

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION

IN THE MATTER OF determining
Whether there has been a violation of the
Securities Act of Washington by:

Kenneth Craig Krull,

Respondent.

SDO - 01 - 43

CONSENT ORDER

Case No. 99-11-364

THE STATE OF WASHINGTON TO:
Kenneth Craig Krull
1995 Lake Whatcom Blvd.
Bellingham, WA 98226

and

Kenneth Craig Krull
c/o KMS Financial Services, Inc.
2200 Sixth Ave. Ste 1125
Seattle, WA 98121

The Securities Division, Department of Financial Institutions, State of Washington, ("Securities Division") and respondent Kenneth Craig Krull ("Krull") do hereby agree to this Consent Order in settlement of the matters alleged herein under the Tentative Findings of Fact and Conclusions of Law set forth below.

FINDINGS OF FACT

RESPONDENT

1. In March of 1981 Krull registered with the State of Washington as a licensed securities salesperson for Foster & Marshall, Inc. ("Foster"). Foster was a broker/dealer of securities having its principal place of business at 2 Broadway-13th Fl. New York, NY 10004.

CONSENT ORDER

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DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

1 reconsideration of the sanctions. On May 9, 1996 the DBCC issued a Decision on Remand, imposing
2 censure; a \$50,000 fine, a ninety-day suspension, bar as a principal, requalification by examination and an
3 assessment of hearing costs. Krull and IMR appealed.

4 7. On July 25, 1997, the NBCC reviewed the entire record and affirmed the DBCC's findings
5 that Krull recommended 115 mutual fund switches and recommended the Krull be censured, barred in any
6 principal or supervisory capacity, suspended for one year in any capacity, fined \$20,000 and required to
7 requalify as a general securities representative. The NBCC also ordered Krull to pay \$171,140.93 in
8 restitution to his customers.

9 8. Krull then appealed to the U. S. Securities and Exchange Commission ("SEC") that
10 confirmed the unsuitability of Krull's mutual fund recommendations, affirmed the one year suspension and
11 \$20,000 fine, but reduced the amount of restitution to \$81,705. The SEC denied Krull's petition for
12 reconsideration, stating that, "As the NASD found, Krull's misconduct was both extensive and egregious."

13 9. After his petition for reconsideration was denied, in February of 1999, Krull received a stay
14 from the SEC and petitioned for review by the United States Court of Appeals, for the Ninth Circuit ("Ninth
15 Circuit"). The Ninth Circuit, under a limited scope of review, affirmed the SEC's decision stating that
16 it "not unwarranted in law or without justification of fact."
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18 10. Krull's one year suspension as a securities salesperson is to take effect beginning June 4,
19 2001.

20 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:
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CONCLUSIONS OF LAW

11. Krull, as described above, is the subject of an order of suspension from association with an SRO, as defined by RCW 21.20.110(1)(f). The order of suspension provides the director with grounds for the restriction or limitation of his investment adviser representative registration pursuant to RCW 21.20.110(1)(f).

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ORDER AND CONSENT

Based on the foregoing,

1. The Securities Division and Krull agree that, for the period from June 4, 2001 through June 3, 2002, Krull's investment adviser representative license, shall be subject to the special conditions set forth in paragraphs 1.1 through 1.10 below, and shall be subject to Krull's continued employment with a registered investment adviser ("IA") that agrees to provide the Securities Division written confirmation that the employing IA agrees to all duties and supervisory conditions imposed upon the employing IA under the conditions in those paragraphs, in addition to existing enhanced supervisory standards. It is also agreed that the special conditions are necessary to meet the Securities Division's overriding goal of protecting the investing public. The special conditions are as follow:

1.1. Krull shall grant the Securities Division reasonable access during business hours to all books and records relating to Krull's activities as an investment advisor representative. These inspections by Securities Division may be announced or unannounced. In addition, Krull's employing IA shall allow Securities Division similar access to their Home Office and any of Krull's offices. The Securities Division, Krull and his employing IA agree that such access does not affect the jurisdiction of any other state of federal agency or self-regulatory organization.

- 1 1.2. Krull agrees to pay within 30 days of invoice, all of Securities Division's costs associated with
2 inspecting Krull's office, under paragraph "1.1" above, subject to a \$1,000 maximum.
- 3 1.3. Krull shall seek and obtain prior approval from a Principal Executive Officer of his employing IA
4 before recommending any securities transactions to his clients. Such approval may be given orally
5 or in writing, but will be documented by both Krull and his employing IA.
- 6 1.4. Krull agrees that any and all existing investment advisory accounts that currently grant Krull
7 discretionary trading authority will be changed to non-discretionary accounts. Krull will seek prior
8 written or oral approval from his employing IA and the client before effecting a transaction in any
9 customer's investment advisory account(s).
- 10 1.5. Krull agrees that he will not initiate or maintain any investment advisory accounts that grant or
11 attempt to grant him power of attorney over the account.
- 12 1.6. Krull agrees to create and maintain a log of oral complaints identifying the details of any complaint
13 received from his customers. Krull agrees to immediately forward, to his employing IA, a
14 description of any such oral complaints received and his employing IA shall forward to Securities
15 Division, at least monthly, a description of any oral complaints received by Krull or the employing
16 IA from Krull's clients. Such oral complaints shall be transmitted so that Securities Division
17 receives them within five business days of the last business day of each month.
- 18 1.7. Krull agrees that if a written complaint is lodged against Krull, by one of his customers, that the
19 recipient of the complaint will fax a copy to Securities Division, within 48 hours of receipt, and if
20 received by Krull only, a copy to his employing IA. Krull's employing IA will follow up with the
21 State, within a reasonable amount of time, to confirm Securities Division's receipt of such fax and
22 shall provide Securities Division with the resolution of all such complaints.
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1.8. Krull agrees to only be employed by an IA under a system created and maintained by the employing IA that ensures that the only compensation Krull is paid is a portion of the investment advisory fees earned from his investment advisory accounts as governed by each account's investment advisory contract. Krull's employing IA will not pay and Krull will not receive any commission-based compensation, including 12b-1 fees or trails from mutual fund assets.

1.9. Krull agrees to create and maintain due diligence files to document the suitability of all buy or sell recommendations he makes to his investment advisory clients. Such files will be available for inspection by Securities Division during any examination.

1.10. Krull agrees that, in conjunction with his employing IA, a letter shall be sent to all of Krull's investment advisory clients within 30 days after June 4, 2001, communicating the essence of this Consent Order and encouraging clients to contact Krull or his employing IA if they have any questions about the order or any other aspect of their account.

2. It is Agreed and Ordered that Krull agrees to pay within 30 days of invoice, all of the State's costs associated with drafting and entering this order, subject to a \$2,000 maximum.
3. It is Agreed that the Securities Division retains the discretion to issue a summary suspension with notice of intent to revoke Krull's investment advisory registration in the event of a breach of the terms of this Consent Order by Krull or his employing IA.. Krull retains his rights to challenge any such revocation order under the normal and usual procedures provided by RCW 21.20.110 and RCW 21.20.120.
4. IT IS AGREED AND ORDERED that Krull shall surrender his securities salesperson license as of June 4, 2001, for the period of one year, pursuant to the April 26, 2001 decision on case NO. 99-70290, SEC No. 3-9394, by the Ninth Circuit Court of Appeals.
5. IT IS AGREED that respondent Krull waives his right to a hearing in this matter.

1 6. IT IS AGREED that the Securities Division has jurisdiction to enter this order.

2 DATED this _____ day of _____, 2001.

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4 _____
5 Kenneth Craig Krull
6 Respondent

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8 Frederick D. Huebner
9 As: Attorney for the Respondent

10 DATED and ENTERED this 4th day of June, 2001.

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14 _____
15 DEBORAH R. BORTNER
16 Securities Administrator

17 Presented by:

18 _____
19 Kristina L. Kneip
20 Senior Securities Examiner

21 Approved by:

22 _____
23 Michael E. Stevenson
24 Chief of Compliance

25 CONSENT ORDER