
*
IN THE MATTER OF: *
*
HORTER INVESTMENT *
MANAGEMENT, LLC *
CRD NO. 119880 *
*

CONSENT ORDER
NO. CO-19-14430-S

I. PRELIMINARY STATEMENT

WHEREAS, the Banking Commissioner (“Commissioner”) is charged with the administration of Chapter 672a of the General Statutes of Connecticut, the Connecticut Uniform Securities Act (“Act”), and Sections 36b-31-2 to 36b-31-33, inclusive, of the Regulations of Connecticut State Agencies (“Regulations”) promulgated under the Act;

WHEREAS, Horter Investment Management, LLC (“Horter”), located at 11726 Seven Gables Road, Symmes Township, Cincinnati, Ohio 45249, has been an investment adviser registered with the Securities and Exchange Commission (SEC No. 801-67471) from January 12, 2007 to the present, and has filed the notice required by Section 36b-6(e) of the Act since August 25, 2009;

WHEREAS, Daniel Reens (CRD No. 6576660) (“Reens”), an individual residing in Newtown, Connecticut, was registered under the Act as an investment adviser agent of Horter from November 2, 2015 to October 22, 2019. From approximately January 2016 through August 2019, while an investment adviser agent of Horter, Reens was also associated with two entities unrelated to Horter: Safe Harbor Retirement LLC (“Safe Harbor Retirement”), a Connecticut limited liability company that has never been registered under the Act in any capacity, and Safe Harbour LLC (CRD No. 300265) (“Safe Harbour”), an investment adviser registered under the Act since September 27, 2019;

WHEREAS, Robert William Brinkman (CRD No. 1511170) (“Brinkman”), an individual residing in Easton, Connecticut, is the President and Chief Compliance Officer of Safe Harbour and has been a registered investment adviser agent of Safe Harbour since September 27, 2019. Brinkman was also during all relevant times the *de facto* control person of Safe Harbor Retirement. At no time was Brinkman an officer, director or employee of Horter or a person subject to Horter’s supervision and control and is thus not a “supervised person” of Horter as defined in Section 202(a)(25) of the Investment Advisers Act of 1940;

WHEREAS, the Commissioner, through the Securities and Business Investments Division (“Division”) of the Department of Banking, has conducted an investigation pursuant to Section 36b-26 of the Act into the activities of Horter, to determine whether it has violated, is violating or is about to violate provisions of the Act or Regulations (“Investigation”);

WHEREAS, as a result of the Investigation, the Division alleges that from approximately January 2015 to approximately January 2019 Brinkman transacted business as an investment adviser agent of Horter absent registration under the Act. Specifically, 1) Brinkman solicited and referred investment advisory clients to Reens while Reens was an investment adviser agent of Horter; and 2) Reens, in turn and while under the supervision of Horter, paid a portion of the investment advisory fees he earned from Horter from the referred clients to Safe Harbor Retirement and, indirectly to Brinkman. In addition, as a result of the Investigation, the Division ascertained that on January 16, 2019, Horter paid Safe Harbor Retirement, an unregistered entity, \$29,337.95 as a solicitation fee;

WHEREAS, Horter had an ongoing duty to supervise Reens during Reens’ association with Horter;

WHEREAS, as a result of such Investigation, the Division believes that a basis exists under Section 36b-27 of the Act for the entry of an order to cease and desist and the imposition of a fine against Horter;

WHEREAS, Section 36b-31(a) of the Act provides, in relevant part, that “[t]he commissioner may from time to time make . . . such . . . orders as are necessary to carry out the provisions of sections 36b-2 to 36b-34, inclusive”;

WHEREAS, Section 36b-31(b) of the Act provides, in relevant part, that “[n]o . . . order may be made . . . unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of sections 36b-2 to 36b-34, inclusive”;

WHEREAS, an administrative proceeding initiated under Section 36b-27 of the Act would constitute a “contested case” within the meaning of Section 4-166(4) of the General Statutes of Connecticut;

WHEREAS, Section 4-177(c) of the General Statutes of Connecticut and Section 36a-1-55(a) of the Regulations provide that a contested case may be resolved by consent order, unless precluded by law;

WHEREAS, on September 27, 2019, the Commissioner entered a Consent Order against Safe Harbour and Brinkman, relating in part to Brinkman transacting business as an investment adviser agent of Horter while not registered under the Act (Docket No. CO-19-8416-S);

WHEREAS, on October 22, 2019, the Commissioner entered a Consent Order against Reens relating in part to his payment of a portion of the investment advisory fees he received from Horter to Safe Harbour Retirement (Docket No. CO-19-8537-S);

WHEREAS, Horter expressly consents to the Commissioner’s jurisdiction under the Act and to the terms of this Consent Order;

WHEREAS, the Commissioner finds that the entry of this Consent Order is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act;

AND WHEREAS, Horter, through its execution of this Consent Order, specifically assures the Commissioner that the violations alleged in this Consent Order shall not occur in the future.

II. CONSENT TO WAIVER OF PROCEDURAL RIGHTS

WHEREAS, Horter, through its execution of this Consent Order, voluntarily waives the following rights:

1. To be afforded notice and an opportunity for a hearing within the meaning of Section 36b-27 of the Act and Section 4-177(a) of the General Statutes of Connecticut;
2. To present evidence and argument and to otherwise avail itself of Section 36b-27 of the Act and Section 4-177c(a) of the General Statutes of Connecticut;
3. To present its position in a hearing in which it is represented by counsel;
4. To have a written record of the hearing made and a written decision issued by a hearing officer; and
5. To seek judicial review of, or otherwise challenge or contest the matters described herein, including the validity of this Consent Order.

III. ACKNOWLEDGEMENT OF THE COMMISSIONER'S ALLEGATIONS

WHEREAS, Horter, through its execution of this Consent Order, and without admitting or denying the Commissioner's allegations, acknowledges the following allegations of the Commissioner:

1. Horter violated Section 36b-6(c)(3) of the Act by engaging an unregistered investment adviser agent; and
2. Horter failed to establish, enforce and maintain a system for supervising the activities of Reens that was reasonably designed to achieve compliance with applicable securities laws and regulations.

WHEREAS, the Commissioner would have the authority to enter findings of fact and conclusions of law after granting Horter an opportunity for a hearing;

AND WHEREAS, Horter acknowledges the possible consequences of an administrative hearing and voluntarily agrees to consent to the entry of the sanctions described below.

IV. CONSENT TO ENTRY OF SANCTIONS

WHEREAS, Horter, through its execution of this Consent Order, consents to the Commissioner's entry of an order imposing on it the following sanctions:

1. No later than the date this Consent Order is entered by the Commissioner, Horter shall remit to the department by cashier's check, certified check or money order made payable to "Treasurer, State of Connecticut" the sum of twelve thousand five hundred dollars (\$12,500) as an administrative fine; and
2. Horter, its representatives, agents, affiliates, successors in interest and employees shall cease and desist from engaging in conduct constituting or which would constitute a violation of the Act or any regulation or order under the Act, either directly or through any person, organization or other device, including, without limitation, violating Section 36b-6(c)(3) of the Act.

V. CONSENT ORDER

NOW THEREFORE, the Commissioner enters the following:

1. The Sanctions set forth above be and are hereby entered;
2. Entry of this Consent Order by the Commissioner is without prejudice to the right of the Commissioner to take enforcement action against Horter and/or its affiliates and successors in interest based upon a violation of this Consent Order or the matters underlying its entry if the Commissioner determines that compliance with the terms herein is not being observed;
3. Nothing in this Consent Order shall be construed as limiting the Commissioner's ability to take enforcement action against Horter and/or its affiliates and successors in interest based upon evidence of which the Division was unaware on the date hereof relating to a violation of the Act or any regulation or order under the Act;
4. Horter shall not take any action or make or permit to be made any public statement, including in regulatory filings, any proceeding in any forum or otherwise, denying, directly or indirectly, any allegation referenced in this Consent Order or create the impression that this Consent Order is without factual basis;
5. Horter shall not take any position in any proceeding brought by or on behalf of the Commissioner, or to which the Commissioner is a party, that is inconsistent with any part of this Consent Order. Nothing in this provision affects Horter's (i) testimonial obligations; or (ii) right to take a legal or factual position in litigation or other legal proceeding in which the Commissioner is not a party; and
6. This Consent Order shall become final when entered.

So ordered at Hartford, Connecticut,
this 18th day of December 2019.

_____/s/_____
Jorge L. Perez
Banking Commissioner

CONSENT TO ENTRY OF ORDER

I, Drew K. Horter, state on behalf of Horter Investment Management, LLC (“Horter”), that I have read the foregoing Consent Order; that I know and fully understand its contents; that I am authorized to execute this Consent Order on behalf of Horter; that Horter agrees freely and without threat or coercion of any kind to comply with the terms and conditions stated herein; and that Horter consents to the entry of this Consent Order.

Horter Investment Management, LLC

By: _____/s/_____
Drew K. Horter
President

State of: Ohio

County of: Hamilton

On this the 13th day of December 2019, before me, the undersigned officer, personally appeared Drew K. Horter, who acknowledged himself to be the President of Horter, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Horter by himself as President.

In witness whereof I hereunto set my hand.

_____/s/_____
Notary Public
Date Commission Expires: February 10, 2024