



**STATE OF NEW MEXICO
REGULATION AND LICENSING DEPARTMENT
SECURITIES DIVISION**

IN THE MATTER OF:)
)
GUARDIAN GROUP INVESTMENTS, LLC, and) Case No. 15-05-0005
RICHARD W. KESSLER,)
)
Respondent(s).)

FINAL ORDER

This matter came before the undersigned Acting Director and Deputy Director of the Securities Division of the New Mexico Regulation and Licensing Department ("Director") for entry of a Final Order, and the Director having reviewed the matter and being duly advised on the premises DOES HEREBY FIND THAT:

1. The "Proposed Summary Order" ("summary order") for Case No. 15-05-0005 that included a "Notice of Administrative Hearing Rights" was issued on June 5, 2017. A duplicate of the order was sent via USPS certified mail, return receipt requested, to the last known address of the respondent Guardian Group Investments, LLC ("Guardian"), and also to the respondent Richard W. Kessler ("Kessler"). The order is attached hereto as "Exhibit A" and incorporated herein.
2. The summary order issued to Guardian was received and signed for by Kessler, Guardian's statutory agent, on June 9, 2017.
3. The summary order issued to Kessler was returned to the issuer as having an insufficient address.
4. The summary order issued to Guardian and signed for by Kessler is identical to the summary order issued to Kessler and returned.
5. Both the respondent Guardian and the respondent Kessler have received sufficient notice of the summary order and "Notice of Administrative Hearing Rights" as required by NMSA 1978, § 58-13C-604.
6. More than fifteen (15) days has elapsed since the respondents have received the summary order, and the respondents have not requested a hearing, nor responded, and are therefore in default, pursuant to NMSA 1978, § 58-13C-604(B)(4).

7. Entry of this Final Order is in the public interest, appropriate for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the New Mexico Uniform Securities Act, NMSA 58-13C-401 *et seq.*

IT IS, THEREFORE, ORDERED THAT:

1. The "Proposed Summary Order" for Case No. 15-05-0005 is made permanent and final as to the respondents. The stated "FACTS" and "CONCLUSIONS OF LAW" specified therein are made part of this Final Order.
2. The respondents Guardian Group Investments, LLC and Richard W. Kessler are hereby permanently barred from transacting securities in New Mexico.

NOTICE OF RIGHT TO APPEAL

A person aggrieved by this Order may appeal the decision set forth herein, pursuant to NMSA 1978, § 39-3-1.1 by filing in district court a notice of appeal within thirty (30) days of the entry date of this Order. The appeal may be taken to the district court for the County of Santa Fe, New Mexico, or to the district court of any other county in which a hearing on this matter was conducted.

ENTERED AT Santa Fe, New Mexico this 27th day of June, 2017.





Alexis Lotero, Acting Director/Deputy Director
New Mexico Securities Division



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IN THE MATTER OF:)
)
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Respondent(s).)

PROPOSED SUMMARY ORDER

The Director of the New Mexico Securities Division ("Director") after investigation has good reason to believe, and therefore alleges the following:

I. FACTS

1. Respondent Guardian Group Investments, LLC ("Guardian") is a New Mexico limited liability company, with its principal place of business last reported as 2900 Louisiana Blvd. NE, Suite 210, Albuquerque, NM 87110, and its organization CRD number is 148617.
2. Guardian is a registered investment adviser in New Mexico.
3. Respondent Richard W. Kessler ("Kessler") is an individual whose last known addresses are 2900 Louisiana Blvd. NE, Suite 210, Albuquerque, NM 87110 and 3521 Chelwood Blvd., NE, Albuquerque, NM 87110. Kessler's individual CRD number is 4860594.
4. Kessler is a registered investment adviser representative in New Mexico.
5. Kessler is, and at all relevant times was, the sole owner of Guardian.
6. In 2015 and 2016, Kessler was employed as a consultant of employer sponsored retirement plans for a company known as Beneco Systems, LLC ("Beneco").
7. In 2015 and 2016, while employed by Beneco, Kessler worked independent of Beneco as an "investment advisor" within the meaning of NMSA 1978 § 58-13C-102(P).
8. In 2015 and 2016 Kessler also worked for and/or as his company, Guardian.



9. In 2015 and 2016 Guardian and/or Kessler obtained funds for the benefit of individual investors. These funds were deposited into a bank account belonging to Guardian and/or Kessler.
10. At the time of obtaining the said investor funds, Kessler held himself and Guardian out as investment advisors. Kessler represented to the investors that the funds would be invested.
11. On July 13, 2016, the Securities Division of the New Mexico Regulation and Licensing Department issued a subpoena duces tecum to Sandia Laboratory Federal Credit Union for accounts of Guardian, Kessler, and/or authorized signer accounts from January 1, 2014 to July 13, 2016.
12. Records were disclosed to the Securities Division evidencing client investor funds being deposited into a Guardian bank account. Said deposits include:
 - a. March 2, 2015, \$716.65 payable to Guardian Group Investments FBO [REDACTED]
 - b. July 6, 2015, \$50,000 payable to Guardian Group Investments FBO [REDACTED]
 - c. February 29, 2016, \$25,796.30, payable to Guardian Investments F.B.O. [REDACTED]
 - d. April 5, 2016, \$13,150.27, payable to Guardian Group Investments FBO [REDACTED]
 - e. April 5, 2016, \$5,349.62, payable to Guardian Group Investments FBO [REDACTED]
 - f. April 5, 2016, \$12,221.07, payable to Guardian Group Investments FBO [REDACTED]
 - g. April 5, 2016, \$16,760.39, payable to Guardian Group Investments FBO [REDACTED]
 - h. August 2, 2016, \$30,000, payable to Guardian Group Investments FBO [REDACTED]
 - i. August 23, 2016, \$20,000, payable to Guardian Group Investments from [REDACTED]
13. Most of the client funds identified in paragraph 12 were never invested as Kessler represented to the individual investors.

14. Neither Guardian, nor Kessler, provided notice to the director of the securities division of the New Mexico Regulation and Licensing Department ("director") that either Guardian or Kessler had taken custody of client funds.
15. Neither Guardian, nor Kessler, maintain at all times a minimum net worth of \$2,000,000, nor have these persons posted any surety bond in an amount set by the director.
16. Neither Guardian, nor Kessler, sent account statements, at least quarterly, to all of the clients listed in paragraph 12.
17. Guardian has not updated registration materials to the internet-electronic filing system operated by FINRA ("IARD") as required by 12.11.5.9(A) NMCA since May 9, 2016. A copy of the materials ("Form ADV") is attached hereto as "Exhibit 1".
18. Kessler has not updated registration materials to the internet-electronic filing system operated by FINRA ("IARD") as required by 12.11.5.10(A) NMCA since March 18, 2011. A copy of the materials ("Form U4") is attached hereto as "Exhibit 2".
19. The information that Guardian has provided in the materials identified in paragraph 17, above, contains information that is materially inaccurate and incomplete. Such misinformation includes, but is not limited to the following statements, such as:
 - a. Guardian does not maintain custody of advisory clients' cash, bank accounts or securities;
 - b. Guardian is in compliance with its home state's minimal capital requirements;
 - c. Guardian's accurate current business address.
20. The information that Kessler has provided in the materials identified in paragraph 18, above, is materially incomplete, as it does not disclose that Kessler is licensed and employed as an insurance broker.
21. Neither Guardian nor Kessler have furnished to every client identified in paragraph 12, above, a written disclosure statement as required by 12.11.5.12(B) NMCA.
22. Neither Guardian no Kessler have furnished every client identified in paragraph 12, above, a copy of an investment advisory contract as required by 12.11.7.10(A) NMCA.

II. CONCLUSIONS OF LAW

1. The director has jurisdiction over this matter pursuant to NMSA 1978, § 58-13C-601 and § 58-13C-610.
2. Guardian and Kessler are "investment advisors" within the meaning of NMSA 1978, § 58-13C-102(P).

3. Guardian and/or Kessler have taken custody of client funds without promptly notifying the director in writing in violation of 12.11.5.22(C) NMCA.
4. Guardian and/or Kessler have taken custody of client funds, and have not sent account statements to clients in violation of 12.11.5.22(F) NMCA.
5. Guardian and/or Kessler have taken custody of client funds and have not maintained a minimal balance of \$2,000,000, nor posted a surety bond to the director in violation of 12.11.5.23 (B) NMCA.
6. Information contained in Guardian's Form ADV is currently materially inaccurate and incomplete, and Guardian has not filed a correcting amendment in violation of 12.11.5.9(C) NMCA.
7. Information contained in Kessler's Form U4 is currently materially inaccurate and incomplete, and Kessler has not filed a correcting amendment in violation of 12.11.5.10(C) NMCA.
8. Guardian has not provided every client identified in paragraph 12 of section I a written disclosure statement in violation of 12.11.5.12 NMCA.
9. Kessler has not provided every client identified in paragraph 12 of section I a written disclosure statement in violation of 12.11.5.12 NMCA.
10. Guardian has not furnished every client identified in paragraph 12 of section I a copy of an investment advisory contract in violation of 12.11.7.10(A) NMCA.
11. Kessler has not furnished every client identified in paragraph 12 of section I a copy of an investment advisory contract in violation of 12.11.7.10(A) NMCA.
12. The violations identified in paragraphs 3-13 of this section constitute "Prohibited Business Practices by Investment Advisers" in violation of 12.11.7.13 NMCA.

III. ORDER

Entry of this Order is in the public interest, appropriate for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act.

IT IS, THEREFORE, ORDERED THAT: Pursuant to NMSA 1978, § 58-13C-412(B), Respondents Guardian and Kessler are permanently barred from transacting securities in New Mexico.

NOTICE OF ADMINISTRATIVE HEARING RIGHTS

Each Respondent is hereby notified of its statutory right to request an administrative hearing on the Cease and Desist. Administrative hearings are governed by § 58-13C-604(b)(4)-(11) NMSA 1978. Respondents have fifteen (15) days from receipt of this

notice to file a written request for a hearing. The request may be sent in the form of U.S. Postal Service Form 3800, Receipt for Certified Mail, or via email to the Director at [REDACTED]. The Director will set the matter for hearing no more than sixty (60) days not less than fifteen (15) days from receipt of the hearing request. The Director will promptly notify the Respondent of the time and place for hearing. The Director, or an appointee will conduct the hearing. The Director or her appointee will pass upon the admissibility of evidence and may exclude evidence that is incompetent, irrelevant, immaterial or unduly repetitious.

As discussed more fully in 58-13C-604(b), any respondent requesting a hearing is entitled to: appear on its own behalf, or may be represented by an attorney; present all relevant evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; request and obtain discovery, including the names and addresses of witnesses.

ENTERED AT Santa Fe, New Mexico this 6th day of June, 2017.





Alexis Lotero, Acting Director/Deputy Director
New Mexico Securities Division