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3 STATE OF OREGON
4 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
5 DIVISION OF FINANCIAL REGULATION

6 In the Matter of:

7 WILLIAM J. KUHN D/B/A
8 INVEST/O – REGISTERED
9 INVESTMENT ADVISORS,

10 (IA-307, IARD #156818, CRD
11 #5899238)

12 Respondent.

DFR Case No. S-18-0111
OAH Case No. 2018-ABC-02253

FINAL ORDER TO CEASE AND
DESIST; FINAL ORDER TO
CANCEL STATE INVESTMENT
ADVISER LICENSE; AND FINAL
ORDER TO CANCEL
INVESTMENT ADVISER
REPRESENTATIVE LICENSE

13 HISTORY OF THE CASE

14 On October 31, 2018, the Department of Consumer and Business Services,
15 Division of Financial Regulation, (Department)¹ issued William J. Kuhn a notice,
16 proposing to cancel the state investment adviser license issued to him for his business
17 Invest/O Registered Investment Advisors (Invest/O) and the licensees of any of its
18 salespersons. On November 27, 2018, Mr. Kuhn requested a hearing.

19 On December 3, 2018, the Department issued Mr. Kuhn an Amended Order to
20 Cease and Desist, Proposed Order to Cancel State Investment Adviser and Investment
21 Adviser Representative Licenses, and Notice of Right to Administrative Hearing.

22 On December 4, 2018, the Department referred the matter to the Office of
23 Administrative Hearings (OAH). On December 31, 2018, the OAH assigned the matter
24 to Administrative Law Judge (ALJ) Samantha Fair. On January 2, 2019, ALJ Fair issued
25 a letter to the parties and set January 14, 2019, as the deadline for submission of witness
26 lists and exhibits. On January 9, 2019, the Department submitted its witness list and

¹ The Department of Consumer and Business Services includes the Division of Financial Regulation. (Test. of Anderson.) The designation of “Department” is used to encompass both entities in this Order.



1 exhibits.

2 On January 24, 2019, ALJ Fair convened a hearing in Salem, Oregon. Mr. Kuhn
3 appeared and testified. The Department appeared and was represented by Senior
4 Assistant Attorney General Joanna Tucker Davis. Also appearing on behalf of the
5 Department was Caroline Smith, a financial enforcement officer for the Department.²
6 Testifying on behalf of the Department was Kirsten Anderson, the licensing manager for
7 the Department. The record closed on January 24, 2019, at the conclusion of the hearing.

8 ALJ Fair issued a Proposed Order on February 1, 2019.

9 The deadline for Mr. Kuhn to file exceptions to the ALJ's Proposed Order was
10 March 4, 2019. The Department did not receive any exceptions from Mr. Kuhn.

11 The Director of the Department of Consumer and Business Services ("the
12 Director"), acting under the Oregon Securities Law, Oregon Revised Statutes ("ORS")
13 59.005 to 59.451, 59.991 and 59.995, and Oregon Administrative Rules ("OAR")
14 Chapter 441, adopts the findings of fact and conclusions of law of ALJ Fair, subject to
15 changes in certain terminology used in the Issues section and the Conclusions of Law
16 section of the ALJ's Proposed Order. In the Issues section and in the Conclusions of Law
17 section, the Director has changed "state investment license" to "state investment adviser
18 license" and has changed "state investment representative license" to "investment adviser
19 representative license", in order to consistently use the terms "state investment adviser"
20 and "investment adviser representative" defined in ORS 59.015(20)(a) and ORS
21 59.015(8)(a), respectively. The Director issues the following Findings of Fact,
22 Conclusions of Law, and Final Orders:

23 ISSUES

24 1. Whether the Department must cancel the state investment adviser
25 license issued to Mr. Kuhn dba Invest/O. ORS 59.175(5) and ORS 59.225(1).

26 ² Two other Department employees were present during the hearing for observation purposes only.





1 for Invest/O, Mr. Kuhn also holds an Oregon investment adviser representative license.
2 (Ex. A2 at 1; test. of Anderson.) Mr. Kuhn and his business Invest/O are not licensed as
3 broker-dealers. (Test. of Anderson.)

4 3. On June 22, 2018, the Department sent an email to Mr. Kuhn and informed
5 him that the Oregon Legislature amended the licensing requirements for investment
6 adviser firms to require such firms to maintain an errors and omissions insurance policy
7 of at least \$1 million, which had to be secured by July 31, 2018. (Ex. A1 at 8, 20.)

8 4. On October 31, 2018, the Department sent Mr. Kuhn a notice and informed
9 him that it had no records showing that Invest/O had an errors and omissions insurance
10 policy. In the notice, the Department further advised Mr. Kuhn that Invest/O's state
11 investment adviser license and the licenses of any individuals associated with Invest/O's
12 license would be cancelled unless Invest/O provided the Department an errors and
13 omissions insurance policy no later than November 30, 2018. (Ex. A1 at 8, 13.) As of
14 January 23, 2019, the Department has never received proof of any errors and omissions
15 insurance policy for Invest/O. (Id. at 11; test. of Anderson.)

16 5. Mr. Kuhn received quotes of approximately \$2,000 per year to purchase an
17 errors and omissions insurance policy in Oregon. There are other states where such
18 policies would cost approximately \$500 per year if his principal place of business was in
19 those states. Mr. Kuhn did not obtain, and has no plans to obtain, an errors and omissions
20 insurance policy for Invest/O. (Test. of Kuhn.)

21 CONCLUSIONS OF LAW

22 The Director CONCLUDES that:

23 1. The Department must cancel the state investment adviser license issued to Mr.
24 Kuhn dba Invest/O.

25 2. The Department must cancel the investment adviser representative license
26 issued to Mr. Kuhn.



1 authorized to transact insurance in this state or from any other insurer approved by
2 the director according to standards established by rule.

3 (b) A licensed broker-dealer subject to section 15 of the Securities Exchange Act
4 of 1934, as amended, is not required to comply with paragraph (a) of this
5 subsection.

6 (c) A licensed state investment adviser who has its principal place of business in a
7 state other than this state is exempt from the requirements of paragraph (a) of this
8 subsection.

9 OAR 441-175-0185 provides, in part:

10 (1) Investment advisors and broker-dealers subject to ORS 59.175 must submit
11 proof of insurance to the division as a condition of licensure and annual renewal.

12 (2) Proof of insurance may be demonstrated by submitting to the division an
13 attestation of compliance on a form approved by the Director and a policy
14 declaration page or a certificate of liability coverage specifying errors and
15 omissions coverage[.]

16 Invest/O is an Oregon-licensed state investment adviser. As such, it is required to
17 file with the Department proof that it maintains an errors and omissions insurance policy
18 unless an exemption applies. Invest/O is not licensed as a broker-dealer. Invest/O's
19 principal place of business is in Bend, Oregon. Therefore, the exemptions provided in
20 ORS 59.175(5)(b) and (c) are not applicable to Invest/O. Invest/O is required to maintain
21 an errors and omissions insurance policy in an amount of at least \$1 million and provide
22 proof of this insurance policy to the Department.

23 The Department has never received proof of any errors and omissions insurance
24 policy for Invest/O. Mr. Kuhn, the sole owner and operator of Invest/O, never obtained
25 such an insurance policy and has no plans to do so. Therefore, Invest/O, and Mr. Kuhn
26 as its sole proprietor, is in violation of ORS 59.175(5) and OAR 441-175-0185(1), for
failing to maintain and provide proof of such a policy.

In his request for hearing and during the hearing, Mr. Kuhn sought a waiver of the
requirement to maintain the errors and omissions insurance policy. He noted that he is a
sole proprietor with a limited client base of less than \$25 million in assets. Mr. Kuhn

1 pointed out his long history of providing satisfactory investment adviser services to his
2 limited clients without a history of any complaints filed against him. He credibly
3 asserted that such a history demonstrates his exceptional knowledge of investments and
4 his skill in providing such services. He argued that such factors should be considered in
5 determining the need for an errors and omissions insurance policy and the amount of the
6 insurance policy. However, as pointed out by the Department, the Oregon legislature did
7 not provide the Department any discretion in waiving or modifying the requirement for
8 the errors and omissions insurance policy. ORS 59.175(5)(a) mandates that a state
9 investment adviser shall provide the Department proof of an errors and omissions
10 insurance policy in an amount of no less than \$1 million. Other than the two exceptions
11 contained in ORS 59.175(5)(b) and (c), neither of which are applicable in this case, state
12 investment advisers must maintain such insurance policies regardless of their size, their
13 complaint history, their experience, or the financial burden the costs of the policies may
14 impose on the advisers.

15 ORS 59.225 provides, in part:

16 (1) If the Director of the Department of Consumer and Business Services finds
17 that an applicant or licensee has ceased to do business as a broker-dealer, state investment
18 adviser, investment adviser representative or salesperson, or has failed to maintain a bond
19 or other security required by ORS 59.175 (4), or has failed to maintain an errors and
20 omissions insurance policy required by ORS 59.175 (5), or is subject to an adjudication
of mental incompetence or to the control of a conservator or guardian, or cannot be
located after reasonable search, the director may cancel the license or application.

21 * * * * *

22 (4) The suspension of a license of a broker-dealer or state investment adviser shall
23 suspend the license of any salesperson of the broker-dealer or the license of any
24 investment adviser representative of the state investment adviser. The revocation,
25 cancellation, withdrawal or expiration of a license of a broker-dealer or state investment
26 adviser shall cancel the license of any salesperson of the broker-dealer or the license of
any investment adviser representative of the state investment adviser[.]

ORS 59.225(1) indicates that the director “may” cancel a license for a variety of



1 Invest/O and Mr. Kuhn violated, and intends to continue violating, ORS 59.175(5) and
2 OAR 441-175-0185(1). The Department did not allege or prove that Invest/O or Mr.
3 Kuhn violated any other provisions of the Oregon Securities Law. Therefore, pursuant to
4 ORS 59.245(4), the Department may issue an order to Invest/O and Mr. Kuhn to cease
5 and desist from any further violations of ORS 59.175(5) and OAR 441-175-0185(1), the
6 statute and administrative rule that were violated.

7
8 FINAL ORDERS

9 The Director issues the following FINAL ORDERS:

10 4. Under ORS 59.245(4), Respondent is ORDERED to CEASE AND DESIST
11 from:

12 A. Failing to maintain an E & O insurance policy required by ORS 59.175(5);

13 and

14 B. Failing to provide the Division with proof of coverage for the required E & O
15 insurance policy, as required by OAR 441-175-0185(1).

16 5. The Director hereby cancels the state investment adviser license of Invest/O,
17 under ORS 59.225(1), because Invest/O violated ORS 59.175(5) by failing to maintain an
18 E & O insurance policy, and because Invest/O violated OAR 441-175-0185(1), by failing
19 to provide the Division proof of coverage for the required E & O insurance policy.

20 6. The Director hereby cancels the investment adviser representative license of
21 William J. Kuhn, under ORS 59.225(4), because the Director is cancelling the state
22 investment adviser license of Invest/O.

23 SO ORDERED this 1st day of April, 2019.

24 CAMERON C. SMITH, Director
25 Department of Consumer and Business Services

26 /s/ Dorothy Bean

Dorothy Bean, Chief of Enforcement
Division of Financial Regulation



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NOTICE OF RIGHT TO JUDICIAL REVIEW

You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review is in accordance with ORS 183.482(1) to the Oregon Court of Appeals.

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