

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, SEPTEMBER 21, 2017

SCC-CLERK'S OFFICE
DOCUMENT CONTROL CENTER

2017 SEP 21 P 2:43

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2017-00033

NEXT FINANCIAL GROUP, INC.,
Defendant

SETTLEMENT ORDER

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

The Division opened an investigation when one of NEXT Financial's former agents, Joshua Ray Abernathy ("Abernathy"), confessed to federal authorities that he had been engaged in securities fraud while employed by at least two different broker-dealer firms, including NEXT Financial, beginning as early as 2008.

The Division's records indicate that Abernathy was registered in the Commonwealth of Virginia ("Virginia") as an investment advisor representative and registered representative with NEXT Financial at various times between March 16, 2007 and September 26, 2012. Starting as early as 2008, and while employed by NEXT Financial, Abernathy misappropriated at least \$442,267.45 from at least nine investors in violation of the Act.

The Division alleges NEXT Financial failed to properly supervise Abernathy, as required by the Act and the Commission's Rules governing Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer, 21 VAC5-20-10 *et seq.* ("Rules"). Specifically, the Division alleges that

NEXT Financial knew and approved of Abernathy's use of a personal securities account, yet failed to monitor such account for unusual activities. Additionally, the Division alleges NEXT Financial maintained, yet failed to follow, written policies requiring it to review Abernathy's transactions relating to Abernathy's personal securities account. The Division alleges that if NEXT Financial had complied with these requirements and obligations it would have discovered Abernathy's fraudulent activities.

Accordingly, based on the investigation, the Division alleges the Defendant violated:

(i) Rule 21 VAC 5-20-260 A by failing to be responsible for the acts, practices, and conduct of Abernathy in connection with the sales of securities; (ii) Rule 21 VAC 5-20-260 B by failing to exercise diligent supervision over the securities activities of Abernathy; and (iii) Rule 21 VAC 5-20-260 D by failing to enforce its written 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.

Prior to the entry of this Settlement Order ("Order"), NEXT Financial paid restitution of \$186,384.38 to nine investors identified by the Division through other proceedings.

NEXT Financial, without admitting or denying the allegations made herein, admits to the Commission's jurisdiction and authority to enter this Order.

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

(1) NEXT Financial will pay to the Treasurer of Virginia ("Treasurer") the amount of Fifty Thousand Dollars (\$50,000) in monetary penalties.

(2) NEXT Financial will pay to the Treasurer the amount of Ten Thousand Dollars (\$10,000) to defray the costs of investigation.

(3) The above penalty and costs of investigation payment requirements will be waived if NEXT Financial makes restitution payments totaling Sixty Thousand Dollars (\$60,000) on a pro rata basis to nine investors identified by the Division within thirty (30) days of the entry of this Order. If NEXT Financial opts to make restitution payments to these investors, it shall provide proof of these payments to the Division within forty-five (45) days of the entry of this Order.

(4) 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:
 NEXT Financial Group, Inc., c/o John T. Unger, Esquire, 2500 Wilcrest Drive, Suite 620,
 Houston, Texas 77042; and a copy shall be delivered to the Commission's Office of General
 Counsel and Division of Securities and Retail Franchising.

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

170820093

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2017-00033

NEXT FINANCIAL GROUP, INC.,
Defendant

ADMISSION AND CONSENT

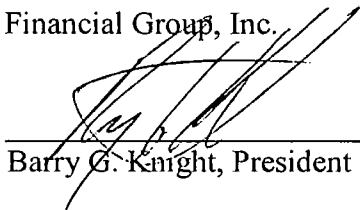
NEXT Financial Group, Inc. ("Defendant"), admits to the jurisdiction of the State Corporation Commission ("Commission") as to the party and subject matter hereof and, neither admitting nor denying the allegations made herein by the Division of Securities and Retail Franchising, hereby consents to the 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.

NEXT Financial Group, Inc.

Date: September 7, 2017

By:


Barry G. Knight, President

Seen and Approved By:


John T. Unger, Esquire