ENTERED
MAR 14 2014
COMMISSIONERS OFFICE

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2011-AH-0076
ADMINISTRATIVE ACTION NO. 11-PPC-0208

DEPARTMENT OF FINANCIAL INSTITUTIONS — COMPLAINANT

v.

NEWTON BARNETT, JOHN BURSE aka JOHN CHAPIN, and JAMES JEFFERIES — RESPONDENTS

COMMISSIONER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER

* * * * * * * * *

This matter is before the Commissioner of the Department of Financial Institutions ("DFI"), pursuant to KRS 13B.120. For the reasons set forth herein, the Commissioner hereby enters his **Findings of Fact, Conclusions of Law, and Final Order** adopting the Findings of Fact, Conclusions of Law, and Recommended Order issued by the Hearing Officer, making additional Conclusions of Law and Orders, and imposing the payment of fines and costs pursuant to KRS 292.500.

FINDINGS OF FACTS

1. This Administrative Proceeding was initiated on May 18, 2011, when the Division of Securities of the Department of Financial Institutions filed an Administrative Complaint against Respondents seeking fines, costs, and an order to cease and desist. Respondents thereafter filed answers to the Department's complaint. Upon receipt of the Respondent's answers, the Department requested the Administrative Hearings Branch of the Office of the Attorney General to assign a hearing officer to the case.

2. On July 7, 2011, the Administrative Hearings Branch of the Office of the Attorney General assigned Hearing Officer, Stuart W. Cobb, to hear the case. The parties thereafter prepared the case for hearing before the hearing officer.

3. This matter came before the hearing officer for a final administrative hearing on February 1-2, 2012, and May 3, 2012. Post hearing briefs were thereafter submitted by the parties to the hearing officer.

4. On August 6, 2012, Respondent, John Burse a.k.a. John Chapin, died.

5. On December 19, 2013, the hearing officer issued his Findings of Fact, Conclusions of Law, and Recommended Order.

6. Complainant and Respondent, James Jeffries, filed exceptions to the hearing officer's Findings of Fact, Conclusions of Law, and Recommended Order. No exceptions were filed by Respondent, Newton Barnett a.k.a. N.A. Barnett.

7. Having considered the entire record in this matter, consisting of three volumes of hearing transcripts, Forty-Five (45) Exhibits, the Exceptions, and the pleadings of both parties, I hereby adopt as my own and incorporate herein the Findings of Fact in their entirety issued by the Hearing Officer.

CONCLUSIONS OF LAW

8. Based on the findings of fact incorporated and adopted herein, I further adopt as my own and incorporate herein the Conclusions of Law and Recommended Order in their entirety issued by the Hearing Officer.

9. In addition, pursuant to KRS 13B.120(2), I hereby exercise my authority to modify the Recommended Order issued by the Hearing Officer by making additional conclusions of law and Orders related to those conclusions. I find this modification of the Hearing Officer's

Recommended Order to be warranted based on the findings and conclusions incorporated herein and set forth in the Hearing Officer's recommended order.

10. These additional conclusions are as follows:

a. As a matter of law, I conclude that Respondent, James Jeffries, violated KRS 292.320(1) when he made untrue statements of material fact and omissions of material fact in connection with the offer and sale of securities to McWilliams and Stevens. See Findings of Fact #5, 6, 7, 15, 16, 33, 34, 35, 36, 37, 42, 44, 45, 46, 47 & 50, and Conclusions of Law #16, 17, 18, 19, 20 & 21; see also Queen v. Commonwealth, 434 S.W.2d 318, 322 (Ky. 1968) (misrepresentations to agent who in turn made misrepresentations to buyer was a violation of KRS 292.320).

b. As a matter of law, I conclude that Respondent, James Jeffries, also violated KRS 292.340 when he sold and assigned his 2.5% ORI to McWilliams and Stevens at a time when the security was not registered, exempt from registration, or a covered security. See Findings of Fact #5, 6, 7, 13, 15, 17, 18, 19, 30, 31, & 32 and Conclusions of Law # 2, 3, 4, 6, & 15; see also Commonwealth v. Allen, 441 S.W.2d 424, 427-28 (Ky. 1969) (both agent and issuer are liable for offer and sale of unregistered securities under KRS 292.340).

c. As a matter of law, I conclude that Respondent, Newton Barnett, violated KRS 292.340 when he offered to sell Burse's and Jeffries' securities at a time when the securities were not registered, exempt from registration, or a covered security. See Findings of Fact #5, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 42, 43, and 46 and Conclusions of Law # 1, 3, 4, 5, 8, 9, and 15; see also Commonwealth v. Allen, 441 S.W.2d 424, 427-28 (Ky. 1969) (both agent and issuer are liable for offer and sale of unregistered securities under KRS 292.340).

d. As a matter of law, I conclude that the Findings of Fact and Conclusions of Law previously adopted or made by me authorizes and warrants pursuant to KRS 292.470(3) the entry of an order against Respondents, Newton Barnett and James Jeffries, to CEASE AND DESIST from offering to sell or selling securities in violation of Chapter 292 of the Kentucky Revised Statutes and to CEASE AND DESIST from committing any other violations of the Act.

FINAL ORDER

THEREFORE, based upon the foregoing findings of fact and conclusions of law and pursuant to KRS 292.470 and KRS 13B.120, IT IS HEREBY **ORDERED** AS FOLLOWS:

1. The Findings of Fact, Conclusions of Law, and Recommended Order issued by the Hearing Officer on December 19, 2013, and attached hereto, are adopted in full and incorporated by reference into this Final Order;

2. Whereas Respondent John Burse is deceased, the charges against him shall be dismissed.

3. Pursuant to KRS 292.500(14), the following fines, totaling $30,000, are imposed against Respondent, Newton Barnett:

a. A fine of $7,500 for violation of KRS 292.330(3) by acting as an agent of Burse at a time Barnett was not registered to act as an agent,

b. A fine of $7,500 for violation of KRS 292.330(3) by acting as an agent of Jeffries at a time Barnett was not registered to act as an agent,

c. A fine of $7,500 for violation of KRS 292.340 by offering to sell Burse's and Jeffries' securities at a time when the securities were not registered, exempt from registration, or a covered security, and

d. A fine of $7,500 for violation of KRS 292.320 for making untrue statements of material fact and omissions of material fact to McWilliams and Stevens in connections with the offer and sale of securities.

4. Pursuant to KRS 292.500(14), the following fines, totaling $15,000, are imposed against Respondent, James Jeffries:

a. A fine of $2,500 for violation of KRS 292.330(7) for employing or associating with Barnett to act as his agent in the sale of securities to McWilliams and Stevens at a time when Barnett was not registered to act as an agent,

b. A fine of $7,500 for violation of KRS 292.340 when he sold and assigned his 2.5% ORI to McWilliams and Stevens at a time when the security was not registered, exempt from registration, or a covered security, and

c. A fine of $5,000 for violation of KRS 292.320(1) when he made untrue statements of material fact and omissions of material fact in connection with the offer and sale of securities to McWilliams and Stevens.

5. Pursuant to KRS 292.470(3), Respondents, Newton Barnett and James Jeffries, are ordered to CEASE AND DESIST from offering to sell or selling securities in violation of Chapter 292 of the Kentucky Revised Statutes and to CEASE AND DESIST from committing any other violations of the Act.

6. The costs of the investigation, including attorney fees incurred as a result of bringing this enforcement action and the costs of holding the hearing referenced herein, are jointly and severally imposed against Respondents, Newton Barnett and James Jeffries, and shall be paid within sixty (60) days of entry of this Order by Respondents in accordance with the parameters set forth in KRS 292.500(16).

This is a **FINAL AND APPEALABLE ORDER**. The **EFFECTIVE DATE** of this order shall be the date reflected on the certificate of service attached to this order.

NOTICE OF APPEAL RIGHTS

Pursuant to KRS 292.490, you are hereby notified that any person aggrieved by this Final Order of the Commissioner may obtain a review of the Order by the Franklin Circuit Court. If you chose to appeal, you must file a written petition asking that the order be modified or set aside in whole or in part in the Franklin Circuit Court within thirty (30) days after the date reflected on the certificate of service attached to this Final Order. A copy of the petition must be served upon the Commissioner.

SO ORDERED this 14th day of March, 2014.

CHARLES A. VICE
COMMISSIONER

Certificate of Service

I hereby certify that a true and correct copy of the foregoing **Final Order** was entered by the Commissioner and sent by certified mail, return receipt requested, on this the 14 day of March, 2014, to:

Hon. Hunter Durham
Durham & Zornes
P.O. Box 100
Colombia, KY 42729-0100
Counsel for James Jeffries

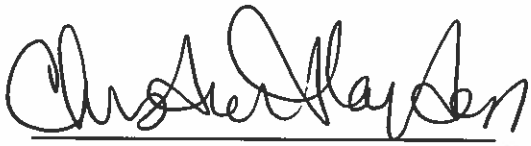
Newton Barnett
2745 Pioneer Drive
Bowling Green, KY 42101

And by hand-delivery to:

Simon Berry
Department of Financial Institutions
1025 Capital Center Drive, Suite 200
Frankfort, KY 40601
Counsel for Complainant

And by messenger mail to:

Stuart Cobb
Division of Administrative Hearings
Office of Attorney General
1024 Capital Center Drive
Frankfort, KY 40601



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COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2011-AH-0076
ADMINISTRATIVE ACTION NO. 11-PPC-0208

DEPARTMENT OF FINANCIAL INSTITUTIONS — COMPLAINANT

vs.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER

NEWTON BARNETT, JOHN BURSE aka JOHN CHAPIN, and JAMES JEFFRIES — RESPONDENTS

* * * * *

This matter came before the hearing officer for a final administrative hearing on February 1-2, 2012 and May 3, 2012. The Complainant, Department of Financial Institutions ("Department"), was represented by Hon. Simon Berry and Hon. William Owsley. The Respondent James Jeffries was present and represented by Hon. Hunter Durham, Durham & Zornes. The Respondent Newton Barnett appeared on his own behalf. The Respondent John Burse appeared on his own behalf; the hearing officer takes judicial notice of the fact that John Burse died subsequent to the hearing on August 6, 2012. The hearing was brought concerning charges made by the Department against the Respondents for alleged violations of KRS Chapter 292, Kentucky Securities law. Based on the evidence placed in the record, the hearing officer hereby makes the following Findings of Fact, Conclusions of Law and Recommended Order:

FINDINGS OF FACT

1. By an oil and gas leased dated February 23, 2007, Danny and Nancy Atwod conveyed to Bruno Bukowski the right to drill for oil and gas on the Atwoods' 122 acre real property located in Green County, Kentucky and a one hundred percent working interest in all oil

and gas wells on the property (Exhibit 1 and Vol I, p. 37, lines 4-10)[1].

2. The Atwoods retained a 25% landowners' royalty interest in the lease.

3. By assignment dated March 12, 2007, Bukowski assigned John Burse ("Burse") a 5% Overriding Royalty Interest ("ORI") in his oil and gas lease with the Atwoods [Exhibit 2 and Vol I, p 46].

4. By assignment dated March 12, 2007, Bukowski assigned James Jeffries ("Jeffries") a 5% ORI in his oil and gas lease with the Atwoods [Exhibit 3 and Vol I, p 51].

5. Sometime in February 2007, Burse called Newton Barnett ("Barnett") in an effort to get Barnett to help Jeffries sell his 5% ORI [Vol I, p 190, lines 19-25].

6. In February 2007, Jeffries needed to make a $25,000 payment toward the mortgage on his farm [Vol I, p 196, lines 12-16, p 197, line 21-25, p 198, lines 102 and Vol II, p 149, lines 10-20].

7. Between February 2007 and sometime in March 2007, Barnett and Jeffries entered into an oral agreement for Barnett to help Jeffries sell his 5% ORI for $50,000. Jeffries was to receive $25,000 and Barnett was to receive $25,000. [Vol I, p 193, lines 9-25, p 194, lines 8-11].

8. Barnett called Mary Ellen McWilliams ("McWilliams"), a potential investor, on the phone in March 2007 and offered to sell her Jeffries' 5% ORI for $50,000 [Vol I, p 187, lines 19-25].

9. During the phone call with McWilliams, Barnett informed her that she could purchase an interest in a ten well oil and gas project for $50,000 and Barnett also told her about the prospects for the oil and gas project [Vol I, p 190, lines 1-7].

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[1] References are to hearing exhibit numbers and volumes and page number of hearing transcript

10. On March 28, 2007, Barnett e-mailed Exhibit 22, information about the oil wells which Barnett prepared indicating the first oil shipment was expected in a week and that all ten (10) wells were expected to be online within thirty (30) days to McWilliams [Vol I, p 198, lines 13-20].

11. From March 28, 2007 through May 7, 2007, Barnett e-mailed information to McWIlliams about the oil and gas project in an effort to sell Jeffries' 5% ORI to McWilliams and David Stevens ("Stevens"), another potential investor [Exhibits 8-12, 22-28 and 42].

12. Sometime in April 2007, Barnett spoke with Stevens about the oil and gas project [Vol II, p 18, lines 7-18].

13. Barnett instructed McWilliams to wire $25,000 to Jeffries' Community Trust Bank account as partial payment for Jeffries' 5% ORI [Vol II, p 18, lines 19-25, Exhibit 26].

14. Jeffries knew that Barnett e-mailed Exhibit 27 to McWilliams [Vol II, p 23, lines 11-14] on April 19, 2007 at 2:45 p.m. Exhibit 27 was a draft document to be signed by Jeffries promising to assign one (1) percent of the ORI for every $10,000 transferred to Jeffries.

15. Jeffries signed the attachment to Barnett's April 19, 2007 e-mail to McWilliams and dated it April 19, 2007. Barnett emailed the signed document to McWilliams at 4:36 p.m. on April 19, 2007 [Exhibit 28 and Vol II, p 144, lines 5-14].

16. Stevens and McWilliams were told that Barnett, Burse and Jeffries would be responsible for performing the work on the wells necessary to produce oil and provide McWilliams and Stevens with a profit on their investments [Exhibit 44 transcript of McWilliams' deposition p 31-32 and p 50-51; Exhibit 45 transcript of Stevens' deposition p 18-9].

17. On April 23, 2007, McWilliams wired $10,000 to Jeffries' bank account [Exhibit 41].

18. On April 30, 2007, Stevens wired $15,000 to Jeffries' bank account [Exhibit 43 and Vol II, p 34, lines 2-8].

19. On May 1, 2007, Jeffries assigned 2.5% of his 5% ORI to McWilliams and Stevens [Exhibit 4, Vol I, p 71, lines 10-15 and Vol II, p 165, lines 7-25].

20. After Jeffries refused to sell McWilliams and Stevens the remaining 2.5% of his 5% ORI, Burse and Barnett entered an agreement whereby Barnett would help Burse sell 2.5% of his 5% ORI to McWilliams and Stevens for $25,000 [Vol II, p 35, 40, 42-43 and Exhibits 29-32].

21. Barnett prepared Exhibit 5 to the hearing [Vol I, p 76, lines 7-10]. Exhibit 5 was a document dated May 25, 2007 signed by Burse promising to assign one (1) percent of the ORI for every $10,000 transferred to Burse.

22. Barnett helped Burse sell 2.5% of his 5% ORI to McWilliams and Stevens [Vol I, p 90, lines 11-14].

23. By check dated July 7, 2007, McWilliams paid $25,000 for 2.5% of Burse's 5% ORI [Exhibit 33].

24. On July 7, 2007, Burse assigned 2.5% of his 5% ORI to McWilliams and Stevens [Exhibit 6 and Vol I, p 80-82].

25. From February 2007 through July 2007, Barnett was not registered with the Department of Financial Institutions ("DFI") as an agent of Jeffries or Burse [Vol II, p 59, lines 22-25, p 60, lines 1-2].

26. Barnett made several offers to sell Jeffries' 5% ORI by calling potential buyers on the phone in March 2007 [Vol III, p 76, lines 22-25 and p 77, lines 1-4].

27. Barnett drafted the attachment to his April 19, 2007 e-mail to McWilliams that was entered as Exhibit 28.

28. Barnett did not file a registration statement with the DFI to register Burse's and Jeffries' 5% ORI as securities prior to offering to sell 2.5% of their 5% ORI to McWilliams and Stevens [Vol II, p 60, lines 3-8].

29. Barnett did not speak with a representative at the DFI to determine whether Burse's 2.5% ORI and Jeffries' 2.5% ORI were exempt from the registration requirements of the Securities Act of Kentucky [Vol II, p 60, lines 9-15].

30. Jeffries sold and assigned 2.5% of his 5% ORI to McWilliams and Stevens. McWilliams and Stevens paid Jeffries a total of $25,000 for the 2.5% ORI [Exhibit 4, 41, 43; Vol I, p 71, lines 10-15 and Vol II, p 165, lines 7-25].

31. Jeffries did not file a registration statement with the DFI to register his 2.5% ORI prior to selling it to McWilliams and Stevens [Vol II, p 164, lines 4-12].

32. Prior to selling his 2.5% ORI to McWilliams and Stevens, Jeffries did not speak with a representative at the DFI to determine whether the 2.5% ORI was exempt from the registration requirements of the Securities Act of Kentucky [Vol II, p 164, lines 13-16].

33. Prior to Barnett's first call to McWilliams to solicit her to invest in the project, Jeffries gave Barnett a tour of the wells to be included in the project and told Barnett that four (4) of the wells on the project were ready to produce oil [Vol I, p 191 and p 203 and Exhibit

22].

34. Jeffries told Barnett that the first oil shipment would occur during the week after March 27, 2007 [Vol I, p 204 and Exhibit 22].

35. Jeffries told Barnett that the wells would produce 80-100 barrels a day [Vol I, p 216-217].

36. Jeffries provided Barnett with the information about the project contained in Exhibit 23, projections of the expected return from oil produced by the wells [Vol I, p 217-210 and Exhibit 23].

37. Jeffries did not obtain the bonds required by the state of Kentucky to operate the wells [Vol II, p 114-118].

38. McWilliams would have considered the fact that the required bonds were not obtained important in making her decision to invest in the project [Exhibit 44 transcript of McWilliams' deposition p 96-97].

39. Stevens would have considered the fact the required bonds were not obtained important in making his decision to invest in the project [Exhibit 45 transcript of Stevens' deposition p 44-45].

40. McWilliams considered the information in Exhibit 22 important when she made her decision to invest in the project [Exhibit 44 transcript of McWilliams' deposition p 14-17].

41. Stevens considered the information in Exhibit 22 important when he made his decision to invest in the project [Exhibit 45 transcript of Stevens' deposition p 11-13].

42. Barnett drafted the e-mail dated April 4, 2007 9:50 a.m. which is Exhibit 23 and it

contained the statement: "We will be refurbishing the wellhead equipment as well as going into each well to pull the tubing and pumps and doing whatever work is necessary on them. Flow lines are being run from all the wells to the gathering tank. This rebuilding effort is what we are funding with the sale of the ORI" [Exhibit 23 and Vol I, p 219].

43. Barnett prepared the "return projections" portions of Exhibit 23 [Vol I, p 221-224].

44. Barnett told McWilliams that well number 1 had run on a gasoline generator and put 20 barrels in the tank in 2 days, but Barnett did not have actual knowledge of how much oil was in the tank [Exhibit 23 and Vol II, p 12-13].

45. McWilliams considered Barnett's statement that well number 1 had produced 20 barrels of oil in two days important when she decided to invest in the project [Exhibit 44 transcript of McWilliams' deposition p 30].

46. Barnett prepared the information in Exhibit 9 [Exhibit 9] emailed to McWilliams on April 25, 2007 after she had transferred $10,000 to Jeffries. It requested the remaining $15,000 of the $25,000 McWilliams was paying as soon as possible to pay for work needed to get the oil wells pumping.

47. McWilliams considered the information in Exhibit 9 important when she was deciding whether to invest in the project [Exhibit 44 transcript of McWilliams' deposition p 52-53].

48. McWilliams considered the information Barnett provided in Exhibit 15 and Exhibit 32 important when she was deciding whether to invest $25,000 in the project [Exhibit 44

transcript of McWilliams' deposition p 68-69]. Exhibit 15 was an email from Barnett to McWilliams dated June 12, 2007, which stated that a well would be pumping oil the next day. Exhibit 32 are emails from Barnett to McWilliams dated June 15, 2007 and June 18, 2007. The June 15, 2007 email stated one of the wells was producing oil, and the June 18 email stated that Barnett would be getting a production report on the producing well and that after that they would be turning on the other five (5) wells.

49. McWilliams considered the information Barnett provided in Exhibit 24 important when she was deciding whether to invest in the project [Exhibit 44 transcript of McWilliams' deposition p 35-39]. Exhibit 24 was an email from Barnett to McWilliams dated April 16, 2007 indicating that after a few minor repairs the first five (5) wells would be producing oil within a day.

50. Despite the assurances given to McWilliams and Stevens that the wells were ready to start pumping significant quantities of oil on a daily basis, no more than seven (7) barrels of oil were ever shipped from June 2007 on, and that only for the purpose of preventing the oil and gas lease from lapsing. [Vol I, pg. 133]

51. The hearing officer takes judicial notice of the fact that John Burse died August 6, 2012.

CONCLUSIONS OF LAW

1. KRS 292.310(1) defines "agent" as any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.

2. KRS 292.310(13) defines "issuer" as any person who issues or proposes to issue any

security and with respect to fractional undivided interest in oil, gas, or other mineral rights, issuer means the owner of any such right or of an interest in such right, whether whole or fractional, who creates fractional interest therein for the purpose of distribution.

3. KRS 292.310(19) defines "security" as an investment contract or a fractional undivided interest in oil, gas, or other mineral rights.

4. The 2.5% ORI that Jeffries sold and assigned to McWilliams and Stevens is an investment contract and a fractional undivided interest in oil and gas rights and therefore meets the definition of security in KRS 292.310 (19).

5. The 2.5% ORI that Burse sold and assigned to McWilliams and Stevens is an investment contract and a fractional undivided interest in oil and gas rights and therefore meets the definition of security in KRS 292.310(19).

6. Jeffries was the issuer of the security he sold to McWilliams and Stevens.

7. Burse was the issuer of the security he sold to McWilliams and Stevens.

8. Barnett acted as an agent by attempting to effect and effecting the purchase and sale of 2.5% of Jeffries' 5% ORI.

9. Barnett acted as an agent by attempting to effect and effecting the purchase and sale of 2.5% of Burse's 5% ORI.

10. KRS 292.330(3) makes it unlawful to transact business in Kentucky as an agent unless the individual is registered with the DFI or exempt from registration.

11. Barnett violated KRS 292.330(3) by acting as an agent of Jeffries at a time Barnett was not registered as an agent.

12. Barnett violated KRS 292.330(3) by acting as an agent of Burse at a time Barnett was not registered as an agent.

13. KRS 292.330(7) makes it unlawful for an issuer to employ or associate with an agent unless the agent is registered with the DFI or exempt from registration.

14. Jeffries employed or associated with Barnett by having Barnett act as his agent to sell McWilliams and Stevens 2.5% of Jeffries' 5% ORI at a time when Barnett was not registered with the DFI as an agent and therefore, Jeffries violated KRS 292.330(7).

15. Burse's 2.5% ORI and Jeffries' 2.5% ORI were not registered under the Securities Act of Kentucky, exempt from registration or covered securities.

16. Jeffries' statements as set forth in findings of fact numbers 33-36 are untrue statements of material facts.

17. Exhibit 23 contains untrue statements of material facts made by Jeffries.

18. McWilliams considered the information in Exhibit 23 important when she made her decision to invest in the project [Exhibit 44 transcript of the McWilliams' deposition p 21-30].

19. Stevens reviewed the information contained in Exhibit 23 before investing in the project [Exhibit 45 transcript of Stevens' deposition p 14, lines 7-14].

20. Jeffries' failure to inform McWilliams and Stevens that the bonds required by the state of Kentucky to operate the wells were not obtained was an omission of a material fact.

21. Exhibits 9, 14, 22, 23, 24 and 32 contain untrue statements of material facts and/or omit material facts necessary to make the statements made, in the light of the circumstances

under which they are made, not misleading.

22. Based on his untrue statements of material facts and omissions of material facts in connection with the offer of Jeffries' 2.5% ORI and Burse's 2.5% ORI, Barnett violated KRS 292.320.

RECOMMENDED ORDER

Wherefore, based on the foregoing Findings of Fact and Conclusions of Law, the hearing officer RECOMMENDS as follows:

1. That whereas John Burse is deceased, the charges against him be DISMISSED.
2. That pursuant to KRS 292.500(14), the Commissioner fine Newton Barnett an amount not to exceed $15,000 for violating KRS 292.330(3) by acting as an agent of Jeffries at a time Barnett was not registered as an agent.
3. That pursuant to KRS 292.500(14), the Commissioner fine Newton Barnett an amount not to exceed $15,000 for violating KRS 292.330(3) by acting as an agent of Burse at a time Barnett was not registered as an agent.
4. That pursuant to KRS 292.500(14), the Commissioner fine Newton Barnett an amount not to exceed $15,000 for violating KRS 292.320 for making untrue statements of material facts and omissions of material facts to McWilliams and Stevens in connection with the offer of Jeffries' and Burse's ORIs.
5. That pursuant to KRS 292.500(14), the Commissioner fine James Jeffries an amount not to exceed $15,000 for violating KRS 292.330(7) because Jeffries employed or associated with Barnett by having Barnett act as his agent to sell McWilliams and Stevens 2.5% of

Jeffries' 5% ORI at a time when Barnett was not registered with the DFI as an agent.

6. That pursuant to KRS 292.500(16), the Commissioner jointly and severally assess Newton Barnett and James Jeffries the costs of the investigation, including attorney's fees incurred as a result of bringing enforcement actions under the provisions of this chapter and the costs of holding the hearing as a result of the enforcement action.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110 (4) you have the right to file exceptions to this recommended decision:

> (4) A copy of the hearing officer's recommended order shall also be sent to each party in the hearing and each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the agency head.

In order to preserve a right to review by the circuit court, case law requires that a litigant must file exceptions with the board or agency if there is anything in the recommended order with which a party does not agree and desires to appeal.

You have a right to appeal the Final Order of the agency pursuant to KRS 13B.140 which reads in part:

> (1) All final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

Pursuant to KRS 23A.010(4), "Such review [by the Circuit Court] shall not constitute an appeal but an original action." The Court of Appeals has suggested that an appeal to circuit court is commenced upon the filing of the appeal petition and the issuance of a summons within the 30-day time period for filing an appeal.

SO RECOMMENDED this 19 day of December, 2013.

STUART W. COBB
HEARING OFFICER
ADMINISTRATIVE HEARINGS BRANCH
OFFICE OF THE ATTORNEY GENERAL
1024 CAPITAL CENTER DRIVE, SUITE 200
FRANKFORT, KY 40601-8204
(502) 696-5442
(502) 573-1009 - FAX

CERTIFICATE OF SERVICE

I hereby certify that the original of this ORDER was mailed this 19th day of December ~~June~~, 2013, by messenger mail, to

GENERAL COUNSEL
DEPT OF FINANCIAL INSTITUTIONS
1025 CAPITAL CENTER DR STE 200
FRANKFORT KY 40601

for filing; and a true copy was sent by first-class mail, postage prepaid, to:

HUNTER DURHAM
DURHAM & ZORNES
130 PUBLIC SQ
PO BOX 100
COLUMBIA KY 42729-0100

NEWTON BARNETT
2745 PIONEER DRIVE
BOWLING GREEN KY 42101

and, by messenger mail, to:

SIMON BERRY
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DOCKET COORDINATOR

110208fc.swc.wpd