acts of practice or being registered under the 1972 Act; could be ordered to pay the costs of the investigation; and could be ordered to pay an administrative assessment of up to \$100,000.00 for each willful violation of the 1972 Act. Nonetheless, Respondent failed to file an answer or otherwise respond to the allegations in the OTSC within the specified 30-day period.

Accordingly, on December 12, 2018, the Bureau filed its MDFA, copies of which were served

upon Respondent Amrein by first-class mail postage prepaid at his ADV Address – the same address at which the Notice and OTSC had been served. In the MDFA, the Bureau asked that Respondent Amrein be deemed in default under the GRAPP at 1 Pa. Code § 35.37 for his failure to answer the allegations set forth in the OTSC, and that those allegations be deemed admitted.

A notice attached to the MDFA directed Respondent Amrein to file an answer to its allegations within 10 days as provided in GRAPP at 1 Pa. Code § 35.179. Therefore, Respondent Amrein was on notice that failure to respond to the MDFA could result in the issuance of an Order finding him in default and deeming the OTSC's factual allegations admitted. Yet, Respondent Amrein never answered or otherwise responded to the OTSC or the MDFA.

Section 35.37 of the GRAPP provides as follows:

§ 35.37. Answers to orders to show cause.

A person upon whom an order to show cause has been served under § 35.14 (relating to orders to show cause) shall, if directed so to do, respond to the same by filing within the time specified in the order an answer in writing. The answer shall be drawn so as specifically to admit or deny the allegations or charges which may be made in the order, set forth the facts upon which respondent relies and state concisely the matters of law relied upon. Mere general denials of the allegations of an order to show cause which general denials are unsupported by specific facts upon which respondent relies, will not be considered as complying with this section and may be deemed a basis for entry of a final order without hearing, unless otherwise required by statute, on the ground that the response has raised no issues requiring a hearing or further proceedings. **A respondent failing to file answer within the time allowed shall be deemed in default, and relevant facts stated in the order to show cause may be deemed admitted.**

1 Pa. Code § 35.37 (emphasis added). Respondent Amrein failed to file an answer within 30 days from the date of the OTSC. Therefore, it followed that, under the December 27, 2018 Order, Respondent Amrein was found to be in default, and the facts alleged in OTSC were deemed admitted. 1 Pa. Code §§ 35.35, 35.37.

The procedural history set forth above satisfactorily demonstrates that Respondent Amrein has been afforded adequate notice of the charges, as well as an opportunity to be heard on them. It is, therefore, now proper to enter a final order in this disciplinary proceeding without a hearing. See, Celane

v. *Insurance Commissioner*, 415 A.2d 130 (Pa. Cmwlth. 1980).

Violations

In its OTSC, the Bureau alleges that Respondent Amrein is subject to disciplinary action by the Commission pursuant to Sections 305(a)(v), (xiii) of the Act, 70 P.S. § 1-305(a)(v), (xiii) and Regulation 304.022(b), (d), 10 Pa. Code § 304.022(b), (d), which provide as follows:

§ 1-305. Denial, suspension, revocation and conditioning of registration

(a) The department may, by order, deny, suspend, revoke or condition any registration or may censure any registrant if it finds that such order is in the public interest and that such registrant or applicant, or in the case of any broker-dealer or investment adviser, any affiliate thereof, whether prior or subsequent to becoming associated with such person:

(v) Has wilfully violated **any provision** of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.), the Securities Exchange Act of 1934, the Trust Indenture Act of 1939 (53 Stat. 1149, 15 U.S.C. § 77aaa et seq.), the Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. § 80b-1 et seq.), the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.), the Commodity Exchange Act, [*footnote omitted*] any law of a foreign country governing or regulating any aspect of the business of securities, commodities futures or banking or this act, or of any rule, **regulation** or order under any of such statutes within the previous ten years; or

(xiii) Has made any material misrepresentation to or withheld or concealed from or omitted to state to the department or any of its representatives any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or has refused to furnish information reasonably requested by the department within the previous ten years; or

10 P.S. § 1-305(a)(v), (xiii) (emphasis added).

§ 304.022. Investment adviser required financial reports.

(b) An investment adviser registered under section 301 of the act that has discretionary authority over client funds or securities, but not custody, shall file with the Department a balance sheet as of the end of its fiscal year with the following conditions:

(1) The balance sheet is not required to be audited but shall be prepared in accordance with generally accepted accounting principles.

(2) The balance sheet must contain a representation by the investment adviser that it is true and accurate.

(d) Except as provided in subsections (e) and (f), investment advisers required to file the reports of financial condition set forth in subsections (a)-(c) shall file the reports with the Department within 120 days of the investment adviser's fiscal year end.

10 Pa. Code § 304.022(b), (d)

The Bureau bears the burden of proving the allegations in the OTSC by a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is generally understood to mean that the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the Commonwealth's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1949). The Bureau, therefore, has the burden of proving the charges against Respondent with evidence that is substantial and legally credible, not by mere "suspicion" or by only a "scintilla" of evidence. *Lansberry*, 578 A.2d at 602. "Preponderance of the evidence is tantamount to a 'more likely than not standard'...Proof by a preponderance of the evidence is 'often alluded to as a weighing of the evidence and a determination based upon which way the mythical scales are tipped'." *Agostino v. Township of Collier*, 968 A. 2d 258, 269 (Pa. Cmwlth. 2009) (citing *Commonwealth v. McJett*, 811 A. 2d 104, 110 (Pa. Cmwlth. 2002)). (citations omitted).

The factual allegations of the OTSC have been deemed admitted, by default. Hence, any objection by Respondent Amrein to the accuracy of the factual averments is waived. The deemed admitted facts establish that, from in or about September 2004 until the present, Respondent Amrein has been registered as an investment advisor, pursuant to Section 301(c) of the 1972 Act.³ Respondent

³ § 1-301. Registration requirement

Unless exempted under section 302 (footnote omitted) 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.

Amrein had discretionary authority over client funds or securities, thereby requiring him to file with the Department a balance sheet, prepared in accordance with generally accepted accounting principles. 10 Pa. Code § 304.022(b). The balance sheet is required to be filed with the Department within 120 days of the investment adviser's fiscal year end. 10 Pa. Code § 304.022(d). Respondent Amrein's fiscal year ended on December 31, 2017, meaning that he was required to file the balance sheet by May 1, 2018. As of the date of the filing of the OTSC (October 26, 2018), Respondent Amrein had not filed a balance sheet as required by Regulation 304.22, 10 Pa. Code § 304.022(b), (d).

By his actions, Respondent Amrein has willfully violated Regulation 304.22, thereby subjecting him to action by the Commission pursuant to section 305(a)(v) of the 1972 Act. 10 P.S. § 1-305(a)(v). Respondent Amrein also has refused to furnish information reasonably requested by the Department and, in so doing, has violated section 305(a)(xiii) of the Act. 10 P.S. § 1-305(a)(xiii).

Sanctions

When the Commission determines that a person has willfully violated the 1972 Act, the sanctions that may be imposed by the Commission are wide-ranging. Under Section 512 of the 1972 Act, 70 P.S. §1-512(a), the Commission may issue an order which bars, conditionally or unconditionally and either permanently or for such period of time as it 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 of 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 1972 Act;
- (4) Being an affiliate of any person registered under section 301 of the 1972 Act; or
- (5) Relying upon an exemption from registration contained in section 202, 203 or 302 of the 1972 Act.

Section 602.1 of the 1972 Act authorizes and, in some instances, requires assessments to be imposed.

For example, subsection (b) provides:

§1-602.1. Assessments

(b) A registrant, applicant for registration, issuer or other person upon whom the [commission] has conducted an examination, audit, investigation or prosecution and who has been determined by the [commission] to have violated this act or rule or order of the [commission] 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 salaries and other compensation paid to clerical, accounting, administrative, investigative, examiner and legal personnel, the actual amount of expenses reasonably incurred by such personnel and the [commission] in the conduct of such examination, audit, investigation or prosecution, including a pro-rata portion of the [commission's] administrative expenses.

70 P.S. §1-602.1(b). Neither the OTSC nor the MDFA specify or document the amount of any costs incurred by the Bureau in the investigation and prosecution of this matter; hence, no award of such costs is proposed.⁴

Subsection (c) similarly provides, in pertinent part:

(c) After giving notice and opportunity for a hearing, the [commission] 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 a broker-dealer, agent, investment adviser or investment adviser representative registered under section 301 or an affiliate of any broker-dealer or investment adviser where the [commission] determines that the person within the previous ten years willfully⁵ has violated this act or a rule or order of the department under this act...;

⁴ The Hearing Officer has no information by way of factual averments, testimony or otherwise, to determine the actual costs of investigation under section 602.1(b). Since the Commission's mandate to assess such costs on Respondent is statutorily based, to the extent that the Bureau has documentation to substantiate the costs and expenses it incurred during the course of its investigation, a recommendation from the Hearing Officer should not be necessary in order to allow the Bureau to recoup its costs.

⁵ (w) "Wilful and wilfully" mean the following:

(1) As used in all sections of the act except section 511 with respect to a wilful violation of section 401(a) [citation omitted] of the act, and notwithstanding any law or statute to the contrary, 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. § 1-1-02(w).

(1) The [commission], 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.

(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 [commission] 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...

70 P.S. §1-602.1(c). (emphasis added).

In its OTSC, the Bureau requests the Commission to issue an order under Section 305 of the 1972 Act that the registration of Respondent Amrein be suspended, revoked, or conditioned, or that Respondent Amrein be censured.

The Bureau also requests the Commission to issue an order implementing the statutory bars set forth in Section 512 of the 1972 Act.⁶

Respondent Amrein was required to timely submit to the Department a balance sheet prepared in accordance with generally accepted accounting principles, yet he failed to do so, even after receiving the Bureau's correspondence of September 4, 2018. Despite having notice of the charges and being afforded an opportunity to be heard, Respondent Amrein has chosen not to contest the Bureau's actions.

⁶ **Section 512. Statutory bars.**

(a) After giving notice and opportunity for a hearing, the department, where it has determined that a person willfully 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 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;
- (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).

Consequently, the record is barren of any evidence that might be reasonably considered as mitigating of any sanction.

The requirement that an investment advisor with discretionary authority of client funds or securities file an annual balance sheet is an important resource by which the Department may detect any abuse of that discretion or other misconduct. Owing to the serious nature of the violations and the Commission's responsibility to regulate the securities industry in a manner that safeguards the public, Respondent Amrein's registration will be suspended until such time as he submits to the Department a balance sheet that is in full compliance with requirements of the 1972 Act. Additionally, the imposition of an administrative assessment of \$2,000.00 is necessary to emphasize to Respondent Amrein the importance of timely submitting proper documentation to the Department, as well as to deter other registrants from similar behavior. Moreover, during the time that Respondent Amrein's registrations are suspended, he shall also be barred as provided in section 512 of the 1972 Act, 70 P.S. § 1-512, from engaging in certain regulated activity.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES**

Commonwealth of Pennsylvania	:	
Department of Banking and Securities,	:	
Bureau of Securities Compliance and	:	
Examinations	:	
	:	Docket No. 180083 (SEC-OSC)
v.	:	
	:	
Frederick John Amrein, d/b/a	:	
Amrein Financial	:	

PROPOSED ORDER

AND NOW, this 11th day of **January 2018**, in accordance with the foregoing findings of fact, conclusions of law and discussion, it is **ORDERED** that Frederick John Amrein, d/b/a Amrein Financial (“Respondent Amrein”) shall pay an **ADMINISTRATIVE ASSESSMENT** of **\$2,000.00** and, effective 30 days after the final order of the Banking and Securities Commission, Respondent Amrein’s investment adviser registration CRD # 125263 shall be **SUSPENDED** and he shall be **TEMPORARILY BARRED**, pursuant to section 512 of the 1972 Act 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.

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

Gerard Mackarevich, Counsel
Banking and Securities Commission
Market Square Plaza
17 N. Second Street, Suite 1300
Harrisburg, PA 17101

At any time, Respondent Amrein may request that his registration be reinstated and that the temporary bar be removed. The Commission will administratively reinstate Respondent Amrein's registration and remove the temporary bar upon his payment of the administrative assessment in full and his submission to the Department a balance sheet, for the fiscal year ended December 31, 2017 and every subsequent fiscal year preceding his request, each of which shall be prepared in accordance with generally accepted accounting principles and otherwise in compliance with the 1972 Act and all other applicable legal and administrative requirements.

BY ORDER:

Redacted

David M. Green
Hearing Officer

For the Bureau: David Murren, Esquire
Assistant Counsel
Office of Chief Counsel
Commonwealth of Pennsylvania
Department of Banking and Securities
Market Square Plaza
17 N. 2nd Street
Suite 1300
Harrisburg, PA 17101

For Respondent: Frederick John Amrein
d/b/a Amrein Financial
Redacted
Redacted

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

Date of Mailing: 1/16/2019

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

FILED

2019 MAY -2 AM 9:47

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

v.

FREDERICK JOHN AMREIN,
d/b/a AMREIN FINANCIAL

DOCKET No. 180083 (SEC-OSC)

PA DEPARTMENT OF
BANKING AND SECURITIES

CERTIFICATE OF SERVICE

On behalf of the agency, I certify that I have this day caused to be served a copy of the foregoing *Final Order* upon the following persons pursuant to 1 Pa. Code §§ 33.31:

BY CERTIFIED AND FIRST-
CLASS MAIL:

Frederick John Amrein,
d/b/a Amrein Financial
Redacted
Redacted

BY ELECTRONIC MAIL:

David Murren, Assistant Counsel
Commonwealth of Pennsylvania
Market Square Plaza
17 North Second Street, Suite 1300
Harrisburg, PA 17101
*Counsel for the Bureau of Securities
Compliance and Examinations*

Dated this 2nd day of May, 2019

Redacted

Linnea Freeberg, Docket Clerk
PA Banking and Securities Commission
17 N. 2nd Street, Suite 1300
Harrisburg, PA 17101
Telephone: (717) 787-5783