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

In the matter of,	CONSENT ORDER TO CEASE AND DESIST
ROBERT HERKOWSKI,	
Respondent.	DFI Case No. S-237857 (EX)

I.

The Administrator of the State of Wisconsin, Department of Financial Institutions, Division of Securities ("Division"), having legal authority and jurisdiction to administer and enforce the Wisconsin Uniform Securities Law, Wis. Stats. Ch. 551 ("Ch. 551") and rules and orders promulgated thereunder, and having determined that this action is necessary and appropriate in the public interest and for the protection of investors, hereby enters this Order as follows:

II.

Division staff have presented evidence sufficient for the Administrator to make the following findings of fact and conclusions of law:

A. Findings of Fact

Respondents

1. Robert Herkowski ("Herkowski") is an adult male resident of the State of Wisconsin, with a last known address of 8051 N. 54th Street, Brown Deer, Wisconsin 53223.

Conduct

2. Herkowski is friends with RH and VH, a married couple who reside in Fond du Lac, Wisconsin. Over the years, Herkowski boasted to RH and VH about his luck with money and told them other people had made money by investing with him.

3. Herkowski told RH and VH that after he retired, he became a part-time broker with ING.

4. Herkowski offered to open an account for RH and VH at ING, an insurance company, and told them he would manage the account on their behalf. Herkowski told RH and VH

they should invest aggressively and discussed possible stocks for their investments. Based upon Herkowski's representations and advice, on or about 10/17/09 RH closed his IRA account and gave Herkowski $2,500 in cash to invest at ING.

5. RH and VH had to pay taxes and penalties for the early withdrawal of the IRA funds.

6. Herkowski advised RH and VH to enter into an aggressive investment strategy. They discussed oil and gas investments among other things.

7. Herkowski provided RH and VH with purported ING account statements which showed an increasing account value for their investment of $2,500.

8. Based on what they believed were legitimate returns, on or about February 2010, the RH and VH invested another $1,000 in cash with Herkowski. RH and VH's total investment with Herkowski was $3,500.

9. On or about February 27, 2010, RH and VH withdrew $500 from their "ING account." Afterwards, when they tried to withdraw funds, Herkowski came up with various excuses as to why the funds could not be withdrawn.

10. At one point, RH became unemployed and his bills accumulated. Herkowski asserted they could not use their investment funds to pay bills due to RH's age. As a result, the RH and VH filed for bankruptcy. Herkowski refused RH and VH's repeated requests for withdrawals of portions of their investment.

11. From 2010 to 2017, via email and U.S. mail Herkowski provided false account statements to RH and VH which showed the value of their "ING account" almost always increasing. Further, Herkowski would inform RH and VH about changes to the investments held in the "ING account" which resulted in continued growth in the account.

12. For example, in 2010 Herkowski asserted "I moved some stock around this week so that we could take advantage of stock pricing. I am moving into staples, like Coffee and a few others. I think this will work out well."

13. Herkowski also asserted: "I have moved some things around to take advantage of some very interesting things. I have gotten you into RX Exploration, a Canadian company that just bought some old gold mines in the state of Montana… I have also got you into Joy Global, Inc., a large mining company in China. I moved a little stock so we got into Bucyrus International a few weeks ago."

14. In 2011, Herkowski asserted: "Moving stock around due to increase in return in the gold market. Watching the market every day, always staying on top of things."

15. As of September 2012, Herkowski informed RH and VH their account value was $77,385.90. He informed them: "I moved some of your stocks around to cash in on a few good buys. I have picked up a few IBM stocks because they are at the edge of a new product. Also picked up a few BP stock[s] to help keep the profits coming in. I am again moving a few things around, moving some things to mining products. They are about to hit a new vane in Montana. The companies that I got you into just went public. The stocks are going up and up."

16. By June of 2014, Herkowski informed RH and VH their account was worth $516,436.40. He stated: "All investments doing well. Apple Inc., Excon/oil is doing great. Vg Mining company is off the chart. Conoco/Phillips and capstone mining with Marathon oil sand company are doing great also."

17. In 2016, Herkowski provided RH and VH with a final annual statement showing a balance of $1,157,825.10.[1] In June 2017, Herkowski provided RH and VH with a statement showing their $3,500 investment had grown to $1,276,107.20.

18. During the time RH and VH believed they were invested in an ING account, they did not set aside funds for their retirement.

19. During the time RH and VH believed their account was valued in excess of $1 million, they sustained certain expenses, including expenses associated with retaining an attorney for a legal matter.

20. Herkowski assured RH's attorney that RH had sufficient funds to pay for legal services and that Herkowski would forward the funds directly to the attorney.

21. Ultimately, no funds were ever received by the attorney, and he sued RH and VH and Herkowski in small claims court for over $8,000 in unpaid legal fees.

22. In fact, Herkowski did not make any investments on behalf of RH and VH. Instead, he used $3,000 of their funds for his personal expenses, without their knowledge or permission.

23. In 2017, when RH and VH became suspicious, they asked Herkowski to have ING assign a new agent to their account. Herkowski provided RH and VH with fictitious names of agents who would be taking over the management of their fake account.

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[1] WI-DFI-000037

24. ING does not conduct any retail brokerage business in the United States.

25. Herkowski has never been an agent or employee of ING and has never been licensed to transact securities investments.

26. Herkowski has never been registered with the Division in any capacity.

27. When questioned by the Division's investigator, Herkowski provided a written statement in which he falsely asserted that he and RH "were playing a game of reality stock market and bonds game. We have been playing the game for 8 years. [RH] was trying to impress his wife. At that time he talked me into it. It was just a game."

B. Conclusions of Law

Legal Authority and Jurisdiction

28. The Administrator has legal authority and jurisdiction over the conduct described above, pursuant to Wis. Stats. Ch. 551 and the rules and orders promulgated thereunder.

29. Herkowski transacted business as an investment adviser representative as defined under Wis. Stat. 551.102(16) and § DFI Sec. 1.02(5), Wis. Admin. Code.

30. Pursuant to Wis. Stat. § 551.404(1), it is unlawful for a person to transact business in Wisconsin as an investment adviser representative unless the person is registered under Ch. 551 as an investment adviser representative or is exempt from registration as an investment adviser representative under Wis. Stat. § 551.404(2).

31. Pursuant to Wis. Stat. § 551.501(2), it is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

32. Pursuant to Wis. Stat. § 551.501(3), it is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly, to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

33. Pursuant to Wis. Stat. § 551.502(1), it is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investment in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities to an employ a device, scheme, or artifice to defraud another person and/or to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

Violations

34. Through the conduct described above, Herkowski violated Wis. Stat. § 551.404(1) by transacting business as an investment adviser representative in Wisconsin without being registered under Ch. 551 or exempted from registration under Wis. Stat. 551.404(2).

35. Through the conduct described above, Herkowski violated Wis. Stat. § 551.501(2) when, in connection with the offer, sale, or purchase of securities, he made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

36. Through the conduct described above, Herkowski violated Wis. Stat. § 551.501(3) when, in connection with the offer, sale, or purchase of securities, he engaged in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

37. Through the conduct described above, Herkowski violated Wis. Stat. § 551.502(1)(a) when in the course of advising others for compensation, either directly or indirectly, as to the value of securities or the advisability of investing in, purchasing, or selling securities, he employed a device, scheme, or artifice to defraud another person.

38. Through the conduct described above, Herkowski violated Wis. Stat. § 551.502(1)(b) when in the course of advising others for compensation, either directly or indirectly, as to the value of securities or the advisability of investing in, purchasing, or selling securities, he engaged in an act, practice, or course of business that operated or would operate as a fraud or deceit upon another person.

III.

In view of the above findings of fact and conclusions of law, the Administrator deems it necessary and appropriate in the public interest and for the protection of investors, and pursuant to its legal authority and jurisdiction under Ch. 551, to wit Wis. Stat. § 551.604, to issue the following orders and notices:

A. Consent Orders issued pursuant to Wis. Stat. § 551.604(2)

(a) IT IS ORDERED summarily that RESPONDENT, his agents, servants, officers, employees, successors, affiliates, and every entity and person directly or indirectly controlled or organized by or on behalf of the RESPONDENT, shall cease and desist from making or causing to be made to any person or entity in Wisconsin any further offers or sales of securities unless and until such securities qualify as covered securities or are registered under Ch. 551 or successor statute.

(b) IT IS FURTHER ORDERED summarily that all exemptions from registration set forth at Ch. 551 or successor statute that might otherwise apply to any offer or sale of any security of or by the RESPONDENT, his agents, servants, officers, employees, successors, affiliates, and every entity and person directly or indirectly controlled or organized by or on behalf of the RESPONDENT, are hereby revoked.

(c) IT IS FURTHER ORDERED summarily that RESPONDENT, his successors, affiliates, controlling persons, officers, agents, servants, employees and every entity and person directly or indirectly controlled or hereafter organized by or on behalf of the RESPONDENT, are prohibited from violating Wis. Stat. § 551.501 or successor statute.

(d) IT IS FURTHER ORDERED summarily that RESPONDENT, his successors, affiliates, controlling persons, officers, agents, servants, employees, and every entity and person directly or indirectly controlled or hereafter organized by or on behalf of the RESPONDENT, is prohibited from violating Ch. 551 or successor statute that might otherwise apply to any offer or sale of a security of or by RESPONDENT.

(e) PLEASE TAKE NOTICE that the summary orders of the Administrator are effective as of the issuance of this order, pursuant to Wis. Stat. § 551.604(2).

B. Service of Order

(f) IT IS FURTHER ORDERED that this order shall be sent promptly by certified mail to each party named in the order at his or her last known address or to the party's attorney of record, or shall be personally served upon the party or the party's attorney of record, pursuant to Wis. Admin. Code § DFI-Sec. 8.06.

(g) PLEASE TAKE NOTICE that the date of the service of this order is the date it is placed in the mail. You are advised that any willful violation of an Order issued by the Division under Ch. 551 is a criminal offense punishable under the provisions of Wis. Stat. § 551.508.

C. Notifications

(h) PLEASE TAKE NOTICE that this Order consented to by the RESPONDENT prohibits the RESPONENT from transacting securities business in the State of Wisconsin, effective upon the date issued, and shall have the same effect on Respondent as a permanent injunction entered by a circuit court pursuant to Wis. Stat. §551.603(2)(a).

(i) PLEASE TAKE FURTHER NOTICE that this Order is effective on the date it is issued. You are advised that any willful violation of an Order issued by the Division under Ch. 551 is a criminal offense punishable under the provisions of Wis. Stat. § 551.508.

EXECUTED at Madison, Wisconsin, this 1st day of February, 2018.

(SEAL)

Leslie M. Van Buskirk

Leslie M. Van Buskirk
Administrator

Division of Securities
State of Wisconsin
Department of Financial Institutions
201 West Washington Avenue, Suite 300
Madison, Wisconsin 53703

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PETER J. HEFLIN

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414-271-0609
FAX: 224-1411

PACSIMILE TRANSMITTAL SHEET

TO: ATTORNEY ROBIN JACOBS AND/OR SCOTT CONWELL

FROM: PETER J. HEFLIN

DATE: JANUARY 31, 2018

FAX NUMBER: (608) 264-7979 TOTAL NO. OF PAGES INCLUDING COVER: 2

PHONE NUMBER: SENDER'S REFERENCE NUMBER:

RE: WAIVER AND CONSENT TO ORDER FOR ROBERT HERKOWSKI, case number: S-237857

☐ URGENT ☑ FOR REVIEW ☐ PLEASE COMMENT ☑ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

ATTACHED IS A COPY OF THE CONSENT TO ORDER FORM SIGNED BY MY CLIENT. THE ORIGINAL, ALONG WITH A COPY OF THE ORDER, WILL BE SENT BY HIM TO YOU IN THE MAIL.

IF YOU HAVE ANY QUESTIONS, PLEASE FEEL FREE TO CALL ME. THANK YOU.

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

In the matter of,

ROBERT HERKOWSKI,

Respondent.

WAIVER AND CONSENT TO ORDER

DFI Case No. S-237857 (EX)

The undersigned Respondent, ROBERT HERKOWSKI, having decided not to contest the issuance of the attached Order, hereby waives his right to a hearing with respect to this matter, including waiving findings of fact and conclusions of law as may otherwise be required for the Order, and hereby consents to the issuance of the Order.

Respondent hereby acknowledges that, in exchange for Respondent's voluntary consent and agreement to cease and desist from further violations of Ch. 551, revocation of certain exemptions, and other conditions as described in the attached Order, the Division agrees to forgo further legal action, including injunction proceedings in a circuit court pursuant to Wis. Stat. § 551.603, and to resolve this matter by issuance of the attached Order.

The undersigned Respondent understands and agrees that the attached Order shall prohibit Respondent from transacting any securities business in the State of Wisconsin and shall have the same prohibitory effect as a permanent injunction issued by a circuit court in accordance with Wis. Stat. § 551.603(2)(a).

The undersigned Respondent understands the Order, when signed by the Administrator of the Division of Securities, is effective on the date issued and that a willful violation of an Order signed by the Administrator is a criminal offense pursuant to Wis. Stat. § 551.508.

Robert Herkowski

ROBERT HERKOWSKI

State of Wisconsin)
County of Racine)
Subscribed before me this
31 day of January, 2018.

Thomas Baker
Notary Public

My commission is permanent/expires 1-22-2021

WISCONSIN NOTARY PUBLIC THOMAS BAKER