

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 SOPHIA C. KIM (State Bar No. 265649)
Senior Counsel
4 Department of Business Oversight
320 West 4th Street, Suite 750
5 Los Angeles, California 90013
Telephone: (213) 576-7594
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA

11 In the Matter of:)	CRD NO.: 144914
)	
12 THE COMMISSIONER OF BUSINESS)	ORDER SUMMARILY REVOKING
13 OVERSIGHT,)	INVESTMENT ADVISER CERTIFICATE
)	(CORP. CODE, § 25242)
14 Complainant,)	
)	
15 v.)	
)	
16 BURNETT, RICHARD LEON d.b.a.)	
17 BURNETT FINANCIAL SERVICES,)	
)	
18 Respondent.)	
)	

20 TO: Burnett, Richard Leon
21 d.b.a. Burnett Financial Services
22 1348 East Hillcrest #55
Thousand Oaks, California 91362

23 Jan Lynn Owen, the Commissioner of Business Oversight (Commissioner) of the
24 Department of Business Oversight (Department), finds that:

25 1. At all relevant times, Burnett, Richard Leon d.b.a. Burnett Financial Services is a
26 sole proprietorship owned and managed by Richard Leon Burnett (BFS). BFS’s principal place of
27 business on file with the Commissioner is 1348 East Hillcrest #55, Thousand Oaks, California
28

1 91362. BFS's mailing address on file with the Commissioner is P.O. Box 7631, Thousand Oaks,
2 California 91359.

3 2. On or around September 7, 2007, the Commissioner granted an investment adviser
4 certificate to BFS.

5 3. BFS's most recent Form ADV¹ Part 1, dated June 30, 2011, and Part 2 undated,
6 states that BFS does not have any clients or assets-under-management. BFS has not filed any
7 amendments with the Financial Industry Regulatory Authority (FINRA) since June 30, 2011,
8 despite being required to file and update the Form ADV regularly with FINRA.

9 4. On or around March 29, 2018 the Department notified BFS by telephone, certified
10 mail, and email that on April 16, 2018 the Department would commence a regulatory examination
11 of the investment advisory services of BFS pursuant to Corporations Code section 25241. The
12 Department directed BFS to have readily accessible on April 16, 2018 the books and records listed
13 on an attached exam request list and summary of personnel form necessary for conducting the
14 regulatory examination (Exam Request List). On March 29, 2018, the Department granted BFS's
15 request to commence the regulatory examination on April 4, 2018 rather than on April 16, 2018.

16 5. On April 4, 2018 the Department conducted an entrance interview of BFS and
17 requested the books and records on the Exam Request List by no later than April 6, 2018. BFS did
18 not submit the required books and records by the deadline of April 6, 2018.

19 6. On April 9 and April 16, 2018, the Department called and left voice mail messages
20 with BFS requesting the required books and records on the Exam Request List.

21 7. After receiving no reply from BFS, on July 12, 2018, the Department notified BFS
22 by email and certified mail to BFS's principal place of business and mailing address of the
23 Department's final demand for the books and records on the Exam Request List (Final Demand).
24 The Final Demand stated that pursuant to Corporations Code section 25241, subdivisions (a), (b),
25 and (c), BFS should make and keep all books and records for the Department's examination at any
26 time, and that failure to provide the books and records on the Exam Request List may result in

27 _____
28 ¹ Pursuant to 10 C.C.R. §§ 260.230.1 and 260.231, the Form ADV is the application for a certificate as an investment
adviser as well as the uniform form used by investment advisers to register with the Securities and Exchange
Commission (SEC). See Investor Bulletin: Form ADV – Investment Adviser Brochure and Brochure Supplement,
available at: https://www.sec.gov/oiea/investor-alerts-bulletins/ib_formadv.html.

1 enforcement action(s) against BFS pursuant to Corporations Code section 25242, subdivision (c)(6).
2 The Final Demand directed BFS to submit the books and records on the Exam Request List by no
3 later than July 23, 2018.

4 8. On July 23, 2018, BFS submitted a response to the Final Demand that was
5 incomplete and/or inaccurate, as summarized below:

6 a. BFS provided a list of at least 23 names of purported clients, their addresses,
7 account numbers, account type and value of their assets; BFS failed to include the name of the
8 custodian, date of inception, client’s phone number, and current account balance as of February 28,
9 2018;

10 b. BFS’s January to February 2018 Balance Sheet was inaccurate because the
11 Equity Section did not include Net Income;

12 c. BFS was required to provide an Income Statement for the year-to-date, but its
13 submission included only February 2018 and was missing January 2018 activity;

14 d. BFS submitted blank copies of an FTJ FundChoice Risk/Return
15 Questionnaire, FTJ FundChoice application addendum, and a TD Ameritrade client account
16 application for FTJ FundChoice; BFS failed to submit a copy of the executed Investment Advisory
17 agreements for all its asset management service clients, as well as the most current non-executed, or
18 pro forma Investment Advisory agreements for all its asset management service clients, as required;

19 e. BFS failed to provide each of the following items on the Exam Request List:

20 i. General Ledger for January 1, 2018 through February 28, 2018;

21 ii. Monthly bank statements and reconciliations of all business accounts
22 February 2018;

23 iii. Monthly brokerage statements and reconciliations of all business accounts for
24 February 2018;

25 iv. Minimum Financial Requirement computations for February 2018;

26 v. List of all brokerage accounts held in the name of the firm, the firm’s
27 personnel and immediate family members (spouse, children), including the
28

- 1 account number, custodian, account type and account balance as of February
- 2 28, 2018;
- 3 vi. Advertising file, including all forms of current advertising used by the firm;
- 4 vii. Correspondence file;
- 5 viii. Complaint file;
- 6 ix. Business Continuity Plan;
- 7 x. Completed Summary of Personnel form listing all of BFS’s personnel along
- 8 with job descriptions including all advisory duties, signed by the BFS’s
- 9 principal as being true and accurate.

10 9. On March 20, 2019, the Department issued a formal demand to produce the books
11 and records listed in an updated examination request list and summary of personnel form, attached
12 as Exhibit A, by no later than April 1, 2019 (March 20, 2019 Demand). The March 20, 2019
13 Demand notified BFS that failure to respond by April 1, 2019 with all the records demanded in
14 Exhibit A may result in summary revocation of the investment adviser certificate of Burnett,
15 Richard Leon d.b.a. Burnett Financial Services pursuant to Corporations Code section 25242,
16 subdivisions (c)(2) and (c)(6).

17 10. On or around April 1, 2019, BFS submitted a response that failed to comply with the
18 Department’s March 20, 2019 Demand, as summarized below:

19 a. BFS failed to update and submit its Form ADV but instead submitted a Form
20 ADV of a different firm, FTJ FundChoice, LLC; to date, BFS has not updated its Form ADV with
21 FINRA since June 30, 2011;

22 b. BFS failed to submit executed Investment Advisory agreements for all its
23 asset management service clients;

24 c. BFS failed to submit a Business Continuity Plan and instead submitted that
25 of a different firm, FTJ FundChoice, LLC;

26 d. BFS failed to submit computations of compliance with minimum financial
27 requirements pursuant to California Code of Regulations, title 10, section 260.237.2 for December
28 2018;

1 e. BFS failed to submit an executed cover letter by an officer of BFS.

2 **IV.**
3 **Applicable Law**

4 11. Corporations Code section 25242 states, in relevant part:

5 (c) The commissioner may summarily suspend or revoke the certificate of
6 a broker–dealer or investment adviser if he or she . . . (2) fails to file any
7 report required under Section 25241 within 10 days after notice by the
8 commissioner that the report is due . . . or (6) fails to maintain records as
9 required by Section 25241.

10 12. Financial Code section 25241 states, in relevant part:

11 (a) Every broker–dealer and every investment adviser licensed under
12 Section 25230 shall make and keep accounts, correspondence,
13 memorandums, papers, books, and other records and shall file financial
14 and other reports as the commissioner by rule requires, subject to the
15 limitations of Section 15(h) of the Securities Exchange Act of 1934 with
16 respect to broker–dealers and Section 222 of the Investment Advisers Act
17 of 1940 with respect to investment advisers.

18 (b) All records so required shall be preserved for the time specified in the
19 rule.

20 (c) All records referred to in this section are subject at any time and from
21 time to time to reasonable periodic, special, or other examinations by the
22 commissioner, within or without this state, as the commissioner deems
23 necessary or appropriate in the public interest or for the protection of
24 investors

25 13. California Code of Regulations, title 10, section 260.241.3 states, in relevant part:

26 (a) Every licensed investment adviser shall make and keep true, accurate
27 and current the following books and records relating to such person's
28 investment advisory business:

(1) A journal or journals, including cash receipts and disbursements
records, and any other records of original entry forming the basis of
entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records) reflecting
asset, liability, reserve, capital, income and expense accounts . . .

(4) All check books, bank statements, cancelled checks and cash
reconciliations of the investment adviser.

(5) All bills or statements (or copies thereof), paid or unpaid, relating to
the business of the investment adviser as such.

(6) All trial balances, financial statements, worksheets that contain
computations of minimum financial requirements required under Section
260.237.2, of these rules, and internal audit working papers relating to the
business of such investment adviser . . .

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(10) All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such . . .

(e) (1) All books and records required to be made under the provisions of subsections (a) to (c)(1), inclusive, of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser

NOW, BASED UPON THE FOREGOING, AND GOOD CAUSE APPEARING, it is hereby ORDERED under the provisions of Corporations Code section 25242, subdivision (c) that the investment adviser certificate of Burnett, Richard Leon d.b.a. Burnett Financial Services, having failed to file any report required under Section 25241 within 10 days after notice by the Commissioner that the report is due and failed to maintain records as required by Section 25241, be summarily revoked, effective immediately on the date of this order.

This revocation precludes Burnett, Richard Leon d.b.a. Burnett Financial Services from engaging in normal investment adviser activities that solicit or facilitate new business, including for existing clients, effective immediately. This revocation does not preclude Burnett, Richard Leon d.b.a. Burnett Financial Services from engaging in activities necessary to wind down the business such as liquidating transactions, transferring accounts, forwarding any checks received to the clearing firm, responding to regulatory inquiries, filing U-5's for registered representatives, and otherwise fielding client or customer phone calls for account servicing or document requests, for a period of 60 days from the date of this order. After that time, the winding down of the investment adviser business must be completed and Burnett, Richard Leon d.b.a. Burnett Financial Services is not permitted to engage in any further investment adviser activities.

Dated: April 24, 2019
Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division