
*
IN THE MATTER OF: *
*
COMMONWEALTH EQUITY *
SERVICES, LLC d/b/a *
COMMONWEALTH FINANCIAL *
NETWORK *
*
(CRD NO. 8032) *
*

CONSENT ORDER
NO. CO-21-202023-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 (“Department”), has conducted an investigation pursuant to Section 36b-26 of the Act into the activities of Commonwealth Equity Services, LLC d/b/a Commonwealth Financial Network (“Commonwealth”) to determine if it has violated, is violating or is about to violate provisions of the Act or Regulations (“Investigation”);

WHEREAS, Commonwealth, located at 29 Sawyer Road, Waltham, Massachusetts 02453-3483, has been registered as a broker-dealer under the Act since July 16, 1981 and has been an investment adviser registered with the Securities and Exchange Commission (SEC No. 801-41541) from June 11, 1992 to the present, and has filed the notice required by Section 36b-6(e) of the Act since February 27, 2001;

WHEREAS, Client A, a Connecticut resident, maintained a brokerage account at Commonwealth from approximately 2000 until his death in February 2019. Client A had three adult children (originally four, but one passed away), and all three children were the beneficiaries of Client A's Commonwealth brokerage account pursuant to a Supplemental Transfer of Death Form signed by Client A on October 12, 2010;

WHEREAS, one of Client A's children (Sibling A) lived in Connecticut, and beginning in approximately 2014, Sibling A was Client A's primary caretaker. Sibling A was responsible for paying Client A's bills and anything related to his personal health and welfare. The other two children (Siblings B and C) lived outside of Connecticut;

WHEREAS, Client A had a contentious relationship with all three of his children, and Siblings A, B and C were continuously arguing amongst themselves over the care of their father and the managing of his finances;

WHEREAS, by the end of 2014, Commonwealth was on notice that Client A was suffering from mild cognitive decline;

WHEREAS, in August 2017, Client A purportedly expressed a desire to Commonwealth to change the beneficiaries of his account from all three of children to Sibling A only. Specifically, during a call between a Commonwealth agent and Client A in September 2017, while Sibling A was with Client A, Client A stated he wanted to remove Siblings B and C as beneficiaries from his account. At the time of this call, Commonwealth was on notice that Client A's mental state had been in decline the last few years, and that it was possible that Client A did not understand the ramifications of signing certain documents and making certain decisions about his Commonwealth account;

WHEREAS, in September 2017, Commonwealth facilitated the change of beneficiary of Client A's Commonwealth account from all three siblings to Sibling A only. Specifically, Commonwealth staff forwarded a "Transfer on Death Beneficiary Designation Form" ("TOD Form") and other necessary paperwork to Client A;

WHEREAS, in September 2017, when Client A expressed a desire to change his TOD Form, Commonwealth was on notice that tensions among Client A’s three siblings had significantly intensified;

WHEREAS, Commonwealth has an ongoing duty to supervise its agents and employees and ensure that Commonwealth’s policies and procedures are being followed;

WHEREAS, the Commissioner, as a result of the Investigation, has obtained evidence that Commonwealth should have taken greater steps to properly supervise Commonwealth staff to ensure that Client A understood the ramifications of removing two of his children as beneficiaries of his Commonwealth account;

WHEREAS, as a result of the Investigation, the Commissioner has reason to believe that the foregoing conduct violates certain provisions of the Regulations, and would support administrative proceedings against Commonwealth under Sections 36b-15 and 36b-27 of the Act;

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 Sections 36b-15 and 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, without holding a hearing and without trial or adjudication of any issue of fact or law, and prior to the initiation of any formal proceeding, the Commissioner and Commonwealth have reached

an agreement, the terms of which are reflected in this Consent Order, in full and final resolution of the matters described herein;

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

II. CONSENT TO WAIVER OF PROCEDURAL RIGHTS

WHEREAS, Commonwealth, 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 Sections 36b-15(f) and 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 Sections 36b-15(f) and 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 ALLEGATION

WHEREAS, Commonwealth, through its execution of this Consent Order acknowledges the following allegation of the Commissioner:

There are sufficient facts upon which Commonwealth could be found to have violated Section 36b-31-6f(b) of the Regulations by failing to establish, enforce and maintain a system for supervising the activities of its agents 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 Commonwealth an opportunity for a hearing;

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

1. Commonwealth, its representatives, agents, and employees shall cease and desist from engaging in conduct constituting or which would constitute a violation of the Act or any regulation, rule or order adopted or issued under the Act, either directly or through any person, organization or other device, including without limitation engaging in any activity in or from Connecticut that violates Section 36b-31-6f(b) of the Regulations; and
2. No later than the date this Consent Order is entered by the Commissioner, Commonwealth shall remit to the Department, by cashier's check, certified check or money order made payable to "Treasurer, State of Connecticut", the sum of twenty thousand dollars (\$20,000), which shall constitute an administrative fine.

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 Commonwealth 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 Commonwealth 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. Commonwealth 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. Commonwealth 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 Commonwealth'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 17th day of September 2021.

_____/s/_____
Jorge L. Perez
Banking Commissioner

