

WF 3861



DAVY CROCKETT TOWER, 8<sup>TH</sup> FLOOR  
500 JAMES ROBERTSON PARKWAY  
NASHVILLE, TENNESSEE 37243

**SECURITIES DIVISION - ENFORCEMENT**

**ADMINISTRATIVE CASE CLOSURE**

**DATE:** December 30<sup>nd</sup>, 2015

**ASSIGNED:** William J. Sweeten

**SUBJECT NAME:** Sean Hornbeck  
1119 B Granada Blvd  
Nashville, TN 37206  
615-712-9596

**O.I. CASE #:** SI #2011-09

**CASE SUMMARY:**

This investigation was opened in 2011 and has been recommended for closure previously. Please see Report of Investigation dated December 16, 2014 for summary and recommendations. The final steps taken were to send a warning letter from TDCI Legal to Sean Hornbeck. This was assigned to Attorney Sarah Branch and completed in January 2015. The report of investigation was returned to enforcement February 4, 2015. There has been no response from Hornbeck. (Please see enclosures)

There have been no developments in this investigation and barring new information coming to light there does not appear to be any progress anticipated towards enforcement actions in this case.

**REASON FOR CLOSURE:**

This has been discussed with Director of Securities Enforcement Eric Howser, Assistant Commissioner Frank Borger-Gilligan, and the attorneys in our legal section. No recoverable money has been located, the whereabouts of the foreign participants are unknown and there have been no additional information obtained in the last 2 years. All current documentation and evidence has been examined at this time and is found insufficient to pursue a violation by the Department. It is agreed that closure at this time would be the best option for this case. Any new information or changes in the status of any of the subjects should be considered and this case reopened if warranted.

Sean Hornbeck is scheduled for a hearing in the Davidson County Chancery Court, January 19, 2016 to appeal his disbarment by the Tennessee Board of Professional Responsibility. His only option for attorney licensure in Tennessee after this would be a successful appeal through the the Tennessee Supreme Court.

It is recommended that this case be closed at this time. For future reference copies of preliminary reports associated with this case have been attached.

  
\_\_\_\_\_  
NAME:  
Securities Examiner

12/30/15  
DATE:

  
\_\_\_\_\_  
ERIC H. HOWSER  
Director of Enforcement

12/30/15  
DATE:

Enclosures (2)



returned to Amy  
2/4/2015 SUB

STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE  
SECURITIES DIVISION  
SUITE 680, 500 JAMES ROBERTSON PARKWAY  
NASHVILLE, TENNESSEE 37243  
615-741-2947

REPORT OF INVESTIGATION

TO: Barbara Doak, Chief Counsel for Securities *BAD 1/6/15*

THROUGH: Daphne D. Smith, Assistant Commissioner *DS-12/30/14*

THROUGH: Carmen Jones, Assistant Director, Securities Enforcement *CJ 12-11-14*

FROM: Amy Henthorn-Powell, Securities Examiner III *AHP 12/16/2014*

DATE: December 16, 2014

RE: Sean Hornbeck; Hornbeck Law; Willem Coenraad Ackermann; Jeff Weaver  
SI # 2011-09

RECEIVED

DEC 16 2015

DEPT OF COMMERCE AND INSURANCE  
LEGAL OFFICE

Assigned to Sarah  
Branch  
BAD 1/6/15

**REPORT OF INVESTIGATION  
December 16, 2014**

**COMPLAINT:** 2011-0005

**COMPLAINANT:** Bruce D. Emery  
1605 Hillmeade Drive  
Nashville, TN 37221

<b>ENTITIES INVOLVED:</b>	<u><b>CRD#</b></u>	<u><b>REG TN</b></u>
Hornbeck Law 6511 Highway 100 Nashville, TN 37205	No	No

<b>INDIVIDUALS INVOLVED:</b>	<u><b>CRD#</b></u>	<u><b>REG TN</b></u>
Sean Hornbeck 6511 Highway 100 Nashville, TN 37205	No	No

Willem C. Ackermann 61 Heron Crescent Westlake Country Estate, Skeerpoort 0232 South Africa	No	No
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Jeff Weaver 111 Old Hickory Blvd., Apt. 293 Nashville, TN 37221	No	No
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**PROFESSIONAL LICENSES:**

Sean Hornbeck has a law license in the State of Tennessee. However, on January 16, 2009, his Tennessee law license was placed on disability inactive status for an indefinite time. Mr. Hornbeck's law license had two suspension statuses: one for disability and one stating that he was not allowed to enter into any legal capacity such as a clerk, paralegal, assistant or attorney. A hearing with regard to this matter was held December 3, 2014 and a decision has not yet been rendered.

On April 23, 2009, his law license in the State of New York was also suspended for an indefinite period of time based upon incapacity. The suspension with the State of New York stated that he was not allowed to enter into any legal capacity such as a clerk, paralegal, assistant or attorney.

**SECRETARY OF STATE:**

**There are three (3) entities related to Hornbeck Law.**

Law Offices of Sean K. Hornbeck, P.C. is an inactive-dissolved Tennessee corporation, Secretary of State Number 509923. It was formed on January 4, 2006 and *administratively* dissolved on August 22, 2008. On May 29, 2008, Sean Hornbeck filed suit in the Davidson County Chancery Court asking the court to dissolve his firm- Law Offices of Sean K. Hornbeck, PC. (Case Number 08-1198-II) The suit involved a dispute between Hornbeck and his partner Tracey Robinson-Coffee over money and ownership of the firm.

K. Hornbeck Law, P.C. is an inactive—dissolved Tennessee corporation, Secretary of State Number 582217. It was formed on July 24, 2008 and *administratively* dissolved on August 17, 2009.

Hornbeck Enterprises, LLC is an inactive-terminated Tennessee Limited Liability Company, Secretary of State Number 578841. It was formed on June 6, 2008 and *terminated* July 28, 2010.

**DATABASE:** No

**SECURITY:** Promissory Note

**REGISTERED:** No

**SALE/PURCHASE:** \$12,500 **TN:** Yes

**COMPLAINT/EVENT:**

On February 9, 2011, the Department received a complaint from Bruce D. Emery regarding Sean Hornbeck, Hornbeck Law, Willem Coenraad Ackermann and Jeff Weaver. On February 11, 2010, Mr. Emery entered into a promissory note with Willem C. Ackermann; wherein he agreed to loan \$12,500.00 to Mr. Ackermann for a period of four (4) days. Mr. Ackermann was purportedly a South African national who owned precious metal located in Switzerland which he intended to sell. The purpose of the \$12,500.00 “loan” was to pay for Mr. Ackermann to travel to Switzerland. No guarantee was made that any deal to sell the metal had gone through.

Mr. Emery was told about this investment opportunity by Sean K. Hornbeck and Jeff Weaver. Apparently, Mr. Hornbeck and Mr. Weaver were initially representing themselves as “massage therapists” and it was in this capacity that Mr. Emery first came to meet both, Mr. Sean Hornbeck and Mr. Jeff Weaver. Jeff Weaver subsequently told Mr. Emery that he was a computer consultant and was waiting on \$60,000.00 in “back payment” for work he had performed for a business in the United Kingdom. According to Mr. Emery, Mr. Hornbeck later indicated that he had hired Mr. Weaver to do some IT work for his law firm. At this point, Mr. Emery learned that Mr. Hornbeck was an attorney and not a massage therapist. However, Mr. Emery stated that he never saw Hornbeck or Weaver in an office setting. Mr. Emery paid the \$12,500.00 loan to

Ackermann in the form of a check made payable to Jeff Weaver, whom he described as Sean Hornbeck's "agent and legal assistant."

Pursuant to the terms of the promissory note, Ackerman guaranteed Emery "a *minimum* repayment of \$35,000.00", an approximate return of *at least* 280%, within four (4) days. Repayment was to be made by February 15, 2010 via a wire transfer to Mr. Emery. Mr. Emery states that he never received any repayment. According to Mr. Emery, Mr. Hornbeck "put him off" with many excuses and only provided him with a copy of the promissory note after he had made numerous requests for it.

Mr. Hornbeck provided Mr. Emery with a copy of a "Retainer Letter" written on Hornbeck's letterhead to Mr. Ackermann wherein it states that Mr. Ackermann had engaged the Law Offices of Sean K. Hornbeck, P.C. as a "business consultant." In the retainer letter, dated March 18, 2008, the Scope of Engagement of services to be provided by the Law Offices of Sean K. Hornbeck to Ackermann is described as:

(i) introductions to various parties that may assist in financial transactions relating to the disposition and sale of gemstones worth approximately \$766,000,000.00; (ii) a transaction with Dan Coddington and/or Golden Summitt Group; (iii) a transaction with the James May Foundation; and (iv) any related or ancillary matters.

The "Retainer Letter" also stated that the Law Offices of Sean K. Hornbeck, P.C. would be "entitled to a flat fee of \$110,000,000.00 in exchange for work performed.

Sean Hornbeck's law license was temporarily suspended on December 11, 2008 and was transferred to disability status on January 22, 2009. It appears that the suspension and subsequent transfer to disability status stem from a November 2008 lawsuit wherein Hornbeck was alleged to have taken \$5.5 million from Harish Raghavan of InsCap Management, LLC "as part of an international investment scam." Hornbeck's attorney filed an affidavit by a Nashville psychiatrist stating that Hornbeck was "suffering from acute depression, grief over lost family members and a troubled marriage, and is not yet properly medicated."

According to Mr. Emery, Mr. Hornbeck referred him to Gallatin based attorney Mary Jeanette Clement in response to his inquiries about the lack of repayment. Mr. Emery said that he contacted Ms. Clement and she told him that she also had been "taken" by Hornbeck and was forced to defend her own law license as a result. She indicated to Emery that she had at one time hired Sean Hornbeck to perform legal work for, presumably on a contract basis. Davidson County Chancery Court records show that Ms. Clement entered a Notice of Appearance on August 25, 2010 that she was representing Mr. Hornbeck in the case -Bobbie T. McDonald vs. Sean K. Hornbeck, et.al (File No. 09-55-IV). However, Ms. Clement filed a Motion to Withdraw as Counsel of Record on October 5, 2010, citing conflict of interest. A check of the Tennessee Board of Professional Responsibility does not indicate that any public discipline has been taken against Ms. Clement.

Complainant Bruce Emery stated that Mary Clement indicated to him that she was going to pursue a civil action against Mr. Hornbeck. He further stated he also is considering retaining Ms. Clement to pursue an action against Sean Hornbeck on his behalf.

## **POSSIBLE VIOLATIONS:**

### **T.C.A. Section 48-1-104 Securities Registration Requirement**

It is unlawful for any person to sell any security in this state unless: (1) it is registered under this part; (2) the security or transaction is exempted under Section 48-2-103; or (3) the security is a covered security.

### **T.C.A. Section 48-1-109 Registration of Broker/Dealers, Agents, and Investment Advisers**

(a) It is unlawful for any person to transact business from or in this state as a broker/dealer, agent, or investment adviser unless such person is registered as a broker/dealer, agent, or investment adviser under this part.

(b) It is unlawful for any broker-dealer to employ an agent to transact business as an agent unless the agent is registered under this part. The registration of an agent is not effective during any period when the agent is not associated with a particular broker-dealer registered under this part. When an agent begins or terminates a connection with a broker-dealer, or begins or terminates those activities which make such person an agent, both the agent and the broker-dealer shall promptly notify the commissioner.

### **T.C.A. Section 48-1-121 Fraudulent Acts or Devices**

It is unlawful for any person, in connection with the sale or purchase of any security in this state, directly or indirectly, to: (1) employ any device, scheme, or artifice to defraud; (2) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; (3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

## **COMMENTS/RECOMMENDATION:**

In *Reves v. Ernst & Young*, (494 U.S. 56 (1990)), the United States Supreme Court adopted the "family resemblance" test for determining whether notes are securities. There is a presumption that notes are securities. However, this presumption may be overcome if the note bears a "family resemblance" to certain types of notes recognized as being outside the investment market regulated by securities laws.

The factors to consider in determining whether a note is a security are: 1. The motivations that would prompt a reasonable borrower and lender to enter into the transaction; 2. The plan of distributing the notes; 3. The reasonable expectations of the investment public regarding whether the instruments were securities; and 4. The presence of any alternative scheme of regulation or other factor that significantly reduces the risk of the instrument so as to make regulation under the securities laws unnecessary. 494 U.S. at 66-67.

In this case, the Complainant/Lender was motivated to enter into the transaction by the expectation of profits. Per the terms of the promissory note, his \$12,500.00 "loan" would be repaid in the minimum amount of \$35,000.00 after a period of only four (4) days. The purported motive of the Borrower (Ackermann) was to obtain funds for travel expenses to Switzerland where he purportedly owned precious metals that he planned to sell.

As to the distribution, it appears that the notes were offered to a broad segment of the public. The reasonable perception of the public also indicates that the note is a security. The Complainant makes reference to his "investment." In *Reves*, the Supreme Court stated, "We have consistently identified the fundamental essence of a "security" to be its character as an "investment." There is no evidence that would have led a reasonable person to question the characterization of the transaction in question as an investment. Finally, no risk-reducing factors are evident that would suggest that the note is not a security. The note is uncollateralized and uninsured.

For the foregoing reasons, it appears that the promissory note in question does satisfy the definition of a security. The securities were not registered in the State of Tennessee nor have any registration exemptions been claimed. Therefore, it appears a violation of **T.C.A. Section 48-1-104** may have occurred. None of the named parties are registered to sell securities in or from the State of Tennessee, in apparent violation of **T.C.A. Section 48-1-109**.

Sean Hornbeck presented himself to Complainant Emery as an attorney duly licensed to practice law in the State of Tennessee. His failure to disclose the prior lawsuit and status of his law license is an omission of a material fact under **T.C.A. Section 48-1-121 (2)**.

The Securities Division made a referral to the Board of Professional Responsibility. The hearing pursuant to the matter regarding his law license suspension was held December 3, 2014. The decision is still pending.

I recommend that this investigation be forwarded to Legal Services to prepare a Warning Letter. After the warning letter is sent and acknowledged, I recommend that this investigation be closed.





STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE  
SECURITIES DIVISION  
SUITE 680, 500 JAMES ROBERTSON PARKWAY  
NASHVILLE, TENNESSEE 37243  
615-741-2947

REPORT OF INVESTIGATION

TO: Daphne D. Smith, Assistant Commissioner

THROUGH: Frank Borger-Gilligan, Director, Securities Enforcement *FB*

THROUGH: Carmen Jones, Assistance Director, Securities Enforcement *CJ*

FROM: Amy Henthorn-Powell, Securities Examiner *AHP*

DATE: November 13, 2013

RE: Sean Hornbeck; Hornbeck Law; Willem Coenraad Ackermann; Jeff Weaver  
SI # 2011-09



Returned to BPR. Add referral  
BAD 1/29/14

RECEIVED

JAN 29 2014

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DEPT OF COMMERCE AND INSURANCE  
LEGAL OFFICE

**REPORT OF INVESTIGATION**  
**November 13, 2013**

**COMPLAINT:** 2011-0005

**COMPLAINANT:** Bruce D. Emery  
1605 Hillmeade Drive  
Nashville, TN 37221

<b>ENTITIES INVOLVED:</b>	<u>CRD#</u>	<u>REG TN</u>
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<b>DATABASE:</b>	No		
<b>SECURITY:</b>	Promissory Note		
<b>REGISTERED:</b>	No		
<b>SALE/PURCHASE:</b>	\$12,500	<b>TN:</b>	Yes

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#### **T.C.A. Section 23-3-103 (1) Unlawful practice prohibited**

#### **COMMENTS/RECOMMENDATION:**

In *Reves v. Ernst & Young*, (494 U.S. 56 (1990)), the United States Supreme Court adopted the "family resemblance" test for determining whether notes are securities. There is a presumption that notes are securities. However, this presumption may be overcome if the note bears a "family resemblance" to certain types of notes recognized as being outside the investment market regulated by securities laws.

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As to the distribution, it appears that the notes were offered to a broad segment of the public. The reasonable perception of the public also indicates that the note is a security. The Complainant makes reference to his "investment." In *Reves*, the Supreme Court stated, "We have consistently identified the fundamental essence of a "security" to be its character as an "investment." There is no evidence that would have led a reasonable person to question the characterization of the transaction in question as an investment. Finally, no risk-reducing factors are evident that would suggest that the note is not a security. The note is uncollateralized and uninsured.

For the foregoing reasons, it appears that the promissory note in question does satisfy the definition of a security. The securities were not registered in the State of Tennessee nor have any registration exemptions been claimed. Therefore, it appears a violation of T.C.A. Section 48-1-104 may have occurred. None of the named parties are registered to sell securities in or from the State of Tennessee, in apparent violation of T.C.A. Section 48-1-109.

Sean Hornbeck presented himself to Complainant Emery as an attorney duly licensed to practice law in the State of Tennessee. His failure to disclose the prior lawsuit and status of his law license is an omission of a material fact under T.C.A. Section 48-1-121 (2).

I recommend that this investigation be closed with a request for Legal Services to prepare a Warning Letter not to engage in Securities and Insurance practices of any kind per the aforementioned disclosures. There are no additional exhibits to be included at this time.