

**STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION**

IN THE MATTER OF:

DEREK NEAL YORK

RESPONDENT

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**ADMINISTRATIVE ORDER
NO. CD 2014-0002**

CEASE AND DESIST ORDER

The Alabama Securities Commission ("Commission"), having the authority to administer and provide for the enforcement of all provisions of Title 8, Chapter 6, Code of Alabama 1975, the Alabama Securities Act ("Act"), upon due consideration of the subject matter hereof, and having confirmed information of the offers for sale and/or sale of securities into, within or from the state of Alabama, has determined as follows:

RESPONDENT

1. **DEREK NEAL YORK ("YORK")** is an Alabama resident with a residential address of 230 Peteet St., Rainbow City, Alabama, 35906. He is not currently registered with the Commission in any capacity.

STATEMENT OF FACTS

2. According to the Central Registration Depository (CRD), **YORK** (CRD # 5798549) was a Financial Advisor with Edward Jones from June 1, 2010 to March 9, 2011, a Financial Service Representative with MetLife Securities from April 18, 2011 to April 6, 2012, Registered Representative with LPL Financial, LLC (LPL) from March 30, 2012 to October 10, 2012 and Investment Advisor Representative with Independent Financial Partners from March 30, 2012 to September 4, 2012.

3. On or about October 9, 2012, **YORK** solicited an Alabama resident

("investor") to invest money into a Real Estate Investment Trust (REIT) that was purportedly sponsored by Cole Capital Corporation (Cole). **YORK** represented that he was an investment advisor for LPL and had access to the Cole sponsored REIT through his firm. Originally, the investor agreed to transfer funds of approximately \$20,000 that were held in a pension from a previous employer to **YORK**. The investor requested the transfer documents from the previous employer and provided them to **YORK** to effect the transaction. **YORK** contacted the investor and conveyed the Cole sponsored fund named "Multi-Family Real Return IV" had a minimum investment of \$35,000. Thereafter, on or about October 26, 2012, the investor sent **YORK** a check payable to **YORK** in the amount of \$15,000.

4. In January 2013, the investor requested that **YORK** provide a summary statement detailing the performance of the investment. **YORK** emailed the investor an account statement indicating an investment had been made into a "Cole sponsored fund named "Multi-Family Real Return IV" with a principal investment of \$35,000 and incurring an 18.7% return creating a total balance of \$41,560."

5. The investor made several attempts to contact **YORK** via e-mail or telephone calls concerning the investment of his funds which were never answered and/or acknowledged.

6. In November 2013, the investor called Cole to inquire about the status of his investment and to obtain a good contact number for **YORK**. Cole conveyed they had no record of the investor's name and/or the Cole sponsored fund named "Multi-Family Real Return IV". The investor sent a copy of the account statement that was provided by **YORK** to Cole for verification. Cole indicated to the investor that the account statement and the Cole sponsored fund named "Multi-Family Real Return IV" security was fictitious.

7. In November 2013, the investor made contact with **YORK** via telephone and demanded his funds be returned. As of November 26, 2013, the investor was still waiting on a response from **YORK**.

8. During the Commission's investigation, Jim Siegel, the Chief Compliance Officer of Cole, confirmed to the Commission that Cole had no record of the investor ever owning shares of any product offered by Cole. Additionally, Mr. Siegel verified the fund named "Multi-Family Real Return IV" was not a Cole product offering, the account statement provided to the investor was falsified and that Cole had no record of **YORK** selling any Cole product offering. Additionally, the Commission staff contacted LPL's Legal Staff and corresponded with Scott Aubrey, Sr. Regulatory Analyst. Mr. Aubrey indicated that **YORK** had been terminated from LPL for non production in November 2012 and never sold a Cole sponsored product through his affiliation with LPL.

CONCLUSIONS OF LAW

9. Pursuant to Section 8-6-2(10), Code of Alabama 1975, Alabama's statutory definition of a security includes certificate of participation, investment contract, share, etc. **YORK** represented that investor funds would be invested in a Cole sponsored fund named "Multi-Family Real Return IV". The represented investment is a security under the Act.

10. Section 8-6-4, Code of Alabama 1975 states: It is unlawful for any person to offer or sell any security in this state unless it is registered under the Act; the security is exempt from registration under Section 8-6-10; or the transaction is exempt under Section 8-6-11. The security offered and sold by **YORK**, to wit; the represented investment in the Cole sponsored fund named "Multi-Family Real Return IV" as represented by **YORK**, was neither registered nor exempt from registration in Alabama in violation of the Act.

11. Pursuant to Section 8-6-17(a), Code of Alabama 1975, it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to: Employ any device, scheme, or artifice to defraud, make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in light of the circumstances under which they are made, not misleading; or engage in any act, practice or course of business which operates or

would operate as a fraud or deceit upon any person. **YORK** sold a security in the state of Alabama under a scheme to defraud in violation of the Act.

This Order is appropriate in the public interest for the protection of investors and consistent with the purposes of the Alabama Securities Act.

This Order does not prevent the Commission from seeking such other civil or criminal remedies that may be available to it under the Alabama Securities Act.

Additionally, if the allegations set forth herein are found to be true, through either administrative adjudication, failure of the **RESPONDENT** to make a timely request for hearing, or default of the **RESPONDENT**, it is the intention of the Commission to impose sanctions upon the **RESPONDENT**. Such sanctions may include, inter alia, an administrative assessment imposed on **RESPONDENT**, an additional administrative assessment for investigative costs arising from the investigation of the violation(s) described herein against **RESPONDENT**, and a permanent order to bar **RESPONDENT** from participation in any securities related industry in the state of Alabama.

ACCORDINGLY, IT IS HEREBY ORDERED that **RESPONDENT** immediately **CEASE AND DESIST** from further offers or sales of any security into, within or from the state of Alabama.

Entered at Montgomery, AL, this 13th day of February, 2014.



ALABAMA SECURITIES COMMISSION
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BY:


Joseph P. Borg
Director