BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
OF THE STATE OF TENNESSEE

IN THE MATTER OF:	)	
	)	
DEPARTMENT OF COMMERCE	)	
AND INSURANCE,	)	
SECURITIES DIVISION	)	**DOCKET NO. 12.06-215542J**
v.	)	
WILLIAM ERIC KAEHR and	)	
WARHORSE WEALTH	)	
ADVISORS		

FINAL ORDER

Respondents, William Eric Kaehr and Warhorse Wealth Advisors, commenced this appeal of the Initial Order, which was entered in this matter on August 23, 2022. The Initial Order entered by Administrative Law Judge J. Shannon Barnhill held that Respondents failed to maintain adequate records for their securities business activities, specifically records pertaining to net capital, and failed to produce the records for inspection by agents of the Commissioner, in violation of Tenn. Code Ann. § 48-1-111(a), (b), and (d); Respondents failed to meet and maintain the minimum net capital requirement, in violation of Tenn. Code Ann. § 48-1-112(a)(2)(B) and Tenn. Comp. R. & Regs. 0780-04-03-01.(6)(a); Respondents knowingly engaged in dishonest business practices as described in Tenn. Comp. R. & Regs. 0780-04-03-.02(6)(c)(26) by failing to provide information requested by the Division, in violation of Tenn. Code Ann. § 48-1-112(a)(2)(G); and finally, Respondents transacted business as an investment adviser or investment adviser representative while suspended from registration, in violation of Tenn. Code Ann. § 48-1-109(c). The Initial Order upheld the Summary Suspension of Respondents' securities registrations, revoked Respondents' securities registrations and held that Respondents shall pay up to five thousand dollars ($5,000.00) as costs of the investigation, prosecution, and hearing on the matter, in the interest of the public and to protect investors in Tennessee.

A Scheduling Order entered on April 10, 2024, required Respondents to file a brief in support of their appeal by June 3, 2024, and for Petitioner, Tennessee Department of Commerce and Insurance, to file a response by July 3, 2024.

On May 23, 2024, Respondents filed Respondents' Notice of Voluntary Dismissal of Appeal, and on May 28, 2024, Petitioner filed a Motion to Partially Strike Respondents' Notice of Voluntary Dismissal of Appeal requesting that certain portions of Respondents' Notice of Voluntary Dismissal of Appeal and that the costs of this appeal be assessed up to five thousand dollars ($5,000). On May 31, 2024, Respondents responded with Respondents' Opposition to Petitioner's Motion to Partially Strike Notice of Voluntary Dismissal of Appeal.

The April 10, 2024, Scheduling Order stated that "[t]he Respondent's failure to submit its brief by June 3, 2024, **shall** result in the dismissal of its appeal and the entry of a final order adopting the Initial Order." (emphasis added). As Respondents have declined to file a brief, the Commissioner hereby **DISMISSES** this appeal and enters this Final Order adopting the Initial Order. As such, Respondents' Voluntary Dismissal of Appeal and Petitioner's Motion to Partially Strike Respondents' Notice of Voluntary Dismissal of Appeal are **DENIED** as moot as to the voluntary dismissal of this appeal and partially striking Respondents' Notice of Voluntary Dismissal of Appeal. To the extent Petitioner's Motion to Partially Strike Respondents' Notice of Voluntary Dismissal of Appeal requested that the amount of costs assessed be increased by five thousand dollars ($5,000), such request is **DENIED**. To the extent that there are issues that arise or remain regarding the assessment of costs by Petitioner, including if actual and reasonable costs that Petitioner has incurred on appeal may be filed as part of Petitioner's assessment of costs pursuant to the Initial Order, those issues are remanded to Administrative Law Judge Barnhill for disposition.

WHEREFORE, it is hereby **ORDERED AND ADJUDGED** the Initial Order issued on August 23, 2022, by Administrative Law Judge Barnhill is **AFFIRMED** and expressly incorporated herein by reference. This Final Order is made pursuant to Tenn. Code Ann. § 4-5-313 and marks the disposition of this matter.

NOTICE OF RECONSIDERATION AND APPEAL PROCEDURES

Within fifteen (15) days after the Final Order is entered, a party may file a Petition for Reconsideration of the Final Order with the Commissioner of Commerce and Insurance, in which the Petition shall state the specific reasons why the Final Order was in error. If no action is taken by the Commissioner of Commerce and Insurance within twenty (20) days of filing of the Petition for Reconsideration, the Petition is deemed denied. Tenn. Code Ann. § 4-5-317.

A party who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in Davison County Chancery Court within sixty (60) days after the entry date of the Final Order, or if a Petition for Reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the Petition for Reconsideration. The filing of a Petition for Reconsideration does not itself act to extend the sixty (60) day period, if the petition is not granted. A reviewing court also may order a stay of the Final Order upon appropriate terms. Tenn Code Ann. §§ 4-5-322 and 4-5-317.

IT IS SO ORDERED.

This 21st day of June 2024.

Carter Lawrence (Jun 21, 2024 15:11 CDT)

Carter Lawrence, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent via Certified Mail, Return Receipt requested to the Respondent, William Eric Kaehr and Warhorse Wealth Advisors, through counsel Charles Williamson, Nicole O. Watson, Michael Cottonee at Nashville City Center, 511 Union Street, Suite 2700, Nashville, TN 37219 and via hand delivery Anthony Glandorf, Chief Counsel for Securities, Department of Commerce and Insurance this 21st day of June, 2024.

Leigh Ferguson (Jun 18, 2024 10:33 CDT)

Leigh Ferguson

BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF: **TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE,** ***Petitioner,*** ***v.*** **WILLIAM ERIC KAEHR AND WARHORSE WEALTH ADVISORS, LLC,** ***Respondent.***	**APD Case No. 12.06-215542J**

INITIAL ORDER

This cause came to be heard on the 16th day of March 2022, before the Honorable Shannon Barnhill, Administrative Law Judge, sitting on behalf of the Commissioner of the Department of Commerce and Insurance ("Commissioner"). The Petitioner, the Tennessee Securities Division ("Division"), was represented by William Leslie, Associate General Counsel, and Vishan Ramcharan, Associate General Counsel. The Respondents, William Eric Kaehr ("Respondent Kaehr") and Warhorse Wealth Advisors, LLC ("Respondent WWA") (collectively "Respondents"), appeared pro se.

Upon consideration of the pleadings, the testimony of witnesses, documentary evidence, and the entire record, the Court issues this Initial Order with Findings of Fact and Conclusions of Law as follows.

FINDINGS OF FACT

1. At the scheduled time for the hearing to begin the Respondents were not present and the Division moved to proceed on a default basis, and the motion was granted. (Tr. p. 5).

2. The Respondents appeared, pro se, approximately twenty (20) minutes into the proceedings and the hearing proceeded as a contested case. (Tr. p. 19-20).

3. The Division opened a routine exam of Respondent WWA. (Tr. p. 10).

4. Respondent Kaehr was a registered investment adviser representative in Tennessee at the time of the exam. (Exhibit 2; Tr. p. 10-11).

5. Respondent Kaehr was the chief compliance officer for Respondent WWA at the time of the exam. (Exhibit 3; Tr. p. 12).

6. Respondent WWA was a registered investment adviser in Tennessee at the time of the exam. (Exhibit 3; Tr. p. 13).

7. At the time of the proceedings, the Respondents' registrations in Tennessee were suspended. (Tr. p. 13).

8. Respondent Kaehr, as Respondent WWA's chief compliance officer, was responsible for ensuring compliance with regulations. (Tr. p. 13).

9. The Division sent the Respondents a letter on June 16, 2020, opening a routine examination and asking for the Respondents to provide certain documents. (Exhibit 4; Tr. p. 14- 15).

10. The Respondents did not respond to the June 16, 2020, document request in full. (Tr. p. 14).

11. The Division sent a follow-up letter to the Respondents on July 27, 2020, that gave the Respondents fourteen (14) days to respond. (Exhibit 5; Tr. p. 15-16).

12. The Respondents did not respond to the July 27, 2020, document request in full. (Tr. p. 15).

13. The Division sent the Respondents a third follow-up letter on November 4,

2020. (Exhibit 6; Tr. p. 16-17).

14. The Respondents did not respond to the November 4, 2020, document request in full. (Tr. p. 16).

15. In email correspondence that began with the Division on July 27, 2020, the Respondents directed the Division to a file that could not be located. (Exhibit 7; Tr. p. 18).

16. On September 3, 2020, the Division emailed the Respondents and gave them a deadline of September 9, 2020, to respond. The Respondents responded on September 10, 2020, after the deadline. The Respondents again failed to provide the requested documentation. (Exhibit 7; Tr. p. 18-19).

17. The Division sent the Respondents a fourth follow-up letter on December 16, 2020. (Exhibit 8; Tr. p. 21-22).

18. The Respondents, again, failed to provide the requested documentation. (Tr. p. 21).

19. On July 2, 2021, the Division emailed the Respondents to obtain the remaining documentation. (Exhibit 9; Tr. p. 22-23).

20. Through additional emails and phone calls, the Respondents provided some additional information and stated that other information would be forthcoming. The Respondents again failed to provide the required documentation. (Exhibit 9; Tr. p. 23).

21. The balance sheets provided by the Respondents and the balance sheet calculations of the Division do not match up and show that the Respondents failed to meet and maintain the minimum net capital requirement of fifteen thousand dollars ($15,000). (Exhibits 10 and 11; Tr. p. 24-26).

22. The Respondents maintained that all bank records for Respondent WWA were not available due to a bank merger. The Respondents stated they attempted to gather the

records but were unsuccessful. (Exhibit 9; Tr. p. 27).

23. In an email dated November 2, 2020, the Respondents admitted they did not meet the minimum net capital requirement and did not keep the monthly net capital computations but going forward ensured the appropriate records would be kept. (Exhibit 7; Tr. p. 28).

24. During the follow-up in the summer of 2021, the Respondents failed to timely provide the documents requested and failed to maintain the minimum net capital requirement of fifteen thousand dollars ($15,000). (Tr. p. 28).

25. As a result of lack of response and incomplete documentation, the Division recommended a summary suspension of the Respondents' registrations with the Division. (Tr. p. 32).

26. On November 5, 2021, an Order of Summary Suspension was executed against the Respondents. (Exhibit 12; Tr. p. 32-33).

27. The Respondents requested an informal hearing which was held on December 1, 2022. At the informal hearing, the Respondents were granted the ability to process money movements for client needs but to conduct no other securities business or transactions. It was made clear that the Respondents were still suspended. (Exhibit 13; Tr. p. 33-34, 40).

28. After the Order of Summary Suspension was issued, the Division again emailed the Respondents about missing or incomplete information. The Respondents again failed to provide all documentation that was required. (Exhibit 14; Tr. p. 35-36).

29. In an email with the Division, the Respondents stated that no investment advisory services had been rendered since the Order of Summary Suspension was issued, but they did collect fees. (Exhibits 15 and 16; Tr. p. 36-37).

30. The Respondents collected over thirty thousand dollars ($30,000) in fees after

the Order of Summary Suspension was issued. (Exhibit 17; Tr. p. 39).

31. The Respondents were given multiple opportunities to get into compliance with Division regulations but ultimately did not succeed. (Tr. p. 42).

32. Respondent Kaehr admitted to not meeting the net capital requirements and to a “litany of errors.” (Tr. p. 45).

33. Respondent Kaehr maintained that all documents and records requested had been provided to the Division. (Tr. p. 46).

34. Respondent Kaehr took full responsibility for the lack of timeliness to providing documentation to the Division. (Tr. p. 47).

35. Respondent Kaehr admitted that further into the exam process, “it became more confusing on what was still needed.” (Tr. p. 49).

36. Respondent Kaehr stated that he retained RIA in a Box for compliance purposes. (Tr. p. 50).

37. Respondent Kaehr stated that he was in the process of selling and merging Respondent WWA with another investment adviser and that the compliance would be handled by “a central body.” (Tr. p. 50-51).

38. Respondent Kaehr admitted that no one at the Division indicated a continuance would happen if no settlement was reached before the date of the hearing. (Tr. p. 51).

39. Respondent Kaehr stated that during the informal hearing, it was never stated that the Respondents could not collect fees. In response to Division emails regarding the fees collected after the Order of Summary Suspension was issued, Respondent Kaehr contacted the custodian and requested the return of the fees to the clients. (Tr. p. 53-54).

40. Although, it is clear that the Respondent’s failed to maintain and timely file required documentation and failed to maintain minimum deposits there was no evidence

presented of any actual harm to Respondent's clients.

APPLICABLE LAW

41. Pursuant to Tenn. Code Ann. § 48-1-115(a), the responsibility for the administration of the Act is vested in the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility pursuant to Tenn. Code Ann.

§ 48-1-115(b).

42. Tenn. Code Ann. § 48-1-116 sets forth that the Commissioner may make, promulgate, amend, and rescind such orders as are necessary to carry out the provisions of the Act upon a finding that such order is in the public interest, necessary for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

43. Tenn. Code Ann. § 48-1-111 states, in pertinent part:

> (a) Every registered broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the commissioner by rule prescribes. All records so required shall be preserved for three (3) years unless the commissioner by rule prescribes otherwise for particular types of records.
>
> (b) Every registered broker-dealer and investment adviser shall file such financial reports and other documents as the commissioner by rule prescribes.
>
> . . .
>
> (d)
>
> > (1) All the records referred to in subsection (a) are subject at any time and from time to time to such reasonable periodic, special, or other examinations . . . by representatives of the commissioner, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors.

. . .

44. Tenn. Code Ann. § 48-1-112(a)(2)(B) and (G) provide that the Commissioner may by order deny, suspend, or revoke any registration if the Commissioner finds that the order is in the public interest and necessary for the protection of investors and if the investment adviser "[h]as willfully violated or willfully failed to comply with any provision of this part or a predecessor chapter or any rule or order under this part or a predecessor chapter . . ." or "[h]as engaged in dishonest or unethical practices in the securities business[.]"

45. Tenn. Code Ann. § 48-1-112(d) sets forth that in any case in which the Commissioner is authorized to deny, revoke, or suspend the registration of a broker-dealer, agent, investment adviser, investment adviser representative, or applicant for broker-dealer, agent, investment adviser, or investment adviser representative registration, the Commissioner may, in lieu of or in addition to such disciplinary action, impose a civil penalty in an amount not to exceed five thousand dollars ($5,000) for all violations for any single transaction, or in an amount not to exceed ten thousand dollars ($10,000) per violation if an individual who is a designated adult is a victim.

46. Tenn. Comp. R. & Regs. 0780-04-03-.02(6) provides, in part:

> . . .
>
> (c) The following are deemed "dishonest or unethical business practices" by an investment adviser or an investment adviser representative under T.C.A. § 48-1-112(a)(2)(G), to the extent
>
> permitted under Section 203A of the Investment Advisers Act, without limiting those terms to the practices specified herein:
>
> . . .
>
> 26. Failing to provide information requested by the Division pursuant to the Act or these Rules.

. . .

47. Tenn. Code Ann. § 48-1-110(d) provides that the Commissioner "may by rule require a minimum net capital for . . . investment advisers."

48. Tenn. Comp. R. & Regs. 0780-04-03-.01(6)(a) provides that registered investment advisers shall have and maintain a minimum net capital of fifteen thousand dollars ($15,000).

49. Tenn. Code Ann. § 48-1-109(c) sets forth that it is unlawful for any person to transact business from, in, or into this state as an investment adviser or investment adviser representative agent unless such person is registered as such with the state, and under subsection (e), "[t]he commissioner may, after notice and an opportunity for a hearing . . . impose a civil penalty against any person found to be in violation of this section, or any rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars ($10,000) per violation[.]"

50. The Respondents failed to maintain adequate records for their securities business activities, specifically records pertaining to net capital, and failed to produce the records for inspection by agents of the Commissioner, in violation of Tenn. Code Ann. § 48-1-111(a), (b), and (d).

51. The Respondents failed to meet and maintain the minimum net capital requirement, in violation of Tenn. Code Ann. § 48-1-112(a)(2)(B) and Tenn. Comp. R. & Regs. 0780-04-03-.01(6)(a).

52. The Respondents knowingly engaged in dishonest business practices as described in Tenn. Comp. R. & Regs. 0780-04-03-.02(6)(c)(26.) by failing to provide information requested by the Division, in violation of Tenn. Code Ann. § 48-1-112(a)(2)(G).

53. The Respondents transacted business as an investment adviser or investment

adviser representative while suspended from registration, in violation of Tenn. Code Ann.

§ 48-1-109(c).

CONCLUSIONS OF LAW

The State has shown, by a preponderance of the evidence as set forth in the above Findings of Fact, that Respondent's conduct constitutes violations of:

1. Tenn. Code Ann. § 48-1-111 states, in pertinent part:

> (a) Every registered broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the commissioner by rule prescribes. All records so required shall be preserved for three (3) years unless the commissioner by rule prescribes otherwise for particular types of records.
>
> (b) Every registered broker-dealer and investment adviser shall file such financial reports and other documents as the commissioner by rule prescribes.
>
> . . .
>
> (d)
>
> (1) All the records referred to in subsection (a) are subject at any time and from time to time to such reasonable periodic, special, or other examinations . . . by representatives of the commissioner, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors.
>
> . . .

AND;

2. Tenn. Comp. R. & Regs. 0780-04-03-.01(6)(a) provides that registered investment advisers shall have and maintain a minimum net capital of fifteen thousand dollars ($15,000).

Based on the foregoing, it is hereby **ORDERED** that:

1. The Order of Summary Suspension of the Respondents' registrations is **UPHELD**.

2. The Respondents' securities registrations are **REVOKED**, and the Respondents shall **CEASE AND DESIST** from engaging in the business of securities.

3. The Respondents shall **PAY** the costs of the investigation, prosecution, and hearing on this matter not to exceed five thousand dollars ($5,000).

4. The policy reason for this decision and Initial Order imposing sanctions against the Respondents is entered to protect the public and investors in the State of Tennessee, consistent with the purposes fairly intended by the policy and provisions of the Law.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the **23rd day of August, 2022**.

J. SHANNON BARNHILL
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the **23rd day of August, 2022.**