



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

IN THE MATTER OF	)	
	)	Case No. 19-05-27
DOUGLAS H. LIEN	)	
dba WESTEND INVESTMENTS	)	FINAL ORDER
	)	TO CEASE AND DESIST
RESPONDENT	)	
	)	

FINAL ORDER TO CEASE AND DESIST

I. PROCEDURAL HISTORY

1. On January 31, 2020 the Director of the New Mexico Securities Division (the “Director”) issued a Preliminary Order to Cease and Desist and Right to Hearing (the “Preliminary Order”) to Respondent Douglas H. Lien dba Westend Investments, a copy of which is attached hereto as Exhibit 1.
2. The Preliminary Order advised the Respondent that he had 15 days from the date of receipt to request a hearing on the allegations contained herein.
3. On February 3, 2020 the Respondent was served with a copy of the Preliminary Order at his address in Santa Fe, New Mexico. A copy of the affidavit of service for the Respondent is attached hereto as Exhibit 2.
4. Fifteen days later, on February 14, 2020, neither the Interim Director nor the Staff of the Division of Securities had received any correspondence from the Respondent, whether via email or any other means.
5. Accordingly, Respondent has failed to request a hearing within the 15-day period mandated by NMSA 1978, § 58-13C-604(B)(2).

II. ORDER

Therefore, pursuant to NMSA § 58-13C-604(B), the Interim Director hereby affirms all findings and orders in the Preliminary Order and further orders that the Preliminary Order issued on January 31, 2020 become final and incorporated in its entirety herein as part of this Final Order.

YOU ARE HEREBY NOTIFIED that, pursuant to NMSA 1978, § 58-13C-609, you may seek judicial review of this Final Order by filing a notice of appeal with the appropriate district court within thirty (30) days in accordance with the provisions of NMSA, 1978 § 39-3-1.1.

ENTERED AT Santa Fe, New Mexico this 19th day of November, 2020.



/s/ Benjamin R. Schrope

Benjamin R. Schrope

Interim Director

New Mexico Securities Division



STATE OF NEW MEXICO

REGULATION AND LICENSING DEPARTMENT

SECURITIES DIVISION

IN THE MATTER OF	)	Case No. 19-05-27
	)	
DOUGLAS H. LIEN	)	
dba WESTEND INVESTMENTS	)	PRELIMINARY ORDER TO CEASE
	)	AND DESIST AND NOTICE OF
Respondent	)	RIGHT TO HEARING
	)	
_____	)	

**PRELIMINARY ORDER TO CEASE AND DESIST
AND NOTICE OF RIGHT TO HEARING**

I. STATEMENT OF APPLICABLE LAW

Pursuant to the authority granted by the New Mexico Uniform Securities Act (the "Act") in NMSA 1978, § 58-13C-602, the Director of the New Mexico Securities Division (the "Director"), through the Staff of the Division's Enforcement Bureau (the "Staff" or the "Division"), has conducted a preliminary investigation into the activities of Respondent Douglas H. Lien ("Respondent Lien") and Westend Investments ("Westend") to determine if the Respondent has engaged in, or is about to engage in, any act, practice or course of business that constitutes a violation of NMSA 1978, §§ 58-13C-403, 502, or any rule or order adopted thereunder.

II. STATEMENT OF JURISDICTION

The Director has subject matter jurisdiction to proceed under NMSA 1978, §§ 58-13C-403 and 502 as this matter involves the provision of investment advice regarding securities to others for compensation as defined under NMSA 1978, § 58-13C-102(P). The Director also has personal jurisdiction over Respondent pursuant to NMSA 1978, § 58-13C-610.

III. RESPONDENT



1. Respondent Douglas H. Lien is an adult male with a last known address at 37 Camino Tetzoco, Santa Fe, New Mexico 87508. At all times relevant to this proceeding, Respondent Lien has been in the business of providing investment advice by discussing general or specific investment products or services, soliciting new accounts or orders, charging management fees, making investment decisions on behalf of his clients, and receiving commissions in and from the State of New Mexico.

2. Westend Investments is an alias used by Respondent Lien to render investment advice with a last known address of 37 Camino Tetzoco, Santa Fe, New Mexico 87508. Lien has included the name "Westend Investments" on his letterhead for official correspondence. The New Mexico Secretary of State, Corporation Division, shows no record for Westend either as a corporation or as a limited liability company in New Mexico. Thus, it is believed that Westend is a business alias (DBA) for Respondent Lien's investment advisory activities. Respondent Lien controls and manages Westend in a manner similar to a sole proprietorship.

IV. GENERAL ALLEGATIONS

Colorado Department of Regulatory Agencies, Division of Securities Complaint

3. On September 3, 2019, the Division received a complaint from a member of the staff of the Colorado Division of Securities (the "Colorado complaint") who advised that they had received complaints from five Colorado investors dating back to at least 2007 who claimed to have executed investment advisory contracts with the Respondent.

4. The Colorado complaint also alleged that the Respondent is an unlicensed investment adviser and may have been pooling client funds and using them to invest or trade in United States Treasury futures for the clients' benefit. The Colorado staff told the Division that the Respondent has stopped answering investors' queries and that the investors are trying to get their money back. According to the Colorado complaint, the Respondent stated to some of the investors that all of their funds are being held at R.J. O'Brian brokerage; that the funds have been placed in longer term securities; and that Respondent did not have the ability to withdraw the funds without incurring substantial penalties.

Complaint from Investor N.B.

5. On August 2, 2019, the Division received a hand-delivered complaint from the law firm of Jean-Nikole Wells who represents New Mexico investor N.B. Wells represented to the Division that her client N.B. entered into an investment advisory relationship with the Respondent in order to safeguard her funds in retirement.

6. Additionally, Wells informed the Staff that approximately 10 years prior, she had represented a New Mexico resident who was also Respondent's client. Wells informed the Staff that in that instance she successfully recovered the entirety of her client's investment from Lien. Wells told the Staff that during conversations with Lien regarding her client's situation, she advised Lien that the New Mexico Securities Act required him to be registered as an investment

adviser in the State of New Mexico. Accordingly, in Wells' view, Lien has been on notice of the registration requirement for many years prior to her representation of N.B.

7. Wishing to end her advisory relationship with Respondent, on August 2, 2019, N.B. sent a letter to Lien demanding the return of her investment along with legal fees and interest due. To date, the Respondent has not returned \$86,400.00 of N.B.'s money or any interest or fees associated with the investments.

8. In an interview with the Staff on October 16, 2019, N.B. also provided the following information:

- a. N.B. invested her life savings of \$95,000 with Respondent and has been Respondent's client since May 2014.
- b. Respondent initially gave N.B. a document entitled "Letter of Agreement" setting forth the terms governing the investment of her money and the management fees that N.B. would be charged. This document also represents that Respondent would issue monthly account statements to N.B., but she has never received monthly account statements containing essential information about her holdings or Respondent's fees.
- c. N.B. has not received any distributions of income from the Respondent since May 22, 2019.
- d. Respondent has failed to keep scheduled meetings with N.B. to discuss the return of her money and have cited repeated excuses for failing to deliver the promised funds to N.B.
- e. N.B. has unsuccessfully sought termination of her investment relationship and the return of her funds on several occasions, and only continued to do business with Respondent because he led her to believe that her investment account was making a profit.

Complaint from Investor R.P.

9. After speaking with N.B., the Staff learned of other New Mexico investors who had engaged Respondent's services believing him to be reputable. On approximately September 27, 2019, the Staff telephoned New Mexico resident R.P. and learned that she also had an investment advisory agreement with the Respondent. In a telephonic interview with Staff on September 30, 2019, R.P. provided the following information:

- a. R.P. invested her life savings and inheritance in the amount of \$500,000 with the Respondent and has been Respondent's client since September 2004.
- b. As with N.B., Respondent gave R.P. a document entitled "Letter of Agreement" setting forth the terms allegedly governing Respondent's investment of her money and the management fees that would be charged. This document also represents that

Respondent would issue monthly account statements to R.P. Also like N.B., R.P. has never received monthly account statements containing essential information about R.P.'s holdings or Respondent's fees.

- c. On several occasions, R.P. has unsuccessfully attempted to terminate her investment advisory contract, including the liquidation and return of all money invested.
- d. Respondent recommended that R.P. take out a life insurance policy on Respondent "to protect her investments in the event of his death."
- e. Respondent has repeatedly failed to attend scheduled meetings with R.P.
- f. On May 23, 2019, R.P. received a "Payout Agreement" promising to return her money, when in truth, Respondent has not returned any money, instead claiming unspecified problems with his broker.
- g. R.P. continued to do business with the Respondent because he led her to believe that her investment account was making a profit.

Complaint from Investor P.K.

10. On or about September 29, 2019, New Mexico investor P.K. contacted the Division via email stating that she also had an investment contract with the Respondent. In that regard, P.K. provided the following information:

- a. P.K. invested her life savings of \$18,000 with Respondent.
- b. Respondent also gave P.K. a document entitled "Investment Agreement." This document stated that P.K.'s money will be placed in the investment account designated for Investor R.P. and that P.K. would be subject to the same Letter of Agreement that Respondent had previously provided to R.P.
- c. P.K. is disabled and lives on a fixed income consisting of her social security disability benefits. She has medical needs and lives in publicly subsidized housing.
- d. P.K. received a statement in January 2019 showing a loss of her investment.
- e. P.K. sent a demand letter to Respondent in the summer of 2019 to release the investment funds for her medical needs.
- f. On numerous occasions, P.K. requested termination of the investment relationship, liquidation, and the return of her funds, but the Respondent continued to miss scheduled meetings.

Request for Documents

11. On August 30, 2019, the Staff served a subpoena *duces tecum* on Respondent Lien seeking all documents relating to their activities as an investment adviser in and from the State of New Mexico. A response to the subpoena was required by September 10, 2019. However, at Respondent's request, the Staff granted an extension until September 17, 2019. Respondent Lien then advised that he could not comply with the Division's subpoena and requested a second extension because the documents requested were allegedly at his home in Massachusetts. Respondent Lien promised to provide the subpoenaed documents by October 31, 2019.

Interview of Respondent Lien

12. On October 7, 2019, Respondent Lien appeared for a scheduled interview in Albuquerque with the Staff. Following an advisement that the interview was voluntary and could be terminated at any time, Lien answered various questions from the Staff regarding his investment advisory business.

13. Lien stated that he worked in commercial banking for approximately 15 years, initially at New England Merchant's Bank which later became The Bank of New England and was acquired by Fleet Bank. Lien stated that he obtained a Master's Degree from the Thunderbird School of Global Management in Phoenix, Arizona and taught English at Montana State University for three years.

14. Lien indicated that he has been managing investments since 2003 and that he has investors in the states of New Mexico, Colorado, and New Hampshire, as well as internationally in Scotland, France, and England. He claimed to be presently managing approximately \$6-7 million in investor funds and charging a 15% management fee as calculated on each client's gross profits, but acknowledged that he did not invest in private equity because he "doesn't really understand it." Lien also remarked that he was using the broker-dealer firm of R.J. O'Brien & Associates in Chicago.

15. When asked whether he possessed a license to sell securities in any state, Lien said, "No, I have not been licensed at all." Lien likewise stated that he had "never taken any securities exams." Understandably, when questioned about delivery of his Form ADV to clients, Lien acknowledged that he "didn't even know what that form was" and "had to look it up."

16. In regards to registration, Lien restated that despite transacting business in both Massachusetts and New Mexico, he is licensed in neither state and "operate[s] [his] business as a sole proprietorship." Notably, Lien claimed that his ability to transact business as an investment adviser in New Mexico was enabled by "de minimis regulation" requiring that he "not have more than 15 customers." Lien claimed that because he only had five New Mexico clients, he was not required to register in New Mexico. (In truth, NMSA 1978, § 58-13C-403(B)(2) only exempts persons with fewer than five New Mexico clients who do not maintain a place of business in New Mexico. Because he operates his business out of his residence at 37 Camino Tetzco in the city of Santa Fe, this provision would not apply to Respondent Lien or Westend.)

17. When questioned specifically about R.P., Lien confirmed that R.P. has requested the return of her investment, but that Lien was unable to give the money back because it was tied up in "longer term situations." Asked what he meant by that, Lien noted that "it was initially just a CD [...] with a local bank," but then stated that it was "a bank in Chicago" and that he "c[ould]n't remember which one exactly[.]" Lien appeared unable to recall additional details regarding R.P.'s investments.

18. Lien confirmed that his New Mexico clients were primarily over the age of 60, saying, "I'm trying to think of those who are under 60. Hardly any."

19. The Staff presented Lien with a hypothetical scenario involving the investment of \$100,000 of client funds. Lien stated that upon receipt of the funds, he would deposit them into his own account and that he would "in effect [...] act as your custodian[.]" He then remarked that he would send the client an agreement stating that he would "hold these funds for you within the parameters that we have discussed." In regards to what documentation would substantiate these "parameters," Lien laughed and commented, "There is no documentation other than we met. Most of my customers are either friends or family. And that was the way it was done."

20. Indeed, Lien's business practice was as follows: Lien would instruct his clients to write checks out to "Douglas Lien" directly, deposit the funds in his personal—not business—bank accounts in Santa Fe, New Mexico, and manage it as a "pool of funds" that also includes his own investments. When directly asked how he was able to differentiate between his personal funds and client funds, Lien responded with a *non sequitur*. Similarly, when queried as to how he managed to only invest in products that were suitable based on his clients' individual needs, Lien responded, "Well, I don't really... I say that I'm... I tried to be short term but there are times when I'm longer term. I try to [...] for the most part invest in markets that are in this country. I don't invest in markets in Hong Kong or other places, you know, even though the return might be better."

21. Lien acknowledged that some clients were totally unaware of his trading activities on their behalf. In one such example from 2019, Lien was asked about a particular "fund" which bore the name of one specific client. In response to whether that client was aware of Lien's trades in and out of various commodities, Lien replied, "She would not know." When the Staff asked Lien whether this fund involved five, 10 or possibly 20 trades, Lien replied, "Could be 50 trades [...] in the space of three months, it could be 50 trades. And she does not know. I mean [...] you ask, how old are my clients? I would say [this client] is 65 or something like that. She's, you know, been in business herself many, many years. And she, she really doesn't know."

22. Indeed, Lien himself appeared unable to recall his own trading activity or identify any specific investments, saying that to recall such things "would take a great deal of going back over." Furthermore, Lien acknowledged his documentation would not meaningfully assist his clients in learning how much their investments had appreciated or depreciated, remarking, "No. There is no way to tell [that] from this [statement]."

23. Lien claimed to prepare some client statements monthly and others quarterly, noting that his frequency in providing client statements was not fixed and that, rather than using

software, he prepared them by hand. He also stated that he "started out" providing his clients with monthly statements, but stopped soon thereafter because it "overwhelmed" him.

24. Lien reiterated his claim to the Staff that he could not liquidate his clients' holdings because they were invested in long-term investments. Then, Lien stated that he was in the process of selling a parcel of commercial property he claimed to own in the Boston, Massachusetts area, noting that the sale would provide enough capital to pay back all his investors. However, when asked for the property's address, he stated that he could not remember it.

25. At the end of the interview, the Staff provided Lien with information on the registration requirements for investment advisers and explained the process required to become a licensed agent or investment adviser in New Mexico.

26. As of the date of this Order, Respondent Lien has not produced any documents in response to the Director's subpoena.

27. As of the date of this Order, Respondent Lien is not communicating with the above investors and has refused to return their funds.

COUNT I

Acting as an Unlicensed Investment Adviser NMSA 1978, § 58-13C-403

28. The allegations contained in the preceding paragraphs are re-alleged and incorporated as though fully set forth herein.

29. From at least 2014 to the date of this Order, Respondent Lien has transacted business in New Mexico as an investment adviser without being registered pursuant to the Act or having demonstrated that he is exempt from registration.

30. Section 58-13C-102(P) of the Act defines an investment adviser as "a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities." Thus, Respondent Lien is an "investment adviser" pursuant to this definition.

31. In particular, Respondent Lien's agreement with his clients to pay out their *pro rata* share of the profits he earned (or, conversely, to share in his losses), constitutes a security in New Mexico because it is tantamount to both a "certificate of interest or participation in a profit-sharing agreement," NMSA 1978, § 58-13C-102(DD), and "an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor," *Id.* at § 102(DD)(5).

32. Section 58-13C-403(A) states: "It is unlawful for a person to transact business in New Mexico as an investment adviser unless the person is registered pursuant to the New Mexico Uniform Securities Act as an investment adviser or is exempt from registration as an investment adviser pursuant to Subsection B of this section."

33. Respondent Lien is not registered as an investment adviser with the Division. Accordingly, he is in violation of NMSA 1978, § 58-13C-403(A).

COUNT II

Investment Advisory Fraud NMSA 1978, § 58-13C-502(A)(2)

34. The allegations contained in the preceding paragraphs are re-alleged and incorporated as though fully set forth herein.

35. Section 58-13C-502(A)(2) of the Act states: "It is unlawful for a person that advises others for compensation, either directly or indirectly [...], as to the value of securities or the advisability of investing in, purchasing or selling securities [...]: to engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person."

36. In connection with rendering investment advice to the above investors, Respondent Lien continually and falsely led the investors named in this Order to believe the following material information:

- a. That their accounts were generating profits when, in truth, they were not;
- b. That their accounts could not be liquidated because their money was placed in long-term, fixed investments when, in truth, there is no evidence their money was actually invested;
- c. That Respondent Lien was not legally required to be registered to work as an investment adviser in New Mexico when, in truth, Respondent Lien did have a legal obligation to be so licensed.

37. The materially false statements made by Respondent Lien constitute such an act, practice or course of business which operates or would operate as a fraud or deceit upon each of the New Mexico investors named in this Order, to wit: N.B., R.P., and P.K. Accordingly, Respondent Lien is in violation of NMSA 1978, § 58-13C-502(A)(2).

38. The foregoing untrue statements are material because there is a substantial likelihood that a reasonable investor would have considered their disclosure significant as part of the "total mix" of information available. *Walta v. Gallegos Law Firm, P.C.*, 131 N.M. 544, 554 (Ct. App. 2001) (citing *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)).

V. CONCLUSIONS OF LAW

39. Respondent Lien dba Westend Investments has transacted business as an unlicensed investment adviser in violation of NMSA 1978, § 58-13C-402(A).

40. In connection with providing investment advice, Respondent Lien has engaged in an act, practice or course of business that operated or would have operated as a fraud or deceit upon New Mexico investors N.B., R.P., and/or P.K. in violation of NMSA 1978, § 58-13C-502(A)(2).

VI. 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 policies and provisions of the Act.

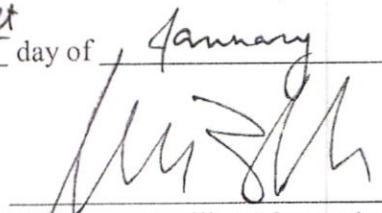
IT IS, THEREFORE, ORDERED THAT:

Pursuant to NMSA 1978, § 58-13C-604(A)(1) of the Act, Respondent Lien, his agents, affiliates, servants, employees, successors, assigns, attorneys, and all persons or entities in active concert with him, who receive actual notice of this Order by personal service or otherwise, shall cease and desist from the following conduct, whether directly or indirectly:

1. Engaging in the business of providing investment advice in and from New Mexico as that term is defined in NMSA 1978, § 58-13C-102(P);
2. Committing investment advisory fraud in and from New Mexico as that term is defined in NMSA 1978, § 58-13C-502(A)(2); and,
3. Soliciting, receiving or accepting any funds from any person for the purpose of investing those funds at the person's behest or as payment for fees for investment advisory services of any kind, whenever incurred.

ENTERED AT Santa Fe, New Mexico this 31st day of January, 2020.




Mathew J. Bouillon Mascareñas
Director
New Mexico Securities Division

NOTICE OF ADMINISTRATIVE HEARING RIGHTS

The Respondent is hereby notified of their statutory right to request an administrative hearing on this Cease and Desist Order. Administrative hearings are governed by NMSA 1978, § 58-13C-604(B)(4)-(11). Respondent has fifteen (15) days from the receipt of this notice to file a written request for a hearing. The request may be sent via U.S. Postal Service, Form 3811, Receipt for Certified Mail, or via email to the Director at matthew.bouillon@state.nm.us. The Director will set the matter for hearing no more than sixty (60) days nor 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 his 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 NMSA 1978, § 58-13C-604(B), any Respondent requesting a hearing is entitled to: appear on their own behalf or may be represented by an attorney; present all relevant evidence; examine all opposing witnesses who appear on any matter relevant to the issues; and request and obtain discovery, including the names and addresses of witnesses.

AFFIDAVIT OF SERVICE

On Feb. 3, 2020 New Mexico Securities Division Special Agent
GREG STOVER personally served the Preliminary
Order To Cease And Desist And Notice Of Right To Hearing dated January 31,
2020 on Mr. Douglas H. Lien at his home in Santa Fe County, New Mexico at
approximately 0945 hrs.

GREG STOVER

Gregory Stover
Special Agent in Charge
New Mexico Securities Division
(505) 490-2063

Feb 3, 2020

