

BEFORE THE SECURITIES COMMISSIONER  
OF THE STATE OF KANSAS



In the Matter of:

James L. McEnerney, Jr. (CRD No. 734383)

Docket No. 19E086

KSC No. 2019-6582

Respondent.

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Pursuant to K.S.A. 17-12a412

**DEFAULT FINAL ORDER**

This matter comes for consideration by the Securities Commissioner of Kansas (“Commissioner”) upon the *Application for Order Denying Application for Registration as Investment Adviser Representative* (“Application”), filed herein by the Staff of the Office of the Kansas Securities Commissioner (“KSC Staff”) on April 29, 2019.

**Summary of Proceedings**

In the *Application*, KSC Staff requested the Commissioner to issue an order under K.S.A. 17-12a412 denying Respondent’s application for registration as an investment adviser representative in Kansas under the Kansas Uniform Securities Act (“KUSA”).

Based on the *Application*, the Commissioner issued a *Notice of Intent to Deny Application for Registration as Investment Adviser Representative* (“NOI”) on May 7, 2019. The *NOI* notified Respondent that if the allegations set forth in the *Application* are found to be true, through either administrative adjudication, failure of Respondent to make a timely request for hearing, or default by Respondent, the Commissioner intended to enter

an order against the Respondent, which may deny, condition, or limit the Respondent's investment adviser representative application under K.S.A. 17-12a412(a).

The *NOI* further notified Respondent that if Respondent wished to contest the allegations in the *Application* or offer evidence and argument to mitigate them or the sanctions or remedies to be imposed, then Respondent must file a request for hearing, in the manner and form prescribed by K.A.R. 81-11-3 and K.A.R. 81-11-5, within thirty-three (33) days of the date of mailing on the *Certificate of Service* accompanying the *NOI*. The *NOI* also notified Respondent that, if a request for hearing is not timely filed, the Commissioner may issue a final order, including the sanctions and remedies described above, without further proceedings.

A *Certificate of Service* filed by the Administrative Clerk indicates that a copy of the *NOI* was sent to Respondent on May 7, 2019, by certified mail, return receipt requested, and by first-class mail, postage prepaid. To date, Respondent has not filed a request for hearing.

Having reviewed the *Application* and the file, the Commissioner finds and orders as follows:

**Findings of Fact**

1. The McEnerney Group, LLC, CRD #140847 ("TMG") is an investment adviser with a principal place of business at 6767 North Wickham Road, Suite 400, Melbourne, FL 32940. On November 20, 2018, TMG submitted a Form ADV to the CRD, which requested registration as an investment adviser under the KUSA.

2. Respondent James L. McEnerney, Jr., CRD #734383 (“Respondent” or “McEnerney”) is an individual with a last known address of [REDACTED]. On November 20, 2018, McEnerney submitted a Form U-4 to the CRD, which requested registration as an investment adviser representative under the KUSA and to be affiliated with TMG. To date, McEnerney’s Form U-4 application for registration is deficient pending approval of TMG’s request for registration as an investment adviser in Kansas.
3. On September 14, 2018, Wells Fargo Clearing Services, LLC (“Wells Fargo”) filed a Form U-5 with the CRD indicating that McEnerney was terminated from Wells Fargo on August 17, 2018. Wells Fargo’s Form U-5 stated McEnerney was terminated for failure to timely disclose a misdemeanor arrest to the firm. Wells Fargo responded “yes” to Question 7F(1), which asked if McEnerney was terminated “after allegations were made that accused the individual of . . . violating investment-related statutes, regulations, rules, or industry standards of conduct[.]”
4. In the Form U-4 McEnerney submitted on November 20, 2018, McEnerney responded “no” to Question 14J(1), which asked “[h]ave you ever voluntarily resigned, been discharged or permitted to resign after allegations were made that accused you of: violating investment related statutes, regulations, rules, or industry standards of conduct[.]” This answer contradicted the answer given by Wells Fargo to Question 7F(1) on its Form U-5 as described above.

5. On January 31, 2019, Jamie Heydenreich (“Heydenreich”), an Examiner with the KSC, sent TMG a letter stating that TMG’s Form ADV was deficient. Heydenreich’s letter listed numerous deficiencies with TMG’s Form ADV, including that it failed to disclose legal or disciplinary events regarding McEnerney as required by Part 2B, Item 3. Additionally, Heydenreich’s letter requested further information regarding the criminal charges and conviction which led to McEnerney’s termination from Wells Fargo, including a written statement from McEnerney regarding the charges.
6. In response to Heydenreich’s letter, McEnerney wrote a letter to KSC Staff, dated February 5, 2019, explaining his criminal charges. McEnerney indicated that he pleaded guilty to a low-level misdemeanor in response to allegations stemming from a text message conversation with an underaged player on a sports team. McEnerney claimed the minor was seeking parental advice, that he was acting as a mentor, and that his text messages were “taken wildly out of context.”
7. KSC Staff obtained a Probable Cause Statement from a Detective Sergeant of the Parkville, Missouri Police Department, which described the allegations forming the basis of McEnerney’s criminal charge. The Probable Cause Statement indicated law enforcement officers had received copies of some of the text messages McEnerney sent to the underaged person, and that the text messages were sexually explicit. The Probable Cause Statement also described other interactions between McEnerney and the minor which were sexually explicit.

These portions of the Probable Cause Statement contradict the letter McEnerney sent to KSC Staff on February 5, 2019.

8. On May 31, 2018, an application by McEnerney for registration as an insurance agent was denied by the Kansas Insurance Department (“KID”). KID provided McEnerney written notice that he had a right to a hearing before the Insurance Commissioner to appeal the denial. McEnerney had until June 18, 2018, to request a hearing before the denial of his application became a final order. McEnerney failed to request a hearing, and the denial of his application for registration as an insurance agent became a final order on June 18, 2018.
9. Denial of McEnerney’s application for registration as an investment adviser representative under the KUSA is in the public interest and is necessary to protect Kansas investors.

#### **Conclusions of Law**

10. The Commissioner has jurisdiction over Respondent and this matter.
11. The Form U-4 submitted by McEnerney was incomplete in material respects and contained statements that, in light of the circumstances under which they were made, were false or misleading with respect to a material fact, which constitutes a ground for discipline under K.S.A. 17-12a412(d)(1).
12. McEnerney lacks sufficient character or reputation to warrant the public trust, which constitutes a ground for discipline under 17-12a412(d)(15).

13. KID's denial of McEnerney's application for registration as an insurance agent constitutes a ground for discipline under K.S.A. 17-12a412(d)(5)(E).
14. The Commissioner may deny McEnerney's investment adviser representative application for registration pursuant to K.S.A. 17-12a412(a) if there is a ground for discipline and the denial is in the public interest.

IT IS THEREFORE ORDERED by the Commissioner that Respondent's investment adviser representative application for registration with the State of Kansas is hereby DENIED.

**ISSUED BY THE COMMISSIONER.**

Entered at Topeka, Kansas, this 21st day of June, 2019.



A handwritten signature in blue ink, reading "Jeffrey S. Wagaman", is written over a horizontal line.

Jeffrey S. Wagaman  
Kansas Securities Commissioner

## NOTICES

- (1) A party to this action may petition the Commissioner for reconsideration within 15 days after service of a final order, following the procedures in K.S.A. 77-529. Under K.S.A. 77-528, a party may petition for a stay of effectiveness of this order until the time at which a petition for judicial review would no longer be timely.
- (2) This order may be subject to judicial review. The agency officer to receive service of a petition for judicial review on behalf of the Office of the Kansas Securities Commissioner is Jack Clayton Johnson, Chief Regulatory Counsel, at 109 SW 9th Street, Suite 600, Topeka, Kansas 66612.