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ARKANSAS SECURITIES DEPT.

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

CASE NO. S-18-0093

ORDER NO. S-18-0093-22-OR01

IN THE MATTER OF:

PALM BEACH CAPITAL CORP
AND JOHN TOWNSHEND

RESPONDENTS

CONSENT ORDER

This Consent Order ("Order") is entered pursuant to the Arkansas Securities Act ("Act"), codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509, the Rules of the Arkansas Securities Commissioner promulgated pursuant to the Act ("Rules"), and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann. §§ 25-15-201 through 25-15-220, in accordance with an agreement between the Staff of the Arkansas Securities Department ("Staff") and the Respondents, Palm Beach Capital Corp. ("PBCC"), and John Townshend ("Townshend")

For the purpose of settling this matter and avoiding costly and uncertain litigation the Respondents admit the jurisdiction of the Act and the Arkansas Securities Commissioner ("Commissioner"), waive their right to a formal hearing and appeal, consent to the entry of this Order without admitting or denying the findings of fact and conclusions of law made herein, and agree to abide by its terms in full and final settlement of all claims that could be brought against them on the basis of the facts set forth herein.

FINDINGS OF FACTS

1. Respondent, PBCC, CRD No. 109870, is an investment advisory firm with its main office located in Fort Smith, Arkansas. PBCC is now registered with the Arkansas Securities Department and has been since 2015. PBCC has a principal place of business located at 2010 Dodson Avenue Fort Smith, Arkansas 72901.

2. Townshend, CRD No. 2784752, is an Arkansas resident. He is the sole proprietor of Palm Beach Capital Corporation and has been registered with the Arkansas Securities Department as an investment adviser representative of Palm Beach Capital Corporation since 2015. Townshend is the owner, principal, and president of PBCC. At all times relevant herein, Townshend was the only registered representative for PBCC.

I. Advice to Purchase Palm Beach Equity Financing Fund

3. Palm Beach Equity Financing Fund ("PBEFF") is a private equity fund which is partially owned by and managed by Townshend and PBCC. The stated investments proposed in PBEFF's Offering Memorandum ("MO") are "exclusively in small business, either through publicly issued shares or private capital investment, whether in debt instruments or equity interest." The MO also states that a purchase of shares in PBEFF has a "high degree of risk and their purchase should be considered only by persons who can afford to sustain a total loss of their investment."
4. On May 25th, 2018, two Arkansas Residents ("ARS") signed three Annuity Payout Option Request Form(s) for Variable Annuity Products. Those forms were sent to the Hartford Insurance Co. and selected a total payout of their three non-qualified variable annuities. The total distribution from the annuities was \$645,568.20, with \$445,249.27 of that amount taxable. On all three forms it was selected that no taxes be withheld. Townshend recommended that ARS purchase thirteen PBEFF shares from the liquidated annuities funds to avoid a tax consequence. On June 20, 2018, ARS relied on the advice of Townshend, agreeing to purchase \$650,000 in PBEFF shares, 13 shares of PBEFF at \$50,000.00 a share. This was not an annuity to annuity rollover, but was a taxable event.

5. At the time Townshend advised them to purchase and sold the PBEFF securities to the ARS, they were in their mid-80s. the \$650,000 represented a substantial amount of their net wealth. Neither ARS were working nor were they in good health.

II. Examinations of PBCC

6. An examination of PBCC by the Staff in 2016 resulted in an exam deficiency letter dated March 28, 2016 that was sent to the firm. The letter noted specific deficiencies and directed PBCC and Townshend to take necessary corrective actions to ensure that the deficiencies were timely remedied. In 2018 the Staff conducted a follow-up exam of PBCC and noted in their August 27, 2018 exam review memo the following:
 - a. PBCC continues to include a Dallas, Texas office address on his Quarterly Investment Report although the firm does not maintain an office there and the address is not included on the firm's ADV. This deficiency was the first deficiency listed in Staff's 2016 letter to PBCC.
 - b. It was noted in 2016 that PBCC's registration with the Arkansas Secretary of state had lapsed into revoked status. This had not been resolved by 2018.
 - c. PBCC was not compliant in 2016 with Rule 306.2(b)(10) which requires that investment advisory contracts include the customer's risk tolerance, investment objectives, annual income, net worth, liquid net worth, and signatures of the parties. A 2018 review of the clients' contracts that were examined in 2016 resulted in the finding that PBCC and Townshend had failed to address the contract deficiencies and remained in violation of the Rule.

LEGAL AUTHORITY AND CONCLUSIONS OF LAW

7. Rule 308.02(a) of the Rules states that investment advisers and representatives have a duty to act primarily for the benefit of their clients. Further, it shall be considered grounds for suspension or revocation of an investment adviser or representative to recommend to a client the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation, and needs. PBCC and Townshend violated Rule 308.02(a) of the Rules when they advised the ARS, who had low risk objectives and higher liquidity needs due to age and limited income, to purchase \$650,000 in shares of PBEFF, an unregistered fund possessing a high level of risk.
8. An investment adviser is a fiduciary, and as such owes the highest standard of care at law to its clients. *SEC vs. Capital Gains Research Bureau, Inc.* 475 U.S. 180, 194 (1963). An investment adviser must eliminate any potential conflicts of interest when dealing with clients. Townshend breached his fiduciary obligations when he advised clients to invest in a fund he created and managed without disclosing the same and by advising clients with a low-risk objective and high liquidity need to purchase an unregistered fund possessing a high level of risk.
9. Ark. Code Ann. § 23-42-308(h) provides that matters may be resolved by consent order in lieu of formal proceedings.

UNDERTAKINGS

In settlement of this matter, but without admitting or denying the findings of fact made above, the Respondents agree with the Staff to withdraw their registrations as an investment advisor and investment adviser representative and to not apply for registration pursuant to the Act for 180 days from the entry of this Order. In the event Respondents apply for registration again, they shall remedy all remaining deficiencies noted in Staff's August 2018 Follow-up Exam Review.

OPINION

This Order is in the public interest. The Background set out in ¶¶ 1-6 support the violations of the Acts and Rules set out in ¶¶ 7-9.

ORDER

IT IS THEREFORE ORDERED, pursuant to the agreement of the Staff and Townshend;

1. That PBCC and Townshend will coordinate with the Staff to file all necessary registration withdrawal forms and the requests to withdraw the registrations of PBCC and Townshend as an investment adviser and investment adviser representative shall be approved by the Staff on the date of the entry of this Order; and
2. No application for any registration pursuant to the Act for either of the Respondents will be accepted or granted for a period of 180 days from the date of the entry of this Order, and in the event, Respondents apply again, they shall remedy all remaining deficiencies noted in Staff's August 2018 Follow-up Exam Review.

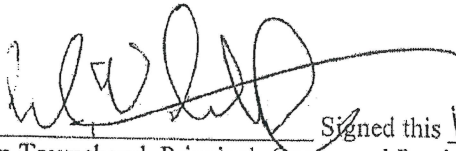
WITNESS TO MY HAND AND SEAL this 16th day of February 2022



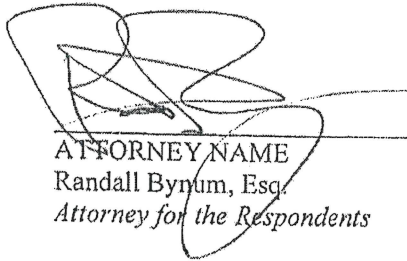
Eric Munson
ARKANSAS SECURITIES COMMISSONER

CONSENT TO ENTRY OF ORDER

John Townshend hereby acknowledges that he has been served with a copy of this Order, has read it, is aware of his and PBCC's right to a hearing and has waived that right. He acknowledges that he is consenting to the entry of this order voluntarily after consulting with counsel and that no threats or improper inducements of any kind have been made by any member of the Staff to induce him to the entry of this order.

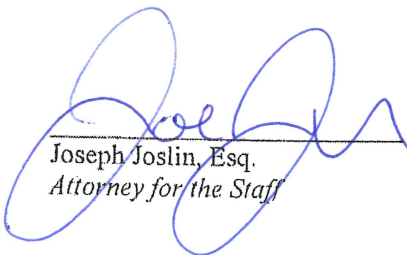


Signed this 11th day of February 2022
John Townshend, Principal, Owner and President of Palm Beach Capital Corp
Respondent



ATTORNEY NAME
Randall Bynum, Esq.
Attorney for the Respondents

Signed this 5th day of February 2022



Joseph Joslin, Esq.
Attorney for the Staff

Signed this 16th day of February 2022