
*
IN THE MATTER OF: *
*
SUMMIT INVESTMENT *
MANAGEMENT, LLC *
CRD NO. 149793 *
*

CONSENT ORDER
MATTER NO. CO-22-202225-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, Summit Investment Management, LLC (“Respondent”) is an investment adviser registered under the Act since May 5, 2009, with its principal office located at 42 Pond Hill Road, Lyme, Connecticut 06371;

WHEREAS, Lawrence Bray Kaplan (CRD No. 1966112) is the Managing Member and Chief Compliance Officer of Respondent and has been registered as an investment adviser agent of Respondent under the Act since May 5, 2009;

WHEREAS, the Commissioner, through the Securities and Business Investments Division (“Division”) of the Department of Banking (“Department”), conducted an examination of Respondent pursuant to Section 36b-14(d) of the Act and Section 36b-31-14f of the Regulations (“Examination”) and a related investigation pursuant to Section 36b-26(a) of the Act (“Investigation”) to

determine if Respondent had violated, was violating or was about to violate provisions of the Act or Regulations or any order thereunder;

WHEREAS, the Division requested client billing invoices in connection with the examination. In response to the Division's request, Respondent submitted three sample client billing invoices that were represented to have been sent to clients, but had not actually been sent to Respondent's clients. After the Division questioned the Respondent about the invoices, Respondent acknowledged that these three billing invoices were not the actual e-mail invoices that were sent to Respondent's clients. Respondent violated Section 36b-23 of the Act by submitting copies of billing invoice emails to the Division and representing that such billing invoices had been sent to clients, when the billing invoices initially sent to the Division had not been sent to the client. Respondent subsequently located the actual email billing invoices that were sent to the three clients and provided them to the Division;

WHEREAS, as a result of the Examination and Investigation, the Division obtained evidence that Respondent violated Section 36b-14(a)(1) of the Act and Section 36b-31-14b(a) of the Regulations by failing to maintain client billing invoices for the first quarter of 2021 for at least three clients;

WHEREAS, to date, the Division has not found evidence of client harm in connection with the violations of Sections 36b-23 or 36b-14(a)(1) of the Act or Section 36b-31-14b(a) of the Regulations referenced in this Consent Order upon which this Consent Order is based because Respondent e-mailed billing invoices to Respondent's clients and the billing invoices Respondents' clients received were correct;

WHEREAS, as a result of the Examination and Investigation, the Commissioner has reason to believe that the foregoing conduct violates certain provisions of the Act and Regulations and would support administrative proceedings against Respondent 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-27 and 36b-15 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 Respondent reached an agreement, the terms of which are reflected in this Consent Order, in full and final resolution of the matters described herein;

WHEREAS, Respondent 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;

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

WHEREAS, Respondent acknowledges that it has had the opportunity to consult with and be represented by independent counsel in negotiating and reviewing this Consent Order and executes this Consent Order freely;

AND WHEREAS, Respondent, through its execution of this Consent Order, specifically represents and agrees that none of the violations alleged in this Consent Order shall occur in the future.

II. CONSENT TO WAIVER OF PROCEDURAL RIGHTS

WHEREAS, Respondent, 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 ALLEGATIONS

WHEREAS, Respondent, through its execution of this Consent Order, acknowledges the following allegations of the Commissioner:

1. Respondent violated Section 36b-23 of the Act by making material misrepresentations to the Commissioner concerning certain documents filed with the Commissioner and whether such documents were sent to clients; and
2. Respondent failed to keep and maintain true, accurate and current books and records in violation of Section 36b-14(a)(1) of the Act and Section 36b-31-14b(a) of the Regulations.

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

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

1. Respondent, its representatives, agents, employees, affiliates, assigns, subsidiaries, and successors in interest 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, including without limitation, violations of Sections 36b-23 and 36b-14(a)(1) of the Act and Section 36b-31-14b(a) of the Regulations, either directly or through any person, organization or other device; and

2. No later than the date this Consent Order is entered by the Commissioner, Respondent shall remit to the Department by cashier's check, certified check or money order made payable to "Treasurer, State of Connecticut" the sum of ten thousand dollars (\$10,000) as 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 Respondent 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 Respondent 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. Respondent 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. Respondent 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 Respondent's (i) testimonial obligations or (ii) right to take a legal or factual position in litigation, arbitration, 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 23rd day of December 2022.

_____/s/_____
Jorge L. Perez
Banking Commissioner

CONSENT TO ENTRY OF ORDER

/

I, Lawrence Bray Kaplan, Managing Member and Chief Compliance Officer, state on behalf Summit Investment Management, LLC, 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 Summit Investment Management, LLC; that Summit Investment Management, LLC agrees freely and without threat or coercion of any kind to comply with the terms and conditions stated herein; and that Summit Investment Management, LLC consents to the entry of this Consent Order.

Summit Investment Management, LLC

_____/s/_____
Lawrence Bray Kaplan
Managing Member and Chief Compliance Officer

State of: Connecticut

County of: New London

On this the 21 day of December 2022, before me, the undersigned officer, personally appeared Lawrence Bray Kaplan, who acknowledged himself to be the Managing Member and Chief Compliance Officer of Summit Investment Management, LLC, and that he, as such Managing Member and Chief Compliance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Summit Investment Management, LLC, by himself as Managing Member and Chief Compliance Officer.

In witness whereof I hereunto set my hand.

_____/s/_____
Notary Public
Date Commission Expires: August 31, 2024