

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

In the Matter of

PETITION FOR ORDER

TIMOTHY PATRICK BARRY,

File No. S-216424(EX)

Respondent.

The staff of the State of Wisconsin, Department of Financial Institutions, Division of Securities, Bureau of Enforcement ("the Division") has conducted an investigation in this matter pursuant to § 551.56, Wis. Stats.,¹ and as a result thereof alleges as follows:

1. Timothy Patrick Barry ("Barry") (CRD #2267209) is an individual born in February 1952, who was licensed by the Division as a securities agent from July 5, 1999 to July 15, 2008. His last known home address is 648 White Birch Court, Appleton, Wisconsin 54915.
2. Barry was also licensed by the Wisconsin Office of the Commissioner of Insurance ("OCI") as an insurance agent from September 25, 1992 until his license was revoked by OCI on February 26, 2009. A true and accurate copy of the Final Decision in OCI Case No. 07-C31082 is attached hereto as Exhibit 1.
3. According to information and documents Barry provided to Division staff and his December 2010 bankruptcy filing, from 2006 to 2009 Barry offered and sold promissory notes to at least six persons in Wisconsin totaling \$359,750.55. Barry used the Wisconsin Banking Association's Consumer Simple Note forms, which were designed to protect borrowers from unscrupulous lenders. The notes promised repayment of principal with interest over a period of time.
4. According to the investors, as well as information and documents Barry provided to Division staff, Barry told the investors he would use their investment money to start and fund a new business entity named "The Organizer," which he promoted in a brochure, stating "I have been very successful in helping people get everything written down in one book that will save your loved ones months of watching the mail, plus the time to go over everything. With this service you can have your estate organized in a convenient folder." A true and accurate copy of this brochure is attached hereto as Exhibit 2.
5. The notes Barry offered and sold to the six persons in Wisconsin are securities as defined by § 551.02(13)(a), Wis. Stats.
6. According to information and documents Barry provided to Division staff, at the time of the offers and sales to the Wisconsin investors, Barry still owed at least \$28,000 to the US Internal Revenue Service (hereinafter "IRS") for taxes in arrears for the tax year 2003.
7. According to the records maintained by the Clerk of Circuit Court of Outagamie County, the IRS filed a Notice of Federal Tax Lien against Barry on March 3, 2005 in the amount of \$35,706.04 for the tax year 2003. A true and accurate copy of this Notice of Federal Tax Lien is attached hereto as Exhibit 3.

¹ Unless otherwise noted, the statutory references are to the Wisconsin Statutes (2005-06), which were in effect at the time of the violations alleged herein and apply pursuant to § 551.703, Wis. Stats. (2007-08).

8. On January 15, 2008, Barry consented to a sanction from the Financial Industry Regulatory Authority ("FINRA," formerly known as the NASD) against Barry, resulting in his 10 business-day suspension and a \$5,000 fine for violating NASD Rule 2110 when he attempted to compensate customers for losses incurred related to a delay in processing a stock sale in 2005. A true and accurate copy of the FINRA Letter of Acceptance, Waiver and Consent is attached hereto as Exhibit 4.
9. On April 18, 2008, the Division issued a Consent Order of Censure against Barry for engaging in actions deemed to be "dishonest or unethical business practices" or "taking unfair advantage of a customer," in violation of § DFI-Sec. 4.06(2)(i), Wis. Admin. Code, and §551.34(1)(g), Wis. Stats., when Barry compensated a customer for losses incurred without having first obtained written authorization from the broker-dealer firm who employed him at the time. A true and accurate copy of this Consent Order is attached hereto as Exhibit 5.
10. The OCI issued an Order granting its staff's Motion for Partial Summary Judgment against Barry on September 5, 2008. A true and accurate copy of that Order is attached hereto as Exhibit 6.
11. On February 26, 2009, OCI revoked Barry's intermediary license and ordered him to pay a forfeiture of \$10,000 and restitution of \$8,881.97 to a former client whom Barry misled about the benefits and suitability of the transactions he proposed. The Order found that Barry had engaged in churning of insurance products for his own benefit while his customers incurred significant losses, failed to inform customers of the status of their insurance policies, concealing his mismanagement of their funds, and repeatedly violating the misrepresentation statute both by direct communication and through omission. See Exhibit 1.
12. According to statements Barry made to Division staff, Barry did not disclose that he was the subject of an unpaid, substantial IRS tax lien to the investors before they invested in his new business "the Organizer."
13. According to information provided to Division staff, Barry did not disclose to two investors in 2008 and 2009 that Barry had received the above-mentioned sanctions from the FINRA, the Division, and OCI before he sold them the notes in 2008 and 2009.
14. Based upon the conduct alleged above, Barry violated § 551.41(2), Wis. Stats., by omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in connection with the offer and sale of securities to a person in Wisconsin.
15. Barry has failed to repay the investors as provided in the notes. Barry and his wife, Susan Barry, filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court, Eastern District of Wisconsin, Case Number 2:10-BK-40364, on December 30, 2010.

Therefore, the staff of the Bureau of Enforcement petitions the Administrator of the Division of Securities for the issuance of the attached Order pursuant to Ch. 551, Wis. Stats.

Dated this 13th day of January, 2012.


 Mark E. Dorman
 Examiner


 Leslie M. Van Buskirk
 Attorney Supervisor