

BEFORE THE SECURITIES COMMISSIONER
OF THE STATE OF KANSAS



In the Matter of:

Todd R. Gentry

Docket No. 23 E 154
KSC No. 2020-6647

Respondent.

Pursuant to K.S.A. 17-12a604

CONSENT ORDER

1. The Staff of the Office of the Kansas Securities Commissioner (“KSC”) alleges that Todd R. Gentry (“Gentry”) engaged in conduct constituting violations of the Kansas Uniform Securities Act, K.S.A. 17-12a101 *et seq.* (“the KUSA”), and that Gentry is subject to administrative sanctions and remedies under K.S.A. 17-12a604.

2. Gentry and the KSC desire to settle the matters raised by the KSC relating to Gentry’s alleged violations.

CONSENTS, STIPULATIONS, WAIVERS, AND ACKNOWLEDGMENTS

3. Gentry and the KSC stipulate and agree that, under the KUSA, the Securities Commissioner of Kansas (“the Commissioner”) has jurisdiction over Gentry and this matter.

4. Gentry and the KSC stipulate and agree that the Commissioner has authority to enter this Order under K.S.A. 17-12a604.

5. Gentry waives his right to a hearing with respect to these matters.

6. Gentry waives any rights that he may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order.

7. Gentry and KSC Staff agree to the issuance of this Order without further proceedings in this matter and agree to be fully bound by the terms and conditions specified herein.

8. Gentry acknowledges and understands that he may consult with an attorney of his own choosing regarding this Order and its contents and acknowledges that his decision to agree to the issuance of this order is knowing and voluntary.

9. Without admitting or denying the allegations made by the KSC Staff as reflected in the Findings of Fact and Conclusions of Law set forth below, Gentry agrees to the issuance of this Order based on such Findings of Fact and Conclusions of Law solely for the purposes of this proceeding and any proceeding that may be brought to enforce the terms of this specific Order.

FINDINGS OF FACT

10. Gentry is an individual who, at all relevant times, was a resident of Wichita, Kansas.

11. HyperBorean, LLC is a Kansas limited liability company formed by Gentry on October 19, 2013. Gentry is the sole member of HyperBorean, LLC. HyperBorean, Inc. is a Kansas corporation formed by Gentry in 2020. Gentry is the sole shareholder and CEO of HyperBorean, Inc. Throughout this Order, HyperBorean, LLC and HyperBorean, Inc., shall be collectively referred to as "HyperBorean." At all relevant times, HyperBorean's primary place of business was and remains located in Wichita, Kansas.

12. Gentry founded HyperBorean to develop a new technology to convert heat into a power source for air-conditioning and refrigeration.

13. Commencing in 2013, Gentry began soliciting capital from investors for HyperBorean's business. From 2013 to present, Gentry raised approximately \$1,606,200.00 from investors through the issuance and sale of promissory notes and SAFE agreements by HyperBorean, hereinafter the Subject Promissory Notes.

14. To solicit potential investors to purchase the promissory notes, Gentry verbally communicated with potential investors and provided potential investors with written offering documents. In these communications and documents, Gentry described HyperBorean's business and his intent and plan to use investor funds to develop the new technology.

15. Before offering and selling the promissory notes issued by HyperBorean, Gentry and his previous company, Inno-Labs, LP, were sued by a company called Hewy Wine Chillers for the conversion of approximately \$300,000. The lawsuit resulted in a judgment against Inno-Labs for over \$300,000. Then, there was a judgment against Gentry for the same amount. In 2019, Gentry entered into a settlement agreement whereby he agreed to pay \$140,000 to Hewy Wine Chillers to satisfy the judgment. These facts are referred to herein as "the Hewy Wine Chillers Judgment and Settlement" or "the Judgment and Settlement."

16. From March 26, 2019, to December 24, 2019, Gentry paid Hewy Wine Chillers \$140,000 to satisfy the Judgment and Settlement. To make these payments, Gentry used some of the funds received by HyperBorean from the contemporaneous sale

and issuance of HyperBorean's promissory notes to at least eight investors (hereinafter "the Subject Promissory Notes").

17. At the time Gentry offered and sold the Subject Promissory Notes, Gentry intended to use some of the funds received by HyperBorean from the sale and issuance of the Subject Promissory Notes to pay Hewy Wine Chillers in satisfaction of the Judgment and Settlement.

18. Gentry did not disclose the facts of the Hewy Wine Chillers Judgment and Settlement, or his intent to use some of the funds received by HyperBorean from the sale and issuance of the Subject Promissory Notes to satisfy the Judgment and Settlement, to the purchasers of the Subject Promissory Notes.

CONCLUSIONS OF LAW

19. The Commissioner has jurisdiction over Gentry and this matter.

20. The Subject Promissory Notes are securities as that term is defined in K.S.A. 17-12a102(28).

21. In connection with the offer and sale and issuance of the Subject Promissory Notes, the facts of the Hewy Wine Chillers Judgment and Settlement, and Gentry's intent to use some of the funds received by HyperBorean from the sale and issuance of the Subject Promissory Notes to pay Hewy Wine Chillers in satisfaction of the Judgment and Settlement, were material facts necessary in order to make other statements Gentry made to the investors of the Subject Promissory Notes not misleading.

22. Gentry violated K.S.A. 17-12a501(2) by omitting, in connection with the offer and sale and issuance of the Subject Promissory Notes, to disclose to their purchasers the existence of the Hewy Wine Chillers Judgment and Settlement and Gentry's intent to use some of the funds raised through the sale and issuance of the Subject Promissory Notes to satisfy the Hewy Wine Chillers Judgment and Settlement.

ORDER

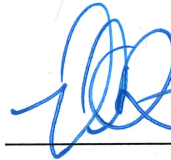
IT IS THEREFORE ORDERED that Gentry shall pay a civil penalty in the amount of \$25,000. Payment shall be made payable to the "Office of the Kansas Securities Commissioner," and delivered to Jack Clayton Johnson, Assistant General Counsel, at 1300 SW Arrowhead Road, Topeka, KS 66604. Such payment shall be made within 30 days of the issuance of this Order. Upon receipt, such payment shall be deposited in the Investor Education and Protection Fund.

IT IS FURTHER ORDERED that Gentry shall immediately CEASE AND DESIST, in connection with the offer or sale of a security in the State of Kansas, from omitting to state any material fact necessary in order to make other statements made, in the light of the circumstances under which they are made, not misleading. In connection with any offer of a security in the State of Kansas made within 10 years of the date of this Order and in which Gentry is the issuer or seller, or in which Gentry is an officer, director, partner, manager, control person, or agent of the issuer or seller, Gentry shall, within five days of such offer and before the security is sold, either: (1) substantially state or cause the issuer or seller to substantially state to the person to whom the security is

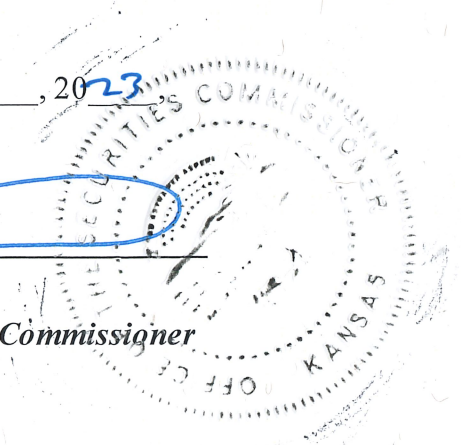
offered the findings of this Order, including but not limited to the findings in Paragraphs 15, 16, 17, 18, 21, and 22; or (2) provide the person to whom the security is offered a copy of this Order.

IT IS SO ORDERED BY THE COMMISSIONER.

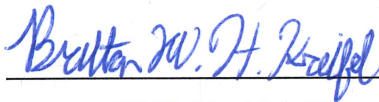
Entered at Topeka, Kansas, this 20th day of APRIL, 2023



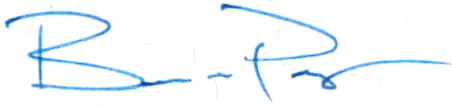
Daniel J. Klucas
Kansas Securities Commissioner



APPROVED BY:



Bretton W.H. Kreifel, Kansas Bar No. 27973
Staff Attorney
OFFICE OF THE KANSAS SECURITIES COMMISSIONER
Attorney for KSC Staff



Braden M. Perry, Kansas Bar No. 21022
KENNYHERTZ PERRY LLC
Attorney for Respondent

NOTICE

- (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 Securities Commissioner is Jack Clayton Johnson, Assistant General Counsel, at 1300 SW Arrowhead Road, Topeka, Kansas 66604.
- (3) This order contains orders to cease and desist issued by the Kansas Securities Commissioner pursuant to K.S.A. 17-12a604(a). An intentional violation of any order to cease and desist contained herein is a severity level 5 nonperson felony.