FILED
June 2, 2020
COMMISSION OF INSURANCE
INSURANCE DIVISION OF IOWA

BEFORE THE INSURANCE DIVISION OF THE STATE OF IOWA

IN THE MATTER OF	)	Division Case No. 88113
CARSON ENERGY, INC.; EARL CARTER BILLS; ANTHONY WEBER, and JERROLD S. ROTHOUSE, Respondents.	)	**FINAL ORDER**

NOW THEREFORE, the Commissioner takes up for consideration the attached Proposed Decision of Administrative Law Judge David Lindgren of the Department of Inspections and Appeals shown as filed on May 15, 2020.

IT IS ORDERED that the Commissioner has reviewed the record and adopts Judge Lindgren's findings of fact, conclusions of law and orders as my own final decision.

IT IS FURTHER ORDERED that the Summary Order to Cease and Desist issued on August 27, 2015 is vacated and the statement of charges are dismissed without prejudice against Carson Energy, Inc. and Earl Carter Bills.

SO ORDERED this 2nd day of June, 2020.

DOUGLAS M. OMMEN
Iowa Insurance Commissioner

Copies via email to all parties of record.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause, or their attorney, at their respective addresses disclosed on the pleadings on June 3, 2019.

By: ( ) First Class Mail
( ) Restricted certified mail, return receipt
( ) Certified mail, return receipt
( ) Personal Service
(X) Email
( ) _____

Signature: /s/ Hilary Foster
Hilary Foster

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
DIVISION OF ADMINISTRATIVE HEARINGS
WALLACE STATE OFFICE BUILDING – THIRD FLOOR
DES MOINES, IOWA 50319

IN THE MATTER OF:	)	NO. 15IID006
	)	
	)	Division Case No. 88113
ANTHONY WEBER AND	)	
JERROLD S. ROTHOUSE	)	
	)	**PROPOSED DECISION**
Respondents.	)	
	)	
	)	

This matter came on for hearing at the Wallace State Office Building in Des Moines on January 15 and 16, 2020. Respondents Anthony Weber and Jerrold Rothouse were present for and testified at the hearing. They were represented by attorney Alex Wonio. The Iowa Insurance Division was represented by attorneys Johanna Nagel and Tracy Swalwell. A number of individuals testified on behalf of the Division, including William Wharf, John Waltzing, Dustin Degroote, Gary Schulte and Tim Graber.

Respondents' counsel stipulated to the admission of all of the Division's Exhibits except for proposed Exhibits AA, II, JJ, and KK. Exhibits AA and II were later admitted. The Division stipulated to the admission of Respondents' Exhibit 1. Exhibits 3 through 8 were later admitted into the record during the hearing.

Following the completion of the hearing and the closing of the record, the parties requested and were granted an opportunity to brief the matter. The Division submitted an initial brief to which Respondents responded. After the Division then submitted its reply brief, the matter was considered fully submitted and the undersigned took the matter under advisement. The undersigned now proceeds to issue the following decision.

PROCEDURAL BACKGROUND

This matter has, for a variety of reasons, taken many fits and starts before its final submission, having initially been transmitted to the Administrative Hearings Division in 2015. Originally, Carson Energy and Earl Carter Bills II were Respondents in this matter along with Anthony Weber and Jerrold Rothouse. However, after Mr. Bills passed away, upon motion by the Division, Carson Energy and Mr. Bills were dismissed from the action, leaving Rothouse and Weber as the sole Respondents.

On July 13, 2018, the Insurance Division filed its First Amended Statement of Charges, alleging two counts: Count I- Unregistered Securities, and Count II – Securities Fraud. In February of 2019, the Division filed a Motion for Partial Summary Judgment on the issue of whether the oil and gas "joint ventures" sold by Respondents constitute securities under the Iowa Uniform Securities Act. Following a hearing, the undersigned granted the Motion, concluding that no genuine issue of material fact remained and that the Joint Venture Agreement was a security within the scope of Iowa Code chapter 502. The Respondents' own Motion for Summary Judgment on the issue of whether they could be liable given their lack of knowledge or authority to register the securities was denied in that same ruling.

Then, on November 27, 2019, the Division filed a Motion for Second Summary Judgment, requesting a ruling under Count I on the issue of whether the Respondents themselves offered or sold the unregistered securities to Iowa investors and had thus violated Iowa Code section 502.301. This Motion was directed solely to Count I of its Statement of Charges, with the Division asserting there is no genuine issue of material fact on the question of whether Weber and Rothouse offered and sold oil and gas well projects to Iowans, and that those projects were required to be registered as securities but were not.

In a January 10, 2020 order, the undersigned granted the Division's Motion for Summary Judgment as to Count I, concluding that Rothouse and Weber both engaged in the sale of unregistered securities and that they thus had violated Iowa Code section 502.301. However, the undersigned ordered that the appropriate amount of sanction and remedy, if any, in addition to any "other appropriate relief" was to be held over to be addressed at the hearing on the remainder of the merits (Count II) of the Division's Statement of Charges.

Accordingly, pursuant to these orders, the only issues that remained be resolved at the January 15 and 16 hearing were Count II (securities fraud) and the remedies and sanctions, if any, to be assessed regarding Respondents' violation of Count I. However, as will be noted later, at that hearing Respondents asked the undersigned to reconsider the previous two orders granting partial summary judgments. The undersigned provided great latitude to Respondents in the presentation of evidence, despite the fact that the merits of Count I had been fully resolved in the summary judgment orders.

FINDINGS OF FACT

Carson Energy is a Texas corporation that was formed in 1983 for purposes of acquiring interests in gas and oil prospects; acquiring, exploring for, discovering, developing, or otherwise operating oil and gas wells and properties. Earl Carter Bills was its founder and then continued to serve as its president. Carson Energy is now defunct and is no longer a going concern, and as such, it and Mr. Bills have been dismissed from this action. For purposes of this case, Carson Energy solicited participation from certain Iowans to invest in those oil and gas ventures mainly in the State of Texas.

The Iowa Insurance Division undertook to investigate Carson Energy and its actions in Iowa in 2014 following a complaint by Robert Warntjes, an Iowan who invested substantial sums in a Carson Energy venture. Eventually, many other Iowans would lodge complaints with the Division and the Division identified others who were not satisfied with their relationship and business with Carson Energy. Many of these Iowans were identified via a subpoena served upon Carson Energy and Mr. Bills asking for other investors.

Anthony Weber and Jerrold Rothouse are the remaining Respondents in this action. Anthony Weber, now a resident of Indiana, was a Vice President and Account Manager for Carson Energy. His job duties largely included cold-calling potential investors. Jerrold Rothouse, who is a resident of Texas, was Vice President and, later, the Director of Client Relations for Carson Energy. His job duties also included cold-callers potential investors as well assisting other salespersons. They both were seeking investments in the oil and gas projects being developed by Carson Energy.

Anthony Weber worked for Carson Energy for four years, although he had no previous experience in oil or gas. Although Weber was essentially a salesman, his first title was assistant vice president and he eventually became a vice president. The title "vice president" appears to have been handed out liberally at Carson Energy, including for all salespersons. It did not necessarily denote a position of any elevated importance.

According to Weber, Carson would provide all sales persons with leads that came from a market research firm which presumably had received answers to questionnaires from these people. The Carson salespersons did not make any sales calls to other persons not on this approved list. From that list of potential partners, Weber would essentially cold call them, introducing himself and presenting the oil and gas opportunities. Salespersons were heavily supervised, and had many suggestions for how to talk to prospects. Carson Energy did provided the salesperson with guidance on how to approach the calls and form answers to a variety of questions that might arise. The supervisors would also provide assistance for how to answer questions.

Weber denies that during the course of his employment he ever told a prospect that the ventures were "low risk, high profit" although he did concede that phrase was in the promotional materials maintained and prepared by Carson Energy. He also denies any guarantees and he claims that if he did promise a guarantee he would have been fired. He claims to have never intentionally misled anybody and he did not hide the fact that there might be a potential for subsequent assessments. Weber, like the other Carson Energy salespersons, was paid a straight salary and did not and did not receive a "cut" of any of the investments he sold. He also admitted that none of the Carson Energy projects he sold to partners were successful. Weber characterized himself as a very low man on the Carson Energy totem pole.

Jerrold Rothouse worked at Carson Energy from 1992 through 1998 and then again from 2001 until its close. At first he was a vice president, but he would later become a "senior vice president." As Rothouse explains it, he was given the senior designation largely due to his longevity with the company and not due to any elevation in authority or importance necessarily. In this role, he was still essentially a salesperson, but due to his experience he would help with less experienced vice presidents and help to answer their questions. Finally, his title became

"director of client relations," but even with this new title his duties never changed from his previous role.

Rothouse explained the cold call lists the vice presidents would receive. Carson Energy purchased these leads from a private company that affirmed the people on the list were knowledgeable in business or that they had an interest in knowledge in the oil and gas field. They were to only make sales calls on people on this preapproved list.

Rothouse made it a practice to keep in touch with and talk to his investors about the projects and other issues. He encouraged his partners to call him to talk to answer any questions they might have. His goal was to give them full knowledge about the projects. He was not personally invested in any of the projects, but during his time with Carson Energy he did see some very productive wells. He described a couple wells as "mind bogglingly big," but he recognized that nothing is a guarantee and science does not always tell the whole story. He in fact was forbidden from making any guarantees. His goal was "active participation" from the investors, in other words, individual that would ask questions, give advice from their areas of experience and expertise, and other input. Rothouse may pass some of these thoughts up the chain at Carson Energy. Rothouse's compensation came in the form of salary and profit sharing. For his last three years, his compensation was $180,000 per year.

Rothouse recalled that in the late 90's Carson Energy became the subject of some securities investigations in Texas. In response, Earl Bills met with attorneys to address the issues, and as far as Rothouse knew they guided Carson Energy into compliance on these issues. Specifically, changes were made in the early 2000's. For example, before then, the salespersons' goal was just to find people with money to share the risk even if they knew them to be passive investors. They just wanted a check at that time. But, according to Rothouse, that all changed after the consulting with the attorneys, in that afterwards they sought persons with expertise and active participants. The information was expected to flow back and forth between them and the investors. And, they wanted to make sure the participants knew this before putting up their money. He claimed that thereafter he was given assurances by Bills that the securities issue had been made proper. To Rothouse's knowledge, all of these changes were made with an eye toward not being considered to be securities.

In 2004, Carson Energy and Rothouse were the subject of an enforcement action in the State of Washington by the Washington Securities Division of the Department of Financial institutions. Eventually, a Consent Order was entered in which the Securities Division recounted Rothouse's cold calls to a 74-year old prospective Washington investor offering him a working interest in an oil and gas well. The investor would later invest $50,000 in the venture. The Washington Securities Division concluded that the investments were securities as defined by and offered in violation of Washington law. Carson Energy and Rothouse were ordered to cease selling such securities in Washington and ordered to pay costs to the Division. There was also a similar action in Pennsylvania around this time finding the ventures to be securities.

Carson Energy dubbed the persons from whom they sought investment "joint venturers." Potential venturers were required to submit an Application Agreement, in which they agreed to name Carson Energy as the "managing venturer." The agreement purported to provide that joint

venturers were granted "extensive and significant management powers" and that they were prohibited from relying on the managing venturer for the success or profitability of the project. Joint venturers were expected to "actively participate" in the management of the venture.

After an application was accepted, the individuals would enter into a Joint Venture Agreement. Among other things, this agreement provided for the assessment of additional capital contributions when needed for continuing or completing a joint venture operation. Ostensibly, these assessments were to be voluntary; however, if a venture opted to not pay the voluntary assessment, he or she would be deemed to have withdrawn from the joint venture and to have abandoned any further interests in the joint venture. This was the provision that many of the Iowa investors complained about. They felt trapped and without recourse, having initially invested such significant sums that they felt obligated to retain.

Iowa Investors

William Wharf was a self-employed nurse anesthetist who in 2011 got a call from Anthony Weber about potential investment in an oil well. Weber informed Wharf that they were pooling investment funds to minimize risk. Prior to this call, Wharf knew nothing about oil. Weber expressed confidence that this would be a productive well and that it was a low risk, high return investment potential. Wharf eventually decided to invest and initially sent two checks, but later sent additional checks for other oil well project participation.

As time went on and there were only minimal returns, Weber kept asking Wharf for additional funds. To Wharf, there seemed to be an endless list of reasons why more money was required. He was required to make a decision and write a check within 24 or 48 hours. Eventually, Wharf's total investment came to $559,210, while his return as of the date of hearing was only $3,335. The full extent of his participation was to say "yes or no" to the additional funds or he would lose his entire investment. He recalls never being asked for any particular input other than to keep sending money.

John Waltzing is a retiree who had formerly farmed and worked for the railroad. Like, Wharf, he was called by Weber informing him about the Carson Energy Projects and seeking his investment. According to Waltzing, Weber appeared to be knowledgeable about oil and gas, and he promoted the purpose of Carson to only do projects that pay off $10 for every $1 invested. Waltzing eventually invested $1,162,882, thinking this was going to be "easy money.' However, he did frequently receive "cash calls" asking for additional funds or he would forfeit his stake in the project. Seeing no other option, he would send the check.

Waltzing did admit that he was an inexperienced investor, but that he did not read the entire venture document and that he did not keep track of all the proceeds he received from his investments. He relied entirely on Carson Energy for their expertise in oil and gas wells. He also never offered any input or suggestions on the projects.

Gary Schulte is a farmer who worked with Jerrold Rothouse and ended up investing $653,700.83 in various oil and gas well projects through Carson Energy. He recalled a conversation in which Rothhouse noted the "lower risk, higher profit potential" nature of the investments. However, he

eventually saw little to no return at all. In investing, he relied on the geologists reports, the claimed successful track record of Carson Energy, and Rothouse's statements about potential returns. Like the others, he responded to cash calls with more checks as he saw no other option and did not want to lose his existing investment.

Tim Graber is a famer who received an unsolicited phone call from Jerrold Rothouse about a new project in Australia. Graber had a history of investing in some other wells and had some other agricultural investments. Rothouse later sent him a prospectus for the project, an application, and a joint venture agreement. Rothouse discussed the great potential for this project to develop many wells, but Rothouse did not make any promises of profitability and no other guarantees. He did, though, mention the low risk, high profitability potential.

Graber chose to invest in the project because he liked the long term potential, low cost, the number of potential wells, and the payout potential. He did not read through the whole joint venture agreement. His total investment was $229,941.05. He also ended up putting in much more than the initial investment pursuant to cash calls. Graber's total income from these projects came to $3,450.52. He did not completely read the joint venture agreement, did not consult an attorney, and did not understand the language.

Additional Iowans invested money in these ventures beyond the individuals mentioned above. In total, the Division has alleged that at least 15 Iowans put up $4,461,850.21 for Carson Energy products, while the Iowans who testified at the hearing invested approximately $2,736,291.45.

ANALYSIS

COUNT I

As set out above in this decision, in the two previous summary judgment rulings, the undersigned concluded that Respondents had engaged in the sales of unregistered securities in Iowa. Specifically, the Division's motions were granted to the extent that they requested a ruling under Count I that Respondents violated Iowa Code section 502.301 by offering and selling unregistered securities in Iowa. However, ruling was reserved on the appropriate remedies or sanctions flowing from the finding of a violation.

Now, at the hearing and in their post-hearing briefing, Respondents have asked the undersigned to reconsider the previous Summary Judgment Rulings with respect to Count I. Specifically, Respondents argue "[t]he Court retains the ability to reconsider all grants of partial summary judgment and should do so in this case." Respondents set forth a number of findings of fact made by the undersigned in the previous partial summary judgment rulings; they then assert the record made at hearing shows that each of these factual issues were contested and that evidence was offered in contradiction to each of them.

While the Iowa Supreme Court has indeed held that until trial is completed and final order rendered, a trial court has power to correct any of its rulings, orders, or partial summary judgment, *see Iowa Electric Light and Power v. Lagel*, 430 N.W.2d 393, 396 (Iowa 1998), I decline to do so in this case.

As Iowa's Supreme Court has cautioned

> Summary judgment is not a dress rehearsal or practice run; "it is the put up or shut up moment in a lawsuit, when a [nonmoving] party must show what evidence it has that would convince a trier of fact to accept its version of the events."

Slaughter v. Des Moines University College of Osteopathic Medicine, 925 N.W.2d 793, 808 (Iowa 2019) (quoting *Hammel v. Eau Galle Cheese Factory*, 407 F.3d 852, 859 (7th Cir. 2005)). Moreover, as Iowa's Rules of Civil Procedure make clear,

> when a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials in the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.

Iowa R. Civ. P. 1.981(5).

Here, the separate summary judgment motions were Respondents' opportunity to show that there existed genuine issues of material fact with respect to Count I. In this case, Respondents did not do so. The only substantive defense asserted in Respondents' Resistance to the Motion for Summary Judgment was that they had no authority, within the structure of Carson Energy, to have registered the ventures as securities. And, the only factual dispute they set forth was whether they had reasonable knowledge of the requirement that the instruments be registered as securities. As is made clear earlier the previous summary judgment ruling, those claims are immaterial in light of the clear language of the Act and in the context of its administrative enforcement.

The Respondents chose a limited and targeted defense at the summary judgment stage. They also explicated a very limited set of alleged factual disputes. In view of the abridged set of alleged factual disputes, the undersigned rejected that limited and targeted defense, and Respondents must now live with that choice. It is inappropriate to allow Respondents to have another bite at showing the existence of a genuine issue of material fact at the hearing. Their opportunity to establish the existence of material fact, such that summary judgment would have been inappropriate, has passed. The purpose of a summary judgment motion is to avoid unnecessary hearings on the merits.

The undersigned therefore proceeds to address Count II of the Division's Statement of Charges and also the appropriate remedies to be ordered based on the conclusion that Respondents violated Iowa Code section 502.301 as set forth in Count I.

COUNT II – SECURITIES FRAUD

Iowa law provides that it is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

1. To employ a device, scheme, or artifice to defraud;

> 2. To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
> 3. To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

Iowa Code § 502.501.

In short, the Division alleges Respondents violated this this Code provision by "making untrue statements regarding the degree of risk, certainty of returns, and production amounts. The Division particularly points to comments to the effect that the projects were "lower risk, higher profit." It also finds fault with statements characterizing the projects as "the perfect vehicle for getting a monthly income stream;" as a "guaranteed return;" and as an "expected homerun."

The Division also argues Respondents violated section 502.501, and were intentionally misleading and deceptive, by failing to disclose certain material facts to investors, including

- Detailed information of ownership of oil and gas rights
- Detailed estimated and actual costs for any project or well
- Financial statements
- Carson Energy operating history
- Risks of investment
- Use of funds
- Compensation of Carson Energy employees
- Information that these projects may be securities and the failure to be so registered
- Their inability to sell securities in Iowa
- The Division's previous Cease and Desist order from 2015

Respondents contest this claim, alleging the Division has for some reason chosen to pursue "two low-level employees that had no control or say in the operations of the company." They further believe the Division is prosecuting them for acts done in 2011 for the "sins of Carson Energy in 2000." They would characterize themselves as simple employees who had no authority other than to simply take the pre-approved list of potential investors and to present the opportunities to them. Finally, they generally deny having made any misleading statements of having failed intentionally to disclose any material facts.

For reasons that follow, I cannot find upon this record that Rothouse or Weber committed securities fraud. Upon review, I would conclude that much of the statements alleged to be deceptive and misleading, are more aptly characterized a puffery or salesmanship. A statement is not material and is mere puffery, if it is "so vague and such obvious hyperbole that no reasonable investor would rely upon [it]." *Parnes v. Gateway 2000, Inc.*, 122 F.3d 539, 547 (8th Cir. 1997). No reasonable investor would rely on "soft, puffing statements"—which encompass "optimistic rhetoric" and "promotional phrase[s] used to champion the company but [ ] devoid of any substantive information." ***Id.*** (internal quotation marks omitted).

For example, statements as to the relative degree of risk or expected profit are inherently subject to interpretation and not capable of precise measurement. Moreover, no reasonable investor could have come to the belief, based on anything reported by either of the Respondents, that oil and gas ventures are anything approaching a sure thing. Furthermore, any comments describing the ventures as "perfect vehicles," or as promising a "guaranteed return," or as an "expected homerun" are all entirely imprecise, obvious brags. As such, these comments attributed to Respondents constituted exaggerated statements of bluster or boast upon which no reasonable investor would rely, and as such they cannot be a basis for a finding that they constitute acts of securities fraud.

With regard to the details allegedly left undisclosed by Rothouse and Weber, there was indeed evidence introduced that those details were not passed on to the investors prior to putting up the money. However, there is no evidence as to the "materiality" of those facts. For example, there was no testimony that had any of these details been divulged, that any of the Iowa investors would have made a different decision in whether to participate. Nor was there any evidence that the investors actually sought out and were denied this information.

Finally, with respect to any of the comments that could be capable of a more precise interpretation (such as the alleged assurance Carson only does projects that pay off $10 for every $1 invested), both Rothouse and Weber flatly denied making them. And, some of the alleged statements were made in promotional mater provided by Carson Energy itself, and must be attributed to them rather than the Respondents.

REMEDIES OR OTHER RELIEF FOR THE VIOLATION OF COUNT I

The Division requests the imposition of civil penalties, restitution, orders to cease and desist, and any other appropriate relief against the Respondents. Given the above ruling declining to find liability under Count II securities fraud, I proceed to address this request with respect to Count I. The Act does provide the following:

> the administrator may impose a civil penalty up to an amount not to exceed a maximum of ten thousand dollars for a single violation or one million dollars for more than one violation, or in an amount as agreed to by the parties, order restitution, or take other corrective action as the administrator deems necessary and appropriate to accomplish compliance with the laws of the state relating to all securities business transacted in the state.

Iowa Code § 502.604(4). Use of the term "may" implies that the imposition of a penalty or restitution is a discretionary act.

In particular, with regard to Count I, the Division asks that penalties be ordered against Weber in the amount of $6000 and against Rothouse in the amount of $9000, which allegedly corresponds to the number of Iowa investors to whom they both made offers and sales. The Division also requests that Respondents be ordered to pay restitution in the amount of $2,708,652.93, which allegedly represents the total net investment minus return for the Iowa investors who testified in this action. Finally, the Division seeks an order prohibiting Respondents from transacting

business in Iowa as securities agents, brokers-dealers, or investment advisor representatives unless appropriately registered in Iowa; from offering or selling any security in Iowa unless they have provided notice to the Commissioner ninety days prior to any offer or sale; and barring them from applying as securities agents, brokers-dealers, or investment advisor representatives for a period of ten years.

In this consideration, Rothouse and Weber must be viewed in light of their relative positions within Carson Energy. Not intended to demean Weber personally, but he truly was simply a low-level salesperson. Although given the elevated-sounding title of "vice president," this was nothing more than a sheepskin to clothe him with more importance and significance than he actually held. Presumably this was meant to impress potential investors with such a title. Titles appears to have been given liberally and freely at Carson Energy as a matter of practice.

Moreover, the record supports that Weber was discretion-less and lacked any authority within the hierarchy of Carson Energy to make any decisions whatsoever with regard to any securities registration or legal requirements. He possessed no sophistication with regard to securities regulation or the legal matters. He also was not particularly sophisticated in oil or gas exploration, save for what he learned in the course of his employment with Carson Energy. Finally, although he had heard talk in the office about potential securities regulation issues in Pennsylvania and Washington, he was assured by Dan Denefe that Carson Energy had undergone an "SEC enema" and that they had come out clean—meaning that what they were selling were no longer considered to constitute securities. Given his position within the company and his lack of legal sophistication, he reasonably relied on this assurance. All of this is to say that Anthony Weber must be assigned a relatively low level of culpability in this matter.

Jerrold Rothouse is not entirely different than Weber in this regard. Although he had various titles implying a lofty position, these were also largely window dressing. While he was variously a vice president, senior vice president, director of client relations these titles were largely a recognition of his many years with Carson Energy and Earl Carter Bill's penchant for assigning titles that belied an employee's real position. And, much like Weber, the Division has submitted nothing into this record from which one could find that Rothouse's position within the Carson Energy hierarchy was such that he had any authority with regard to securities, their registration, or any other important legal matters. Rather, he was largely a salesman, or later in his career a person who provided assistance and guidance to other salespersons due to his experience and years in the business.

Given these considerations, and also including that they both appear to be functionally insolvent, the record does not warrant a multi-million dollar assessment of restitution against either Rothouse or Weber. No purpose would serve to saddle them with such oppressive restitution amount. Unfortunately, with Carson Energy's demise and Earl Carter Bills' passing, the truly culpable entities no longer exist to proceed against. However, the fines and other equitable remedies sought by the Division do appear appropriate and reasonable.

ORDER

The undersigned declines to reconsider the summary judgment rulings which fully resolved the merits of Count I. However, the undersigned further declines to find Respondents liable under Count II, for securities fraud. In light of the finding of a violation under Count I, Anthony Weber shall be assessed a fine of $6000 and Jerrold Rothouse shall be assessed a fine of $9000. The Division shall communicate with Respondents to determine the manner and method of paying these fines. Neither shall be required to pay any restitution. However, they shall be prohibited from transacting business in Iowa as securities agents, brokers-dealers, or investment advisor representatives unless appropriately registered in Iowa; from offering or selling any security in Iowa unless they have provided notice to the Commissioner ninety days prior to any offer or sale; and from applying as securities agents, brokers-dealers, or investment advisor representatives for a period of ten years.

Dated this 15th day of May, 2020.

David Lindgren
Administrative Law Judge
515-281-7148

CC:

- Alex Wonio, Respondents' attorney (by email at a wonio@hmrlawfirm.com)
- Johanna Nagel, IID (by email)
- Tracy Swalwell, IID (by email)

APPEAL RIGHTS

This proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the commissioner within 30 days after issuance of the proposed decision. 191 Iowa Administrative Code 3.27(1).