
*
IN THE MATTER OF: *
*
HERBERT H. HAFEN *
a/k/a ELIAS HERBERT HAFEN *
a/k/a ELIAS NIGGEBRUGGE *
a/k/a E HERBERT NIGGEBRUGGE *
CRD NO. 867068 *

ORDER TO CEASE AND DESIST

NOTICE OF INTENT TO FINE

AND

NOTICE OF RIGHT TO HEARING

DOCKET NO. CDF-20-8474-S

I. PRELIMINARY STATEMENT

1. 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.

2. Pursuant to Section 36b-26(a) of the Act, the Commissioner, through the Securities and Business Investments Division (“Division”) of the Department of Banking, has conducted an investigation into the activities of Herbert H. Hafen (“Hafen”) to determine if Hafen has violated, is violating or is about to violate provisions of the Act or Regulations (“Investigation”).

3. As a result of the Investigation, the Commissioner has reason to believe that Hafen has violated certain provisions of the Act and Regulations.

4. As a result of the Investigation, the Commissioner has reason to believe that a basis exists to issue a cease and desist order against Hafen pursuant to Section 36b-27(a) of the Act.

5. As a result of the Investigation, the Commissioner has reason to believe that a basis exists to impose a fine upon Hafen pursuant to Section 36b-27(d) of the Act.

II. RESPONDENT

6. Herbert H. Hafen (“Hafen”), a citizen of The Netherlands, is an individual whose address last known to the Commissioner is 286 Indian Rock Road, New Canaan, Connecticut 06840. Since 1989, Hafen has been registered as a broker-dealer agent and an investment adviser agent of various firms under the Act. Most recently, Hafen was registered as an investment adviser agent and a broker-dealer agent of Wells Fargo Clearing Services, LLC (CRD No. 19616) from March 29, 2018 to September 13, 2018; an investment adviser agent of Morgan Stanley from December 2, 2009 to April 3, 2018; and a broker-dealer agent of Morgan Stanley from June 1, 2009 to April 3, 2018.

III. STATEMENT OF FACTS

Background on Hafen

7. On September 13, 2018, Wells Fargo Clearing Services, LLC filed a Form U5 (Uniform Termination Notice for Securities Industry Registration) indicating that Hafen had been discharged after admitting to entering into financial arrangements with clients that were not approved by the firm. The Form U5 requested the termination of Hafen’s registrations with all jurisdictions and self-regulatory organizations.

8. On February 1, 2019, the Financial Industry Regulatory Authority (“FINRA”), pursuant to FINRA Rule 9552(h) and in accordance with FINRA’s Notice of Suspension and Suspension from Association letters dated October 29, 2018 and November 23, 2018, permanently barred Hafen from association with any FINRA member in any capacity following allegations that Hafen failed to respond to FINRA requests for information.

9. On September 4, 2019, Hafen pled guilty in federal court to investment adviser fraud (*United States v. Hafen*, SDNY Docket No. 1:19CR00637-AKH). Sentencing is scheduled for February 4, 2020.

Improper Investment Advisory Practices

10. Beginning in approximately July 2011 and at a time when Hafen was registered as an investment adviser agent and a broker-dealer agent under the Act, Hafen, without notice to his employing firm, convinced at least one of his clients to remove money from her IRA account held at the financial institution at which he was employed and send it to him for an outside investment opportunity.

11. Over the course of the next seven (7) years, from 2011 until 2018, at a time when Hafen was registered as an investment adviser agent and a broker-dealer agent under the Act, said client made one transfer a year from her IRA to her personal bank account and then over to Hafen for a total of three hundred twenty five thousand dollars (\$325,000).

12. The client in question, an elderly widow, inherited the IRA after her husband passed away in 2008. The widowed client intended to use the IRA funds to support herself financially for the remainder of her life, an intention of which Hafen was aware and thwarted.

13. Upon receipt of the client's money, Hafen used the money to pay personal expenses such as credit card bills, mortgage payments and to repay another investor who had also sent funds to Hafen for the purported outside investment opportunity. A portion of the client's funds were deposited into accounts maintained by Hafen in the State of Connecticut.

14. In addition to receiving monies from the client, Hafen falsely represented to her that her IRA account was valued at approximately \$300,000 when in fact the account only held \$150,000 in available funds. Ultimately, Hafen's employing firm reimbursed the client for an amount which included the client's losses of approximately \$300,000.

IV. STATUTORY BASIS FOR ORDER TO CEASE AND DESIST AND ORDER IMPOSING FINE

Violation of Section 36b-5(f) of the Act by Hafen Engaging in Dishonest or Unethical Practices in Connection With the Rendering of Investment Advice

15. Paragraphs 1 through 14, inclusive, are incorporated and made a part hereof as if more fully set forth herein.

16. Hafen engaged in dishonest or unethical business practices in connection with the rendering of investment advice as more fully described in paragraphs 10 through 14, inclusive. Such conduct constitutes a violation of Section 36b-5(f) of the Act by Hafen, and therefore a basis for an order to cease and desist against Hafen under Section 36b-27(a) of the Act and a basis for the imposition of a fine against Hafen under Section 36b-27(d) of the Act. Section 36b-5(f) provides that: "No person who directly or indirectly receives

compensation or other remuneration for: (1) Advising another person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise; or (2) soliciting advisory business on behalf of a person subject to the prohibition contained in subsection (a) of this section shall engage in any dishonest or unethical practice in connection with the rendering of such advice or in connection with such solicitation.”

**V. ORDER TO CEASE AND DESIST, NOTICE OF INTENT TO FINE
AND NOTICE OF RIGHT TO HEARING**

WHEREAS, as a result of the Investigation, the Commissioner finds that, with respect to the activity described herein, **HERBERT H. HAFEN** has committed at least one violation of Section 36b-5(f) of the Act;

WHEREAS, the Commissioner further finds that the issuance of an Order to Cease and Desist and the imposition of a fine upon Hafen is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policies and provisions of the Act;

WHEREAS, notice is hereby given to Hafen that the Commissioner intends to impose a maximum fine not to exceed one hundred thousand dollars (\$100,000) per violation upon Hafen;

WHEREAS, the Commissioner **ORDERS** that **HERBERT H. HAFEN CEASE AND DESIST** from directly or indirectly violating the provisions of the Act and Regulations, including without limitation: engaging in dishonest or unethical practices in connection with the rendering of investment advice or the solicitation of investment advisory business by steering investment advisory clients to outside investment vehicles absent authorization from his employing firm and misappropriating client funds in connection therewith;

THE COMMISSIONER FURTHER ORDERS THAT, pursuant to Section 36b-27 of the Act, Hafen will be afforded an opportunity for a hearing on the allegations set forth above if a written request for a hearing is received by the Department of Banking, Securities and Business Investments Division, 260 Constitution Plaza, Hartford, Connecticut 06103-1800 within fourteen (14) days following Hafen’s receipt of this Order.

CERTIFICATION

I hereby certify that on this 13th day of February 2020, I caused to be mailed by certified mail, return receipt requested, the foregoing Order to Cease and Desist, Notice of Intent to Fine and Notice of Right to Hearing to: Herbert H. Hafen, 286 Indian Rock Road, New Canaan, Connecticut 06840, certified mail no. 7014 2120 0000 3701 2204, and Scott Schirick, Esq., Pryor Cashman, LLP, 7 Times Square, New York, NY 10036, certified mail no. 7014 2120 0000 3701 2242.

_____/s/_____
Christopher Cartelli
Paralegal