CLOTHILDE V. HEWLETT

Commissioner

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BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION

OF THE STATE OF CALIFORNIA

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| In the Matter of:  THE COMMISSIONER OF FINANCIAL PROTECTION AND INNOVATION,  Complainant,  v.  ANDREW L. PENN,  Respondents. | ACCUSATION IN SUPPORT OF ORDER TO BAR ANDREW L. PENN FROM ANY POSITION OF EMPLOYMENT, MANAGEMENT OR CONTROL OF ANY INVESTMENT ADVISER, BROKER-DEALER OR COMMODITY ADVISER  (Cal. Corp. Code § 25232.1) |

The Commissioner of Financial Protection and Innovation (Commissioner) is informed and believes, and based upon such information and believe, alleges and charges as follows:

**INTRODUCTION**

1. The Commissioner is authorized to administer and enforce the provisions of the Corporate Securities Law of 1968 (Cal. Corp. Code §§ 25000-25707) (CSL) and the regulations promulgated thereunder at title 10 of the California Code of Regulations (CCR), which includes the offer and sale of securities and the licensure, examination, and regulation of investment advisers.
2. The Commissioner brings this action in order to issue an order barring Andrew L. Penn (Penn) from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser pursuant to Corporations Code section 25232.1.
3. At all relevant times herein, Andrew L. Penn, is and was a California resident, located at 26608 Sunflower Court, Calabasas, California 91302, conducting business by telephone at (818) 427-5634 and by email at Andrewdarci@gmail.com.

**THE COMMISSIONER HAS GROUNDS TO BAR ANDREW L. PENN**

1. Corporations Code section 25232.1 provides, in pertinent part:

*The commissioner may*, after appropriate notice and opportunity for hearing,…*bar*…*from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser,* any officer, director, partner, employee of, or person performing similar functions for, an investment adviser, or any other person, *if he or she finds* that the…*bar* is in the public interest and *that the person has committed any act or omission enumerated in subdivision…(e)…of Section 25232*…. [Emphasis added.]

1. Corporations Code section 25232, in relevant part, provides:

(*e) Has willfully violated any provision of…Title 4* (commencing with Section 25000)…[Emphasis added.]

1. In accordance with Corporations Code section 25232.1, the Commissioner may bar any person, based on willful violations of sections of the CSL or rules adopted thereunder. In this case, Penn has willfully violated multiple CSL codes and regulations including: (1) Corporations Code section 25110, by offering and sell securities in this state, unless such security or transaction has been qualified or unless such security is exempted or not subject to qualification; and (2) Corporations Code 25401, by offering and selling securities by means of written or oral communications which included untrue statements of material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.
2. **Corporations Code section 25110**
3. Beginning in or about November 2019, Andrew L. Penn offered and/or sold securities, in the form of Private Investment Agreements - investment contracts - in California through telephone calls and email correspondence.

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1. Andrew L. Penn provided investors with a “Private Investment Agreement” that indicated that he would use the proceeds from the sales of these securities to acquire, hold, and sell artworks.
2. Penn sold securities to at least six investors, residing in California and elsewhere, in at least 12 separate transactions. raising at least $622,275.00.
3. Corporations Code section 25110 prohibits the offer or sale of unqualified, non-exempt securities in issuer transactions in the State of California. The securities offered and sold by Penn are subject to qualification under the CSL. These securities were offered or sold in this state in issuer transactions. The Department has not issued a permit or other form of qualification authorizing any person to offer or sell these securities in this state. The offer or sale of these securities is not exempt.
4. Based on the foregoing findings, the Commissioner is of the opinion that the securities, in the form of an investment contract, offered and sold by Penn, are securities, subject to qualification under the California Corporate Securities Law of 1968 and are being or have been offered or sold without being qualified, in violation of Corporations Code section 25110.
5. **Corporations Code section 25401**
6. In connection with the offers and sales of these securities, Andrew L. Penn made, or caused to be made, misrepresentations of material fact to investors and potential investors, including that:
   1. The investment was “Fully Guaranteed” with a “guaranteed return” of “40% over a term of 19 months” or “guaranteed return of 22.8% - term ending the end of February 2023;
   2. The investor would receive semi-annual payments;
   3. The investment had “Zero Risk; and
   4. The client had sole discretion “to determine how the proceeds are allocated,” at the end of the contracted term.
7. In fact, none of these statements were true. At least five of the investors never received any payments. One investor did receive a portion of the original deposit after asking for a refund, but

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received no profits. At least six investors have made multiple requests for a refund from the Penn’s but have been unsuccessful.

1. Corporations Code section 25401 prohibits the offer or sale of securities in this state by means of written or oral communications that include untrue statements of material fact or omit materials facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The misrepresentations of Penn are material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.
2. Based on the foregoing findings, the Commissioner is of the opinion that the securities issued by Andrew L. Penn were offered and sold in this state by means of written or oral communications which included untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in violation of Corporations Code section 25401.

**CONCLUSION**

Based upon the foregoing, the Commissioner finds that grounds exist, and that it is in the public interest, to enter an order to bar Andrew L. Penn, from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser pursuant to Corporations Code section 25232.1. The Commissioner hereby notifies Andrew L. Penn of her intention to make such order final.

DATED: June 11, 2024 CLOTHILDE V. HEWLETT

Sacramento, California Commissioner of Financial Protection and Innovation

By: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Ryan M. Cassidy

Counsel

Enforcement Division