



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)
)
DOUGLAS BAGWELL; and)
DOUGLAS BAGWELL & CO., LLC,) Case No. AP-16-28
)
 Respondents.)

CONSENT ORDER

SUMMARY OF ENFORCEMENT SECTION’S ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division of the Office of Secretary of State (“Enforcement Section”), through Director of Enforcement Sandra J. McDowell, has alleged that Respondents Douglas Bagwell (“Bagwell”) and Douglas Bagwell & Co., LLC (“DBC”) violated Missouri securities laws when Bagwell: (a) sold unregistered securities to investors in DBC, (b) sold annuities without having an insurance license, and (c) failed to report a judgment in a timely manner. The Enforcement Section also alleged Respondent DBC violated Missouri securities laws when DBC’s website: (a) contained misrepresentations about the qualifications of Bagwell and about DBC’s advisory practice, and (b) advertised the sale of unregistered securities in DBC. Finally, the Enforcement Section alleged Respondents violated Missouri securities laws when DBC through Bagwell: (a) took loans from advisory clients, (b) made misrepresentations and/or omissions of material fact in a debt-to-equity conversion, and (c) maintained incomplete or inaccurate financial information. This constitutes grounds to issue an order pursuant to Section 409.6-604, RSMo. (Cum. Supp. 2013)¹.
2. Respondents and the Enforcement Section desire to settle the allegations and the matters raised by the Enforcement Section relating to the Respondents’ alleged violations of Sections 409.3-301; 409.4-402(a); 409.4-402(d); 409.4-406(b); 409.4-411(c)(1) and/or (3); 409.4-412(d)(2); 409.4-412(d)(13); 409.5-501; and 409.5-505, as well as 15 CSR 30-51.160(3)(A) and 15 CSR 30-51.172(G), (J), and/or (S).

¹ Unless otherwise noted, all statutory references are to the 2013 cumulative supplement to the Revised Statutes of Missouri.

CONSENT TO JURISDICTION

3. Respondents and the Enforcement Section stipulate and agree that the Missouri Commissioner of Securities (“Commissioner”) has jurisdiction over the Respondents and these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, *et seq.*
4. Respondents and the Enforcement Section stipulate and agree that the Commissioner has authority to enter this Order pursuant to Section 409.6-604(h), which provides:

“The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act.”

WAIVER AND EXCEPTION

5. Respondents waive Respondents’ rights to a hearing with respect to this matter.
6. Respondents waive any rights that Respondents may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondents specifically forever release and hold harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner, and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter.
7. Respondents stipulate and agree with the Enforcement Section that, should the facts contained herein prove to be false or incomplete in a material way, the Enforcement Section reserves the right to pursue any and all legal or administrative remedies at its disposal.

CONSENT TO COMMISSIONER’S ORDER

8. Respondents and the Enforcement Section stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
9. Respondents agree not to take any action or to make or permit to be made any public statement creating the impression that this Order is without factual basis. Nothing in this paragraph affects Respondents’ (a) testimonial obligations; (b) right to take legal or factual positions in connection with litigation, arbitration, or other legal proceeding in which the Commissioner is not a party; or (c) right to make public statements that are factual.
10. Respondents agree that Respondents are not the prevailing party in this action since the parties have reached a good faith settlement.
11. Respondents neither admit nor deny the allegations made by the Enforcement Section, but consent to the Commissioner’s Findings of Fact, Conclusions of Law, and Order as set

forth below solely for the purpose of resolving this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.

12. Respondents and the Enforcement Section agree that the Enforcement Section is no longer pursuing violations other than the multiple violations of post registration requirements of failing to keep books and records as required by Section 409.4-411(c)(1) and (3) and/or materially aiding in the violations thereof as to DBC and Bagwell.
13. All issues through the date of this Consent Order have been resolved with Respondents, and the current audit and investigation is being closed with this Consent Order. No further audits or investigations will take place by the Missouri Securities Division for the same time periods at issue during this audit and investigation. This Consent Order only applies to Respondents Bagwell and DBC and not to DouglasBagwell Corp (“DB Corp”).

COMMISSIONER’S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

I. FINDINGS OF FACT

14. DBC has been a Missouri registered investment adviser (“IA”) since August 30, 2005, and has an address of 2200 East Sunshine Street, Suite 324, Springfield, Missouri 65804. DBC is registered in Missouri through the Central Registration Depository (“CRD”) with number 134485.
15. Bagwell filed an application for registration as an investment adviser representative (“IAR”) in Missouri on May 11, 2005, and has been a Missouri registered IAR with DBC since August 30, 2005. Bagwell maintains a business address of 2200 East Sunshine Street, Suite 324, Springfield, Missouri 65804, and a residential address of 3924 North Broadway Avenue, Springfield, Missouri 65803. Bagwell is registered in Missouri through the CRD with number 4219659.
16. DB Corp is a general business – for profit formed on September 23, 2009, and is in good standing. DBC was formed by DB Corp in March 2012, but split from DB Corp and began keeping separate books in January 2016.
17. Bagwell is the Chief Executive Officer and Chairman of the Board of DBC.
18. BKD, LLP (“BKD”) is an accounting and advisory company headquartered in Springfield, Missouri.
19. On April 30, 2012, the Securities Division’s Exams Section conducted an unannounced examination of DBC. During the examination of the books and records of DBC, the Exams Section believed that DBC failed to generate and retain true, accurate and current financial records relating to its advisory business, as represented by the following inconsistencies,

among others:

- a. Bagwell omitted information from the Exams Section about investors in DBC;
 - b. DBC's financials overstated DBC's assets and did not include depreciation of assets in accordance with Generally Accepted Accounting Principles ("GAAP");
 - c. Bagwell listed a rental house, not titled in the name of DBC, as an asset of DBC on DBC's financial documents but not as a liability, which was not in accordance with GAAP; and
 - d. Bagwell did not list two DBC mortgages, which understated DBC's liabilities.
20. On October 12, 2012, Bagwell provided a response to the Exams Section's request for more information. In his letter, Bagwell admitted to the following errors regarding the financial statements provided during the exam:
- a. certain capital contributions to DBC were categorized incorrectly;
 - b. banking records were incorrectly downloaded;
 - c. depreciation was not accurately reflected on the financials;
 - d. retained earnings reflected progressive declines when actual results may have been positive;
 - e. bank accounts were opened using an incorrect tax identification number; and
 - f. cash contributions to the firm by Bagwell may have been classified incorrectly.
21. Bagwell re-calculated his financial statements, which showed that DBC's net worth (assets minus his liabilities) equaled *negative* \$10,307.93 for 2012. Bagwell informed the Exams Section that he would be converting debt to equity to cure his negative net worth.
22. DBC through Bagwell engaged the services of BKD to help revise DBC's financial statements. The scope of BKD's services were limited in such a way that BKD's name was not permitted to be associated with DBC's "internal financial statements" and BKD's services were "not intended to be an audit, review or compilation of financial statements in accordance with standards issued by the American Institute of Certified Public Accountants."
23. In addition to the Exams Section request for compliant financial reports, the Enforcement Section requested financial statements from DBC in compliance with GAAP on at least two other occasions, June 22, 2015, and January 5, 2016.

24. DBC gave conflicting representations to the Enforcement Section by stating that DBC's accounting method "was confirmed and continued by BKD". However, on a later occasion, DBC represented that BKD would not certify the financials submitted to the Exams and Enforcement Sections since BKD "was not retained to perform an audit to prepare audited financial statements." Under those circumstances, BKD's position was that it could not associate its name with the statements. Equally, BKD stated that GAAP standards do not apply to its work because those standards are triggered only where more formal action such as an audit is performed.
25. Despite multiple requests from the Exams and Enforcement Sections, neither has been able to obtain certified, GAAP-compliant financial statements from DBC in the last four years.
26. Neither the Exams Section nor the Enforcement Section believed they were given adequate supporting documents to justify DBC's characterization and valuation of a rental property on its balance sheet. DBC submitted three different documents showing the residence as either being purchased by DBC for \$1, being leased to DBC, or being the subject of a lease with an option to purchase agreement.
27. In explaining how the property was valued, DBC informed the Enforcement Section that there "is no appraisal or independent valuation of the property. KPM CPA ("KPM") assisted in the initial valuation of the property at \$124,500, \$20,000 of which was allocated to the land and \$104,500 to the property." DBC did not explain how KPM "assisted" in the "initial valuation."
28. Section 409.4-411(c)(1) and (3) imposes a duty on DBC to keep and maintain adequate records of the accounts, correspondence, memoranda, papers, books, and other records required by rule adopted or order issued under this act. 15 CSR 30-50.010, 15 CSR 30-50.040, and 15 CSR 30-51.140(B) and (F) further explain the types of records that DBC was required to keep under Section 409.411(c)(1) and (c)(3). As interpreted by the Enforcement Section, these provisions required that DBC keep financial statements that are certified by an independent certified public accountant in accordance with GAAP.
29. Pursuant to 15 CSR 30-51.040(1), Investment Advisers registered in Missouri are required to keep financial statements that are certified unless otherwise prescribed hereinafter or permitted by the commissioner. In addition, under 15 CSR 30-5.010(1)(f), certified means, when used in connection with financial statements, certified by an independent certified public accountant in accordance with GAAP.
30. Failure to maintain adequate records and failure to produce GAAP-compliant financial statements constitutes multiple violations of 409.4-411(c)(1) and (c)(3) and/or constitutes multiple violations of materially aiding in violations of 411(c)(1) and (c)(3). Violations of 409.411(c)(1) and (c)(3) are subject to the Commissioner's authority under Sections 409.6-604 and 409.6-605.

II. CONCLUSIONS OF LAW

31. The Commissioner finds Respondents violated Missouri securities laws when DBC through Bagwell: (a) failed to keep required books and records, and (b) maintained incomplete or inaccurate financial information. This constitutes grounds to issue an order pursuant to Section 409.6-604, and this course of conduct constitutes grounds to discipline Respondents pursuant to Section 409.6-604(a).
32. The Commissioner, after consideration of the stipulations set forth above and on the consent of Respondents and the Enforcement Section, finds and concludes that the Commissioner has jurisdiction over Respondents and this matter and that the following Order is in the public interest, necessary for the protection of public investors and consistent with the purposes intended by Chapter 409.

III. ORDER

NOW, THEREFORE, it is hereby Ordered that:

33. Respondent DBC shall have financial statements certified by a certified public accountant annually with the first certified financial statement on hand for Fiscal Year Ending December 31, 2017, by March 31, 2018.
34. These certified financial statements shall be maintained by Respondent DBC and if the Enforcement Section requests a copy of the financial statements, Respondents shall provide them to the Enforcement Section immediately upon request. After reviewing the financial statements, the Enforcement Section shall immediately return them to Respondents or immediately destroy copies of them after reviewed.
35. The financial statements shall be:
 - a. prepared in conformity with generally accepted accounting principles;
 - b. certified by a certified public accountant; and
 - c. accompanied by an opinion of the accountant as to the report of the financial positions, by a note stating the principles used to prepare the financial statements, and any other explanations required for clarity.
36. Respondents shall pay, jointly and severally, \$3,000 to the Investor Education and Protection Fund. This payment shall be sent within thirty (30) days of the effective date of this Consent Order to the Securities Division at 600 West Main Street, Jefferson City, Missouri, 65101, and shall be made payable to the Missouri Secretary of State's Investor Education and Protection Fund.

37. Respondents shall pay, jointly and severally, \$1,000 for the cost of this investigation. This payment shall be sent within thirty (30) days of the effective date of this Consent Order to the Securities Division at 600 West Main Street, Jefferson City, Missouri, 65101, and shall be made payable to the Missouri Secretary of State's Investor Education and Protection Fund.
38. Respondents shall pay their own costs and attorney's fees with respect to this matter.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,

MISSOURI THIS 16th DAY OF May, 2017.



JOHN R. ASHCROFT
SECRETARY OF STATE


DAVID M. MINNICK
COMMISSIONER OF SECURITIES

Consented to by:

THE ENFORCEMENT SECTION OF THE
MISSOURI SECURITIES DIVISION

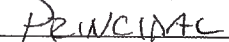


Sandra J. McDowell
Director of Enforcement
Counsel for Petitioner

DOUGLAS BAGWELL AND DOUGLAS
BAGWELL & CO., LLC

BY:  _____

NAME:  _____

TITLE:  _____

Approved as to Form:



Lowell Pearson
Laura Robinson
Husch Blackwell LLP
Attorneys for Respondents