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### Texas State Securities Board

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### SOAH DOCKET NO. 312-09-6218 SSB DOCKET NO. IC09-05

IN THE MATTER OF THE  
INVESTMENT ADVISER  
REPRESENTATIVE REGISTRATION  
OF JEREMY MCGILVREY AND  
THE INVESTMENT ADVISER  
REGISTRATION OF HCW ASSET  
MANAGEMENT, LLC

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Order No. IC09-REV-24

#### DEFAULT ORDER

Be it remembered that this is your OFFICIAL NOTICE of the issuance by the Securities Commissioner of the State of Texas ("Securities Commissioner") of a DEFAULT ORDER pursuant to Sections 14 and 23.B of The Securities Act, TEX. REV. CIV. STAT. ANN. art. 581-1 et seq. (Vernon 1964 & Supp. 2008) ("Texas Securities Act") and § 105.8(a)(2) of the Rules and Regulations of the Texas State Securities Board, 7 Tex. Admin. Code Chapter 101 et seq. (Supp. 2009) ("Board Rules").

#### FINDINGS OF FACT

The staff of the Inspections and Compliance Division of the Texas State Securities Board (the "Staff") has presented evidence sufficient for the Securities Commissioner to find that:

1. On or about August 27, 2009, a Notice of Hearing, SOAH DOCKET NO. 312-09-6218B DOCKET NO. IC09-05(the "Notice") was personally served on Jeremy McGilvrey ("Respondent McGilvrey") and HCW Asset Management, LLC ("Respondent HCW")(collectively, the "Respondents"). The Notice informed Respondents that the hearing was scheduled for 9:00 AM central time on October 6, 2009.
2. Furthermore, the Notice contained the following statement as required by the Board Rules:

**IF YOU DO NOT FILE A WRITTEN ANSWER OR OTHER WRITTEN RESPONSIVE PLEADING TO THIS NOTICE OF HEARING ON OR BEFORE**

**THE 20TH DAY AFTER THE DATE ON WHICH THIS NOTICE WAS MAILED TO YOU OR PERSONALLY SERVED ON YOU, THE FACTUAL ALLEGATIONS IN THIS NOTICE WILL BE DEEMED ADMITTED, AND THE SECURITIES COMMISSIONER MAY DISPOSE OF THIS CASE WITHOUT A HEARING AND GRANT THE RELIEF SOUGHT IN THIS NOTICE.**

**THE RESPONSE MUST BE FILED IN AUSTIN, TEXAS, WITH THE STAFF OF THE STATE SECURITIES BOARD AND THE STATE OFFICE OF ADMINISTRATIVE HEARINGS.**

**IF YOU FAIL TO ATTEND THE HEARING, EVEN IF A WRITTEN ANSWER OR OTHER RESPONSIVE PLEADING HAS BEEN FILED, THE FACTUAL ALLEGATIONS IN THIS NOTICE WILL BE DEEMED ADMITTED, AND THE SECURITIES COMMISSIONER MAY DISPOSE OF THIS CASE WITHOUT A HEARING AND GRANT THE RELIEF SOUGHT IN THIS NOTICE.**

3. Within the Notice, the Staff requested that the Respondents' registrations with the Securities Commissioner be REVOKED and that Respondents be ordered to CEASE AND DESIST engaging in fraudulent conduct.
4. In the Notice, the Staff made the following allegations:
  - a. Respondent McGilvrey is a natural person whose last known personal address as filed with the Securities Commissioner is 20303 Messina, San Antonio, TX 78258.
  - b. Respondent HCW is a Texas corporation whose last know address as filed with the Securities Commissioner is 13409 NW Military Highway, #350, San Antonio, TX 78231.
  - c. On or about November 21, 2008, Respondent McGilvrey registered with the Securities Commissioner as an investment adviser representative of Respondent HCW. This registration is currently effective.
  - d. On or about November 21, 2008, Respondent HCW registered with the Securities Commissioner as an investment adviser. This registration is currently effective.
  - e. From on or about January 30, 2006 through on or about June 27, 2008, Respondent McGilvrey was registered as an agent and investment adviser representative of LPL Financial Corporation ("LPL").
  - f. From on or about June 18, 2008 through on or about May 29, 2009, Respondent McGilvrey was registered as an agent and investment adviser representative of Next Financial Group, Inc. ("Next")

- g. During the time that Respondent McGilvrey was registered with LPL and Next, he operated as an independent contractor with both firms. To that end, Respondent McGilvrey used the name "Hill Country Wealth" in connection with his securities business.
- h. On or about June 1, 2006, Hill Country Wealth, Inc. ("HCW Inc.") was established as a Texas corporation. Respondent McGilvrey is listed with the Secretary of State as a Director of HCW, Inc.
- i. Clients A and B are a married couple. Client A, a 94 year old male, is a retired two-star Air Force General. He suffers from severe Alzheimer's disease and dementia. His wife, Client B, is 89 years old and is retired after serving as a Physical Therapist with the Air Force.
- j. After the onset of Client A's Alzheimer's disease, Client B began trying to manage their assets. Client B was introduced to Respondent McGilvrey and Hill Country Wealth so that she could obtain financial advice from an investment professional.
- k. In February 2008, securities belonging to Clients A and B were transferred to a brokerage account at LPL. Respondent McGilvrey was listed as the account representative for Clients A and B.
- l. On or about June 27, 2008, a \$200,000 cashier's check was deposited into HCW, Inc.'s bank account. On or about July 9, 2008, a \$150,000 cashier's check was deposited into HCW, Inc.'s bank account. Both of these checks were from Client B.
- m. Respondent McGilvrey represented to the Staff that the two checks totaling \$350,000 were in connection with a stock repurchase agreement between HCW, Inc. and Client B. Respondent McGilvrey solicited Client B for this investment.
- n. Before Client B's \$200,000 was deposited on June 27, 2008, HCW, Inc.'s bank account balance was just over \$9,300. Payments from the HCW, Inc. account shortly after the deposit include:
  - i. Payments totaling approximately \$84,000 to Respondent McGilvrey's American Express card. The charges paid off by these payments included multiple personal, non-business related expenses; and
  - ii. A \$28,500 check to a car dealership on or about July 7, 2008. This check was used to purchase a Mercedes Benz in Respondent McGilvrey's name.

- o. Before Client B's \$150,000 check was deposited on July 9, 2008, HCW, Inc.'s bank account balance was approximately \$39,750.
- p. On or about July 11, 2008, Respondent McGilvrey transferred \$100,000 from HCW, Inc.'s account to a bank account in his name. On the same day, Respondent McGilvrey wrote a check for \$100,000 from that personal bank account. Those funds were then deposited into a brokerage account at Next in Respondent McGilvrey's name.
- q. This investment in HCW, Inc. was not suitable for Client B, and thus Respondent McGilvrey's sale of HCW, Inc. stock to Client B constitutes an inequitable practice in the sale of securities and/or a fraudulent business practice.
- r. Respondent McGilvrey did not disclose to Client B that the funds invested by Client B in June/July 2008 could be used for personal/non-business related expenses. This failure to disclose is an intentional failure to disclose a material fact and constitutes a fraudulent business practice.
- s. Respondent McGilvrey's use for personal/non-business related expenses of funds invested by Client B in HCW, Inc. constitutes a fraudulent business practice.
- t. On or about October 21, 2008, a check for \$500,000 from Client B was deposited into HCW Inc.'s bank account. This transaction was documented by a stock repurchase agreement between HCW, Inc. and Client B. Respondent McGilvrey solicited Client B for this investment.
- u. This document related to Client B's October 2008 investment is dated June 30, 2008 and titled "Stock Re-purchase Agreement". However, an officer of HCW, Inc., Lance Smith, represented to the Staff that the Stock Re-Purchase Agreement was actually signed by Client B after June 30, 2008 and in the fall of 2008. Key terms of this Stock Re-Purchase Agreement provide that:
  - i. In exchange for Client B's \$500,000, she would receive 100,000 Class B non-voting shares of stock in HCW, Inc.; and
  - ii. After five years, Client B would transfer all 100,000 shares back to HCW, Inc. in exchange for a return of the principal investment plus a "guaranteed" 6.5% annual interest.
- v. Before Client B's \$500,000 check was deposited on October 21, 2008, HCW, Inc.'s bank account balance was approximately \$100.
- w. On October 24, 2008, Respondent McGilvrey transferred \$350,000 from the HCW, Inc. account to his personal bank account. On the same day,

Respondent McGilvrey wrote a check for \$300,000 from that personal bank account, which was then deposited into a brokerage account at Next in Respondent McGilvrey's name.

- x. This investment in HCW, Inc. was not suitable for Client B, and thus Respondent McGilvrey's sale of HCW, Inc. stock to Client B constitutes an inequitable practice in the sale of securities and/or a fraudulent business practice.
- y. Respondent McGilvrey did not disclose to Client B that the funds invested by Client B in HCW, Inc. stock could be used for personal/non-business related expenses. This failure to disclose is an intentional failure to disclose a material fact and constitutes a fraudulent business practice.
- z. Respondent McGilvrey did not disclose to Client B that some of the funds that Client B had previously invested in HCW, Inc. were used for personal/non-business related expenses. This failure to disclose is an intentional failure to disclose a material fact and constitutes a fraudulent business practice.
- aa. Respondent McGilvrey's use for personal/non-business related expenses of funds invested by Client B in HCW, Inc. constitutes a fraudulent business practice.
- bb. In late January 2009, Respondent McGilvrey solicited Client B for another investment in HCW, Inc. This time Respondent McGilvrey sold Client B a \$500,000 promissory note issued by HCW, Inc. The maturity date for the promissory note is listed as February 2, 2011, and the annual interest rate is 8%.
- cc. To invest in this promissory note, Client B gave Respondent McGilvrey a \$500,000 check dated January 30, 2009. As described below, the investment moneys were split between HCW, Inc.'s bank account and Respondent McGilvrey's personal bank account.
- dd. In connection with Client B's investment in the promissory note, \$250,000 was deposited into HCW, Inc.'s bank account on January 30, 2009. Before this deposit, the bank account's balance was approximately \$5,000.
- ee. On or about February 20, 2009, Respondent McGilvrey wrote a check against HCW, Inc.'s bank account for \$25,000 payable to a casino-hotel in Las Vegas, NV.
- ff. On January 30, 2009, the other \$250,000 related to Client B's investment in the \$500,000 promissory note was deposited directly into Respondent

McGilvrey's personal bank account. Prior to this deposit, this account's balance was approximately \$2,100.

- gg. On or about February 3, 2009, Respondent McGilvrey wired \$15,000 from this bank account to a casino-hotel in Las Vegas, NV.
  - hh. This investment in HCW, Inc. was not suitable for Client B, and thus Respondent McGilvrey's sale of a promissory note issued by HCW, Inc. to Client B constitutes an inequitable practice in the sale of securities and/or a fraudulent business practice.
  - ii. Respondent McGilvrey did not disclose that the funds invested by Client B in the promissory note could be used for personal/non-business related expenses such as gambling expenses. This failure to disclose is an intentional failure to disclose a material fact and constitutes a fraudulent business practice.
  - jj. Respondent McGilvrey did not disclose to Client B that some of the funds that Client B had previously invested in HCW, Inc. were used for personal/non-business related expenses. This failure to disclose is an intentional failure to disclose a material fact and constitutes a fraudulent business practice.
  - kk. Respondent McGilvrey's use for personal/non-business related expenses of funds invested by Client B in HCW, Inc. constitutes a fraudulent business practice.
- II. Client C is an 85 year old retired teacher from Fredericksburg, TX.
- mm. On April 8, 2009, Respondent McGilvrey and HCW, Inc. entered into a settlement agreement in a civil litigation matter related to Clients A and B. As part of that settlement, Respondent McGilvrey and HCW, Inc. agreed to pay a total of \$1,000,000 to the estate for Clients A and B. The first payment in that settlement, for \$200,000, was due by April 15, 2009. The second payment, for \$25,000, was due by April 17, 2009.
  - nn. On or about April 12, 2009, Respondent McGilvrey solicited Client C for an investment in HCW, Inc. Respondent McGilvrey could not clearly describe the type or terms of this investment to the Staff. Respondent McGilvrey told the Staff that it was either through a stock repurchase agreement or a promissory note.
  - oo. In connection with this investment, on or about April 12, 2009, Client C provided Respondent McGilvrey a check for \$100,000 payable to HCW, Inc. Respondent McGilvrey filled out the key parts of the check before he asked Client C to sign the check.

- pp. Client C believed that this \$100,000 check was for the purchase of an annuity. But, on or about April 14, 2009, Respondent McGilvrey deposited Client C's \$100,000 check into HCW, Inc.'s bank account.
- qq. The next day, Respondent McGilvrey used \$225,000 from HCW, Inc.'s account to purchase a cashier's check payable to the estate for Clients A and B.
- rr. In connection with Client C's investment on April 12, 2009, Respondent McGilvrey did not disclose to Client C that HCW, Inc. and Respondent McGilvrey owed \$1,000,000 to other clients and that Client C's investment would be used to pay that settlement. Respondent McGilvrey's failures to disclose are intentional failures to disclose material facts and constitute a fraudulent business practice.
- ss. This investment in HCW, Inc. was not suitable for Client C, and thus Respondent McGilvrey's sale of an investment in HCW, Inc. to Client C constitutes an inequitable practice in the sale of securities and/or a fraudulent business practice.
- tt. Respondent McGilvrey informed the Staff that in order to pay the settlement with Clients A and B, he offered investments in HCW, Inc. to people other than Client C.
- uu. Furthermore, Respondent McGilvrey admitted that in connection with the offering of those investments, he did not inform the investors of the \$1,000,000 settlement or that their investments would be used to pay that settlement.
- vv. Respondent McGilvrey's failures to disclose are intentional failures to disclose material facts and constitute a fraudulent business practice.
- ww. Respondent McGilvrey typically earned more in commissions for his the sale of a variable annuity than he did for other investments that he sold. As indicated by the examples below, Respondent McGilvrey engaged in numerous fraudulent practices in connection with the sale of variable annuities to investors in Texas.
- xx. Client D is a semi-retired 65 year old from San Antonio, TX. In January 2008, Client D went to Respondent McGilvrey to invest in a certificate of deposit (CD). Respondent McGilvrey told Client D that he could "guarantee" a 7% return for the investment. Client D gave Respondent McGilvrey a check for \$50,000 to purchase a CD. Instead, Respondent McGilvrey purchased an annuity for Client D. Respondent McGilvrey never informed Client D that he was going to purchase an annuity for Client D.

- yy. Respondent McGilvrey's conduct in connection with the sale of the annuity to Client D constitutes a fraudulent business practice.
- zz. Client E is a 66 year old male from San Antonio, TX. He became a client of Respondent McGilvrey in 2006 and purchased numerous investments from Respondent McGilvrey.
- aaa. In September 2007, Client E decided to purchase a CD based on concerns over the risk of his investments. Similar to his representations to Client D, Respondent McGilvrey told Client E that he could get Client E a CD paying 7% interest. Client E then gave Respondent McGilvrey a check for \$100,000 to purchase a CD. Respondent McGilvrey purchased an annuity for Client E with this \$100,000. Respondent McGilvrey did not inform Client E that he was going to purchase an annuity for Client E.
- bbb. Respondent McGilvrey's conduct in connection with the sale of the annuity to Client E constitutes a fraudulent business practice.
- ccc. The Form ADV is the application form required to be filed by investment advisers seeking registration with the Securities Commissioner. After an investment adviser is registered, § 116.9(a)(6) of the Rules and Regulations of the Texas State Securities Board ("Board Rules") requires the adviser to timely update any changes in information disclosed on the Form ADV.
- ddd. Item 8.A(3) of the Form ADV requires the investment adviser to disclose if the adviser or any related person recommends securities (or other investment products) to advisory clients in which the adviser or any related person has some other proprietary (ownership) interest.
- eee. On or about November 21, 2008, Respondent HCW filed its Form ADV with the Securities Commissioner. On the November 21, 2008 Form ADV, Respondent HCW represented that it did "No" to Item 8.A(3) of the Form ADV. However, prior to this filing, several of Respondent HCW's clients had already invested in HCW, Inc. Therefore, Respondent HCW's representation of "No" in response to item 8.A(3) on its November 21, 2008 Form ADV constitutes a misrepresentation of a relevant fact and is a fraudulent business practice. In the alternative, Respondent HCW failed to update its Form ADV within thirty (30) days of the date that a person that invested in HCW, Inc. became a client of Respondent HCW. This failure to timely update is a violation of § 116.9(a)(6) of the Board Rules.
- fff. Item 11.H(1)(a) of the Form ADV requires the investment adviser to disclose if any domestic or foreign court has enjoined the adviser or any advisory affiliate in connection with any investment-related activity.



- ggg. On or about March 19, 2009, a probate court in Bexar County, Texas entered a temporary restraining order (the "TRO") against Respondent McGilvrey and others, including Lance Smith. The TRO prohibited Respondent McGilvrey and Mr. Smith from receiving or disposing of, withdrawing or attempting to withdraw, removing, transferring or converting any funds belonging to Clients A and B. Furthermore, the TRO also specifically enjoined Respondent McGilvrey and Mr. Smith from making any sale, purchase, or withdrawals from the investment and other financial accounts belonging to Clients A and B.
- hhh. Respondent HCW did not update its Form ADV to disclose the TRO within thirty (30) days after the TRO was entered. This failure to timely update the Form ADV is a violation of §116.9(a)(6) of the Board Rules.
- iii. On or about May 1, 2009, the probate court issued a temporary injunction against Respondent McGilvrey and Lance Smith. The temporary injunction enjoined Respondent McGilvrey and Mr. Smith from receiving or disposing of, withdrawing or attempting to withdraw, removing, transferring or converting any funds belonging to Clients A and B. Furthermore, the injunction also specifically enjoined Respondent McGilvrey and Mr. Smith from making any sale, purchase, or withdrawals from the investment and other financial accounts belonging to Clients A and B.
- jjj. Respondent HCW did not update its Form ADV to disclose the injunction within thirty (30) days after the injunction was entered. This failure to timely update the Form ADV is a violation of § 116.9(a)(6) of the Board Rules.
- kkk. Pursuant to Section 14.A(3) of the Texas Securities Act, Respondents' inequitable practices in the sale of securities and fraudulent business practices are bases for the revocation of Respondents' registrations with the Securities Commissioner.
- lll. Pursuant to Section 14.A(6) of the Texas Securities Act, Respondent HCW's violations of §116.9(a)(6) of the Board Rules are bases for the revocation of Respondents' registrations with the Securities Commissioner.
- mmm. Furthermore, pursuant to Sections 23.A and 23.B of the Texas Securities Act, Respondents' actions are bases for the issuance of an Order requiring Respondents to cease and desist from engaging in fraudulent conduct.
5. Pursuant to §105.8(a)(1) of the Board Rules, the Securities Commissioner may make an informal disposition of a contested case by default upon proof to the Securities Commissioner that the Notice was personally served on the Respondents, and that the Respondents have failed to file a written response no

later than the 20<sup>th</sup> day after the date the notice was personally served on Respondents.

6. Respondents did not file an answer or other written response to the Notice on or before the 20<sup>th</sup> day after the date the notice was personally served on Respondents.
7. On September 24, 2009, the Staff requested that the matter be dismissed from the SOAH docket for informal disposition pursuant to the Board Rules.
8. On October 1, 2009, Administrative Law Judge Gary W. Elkins issued an Order granting the Staff's request to dismiss the matter from the SOAH docket.

#### CONCLUSIONS OF LAW

1. Pursuant to §105.8(a)(1) of the Board Rules, the matters set forth in Finding of Fact 4 above and alleged by the Staff in the Notice, are deemed admitted as true.
2. Pursuant to § 105.8(a)(1) of the Board Rules and Sections 14 and 23 of the Texas Securities Act, the relief requested in the Notice is granted.

#### ORDER

1. It is therefore ORDERED that the registrations of Jeremy McGilvrey and HCW Asset Management, LLC are hereby REVOKED.
2. It is further ORDERED that Jeremy McGilvrey and HCW Asset Management, LLC CEASE AND DESIST from engaging in fraudulent conduct in the sale of securities and the rendering of investment advisory services.

SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this 16<sup>th</sup>  
day of October, 2009.

  
DENISE VOIGT CRAWFORD  
Securities Commissioner