

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, JANUARY 6, 2016

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2015-00024

FULCRUM SECURITIES, LLC,
Defendant

SETTLEMENT ORDER

The State Corporation Commission's ("Commission") Division of Securities and Retail Franchising ("Division") conducted an investigation of Fulcrum Securities, LLC ("Defendant"), pursuant to § 13.1-518 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia ("Code").

The Defendant has been a registered broker-dealer with the Commission since September 29, 2009. The Defendant employed Christopher Matthew Cunningham (CRD #2390800) ("Cunningham") as a broker-dealer agent from November 13, 2009, to his termination on July 5, 2011.

During his employment with the Defendant, Cunningham obtained \$91,954 from three residents of the Commonwealth of Virginia ("Virginia") through three separate solicitations from 2010 to 2011. Each individual was a client of the Defendant at the time of the solicitation. Cunningham represented each solicitation as an investment into his company Rock Solid Distributors, LLC ("Rock Solid"), but all of the money was used for Cunningham's personal benefit. Two of the clients are deceased but are survived by their children.

Based on these activities and other similar activities contributing to a \$1.2 million fraud, Cunningham pled guilty in the U.S. District Court for the Eastern District of Virginia to one

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count of wire fraud on July 8, 2014, and was sentenced on October 10, 2015, to 57 months in prison.

The Division alleges that the Defendant violated the Act and the Commission's Rules governing Broker-Dealers, Broker-Dealer Agents, and Agents of the Issuer, 21 VAC 5-20-10 *et seq.* by failing to: (1) supervise Cunningham, who engaged in dishonest and unethical practices; (2) properly review customer accounts; and (3) enforce its written policies and procedures. In addition, most of the alleged violations involved elderly customers of the Defendant.

During his employment with the Defendant, Cunningham obtained \$91,954 from three Virginia residents through three separate solicitations from 2010 to 2011. These funds were in exchange for unregistered securities related to Cunningham's company. The Division alleges that the Defendant failed to prevent or address these transactions on a timely basis.

The Division alleges that the Defendant failed to conduct a complete review of at least one client's account to determine if there were any conflicts of interest or other risk factors. The Defendant identified Cunningham's wife, who was sanctioned by the Financial Industry Regulatory Authority ("FINRA"), on an elderly client's living trust associated with the client's account.¹ In addition, the Division alleges that the Defendant failed to review a customer account after being alerted of potential abuse after Cunningham left the firm.

The Division further alleges that the Defendant failed to enforce its written policies and procedures by not investigating a complaint related to a customer account. The Defendant

¹ Edith Mechling's CRD report states that she was suspended from association with any National Association of Securities Dealers' (now FINRA) member in any capacity for the three-month period of April 3, 2006, to July 2, 2006.

initiated an internal investigation after receiving an additional complaint from another client's attorney five months later.

Based on its investigation, the Division alleges the Defendant violated: (i) Rule 21 VAC 5-20-260 B by failing to exercise diligent supervision over the securities activities of its agent; (ii) Rule 21 VAC 5-20-260 D (2) by failing to monitor and conduct frequent examinations of all customer accounts to detect and prevent irregularities or abuses; and (iii) Rule 21 VAC 5-20-260 D by failing to enforce its written policies and procedures.

If the provisions of the Act are violated, the Commission is authorized by § 13.1-506 of the Act to revoke a defendant's registration, by § 13.1-519 of the Act to issue temporary or permanent injunctions, by § 13.1-518 A of the Act to impose costs of investigation, by § 13.1-521 A of the Act to impose certain monetary penalties, by § 13.1-521 C of the Act to order a defendant to make rescission and restitution, and by § 12.1-15 of the Code to settle matters within its jurisdiction.

The Defendant neither admits nor denies these allegations but admits to the Commission's jurisdiction and authority to enter this Settlement Order ("Order").

As a proposal to settle all matters arising from these allegations, the Defendant has made an offer of settlement to the Commission wherein the Defendant will abide by and comply with the following terms and undertakings:

- (1) The Defendant will make an offer of restitution totaling \$91,954 to the three (3) Virginia investors pursuant to the following:
 - (a) Within thirty (30) days of the date of this Order, the Defendant will make written offers of restitution sent by certified mail to the investors, which will include an offer to return the individual amounts invested with Cunningham and Rock Solid

and a provision that gives the investors thirty (30) days from the date of receipt of the offer of restitution to provide the Defendant with written notification of his or her decision to accept or reject the offer.

- (b) The Defendant will provide to the Division copies of the offers of restitution for its review and comment at least ten (10) days before sending it to the investors.
- (c) The Defendant will include with the written offers of restitution a copy of this Order.
- (d) If the restitution offers are accepted, the Defendant will forward the payment to the investors within one (1) year of the date of this Order.
- (e) Within thirty (30) days of the final restitution payment or investor rejection of restitution, the Defendant will submit to the Division proof of certified mailing of the offers of restitution and an affidavit, executed by the Defendant, which contains the date on which the investors received the offer of restitution, the investors' responses, and, if applicable, the amount and the date that payment was sent to the investors.

- (2) The Defendant will not violate the Act in the future.

The Division has recommended that the Commission accept the offer of settlement of the Defendant.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Division, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

(1) The offer of the Defendant in settlement of the matter set forth herein is hereby accepted.

(2) The Defendant shall fully comply with the aforesaid terms and undertakings of this settlement.

(3) The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding, or taking such other action it deems appropriate, on account of the Defendant's failure to comply with the terms and undertakings of the settlement.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:
William P. Behrens, President & CEO, Fulcrum Securities, LLC, 11975 Westline Industrial Drive, St. Louis, Missouri 63146; and Richard H. Kuhlman, Esquire, Bryan Cave, LLP, One Metropolitan Square, 211 North Broadway, Suite 3600, St. Louis, Missouri 63102; and a copy shall be delivered to the Commission's Office of General Counsel and Division of Securities and Retail Franchising.

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Defendant

ADMISSION AND CONSENT

Fulcrum Securities, LLC ("Defendant"), admits to the jurisdiction of the State Corporation Commission ("Commission") as to the party and subject matter hereof and, neither admitting nor denying the allegations made herein by the Division of Securities and Retail Franchising, hereby consents to the form, substance and entry of the foregoing Settlement Order ("Order").

The Defendant further states that no offer, tender, threat or promise of any kind whatsoever has been made by the Commission or any member, subordinate, employee, agent or representative thereof in consideration of the foregoing Order.

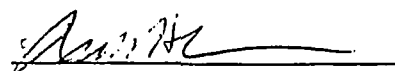
Fulcrum Securities, LLC

Date: DEC. 18, 2015

By:


William P. Behrens, President & CEO

Seen and Approved By:


Richard H. Kuhlman, Esquire
Bryan Cave, LLP

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