

**ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND**

IN THE MATTER OF:	*	No. 2004-0682
NIGEL HOWSE	*	
Respondent.	*	
	* * *	

ORDER TO SHOW CAUSE

WHEREAS, the Securities Division of the Office of the Attorney General (the "Securities Division") initiated an investigation into the activities of Nigel Howse ("Howse" or "Respondent") and his now-defunct company, Hygiene Services Corporation ("HSC"); and

WHEREAS, the Maryland Securities Commissioner (the "Securities Commissioner") has found that grounds exist to allege that Respondent violated the Maryland Securities Act, contained at Md. Code Ann., Corps. and Ass'ns, §§11-101 *et seq.* (1999 Repl. Vol. & Supp. 2004) (the "Securities Act"), by engaging in acts or practices constituting violations of the Securities Act.

NOW, THEREFORE, pursuant to §11-701 of the Securities Act, pending a hearing in this matter or until such time as the Securities Commissioner modifies or rescinds this Order, it is hereby:

ORDERED, that Respondent show cause why a final order should not be entered against him, ordering that Respondent be barred permanently from engaging in the securities and investment advisory business in Maryland, that a monetary penalty be entered against him, and that he cease and desist from further violation of §§11-301, 11-302, 11-401, and 11-501 of the Securities Act.

The Securities Commissioner alleges the following as a basis for this Order:

I.

JURISDICTION

1. The Securities Commissioner has jurisdiction in this proceeding pursuant to § 11-701 of the Securities Act.

II.

RESPONDENT

2. Howse is a resident of Reisterstown, MD.

3. Howse is not now, nor has he ever been, registered in Maryland as an issuer agent, broker-dealer agent, or investment adviser or investment adviser representative.

III.

STATEMENT OF FACTS

4. Howse became acquainted with Sharon Rose of Kingsville, Maryland because he was a patron at her hair salon business. In or about June 2001, Howse solicited Ms. Rose to invest money in HSA.

5. Mr. Howse suggested to Ms. Rose that because of an impending deal, an investment in HSA would be profitable. In reliance upon Mr. Howse's representations regarding the investment, Ms. Rose invested a total of \$130,000 through a series of payments to Mr. Howse.

6. Mr. Howse provided Ms. Rose with receipts totaling \$130,000 for the monies representing her investment. He also sent letters to Ms. Rose and her attorney, verifying her investment in HSA.

7. In July 2002, Mr. Howse represented to Ms. Rose in a letter that she owned one third of HSA's outstanding shares, and that her investment was worth \$100,000.

8. In August 2004, Mr. Howse mailed Ms. Rose's attorney an HSA stock certificate reflecting Ms. Rose's ownership of 1,666 shares of HSA.

9. Notwithstanding Mr. Howse's representations regarding HSA's stock value, according to Maryland State Department of Assessments and Taxation records, in October 2003 HSA's corporate charter was forfeited.

10. After making her investment in HSA, Ms. Rose was further informed of the worthlessness of her investment by Mr. Howse's wife, Leslie Howse, who advised Ms. Rose that Mr. Howse used her money to pay personal expenses.

11. Before Ms. Rose invested in HSA, Mr. Howse did not provide her with any disclosure documents, nor did he provide her with any information regarding the risks relating to the investment.

COUNT I

(Offer and Sale of Unregistered Securities - Section 11-501)

WHEREAS, Section 11-501 of the Securities Act makes it unlawful for any person to offer or sell a security in this State unless the security is registered, exempt from registration under Subtitle 6 of the Securities Act, or qualifies as a federal-covered security; and

WHEREAS, Respondent offered and sold investments in his company HSA;

WHEREAS, Section 11-101(r) of the Securities Act broadly defines the term "security" to include those investments listed at (1)(i) through (1)(xvi); and

WHEREAS, Section 11-101(r)(1)(ii) defines stock as a security; and

WHEREAS, Section 11-101(r)(1)(vi) of the Securities Act defines evidence of indebtedness as a security; and

WHEREAS, Section 11-101(r)(1)(xi) of the Securities Act defines an investment contract as a security; and

WHEREAS, Section 11-101(r)(1)(xvi) defines any “[c]ertificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the preceding” definitions listed in 11-101(r)(1)(i) through 11-101(r)(1)(xvi) as a security; and

WHEREAS, the investments described herein constitute stock, evidences of indebtedness, investment contracts, or, in the alternative, another classification of security contained in Section 11-101(r) of the Securities Act; and

WHEREAS, the securities offered and sold by Respondent were not registered with the Division, nor was a claim of exemption from registration or a claim that the securities are federal-covered securities filed with respect to the offerings; and

WHEREAS, Respondent has offered and sold securities in violation of the registration requirements of Section 11-501 of the Securities Act.

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondent cease and desist from offering and selling securities investments in or from Maryland, pending a hearing in this matter or until such time as the Securities Commissioner modifies or rescinds this Order. Willful violation of this Order could result in criminal penalties under Section 11-705 of the Securities Act; and it is further

ORDERED that Respondent show cause why a final order should not be issued against him that orders Respondent to cease and desist from further violation of Section 11-501 of the Securities Act, assesses Respondent the statutory penalty of \$5,000 per violation of Section 11-501, permanently bars Respondent from the securities and investment advisory business in Maryland and orders any other sanction or combination of sanctions against Respondent as permitted under Section 11-701.1.

COUNT II

(Broker-Dealer/Agent Registration Violation; Section 11-401)

WHEREAS, Section 11-401 of the Securities Act makes it unlawful for any person to transact business in the offer and sale of securities in this State as an agent unless that person is registered as an agent; and

WHEREAS, the Securities Act defines “broker-dealer” to mean a person engaged in the business of effecting transactions in securities for the account of others or for his own account; and

WHEREAS, the Securities Act defines “agent” to mean an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect the purchase or sale of securities; and

WHEREAS, Respondent has transacted business as a broker-dealer or agent in this State by effecting securities transactions while Respondent was not registered with the Division as a broker-dealer or agent, in violation of Section 11-401 of the Securities Act.

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondent cease and desist from acting as an unregistered broker-dealer or agent, pending a hearing in this matter or until such time

as the Securities Commissioner modifies or rescinds this Order. Willful violation of this Order could result in criminal penalties under Section 11-705 of the Securities Act; and it is further

ORDERED that Respondent show cause why a final order should not be issued against him that orders Respondent to cease and desist from further violation of Section 11-401's broker-dealer/agent registration provisions, assesses Respondent the statutory penalty of \$5,000 per violation of Section 11-401's broker-dealer/agent registration provisions, permanently bars Respondent from the securities and investment advisory business in Maryland and orders any other sanction or combination of sanctions against Respondent as permitted under Section 11-701.1.

COUNT III

(Investment Adviser/Investment Adviser Representative Registration Violation; Section 11-401)

WHEREAS, Section 11-401 of the Securities Act makes it unlawful for any person to transact business in the offer and sale of securities in this State as an investment adviser or investment adviser representative unless that person is registered as such; and

WHEREAS, the Securities Act defines “investment adviser” to mean a person who engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities; and

WHEREAS, the Securities Act further defines “investment adviser” to mean a person who provides or offers to provide, directly or indirectly, financial advice and investment counseling or

advice, on a group or individual basis; gathers information relating to investments, establishes financial goals and objectives, processes and analyzes the information gathered, and recommends a financial plan; or holds himself out as an investment adviser in any way, including indicating by advertisement, card or letterhead, or in any other manner that he is, a financial or investment “planner”, “counselor”, “consultant”, or any other similar type of adviser or consultant; and

WHEREAS, the Securities Act defines “investment adviser representative” to mean any partner, officer, director of (or a person occupying a similar status or performing similar functions) or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who: makes any recommendations or otherwise renders advice regarding securities to clients; manages accounts or portfolios of clients; determines which recommendation or advice regarding securities should be given with respect to a particular client account; solicits, offers or negotiates for the sale of or sells investment advisory services, directly supervises employees who perform any of the foregoing; or any other person as the Securities Commissioner designates by rule or order; and

WHEREAS, Respondent transacted business as an investment adviser or investment adviser representative in this State by advising an individual regarding securities, and by recommending investments to an individual; and

WHEREAS, Respondent transacted business as an investment adviser in this State while not registered with the Division as an investment adviser or investment adviser representative, in violation of Section 11-401 of the Securities Act.

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondent cease and desist from offering and selling securities investments in or from Maryland, pending a hearing in this matter or

until such time as the Securities Commissioner modifies or rescinds this Order. Willful violation of this Order could result in criminal penalties under Section 11-705 of the Securities Act; and it is further

ORDERED that Respondent show cause why a final order should not be issued against him that orders Respondent to cease and desist from further violation of Section 11-401's investment adviser registration provisions, assesses Respondent the statutory penalty of \$5,000 per violation of Section 11-401's investment adviser registration provisions, permanently bars Respondent from the securities and investment advisory business in Maryland and orders any other sanction or combination of sanctions against Respondent as permitted under Section 11-701.1.

COUNT IV

(Fraud in Connection with the Offer or Sale of Securities, §11-301)

WHEREAS, §11-301 of the Securities Act makes it unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly to:

- (1) employ any device, scheme or artifice to defraud;
- (2) make any untrue statement of a material fact or 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; or
- (3) engage in any act, practice or course of business which operates or would operate as a fraud or deceit on any person; and

WHEREAS, Respondent employed a device, scheme or artifice to defraud by advising that Ms. Rose purchase unregistered, non-exempt securities that are not federal-covered securities without disclosing that the investments were being offered and sold in violation of applicable

securities laws; and

WHEREAS, Respondent made untrue statements of material fact including but not limited to claims regarding the nature of the investments he recommended and the opportunity to profit from the purchase of those investments; and

WHEREAS, by recommending the purchase of unregistered, non-exempt securities that are not federal-covered securities and by making misrepresentations and omissions of material fact in the course of those recommendations, Respondent engaged in activities that operated as a fraud or deceit upon investors; and

WHEREAS, Respondent failed to disclose material facts, including but not limited to facts concerning Respondent's lack of registration as a broker-dealer, issuer agent or investment adviser.

NOW, THEREFORE, IT IS HEREBY **ORDERED**, that Respondent show cause why a final order should not be issued against him that orders Respondent to cease and desist from engaging in the offer and sale of securities in violation of the antifraud provisions of §11-301 of the Securities Act, assesses Respondent the statutory penalty of \$5,000 per violation, permanently bars Respondent from engaging in the securities and investment advisory business in Maryland and orders any other sanction or combination of sanctions against Respondent as permitted under §11-701.1.

COUNT V

(Fraud in Connection with Investment Advisory Activities, §11-302)

WHEREAS, Section 11-302 of the Securities Act makes it unlawful for any person who acts as an investment adviser or representative under Section 11-101(f) or (g) of the Securities Act to:

- (1) employ any device, scheme or artifice to defraud;

- (2) engage in any act, practice or course of business which operates or would operate as a fraud or deceit on the other person;
- (3) engage in dishonest or unethical practices as the Commissioner may define by rule; or course of business which operates or would operate as a fraud or deceit on any person;
- (4) when acting as principal for his own account knowingly sell any security to or purchase any security from a client, or when acting in an agency capacity for a person other than the client knowingly effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction; or
- (5) knowingly make any untrue statement of a material fact or 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; and

WHEREAS, Code of Maryland Regulations (“COMAR”) 02.02.05.03B sets forth various prohibited practices, and provides that an investment adviser is a fiduciary and has a duty to act primarily for the benefit of its clients; and

WHEREAS, COMAR 02.02.05.03B(15) prohibits an investment adviser from taking an action, directly or indirectly, with respect to those securities, instruments or funds in which a client has any beneficial interest, when the investment adviser has custody or possession of the securities or funds and the investment adviser’s action is subject to and does not comply with the safekeeping requirements of 17 CFR Section 275.206(4)-2 (SEC Rule 206(4)-2 Custody or Possession of Funds or Securities of Clients); and

WHEREAS, Respondent employed a device, scheme or artifice to defraud by advising that Ms. Rose purchase unregistered, non-exempt securities that are not federal-covered securities without disclosing that the investments were being offered and sold in violation of applicable

securities laws; and

WHEREAS, Respondent made untrue statements of material fact including but not limited to claims regarding the nature of the investments he recommended and the opportunity to profit from the purchase of those investments; and

WHEREAS, by recommending the purchase of unregistered, non-exempt securities that are not federal-covered securities and by making misrepresentations and omissions of material fact in the course of those recommendations, Respondent engaged in activities that operated as a fraud or deceit upon investors; and

WHEREAS, Respondent failed to disclose material facts, including but not limited to facts concerning Respondent's lack of registration as a broker-dealer, issuer agent or investment adviser; and

WHEREAS, Respondent provided an HSA investor with false information regarding the value of her HSA investment; and

WHEREAS, Respondent provided an HSA investor with stock certificates reflecting her ownership of 1,666 shares of HSA, at a time when HSA was a defunct company; and

WHEREAS, Respondent had custody of client funds and securities and failed to comply with applicable safekeeping rules; and

WHEREAS, Respondent breached his fiduciary duty as an investment adviser to act in the best interests of clients.

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondent cease and desist from engaging in investment advisory activities in violation of Section 11-301 of the Securities Act and the prohibited practices set forth in COMAR 02.02.05.03B, pending a hearing in this matter or until

such time as the Securities Commissioner modifies or rescinds this Order. Willful violation of this Order could result in criminal penalties under Section 11-705 of the Securities Act; and it is further

ORDERED that Respondent show cause why a final order should not be issued against him that orders him to cease and desist from engaging in activities in further violation of Section 11-302's investment advisory anti-fraud provisions and the prohibited practices set forth in COMAR 02.02.05.03B, assesses Respondent the statutory penalty of \$5,000 per violation of Section 11-501, permanently bars Respondent from the securities and investment advisory business in Maryland and orders any other sanction or combination of sanctions against Respondent as permitted under Section 11-701.1.

REQUIREMENT OF ANSWER

_____ **IT IS FURTHER ORDERED**, pursuant to §11-701.1 of the Securities Act and COMAR 02.02.06.06, that Respondent shall file with the Securities Commissioner a written Answer to this Order To Show Cause *within 15 days of service of the Order*. The Answer shall admit or deny each factual allegation in the Order and shall set forth affirmative defenses, if any. A respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state.

The Answer also shall indicate whether the respondent requests a hearing. A hearing will be scheduled in this matter if one is requested in writing. A respondent's failure to file a written request for a hearing in this matter shall be deemed a waiver by that respondent of the right to such a hearing.

A respondent's failure to file an Answer or a request for a hearing shall result in entry of a final order granting the relief requested by the Division.

SO ORDERED:

DATED: _____, 2005

Melanie Senter Lubin
Securities Commissioner

g:\users\teweyj\wpdata\Howse\HOWSE.ORDER.wpd

