

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **SECURITIES DIVISION**

4 IN THE MATTER OF DETERMINING) Order No.: S-13-1231-14-CO01
5 whether there has been a violation of the)
6 Securities Act of Washington by:) CONSENT ORDER
7)
8 ROBERT E. MOE (CRD No. 4458333) and)
9 MOE INVESTMENT MANAGEMENT, LLC)
10 (CRD No. 116082),)
11)
12 Respondents.)

13 **INTRODUCTION**

14 Pursuant to the Securities Act of Washington, Chapter 21.20 RCW, the Securities Administrator of
15 the Department of Financial Institutions Securities Division (“Securities Division”) and the Respondents,
16 Moe Investment Management, LLC and Robert Moe, do hereby enter into this CONSENT ORDER in
17 settlement of the matters alleged herein. The Securities Division believes that entry of an agreed Consent
18 Order is in the public interest and is appropriate for the protection of investors. Respondents neither admit
19 nor deny the allegations contained herein. The Securities Division sets forth the following Findings of Fact
20 and Conclusions of Law.

21 **FINDINGS OF FACT**

22 **RESPONDENTS**

23 1. Moe Investment Management, LLC (“Moe I.A.”) is a Washington limited liability company
24 registered with the Washington State Securities Division as an investment adviser under file number 3000-
25 74460. It is located at 427 W. Sinto Avenue, Suite 200, Spokane, Washington. Its Central Registration
26 Depository (“CRD”) number is 116082.

27 2. Robert Moe is the sole investment adviser representative and managing member of Moe I.A.
28 His CRD number is 4458333.

29 **NATURE OF THE CONDUCT**

30 3. From October 2006 to July 2013, Moe I.A. acted as the investment adviser and Robert Moe
31 acted as the investment adviser representative for a trust, HP Trust. The beneficiary under HP Trust was

1 Client H.K. Moe I.A. received an investment advisory fee based on the assets under management for the
2 investment advisory services.

3 4. In addition to being HP Trust's investment adviser representative, Robert Moe was the
4 trustee for HP Trust.

5 5. Client H.K. needed twenty-four hour care. Client H.K. relied on Robert Moe to use the
6 items in the trust to pay her medical and other expenses. In addition to receiving an investment advisory
7 fee, Robert Moe received a monthly trustee fee for the trustee services.

8 6. In April 2007, the value of the brokerage account was \$1,274,845. The value of the
9 brokerage account steadily decreased each month as the securities were cashed out and used to pay Client
10 H.K.'s medical and other expenses. The value of the securities account was \$26,889 in April 2013.

11 *A. False Filings*

12 7. The Form ADV is the primary way that the Securities Division and clients learn about
13 potential conflicts of interest for investment advisers.

14 8. Each investment adviser registered with the Securities Division must promptly notify the
15 Director of any material updates to its Form ADV and must make an annual updating filing within ninety
16 days after the investment adviser's fiscal year end. WAC 460-24A-205. An investment adviser must notify
17 the Director when it acts as a trustee as the investment adviser is considered to have custody of client funds
18 and is subject to additional regulatory requirements and oversight.

19 9. The Form ADV asks whether the investment adviser or a related person acts as a trustee. In
20 each of the Forms ADV filed for Moe I.A. for the years 2007 to 2013, it was marked "no" in response to
21 this question.

22 10. In 2013, the Securities Division conducted an examination of Moe I.A. and discovered that,
23 from October 2006 to July 2013, Robert Moe acted as a trustee to HP Trust. Had the Securities Division
24 been aware of Robert Moe's trustee role he would have been subject to additional regulatory requirements
25 and oversight.

1 11. Additional regulatory requirements and oversight was necessary because during the time
2 Robert Moe acted as trustee, no other person was involved in the management of the trust or received
3 invoices or statements regarding the trust's assets. Moe I.A. created invoices for his investment advisory
4 services, which only Robert Moe could access. As a result, no one else reviewed the investment advisory
5 agreement or invoices to determine whether the investment advisory fee he charged was reasonable.

6 *B. Unreasonable Fee*

7 *The investment management agreement provided for an unreasonable fee.*

8 12. An investment adviser fee must be reasonable in relation to the services provided. The
9 investment management agreement between Moe I.A. and HP Trust provided for an advisory fee of 2%
10 until October 2009 when Robert Moe, as trustee for HP Trust, signed a modification to the agreement
11 increasing the fee to 3% charged at .25% per month. No one other than Robert Moe had oversight of the
12 account to determine whether the 3% fee was reasonable.

13 13. An annual advisory fee of 3% is higher than the industry standard but may be reasonable
14 depending on the services provided to the account. An account that requires complex or specialized
15 services justifies charging a higher fee.

16 14. The brokerage account held in HP Trust consisted of conservative, income producing stocks;
17 a money market fund; and cash. Conservative, income producing stocks; money market funds; and cash do
18 not require complex or specialized investment management services.

19 *The fee charged was higher than the contractual amount.*

20 15. Moe I.A. calculated the investment advisory fee based on a percentage of the value of the
21 entire trust, instead of the value of the brokerage account. The value of the brokerage account decreased
22 each month as the securities were cashed out to pay Client H.K.'s living expenses while the value of the
23 other trust assets remained constant. When the investment advisory fee was calculated based only on the
24 value of the brokerage account, the fee charged was .32% of the brokerage account value in October 2009,
25 which equates to an annual fee of 3.84%, and it increased each month to 1.61 % in April 2013, which
equates to an annual fee of 19.32%. The trustee fee charged was \$3,500.

1 16. As a result of Moe I.A. calculating the advisory fee based on the value of the trust instead of
2 the brokerage account, HP Trust paid Moe I.A. \$17,141 more in investment advisory fees than it should
3 have paid under the investment management agreement. Also during this timeframe Robert Moe charged
4 HP trust trustee fees of about \$150,500.

5 **CONCLUSIONS OF LAW**

6 1. As set forth in the Tentative Findings of Facts, Respondent, Moe I.A. has violated RCW
7 21.20.020(1)(c) and WAC 460-24A-220(20) by failing to update Form ADV to disclose Moe I.A. or an
8 affiliate acted as a trustee as required by WAC 460-24A-205.

9 2. As set forth in the Tentative Findings of Facts, Respondent, Moe I.A. has charged an
10 unreasonable advisory fee in violation of RCW 21.20.020(1)(c) and WAC 460-24A-220(10) and -220(20).

11 3. As set forth in the Tentative Findings of Facts, Respondent, Moe I.A. has violated WAC 460-
12 24A-130 by charging a fee other than the fee in the investment advisory agreement in violation of RCW
13 21.20.020(1)(c) and WAC 460-24A-220(8),(10), and (20).

14 4. The violations of RCW 21.20.020(1)(c) constitutes a ground to impose a fine under RCW
15 21.20.110(1).

16 5. As set forth in the Tentative Findings of Facts and pursuant to RCW 21.20.110(6), Robert
17 Moe as the person who controlled Moe I.A. is responsible for Moe I.A.'s violations of RCW
18 21.20.020(1)(c); WAC 460-24A-130; -205; and -220. Such conduct constitutes grounds for an order to
19 impose a fine under RCW 21.20.110(1).

20 **CONSENT ORDER**

21 Based upon the foregoing and finding it in the public interest:

22 IT IS AGREED AND ORDERED that Moe I.A. and Robert Moe shall cease and desist from
23 violations of Chapter 21.20 RCW, the Securities Act of Washington, including violations of RCW
24 21.20.020; WAC 460-24A-130; WAC 460-24A-205; and WAC 460-24A-220 by charging a fee other than
25 what is disclosed in an advisory contract, by failing to disclose trustee arrangements on his Form ADV, and
by charging an unreasonable fee.

1 IT IS FURTHER AGREED that Moe I.A. and Robert Moe shall be liable for and pay a fine of
2 \$21,000.

3 IT IS FURTHER AGREED that Robert Moe shall not act as a trustee for an investment advisory
4 client without first getting approval from the Securities Division.

5 IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this Consent Order.

6 IT IS FURTHER AGREED that Moe I.A. and Moe enter into this Consent Order freely and
7 voluntarily and with full understanding of its terms and significance.

8 IT IS FURTHER AGREED that in consideration of the foregoing, Moe I.A. and Robert Moe waive
9 their right to a hearing and to judicial review of this matter pursuant to RCW 21.20.440 and Chapter 34.05
10 RCW.

11 **AUTHORITY AND PROCEDURE**

12 This Order is entered pursuant to the provisions of chapter 21.20 RCW and is subject to the
13 provisions of RCW 21.20.120 and Chapter 34.05 RCW. Respondents have been notified of his right to an
14 administrative hearing and have waived their right to a hearing.

15
16 WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

17
18 Signed this _____ day of May 2015.

19
20 Signed by:
21 MOE INVESTMENT MANAGEMENT, LLC

22
23 _____
24 ROBERT MOE
25 Managing Member

Signed by:

ROBERT MOE, CRD No. 4458333

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

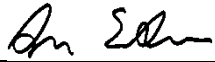
SIGNED and ENTERED this 29th day of June 2015.



William M. Beatty
Securities Administrator

Approved by:

Presented by:



Suzanne Sarason
Chief of Enforcement



Kristen Standifer
Financial Legal Examiner