

BEFORE THE
DIVISION OF SECURITIES
DEPARTMENT OF FINANCIAL INSTITUTIONS
STATE OF WISCONSIN

In the Matter of
THOMAS H. MURPHY,
RICHARD C. PETERSON,
LIBERTY INVESTMENT COUNSEL, LTD.

PETITION FOR ORDER

Respondents.

File No. S-99281(LX)

The staffs of the Licensing & Compliance Section and the Enforcement Unit, Registration & Enforcement Section, of the Division of Securities, Department of Financial Institutions, State of Wisconsin have conducted an investigation in this matter pursuant to sec. 551.56, Wis. Stats. and as a result thereof allege as follows:

1. Thomas H. Murphy ("Murphy") is a licensed securities agent (CRD #1399925) with a last known business address at 910 Elm Grove Rd., Suite 26, Elm Grove, WI 53122;
2. Liberty Investment Counsel, Ltd., ("Liberty") is a licensed broker-dealer (CRD # 10062) with a business address at 700 Pilgrim Parkway, Suite 300, Elm Grove, WI 53122;
3. Richard C. Peterson ("Peterson") is a licensed securities agent (CRD # 361552) with a last known business address at that of Liberty;
4. At all times material hereto, Murphy was licensed as a securities agent with Liberty;
5. At all times material hereto, Peterson was licensed as a securities agent with Liberty and was the designated supervisor in Wisconsin;
6. At all times material hereto and until July 7, 1997, Liberty conducted its advisory business, as a state regulated investment advisor, through its broker-dealer license in Wisconsin;
7. During at least 1992 through 1997 Murphy borrowed a total of at least \$13,000 from at least one customer of his or his employing broker-dealer;
8. Pursuant to DFI-Sec 4.06(2)(a), Wis. Adm. Code, borrowing money from a customer of the agent or the agent's employing broker-dealer is deemed to be "dishonest or unethical business practice" or "taking unfair advantage of a customer" and provides a basis, pursuant to sec. 551.34(1)(g), Wis. Stats., for the suspension of Murphy's license;
9. On May 24, 1999, pursuant to an examination of the books and records of Liberty the staff provided a questionnaire to Murphy for his completion;

10. The questionnaire asked, among other items, if the agent had ever borrowed money from a customer;

11. Murphy wrote on his questionnaire that he returned to the staff that he had never borrowed money from a customer;

12. Murphy's action, in making a material misrepresentation to the staff, provides a basis, pursuant to sec. 551.34(1)(m), Wis. Stats., for the suspension of Murphy's securities agent license;

13. Upon information and belief, neither Murphy nor Liberty supply copies of Liberty's Form ADV to Murphy's prospective investment advisory clients as required by DFI-Sec 5.05(8), Wis. Adm. Code;

14. Upon information and belief, none of Murphy's investment advisory customers have received the annual offer of a copy of Liberty's ADV as required by DFI-Sec 5.05(8), Wis. Adm. Code;

15. Murphy prepared his own client bills and sent them to his customers;

16. Murphy's bills were never reviewed by his supervisor;

17. There are no copies of Murphy's bills maintained at Liberty's principal office nor is Murphy able to supply a copy of the bills;

18. Liberty and Peterson's failure to keep copies of Murphy's bills is a violation of DFI-Sec. 5.03(1)(c) and (g), Wis. Adm. Code.;

19. Liberty and Peterson's failure to keep copies of Murphy's bills in violation of DFI-Sec 5.03(1)(c) and (g), Wis. Adm. Code, provides a basis, pursuant to sec. 551.34(1)(b), Wis. Stats., for the censure of the licensees or a suspension of their license;

20. The letterhead used by Murphy read "Thomas H. Murphy, Registered Investment Advisor, Liberty Investment Counsel, Ltd. 910 Elm Grove Road, Elm Grove, WI 53122;"

21. Based on the above-referenced letterhead, Murphy is holding his office out as a Liberty branch office;

22. Liberty and Peterson failed to notify the Division that they had a branch office at this address;

23. Murphy's actions, in holding himself out as a branch office of Liberty constitute a "dishonest or unethical business practice" or taking unfair advantage of a customer and pursuant to sec. 551.34(1)(g), provides a basis for the suspension of an agent;

24. Murphy's actions, in holding himself out as a registered investment advisor, constitute a "dishonest or unethical business practice" or taking unfair advantage of a customer and pursuant to sec. 551.34(1)(g), provides a basis for the suspension of an agent;

25. Liberty and Peterson have violated DFI-Sec 5.04(5)(a), Wis. Adm. Code by failing to notify the Division of this branch;

26. Liberty and Peterson's failure to notify the Division of a branch office in violation of DFI-Sec 5.04(5)(a), Wis. Adm. Code provides a basis, pursuant to sec. 551.34(1)(b), Wis. Stats., for the censure of the licensees or a suspension of their license;

27. Murphy prepared his written summaries of his customers' accounts including the valuation of limited partnerships held in his customers' accounts;

28. Murphy has no records to indicate how he valued those limited partnerships;

29. Murphy's failure to maintain these records is a violation of DFI-Sec 5.03(1)(g), Wis. Adm. Code;

30. Murphy's failure to keep and maintain proof of how he valued the limited partnerships in violation of DFI-Sec 5.03(1)(g), Wis. Adm. Code provides a basis, pursuant to sec. 551.34(1)(b), Wis. Stats., for the suspension of Murphy's license;

31. Liberty has no copies of these written summaries at its principal office;

32. Liberty and Peterson's failure to keep copies of Murphy's summaries is a violation of DFI-Sec. 5.03(1)(g), Wis. Adm. Code.;

33. Liberty and Peterson's failure to keep copies of Murphy's summaries in violation of DFI-Sec 5.03(1)(g), Wis. Adm. Code, all provide a basis, pursuant to sec. 551.34(1)(b), Wis. Stats., for the censure of the licensees or a suspension of their license;

34. Liberty and Peterson's failure to detect Murphy's violations as well and its own lack of records demonstrates that they failed to establish written supervisory procedures and a system for applying the procedures which may reasonably be expected to prevent and detect any violations of Ch. 551, Wis. Stats., which provides a basis, pursuant to sec. 551.34(1)(j), Wis. Stats., for the censure of the licensees or a suspension of their license.

THEREFORE, the staffs of the Licensing & Compliance Section and the Enforcement Unit petition the Administrator for the issuance of the attached Order.

DATED this 1st day of February, 2000.


David A. Cohen
Supervising Attorney
Enforcement Unit


Helen E. Kluever
Licensing Examiner
Licensing & Compliance Section