
*
IN THE MATTER OF: *
*
VOYA FINANCIAL ADVISORS, INC. *
f/k/a ING FINANCIAL PARTNERS, INC. *
CRD No. 2882 *
*

CONSENT ORDER
DOCKET NO. CO-18-8430-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, the Commissioner, through the Securities and Business Investments Division (“Division”) of the Department of Banking, conducted an investigation pursuant to Section 36b-26(a) of the Act into the activities of Voya Financial Advisors, Inc. f/k/a ING Financial Partners, Inc. (“Voya”) to determine whether Voya violated, was violating or was about to violate provisions of the Act or Regulations (“Investigation”);

WHEREAS, as a result of the Investigation, on April 23, 2018, the Commissioner, acting pursuant to Section 36b-27 of the Act, issued an Order to Cease and Desist, Order to Make Restitution, Notice of Intent to Fine and Notice of Right to Hearing against Voya (Docket No. CRF-18-8430-S) (collectively, “Notice”), which Notice is incorporated by reference herein;

WHEREAS, on May 3, 2018, Voya requested a hearing on the matters alleged in the Notice;

WHEREAS, on May 7, 2018, the Commissioner issued a Notification of Hearing and Designation of Hearing Officer, wherein the Commissioner scheduled the hearing on the matters alleged in the Notice for July 17, 2018 and appointed Department of Banking Attorney Stacey Serrano as the Hearing Officer on the matters alleged in the Notice;

WHEREAS, on June 21, 2018, Voya requested a continuance of the hearing scheduled for July 17, 2018, which was granted on July 12, 2018;

WHEREAS, the Hearing Officer held conference calls on July 12, 2018 and September 5, 2018 between the parties to discuss procedural matters and potential future hearing dates;

WHEREAS, on November 13, 2018, the Commissioner issued an Amended and Restated Order to Cease and Desist, Amended and Restated Order to Make Restitution, Amended and Restated Notice of Intent to Fine and Notice of Right to Hearing (“Amended Notice”), which Amended Notice is incorporated by reference herein;

WHEREAS, the Hearing Officer held an additional conference call on November 14, 2018 between the parties to discuss potential future hearing dates;

WHEREAS, on November 29, 2018, the Hearing Officer scheduled the hearing for January 22, 23 and 24, 2019. A hearing was held on January 22, 23 and 24, 2019, though the hearing was not completed during those days;

WHEREAS, Section 36b-27(f) of the Act provides, in relevant part, that “[a]ny time after the issuance of an order or notice provided for in subsection (a), (b) . . . or subdivision (1) of subsection (d) of this section, the commissioner may accept an agreement by any respondent named in such order or notice to enter into a written consent order in lieu of an adjudicative hearing”;

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 constitutes 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 of Connecticut State Agencies provide that a contested case may be resolved by consent order, unless precluded by law;

WHEREAS, Voya and the Commissioner now desire to resolve the matters alleged in the Amended Notice without the need for further administrative proceedings;

WHEREAS, the Commissioner finds that the issuance 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;

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

WHEREAS, Dale Joseph Quesnel, Sr. (“Quesnel”) (CRD No. 2231152) was registered as a broker-dealer agent of Voya under the Act from January 1, 2004 to January 14, 2011. On June 22, 2015, the Commissioner entered an Order to Cease and Desist, Order to Make Restitution and Notice of Intent to Fine (Docket No. CRF-15-8110-S) against Quesnel. Quesnel requested a hearing, which took place on October 20, 2015. On March 3, 2016, the Commissioner entered Findings of Fact, Conclusions of Law and an Order against Quesnel (“Quesnel Order”). The Quesnel Order found, *inter alia*, that while Quesnel was a broker-dealer agent of Voya, Quesnel did not provide Voya with prior written notice that he was selling unregistered securities of Overtime Marketing, Overtime Southeast and Overtime Southwest (collectively the “Overtime Notes”), and Floridel, LLC (“Floridel Notes”), to investors in Connecticut and other states and that he would be receiving compensation in connection with those sales. Specifically, the Quesnel Order found that Quesnel, through the sale of unregistered securities of the

Overtime Notes and Floridel Notes, participated in private securities transactions without providing prior written notice to Voya.

WHEREAS, the Quesnel Order ordered Quesnel to pay restitution to the investors who purchased the Overtime Notes and the Floridel Notes, which Quesnel failed to do;

WHEREAS, despite the foregoing acts by Quesnel to evade Voya's supervisory system, Voya is entering this Consent Order in recognition of the fact that Quesnel's violations of the Act resulted in investor losses to Voya clients that have not been recovered from Quesnel or others;

WHEREAS, as of the date of the entry of this Consent Order, the investor losses that have not been recovered by the clients of Voya who purchased unregistered securities of the Overtime Entities and Floridel while Quesnel was an agent of Voya is \$915,000;

AND WHEREAS, Voya, through its execution of this Consent Order, specifically assures the Commissioner that it will comply with applicable federal and state laws and regulations designed to reasonably prevent the violations alleged in the Amended Notice and in this Consent Order from occurring in the future.

II. CONSENT TO WAIVER OF PROCEDURAL RIGHTS

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

1. To be afforded 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, through its execution of this Consent Order, Voya acknowledges the Commissioner's allegations in the Amended Notice without admitting or denying them:

Voya violated Section 36b-31-6(f) of the Regulations by failing to establish, enforce and maintain a system for supervising the activities of its agents, investment adviser agents and Connecticut office operations 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 Voya an opportunity for a hearing;

AND WHEREAS, Voya 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, Voya, through its execution of this Consent Order, consents to the Commissioner's entry of a Consent Order imposing on it the following sanctions:

1. Voya shall cease and desist from directly or indirectly violating the provisions of the Act or any regulation, rule or order adopted or issued under the Act, including without limitation, engaging in any activity in or from Connecticut that violates Section 36b-31-6(f) of the Regulations;
2. On or before March 15, 2019, Voya shall remit to the Department, by wire transfer, cashier's check, certified check or money order made payable to "Treasurer, State of Connecticut," the sum of one hundred thousand dollars (\$100,000) as an administrative fine. If this administrative fine is not paid on or before March 15, 2019, this Consent Order will be null and void;
3. (a) No later than the date this Consent Order is entered by the Commissioner, Voya shall establish and administer a fund ("Fund") in the amount of \$915,000 for the benefit of those Voya clients identified by the Division who purchased Overtime Notes and Floridel Notes from Quesnel while he was an agent of Voya (the "Investors"). The Division will identify for Voya the amount each Investor is entitled to from the Fund;

(b) Voya shall make all reasonable efforts to confirm that the contact and address information for the Investors is up-to-date. Voya shall immediately notify the Division if it is unable to locate one or more Investors notwithstanding the use of reasonable due diligence. To the extent Voya is unable to locate one or more Investors notwithstanding the use of reasonable due diligence, upon Voya notifying the Division Director of methods used to locate investors, provided the Director finds such methods satisfactory, Voya's obligations under Section IV (3) of this Consent Order have been satisfied;

(c) No later than thirty days following the entry of this Consent Order by the Commissioner, Voya shall forward to the Investors, or their estate, a copy of this Consent Order, together with written notice, preapproved by the Division Director, stating that the Investor, or its estate, is entitled to payment from the Fund if they respond within sixty days and provide Voya with disbursement instructions sufficient to make payment; and

(d) No later than ninety days following the entry of this Consent Order by the Commissioner, Voya shall disburse to the Investors the monies in the Fund according to the amounts identified by the Division, and provide written proof of disbursement to the Commissioner, including a copy of the check or wire transfer to each Investor. If one or more of the Investors cannot be located despite a diligent search, fails to provide sufficient disbursement instructions, fails to timely respond to the notice or unequivocally declines disbursement in writing, Voya will immediately notify the Division in writing.

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 Voya 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 or if any representation made by Voya and set forth herein is subsequently determined to be untrue;
3. Nothing in this Consent Order shall be construed as limiting the Commissioner's ability to take enforcement action against Voya based upon evidence of which the Division was unaware on the date hereof relating to a violation of the Act or any regulation, rule or order adopted or issued under the Act;
4. Voya shall not take any action or make or permit to be made any public statement, including in regulatory filings 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. Voya 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. However, nothing in this Consent Order affects Voya's testimonial obligations or right to take any legal or factual position in litigation, arbitration, or other legal proceedings in which the Commissioner is not a party; and
6. This Consent Order shall become final when entered.

So ordered at Hartford, Connecticut,
this 11th day of March 2019

_____/s/_____
Jorge L. Perez
Banking Commissioner

CONSENT TO ENTRY OF ORDER

I, Thomas Halloran, state on behalf of Voya Financial Advisors, Inc. f/k/a ING Financial Partners, Inc. (“Voya”), 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 Voya; that Voya agrees freely and without threat or coercion of any kind to comply with the terms and conditions stated herein; and that Voya consents to the entry of this Consent Order.

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Voya Financial Advisors, Inc. f/k/a ING Financial Partners, Inc.

By: _____/s/_____
Thomas Halloran
President

State of: [Blank in Original]

County of: [Blank in Original]

On this the 7 day of March 2019, before me, the undersigned officer, personally appeared Thomas Holloran, who acknowledged her/himself to be the President of Voya, 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 Voya. by himself as President.

In witness whereof I hereunto set my hand.

_____/s/_____
Notary Public
Date Commission Expires: July 8, 2022