STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE

TENNESSEE SECURITIES DIVISION	)	
	)	
Petitioner,	)	
	)	
vs.	)	**Order No. 2016-007**
	)	
BROAD STREET VENTURES, LLC,	)	
DOUGLAS DYER, and	)	
JAMES HUGH BRENNAN	)	
	)	
Respondents.	)	

EX PARTE ORDER TO CEASE AND DESIST

This Order issues as the result of a Petition, and its Exhibits attached thereto, filed by the Tennessee Securities Division ("TSD") of the Department of Commerce and Insurance ("Department"). This Order is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Tennessee Securities Act of 1980, TENN. CODE ANN. §§ 48-1-101 to 48-1-201 (2012) ("Act"), places the responsibility for the administration of the Act on the Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner"). The TSD is the lawful agent through which the Commissioner discharges this responsibility. TENN. CODE ANN. § 48-1-115 (2012).

2. The TSD is authorized to bring this action based on a finding by the Commissioner that the action is in the public interest, necessary for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act. TENN. CODE ANN. § 48-1-116 (2012).

3. Respondent Broad Street Ventures, LLC (Secretary of State Control No. 000575616) ("Broad Street") is a Tennessee limited liability company with a current principal business address of 735 Broad St. Suite 400, Chattanooga, TN 37402-2940. The Registered Agent for Broad Street is Jim Brennan with a current mailing address of 735 Broad St. Suite 400, Chattanooga, TN 37402-2940.

4. Respondent Jim Brennan (Brennan) (CRD #898696), a member of Broad Street, is a citizen and resident of the State of Tennessee, Hamilton County, residing at a last known address of 870 Vine Street, Chattanooga, Tennessee. Brennan was censured and barred from association with any NASD (National Association of Securities Dealers) member in 1999. [1] Brennan has not been registered to sell securities in Tennessee since September 11, 1996. At all relevant times, Dyer was not registered as a broker-dealer, broker-dealer agent, investment adviser or investment adviser representative with the TSD.

5. Respondent Douglas Dyer ("Dyer") (CRD #1748410), a member of Broad Street, is a citizen and resident of the State of Tennessee, Hamilton County, residing at a last known address of 509 Yellow Hammer Road, Chattanooga, Tennessee. Dyer was suspended by the NASD in 1999 and a ten thousand dollar ($10,000) fine was imposed, but suspended until such time as Dyer may re-enter the securities industry. At all relevant times, Dyer was not registered

[1] NASD is the predecessor to the current national regulatory body, the Financial Industry Regulatory Authority (FINRA)

as a broker-dealer, broker-dealer agent, investment adviser or investment adviser representative with the TSD.

6. At all relevant times, Respondents Brennan and Dyer conducted a securities related business through Respondent Broad Street.

7. Between September 2008 and January 2015, Respondents Dyer and Brennan offered to sell or sold unregistered securities from or in Tennessee in the cumulative amount of at least three million two hundred thousand dollars ($3,200,000) to investors.

8. The proceeds of each of the sales were deposited in bank accounts in Tennessee under the names of Broad Street Ventures, LLC.

9. The first security purchased in the aforementioned transactions was an investment contract between investor Robert Nichols and Broad Street Ventures.

10. The second security purchased was an investment contract between investor Jim Thurston and Broad Street Ventures.

11. The third security purchased was an investment contract between investor James Ross and Broad Street Ventures.

12. The securities offered for sale in paragraph seven (7) were shares in "Scenic City F10 I-VIII," which were said to require a minimum investment of twenty-five thousand dollars ($25,000).

13. The investment contracts offered and sold by the Respondents were not registered with the TSD for sale in Tennessee, were not the subjects of any exemption filings made with the TSD, were not exempted from the registration requirements of the Act and do not qualify as covered securities pursuant to the Act.

14. At all relevant times, Broad Street was not registered in Tennessee as an investment adviser, investment adviser representative, broker-dealer or broker-dealer agent.

16. Respondent Brennan did not disclose to investors that he had been permanently barred from participation in the securities industry by NASD.

17. Neither Respondent Brennan nor Dyer disclosed that they and Broad Street were the subjects of a Desist and Refrain Order in the State of California.

18. Neither Dyer nor Brennan established that investors were "accredited investors" within the meaning of the law when they solicited and received funds from the investing public.

19. Respondents have, upon information and belief, as recently as January of 2016, continued to offer to sell or to sell securities without the sellers or the securities being registered with the TSD.

20. Between the months of September 2008 and January 2015, Respondents Brennan and Dyer engaged in a pattern and practice of accepting wire transfers and checks from investors around the country and abroad for deposit into the Broad Street bank account. Respondents then transferred those funds into the personal account of Dyer and into the alter ego account of Brennan, Ridgecrest Capital Corp.[2]

21. Once the funds were converted to the personal accounts, they were freely spent by Brennan and Dyer for personal expenses.

CONCLUSIONS OF LAW

Respondents' Ongoing Unlawful Conduct Warrants the Issuance of an Order to Cease and Desist

22. The Commissioner finds that the TSD is authorized to bring this action based on her finding that the action is in the public interest, necessary for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act pursuant to

[2] Ridgecrest Capital Corporation, a Tennessee Corporation, was revoked by the Tennessee Secretary of State on December 1, 2006, at the request of the Tennessee Department of Revenue. It has not been revived.

TENN. CODE ANN. § 48-1-116(a) and (b) (2012). In addition, the Commissioner has determined that prior notice of this Cease and Desist Order is not in the public interest and would be detrimental to the protection of investors. TENN. CODE ANN. § 48-1-116(e)(2)(A) (2012). Respondents' ongoing unlawful conduct necessitates an order to cease and desist all such unlawful activity to prevent the Respondents from continuing to sell unregistered securities while not being registered to offer to sell or to sell securities in Tennessee by simply changing the name or form of the offerings being made in order to hide the unlawful nature of their conduct.

23. The facts as stated demonstrate that Respondents, who are not registered with the TSD to offer to sell or to sell securities from or in Tennessee, are continuing to offer to sell or to sell securities in Tennessee that are not registered with the TSD for sale in Tennessee.

24. Respondents' continuing illegal conduct provides grounds under the TENN. CODE ANN. §§ 48-1-116(a) and 48-1-116(e)(2)(A) (2012) for the entry of an Order to Cease and Desist all securities activities.

Respondents Offered or Sold Securities Without Being Registered to Offer or Sell Securities From or In Tennessee

25. The facts as stated demonstrate that the Natural Person Respondents offered to sell or sold securities in Tennessee without being registered under the Act to offer to sell or to sell securities in Tennessee. It is unlawful for any person to transact business from or in this state as a broker-dealer or agent unless such person is registered as a broker-dealer or agent under the Act. TENN. CODE ANN. § 48-1-109(a) (2012). In addition, it is unlawful for any person to transact business from or in this state as an investment adviser or investment adviser representative unless such person is registered as an investment adviser or investment adviser representative under the Act. TENN. CODE ANN. § 48-1-109(c) (2012).

26. The Respondents' offers to sell or sales of securities without being registered with

the TSD to engage in the offering/selling of securities from, in or into Tennessee provides adequate grounds under TENN. CODE ANN. § 48-1-116(a) (2012) for the entry of an Order to Cease and Desist all securities activities.

Respondents Sold Unregistered Securities in Tennessee

27. The facts as stated demonstrate that Respondents sold securities in Tennessee that were not registered with the TSD to be sold in Tennessee. It is unlawful for any person to sell any security in this state unless it is registered under the Act, the security or transaction is exempted under the Act, or the security is a covered security. TENN. CODE ANN. §§ 48-1-102(17)(A) and 48-1-104(a) (2012).

28. Respondents' sales of unregistered securities provide grounds under TENN. CODE ANN. § 48-1-116(a) (2012) for the entry of an Order to Cease and Desist all securities activities.

Brennan and Dyer Engaged in Securities Fraud

29. The facts as stated demonstrate that Brennan and Dyer failed to disclose to the investors that they and their company, Broad Street, were not registered to sell securities or that they and Broad Street had been made the subject of a California Desist and Refrain Order. Pursuant to TENN. CODE ANN. § 48-1-121(a)(2) (2012),

> [i]t is unlawful for any person, in connection with the offer, sale or purchase of any security within the State of Tennessee, directly or indirectly, to ... [m]ake any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading....

30. Brennan and Dyer's failure to disclose these material facts provides grounds under TENN. CODE ANN. § 48-1-116(a) (2012) for the entry of an Order to Cease and Desist all securities activities.

ORDER

NOW, THEREFORE, in consideration of the foregoing, it is **ORDERED** that:

1. Respondents **SHALL COMPLY** with the Act and all rules promulgated thereunder.

2. The Respondents **SHALL CEASE AND DESIST** any further conduct as a broker-dealer, broker-dealer agent, investment adviser or investment adviser representative from or in the state of Tennessee until such time as he or she is effectively registered with the TSD to engage in such activity.

3. The Respondents, and any successor entities, **SHALL IMMEDIATELY CEASE AND DESIST** from the issuance, offer to sell, or sale of any security, including but not limited to, investment contracts, loan agreements, stock or any other investment interest or security in Broad Street Ventures, LLC or any product or offering of Broad Street Ventures, LLC, including any successor entities, to any "person," as that term is defined under the Act, until such time as any such security is: 1) deemed by the TSD to be registered with the TSD for sale in Tennessee; 2) is deemed by the TSD to be exempted from the registration provisions of the Act; or 3) is deemed by the TSD to be a covered security, as that term is defined in the Act.

4. Respondents **SHALL CEASE AND DESIST** any further conduct in violation of the Act's prohibition against engaging in securities fraud, including but not limited to, by failing to disclose material information to investors about his criminal convictions for bank fraud, embezzlement and felony worthless check or by making any untrue statement of a material fact or omitting 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.

5. All entities or persons in any way assisting, aiding, or helping the aforementioned Respondents in any of the aforementioned violations of the Act, **SHALL CEASE AND DESIST** all such activities in violation of the Act.

6. This Order to Cease and Desist is not intended to prohibit any lawful conduct in which Respondents might be engaged.

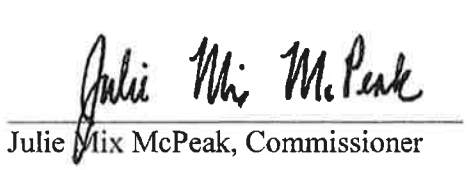
7. Entry of this Order to Cease and Desist shall not in any way restrict the TSD or the Commissioner of the Department from taking further action with respect to these or other possible violations of the Act, or any of the rules promulgated thereunder, by Respondents.

8. You are advised that you have the right to a hearing as to all matters raised in this Order to Cease and Desist. If you wish to exercise your right to a hearing, please notify:

FRANK BORGER-GILLGAN
ASSISTANT COMMISSIONER FOR SECURITIES
STATE OF TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE
DAVY CROCKETT TOWER, 8TH FLOOR
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243

9. Such request must be received within thirty (30) days from the date of entry of this Order to Cease and Desist. This Order to Cease and Desist shall become a Final Order thirty (30) days from the date of its entry, unless written notification requesting a hearing is made within that thirty (30) day period.

ENTERED this 22nd day of February, 2016.



Julie Mix McPeak, Commissioner

APPROVED FOR ENTRY:

Frank Borger-Gilligan
Assistant Commissioner for Securities
Department of Commerce and Insurance

ISSUANCE REQUESTED BY:

Charles S. Herrell (BPR# 018032)
Assistant General Counsel
Department of Commerce and Insurance
Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243

STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE

TENNESSEE SECURITIES DIVISION	)	
Petitioner,	)	
	)	**Case No. 2016-007**
vs.	)	**Order No. 2016-007-02**
	)	
BROAD STREET VENTURES, LLC	)	
DOUGLAS DYER, and	)	
JAMES HUGH BRENAN	)	
Respondents.	)	
	)	

ORDER GRANTING PEITIONER'S MOTION TO DISMISS

ADMINISTRATIVE HISTORY

On May 18, 2016, Petitioner, through counsel, filed an Objection to Representation and Motion to Dismiss in this matter. Pursuant to Tenn. Code Ann. § 48-1-118(e)(1), Julie Mix McPeak, Commissioner of the Department of Commerce and Insurance, appointed Chlora Lindley-Myers, Deputy Commissioner, as her designee by an Order Appointing Commissioner's Designee dated June 1, 2016. A hearing on the Objection to Representation and Motion to Dismiss was held on July 7, 2016, where Petitioner and Respondents presented their arguments before the Commissioner's Designee. The Commissioner's Designee bases her ruling on the following Findings of Facts and Conclusions of Law:

FINDINGS OF FACT

1. On February 22, 2016, the Commissioner of the Department of Commerce and Insurance ("Commissioner") issued an Order to Cease and Desist ("Order") to Broad Street Ventures, LLC, ("Broad Street"), Douglas Dyer ("Dyer"), and James Hugh Brennan ("Brennan")

(collectively "Respondents") pursuant to the Tennessee Securities Act of 1980, as amended, TENN. CODE ANN. §§ 48-1-101 to 48-1-201 (2012) ("Act").

2. The Respondents were ordered to cease and desist from violations of the Act and by the terms of the Order, given thirty days to request a hearing by submitting the request in writing to the Assistant Commissioner for Securities, Frank Borger-Gilligan.
3. On March 21, 2016, Frank Lightmas ("Lightmas") submitted a request for a hearing on behalf of Respondents to Frank Borger-Gilligan via email and FedEx on letterhead for "The Law Offices of Frank A. Lightmas, Jr., LLC" with an address in Atlanta, Georgia ("Request").
4. The Request also advised that the law firm represented the Respondents in connection with the proceeding instituted by the Tennessee Securities Division that resulted in the Order. The Request was entered into the hearing record as Petitioner's Exhibit No. 1 and is attached hereto as Exhibit A and incorporated by reference.
5. At the time of the March 21, 2016 request, Lightmas was not admitted to practice law in Tennessee nor had an application for admission via *pro hac vice* been submitted.
6. Petitioner's counsel, Charles Herrell, represented in the hearing that upon discovering Lightmas was not admitted to practice law in Tennessee, he determined to allow additional time for Lightmas to become admitted.
7. Petitioner filed an Objection to Representation and Motion to Dismiss on May 18, 2016.
8. Respondents filed a Response to Petitioner's Objection to Representation and Motion to Dismiss on May 27, 2016.
9. Concurrently, Lightmas filed an application for admission *pro hac vice* on May 27, 2016.

10. Based upon oral confirmation from a contact at the Tennessee Board of Professional Responsibility, Lightmas was added to the roll of attorneys admitted *pro hac vice* in Tennessee on June 1, 2016.

CONCLUSIONS OF LAW

11. Tenn. Code Ann. § 48-1-116(e)(2) states that no order may be entered under the Act without:

> (A) Notice to the affected parties (which shall be prior notice unless the commissioner determines that prior notice would not be in the public interest and would be detrimental to the protection of investors);
> (B) Opportunity for a hearing before the commissioner; and
> (C) Written findings of fact and conclusions of law.

12. Tenn. Code Ann. § 48-1-116(e)(3) states that "every investigation, hearing or other proceeding … held under the provisions of this part which determines or affects the legal rights, duties, or privileges of particular specified parties shall be deemed to be a 'contested case' under the [Uniform Administrative Procedures Act] and shall be conducted as required by that act."

13. The portion of the Uniform Administrative Procedures Act ("UAPA") that governs contested cases is codified at Tenn. Code Ann. §§ 4-5-305 to 4-5-325.

14. Tenn. Code Ann. § 4-5-305 states that "[a]ny party may participate in the hearing in person or if the party is a corporation … by a duly authorized representative."

15. Tenn. Code Ann. § 4-5-307 states that in a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

16. Tenn. Code Ann. § 4-5-318(a) states that an initial or final order shall become effective upon entry unless a later date is stated in the order.

17. Tenn. Code Ann. § 23-3-103(a) states:

> No person shall engage in the practice of law or do law business, or both, as defined in § 23-3-101, unless the person has been duly licensed and while the

> person's license is in full force and effect, nor shall any association or corporation engage in the practice of the law or do law business, or both. However, nonresident attorneys associated with attorneys in this state in any case pending in this state who do not practice regularly in this state shall be allowed, as a matter of courtesy, to appear in the case in which they may be thus employed without procuring a license, if properly authorized in accordance with applicable rules of court, and when introduced to the court by a member in good standing of the Tennessee bar, if all the courts of the resident state of the nonresident attorney grant a similar courtesy to attorneys licensed in this state.

18. Tenn. Code Ann. § 23-3-101(3) defines the practice of law as:

> the appearance as an advocate in a representative capacity or the drawing of papers, pleadings or documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies, or the soliciting of clients directly or indirectly to provide such services.

19. The Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies ("Rules") apply to contested case proceedings under the UAPA. The Rules for representation by counsel can be found in Tenn. Comp. R. & Regs. 1360-04-01-.08.

20. Any party to a contested case hearing may be represented by a licensed attorney. Tenn. Comp. R. & Regs. 1360-04-01-.08(1).

21. Tenn. Comp. R. & Regs. 1360-04-01-.08(5) requires an entry of appearance by counsel to be "made by: (a) the filing of pleadings; (b) the filing of a formal or informal notice of appearance; or (c) appearance as counsel at a prehearing conference or a hearing."

22. The Rules require out-of-state counsel to comply with Tenn. Code Ann. § 23-3-103(a) and Supreme Court Rule 19. Tenn. Comp. R. & Regs. 1360-04-01-.08(8). However, the affidavit required to be filed in Supreme Court Rule 19 shall be filed with the director of the Administrative Procedures Division, with a copy to the administrative judge presiding in the matter in which counsel wishes to appear. *Id.*

DISCUSSION

23. Petitioner makes the argument that Lightmas was making an appearance on behalf of his clients in the email requesting a hearing without being admitted to practice law in Tennessee, and was therefore, engaged in the unauthorized practice of law. Petitioner further argues that the request for a hearing by Lightmas should be considered a nullity based upon the findings in *Bivins v. Hospital Corp. of America*, 910 S.W.2d 441 (Tenn. Ct. App. 1995). *Bivins* held that proceedings in a suit by a person not entitled to practice law are a nullity, and an attempted appeal of a person not licensed to practice law, purporting to represent another, will be dismissed. *Id.* at 447 (citing 7 C.J.S. Attorney and Client § 31, p. 869, n.13 & n.20). Because the request is a nullity, then there was no request for a hearing made within the thirty-day timeframe outlined by the Order, and the Order should be final.

24. Lightmas argues that a mere request for a hearing is not tantamount to the filing of pleadings or appearing at a prehearing conference or hearing, and therefore, he did not have to file an application for admission *pro hac vice* until the first pleading was filed.

25. Lightmas argues that there has been no case or rule cited by Petitioner that holds that the sending of a letter like the one in question to an agency, requesting a hearing, constitutes the practice of law. None of the rules or statutes referenced addresses this type of letter or prohibits an out-of-state attorney not admitted in Tennessee from sending a letter of the type at issue in this case.

26. Lightmas further argues that the deficiency has now been cured and the case should go forward on the merits. Lightmas cites *Tri-Cities Holdings, LLC v. Tennessee Health Services and Development Agency*, No. M2015-00058-COA-R3-CV (Tenn. Ct. App. February 22, 2016) ("*Tri-Cities*"), as an example of an out-of-state attorney communicating with the

Administrative Procedures Division regarding an administrative hearing without having filed an application for admission *pro hac vice* to request a stay of the administrative proceedings pending a federal case. In *Tri-Cities*, out-of-state counsel sent a letter on July 28, requesting the stay and filed a motion for admission *pro hac vice* on July 30 which was granted on August 2.

Whether Lightmas Engaged in the Practice of Law

27. It is clearly settled that an out-of-state attorney who is not licensed in Tennessee cannot engage in the practice of law or law business without a license or without complying with Supreme Court Rule 19, to appear *pro hac vice*. The question then becomes whether Lightmas engaged in the practice of law by requesting a hearing on behalf of his client.

28. The Request not only asked for a hearing on all matters raised in the Order but also informed Frank Borger-Gilligan that the law firm of Frank A. Lightmas Jr., LLC, represented the Respondents in the "above-referenced proceeding instituted by [the Division]." Therefore, the Request operated as a notice of appearance as counsel and would fall under Tenn. Comp. Rules & Regs. 1360-04-01-.08(5).

29. Lightmas argues that sending a letter to an agency requesting a hearing does not constitute the practice of law. However in his request, Lightmas referenced a proceeding instituted by the Division and entered his appearance as Respondents' counsel. Although the UAPA does not specifically address a request for a hearing regarding an administrative cease and desist order, it does address representation by counsel in contested case proceedings before administrative agencies. Under Tenn. Code Ann. § 48-1-116(e)(3), this proceeding and the resulting hearing would be a contested case under the UAPA.

30. Further, the Request would fall under the definition of "practice of law" pursuant to Tenn. Code An. § 23-3-101. Practice of law is defined as the "**appearance as an advocate in a representative capacity**...or the performance of any act in such capacity in connection with proceedings pending or prospective before any court, **commissioner**, referee or any body, board, committee or commission constituted by law or having authority to settle controversies." Tenn. Code Ann. § 23-3-101(3). (Emphasis added). Lightmas entered an appearance as the Respondents' advocate and requested a hearing on their behalf as to all matters raised in the Order. Those actions would be the performance of any act in the representative capacity in connection with proceedings pending before any commissioner, and therefore, fall within the definition of practice of law.

31. A requirement of Tenn. Comp. R. & Regs. 1360-04-01-.08(8) is compliance with Tenn. Code Ann. § 23-3-103(a). By engaging in the unauthorized practice of law, Lightmas was not in compliance with the requirements of Tenn. Comp. R. & Regs. 1360-04-01-.08(8).

Whether the Request by an Attorney Not Licensed in Tennessee is a Valid Request for a Hearing

32. Petitioner argues that *Bivens* applies and because Lightmas was not admitted *pro hac vice* at the time of the Request, his request for a hearing should be considered a nullity.

33. Lightmas argues that *Bivens* does not apply because the case was referring to filed pleadings and not the sending of a letter requesting a hearing.

34. Lightmas argues that anytime an out-of-state attorney appears in court, the attorney has to be admitted on a *pro hac vice* basis and have local counsel, but that this is an administrative procedure and not court. However, it is quite clear that the UAPA requires compliance with Supreme Court Rule 19 in an administrative proceeding context.

35. Lightmas urged the Commissioner's Designee to consider the *Tri-Cities* case where an attorney was not admitted *pro hac vice* when he initially requested a stay with the administrative judge but filed a motion for admission *pro hac vice* shortly thereafter.

36. In the *Tri-Cities* case, the attorney sent the letter to the administrative judge on July 28 requesting the stay and filed a motion for admission *pro hac vice* on July 30 which was granted on August 2. There was a two-day lapse before the out-of-state attorney applied for admission *pro hac vice.* The facts differ in the case at hand because Lightmas sent the Request on March 21, 2016, and did not apply for admission *pro hac vice* until May 27, 2016. In fact, Lightmas did not apply for admission *pro hac vice* until Petitioner filed the Objection to Representation and Motion to Dismiss on May 18, 2016.

37. There is a substantial difference between the two-day time lapse before an attorney filed the motion for admission *pro hac vice* in the *Tri-Cities* case and the 67 days between the Request submitted by Lightmas and his application for admission *pro hac vice*. Lightmas admitted in the hearing that he has seen many attorneys at the first opportunity to talk with a Judge, make a verbal motion for *pro hac vice* admission or submit the papers at that time. There was nothing prohibiting Lightmas to advise in the Request that he would be making application for admission *pro hac vice* in the near future. He did not do so until 67 days later after Petitioner filed the Objection to Representation and Motion to Dismiss. It is not the Petitioner's duty to advise Lightmas of what is required under Tennessee law.

38. Petitioner allowed for additional time before filing the Objection to Representation and Motion to Dismiss to give Lightmas ample time to notify the Department that he was applying for admission *pro hac vice.* Between March 21 and May 27, Lightmas did not advise Petitioner or the Division that he was attempting to apply for admission *pro hac vice*

nor did he request an extension of time to comply. It seems the only trigger for Lightmas' application for admission *pro hac vice* was the Objection to Representation filed by the Petitioner. Lightmas did not comply with the requirements of Supreme Court Rule 19, Tenn. Code Ann. § 23-3-103(a) and therefore violated Tenn. Comp. R. & Regs. 1360-04-01-.08(8).

39. Lightmas argues that if the Commissioner's Designee grants Petitioner's Motion to Dismiss, then she is holding that every communication with a state agency would require attorneys be admitted on a *pro hac vice* basis. This argument is a fallacy. It is clear from the facts that Lightmas was entering his appearance and requesting a hearing on a proceeding initiated by the Commissioner. It is quite clear that pursuant to the Act, it is considered a contested case hearing under the UAPA. Although the entrance of appearance and request for hearing was submitted in an informal manner and not by pleading or motion, based upon the law discussed above, it is more than a simple communication with the Department and should not be treated as such.

40. *Bivens* held that proceedings in a suit by a person not entitled to practice law are a nullity and that the signature of an unauthorized attorney may be struck. Although *Bivens* applied in a civil law suit, it can be applied by analogy to this administrative proceeding given the requirements of the UAPA to comply with Supreme Court Rule 19.

41. Therefore, Lightmas' request for a hearing is a nullity.

42. Under the UAPA, Tenn. Code Ann. § 4-5-307 states that in a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

43. Tenn. Code Ann. § 4-5-318(a) states that an initial or final order shall become effective upon entry unless a later date is stated in the order. The Order stated that it would become final

thirty days from entry, unless a written notification requesting a hearing was made within that thirty day period.

44. Because Lightmas' request for a hearing was a nullity due to the unauthorized practice of law, he did not make the request within the required thirty-day timeframe. Under the UAPA, because no request was made then the Order became final thirty days from entry.

Findings of the Commissioner's Designee

45. Based upon the findings of facts and conclusions of law, the Commissioner's Designee makes the following findings:

    a. By requesting a hearing and entering his appearance as counsel for all Respondents, Lightmas was engaged in the practice of law, but he was not admitted *pro hac vice*.

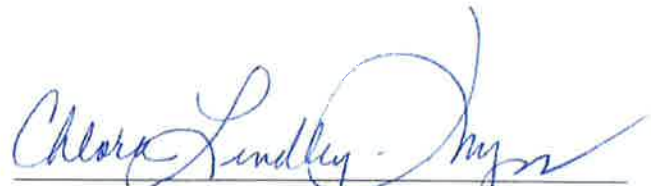
    b. The request for a hearing should be considered a nullity due to the unauthorized practice of law and the failure to comply with Supreme Court Rule 19, Tenn. Code Ann. § 23-3-103(a) and Tenn. Comp. R. & Regs 1360-04-01-.08(8).

    c. Because the request for a hearing submitted on March 21, 2016, was a nullity, there was no request for a hearing on behalf of Respondents within the thirty days as required by the Order.

ORDER

IT IS HEREBY ORDERED that the Motion to Dismiss the request for a hearing be granted and the *Ex Parte* Order to Cease and Desist entered by Commissioner Julie Mix McPeak on February 22, 2016, is final.

Dated this 12th day of August, 2016.



Chlora Lindley-Myers, Commissioner's Designee
Tennessee Department of Commerce and Insurance

Certificate of Service

I hereby certify that a copy of the foregoing is being forwarded via First Class U.S. Mail, postage pre-paid, and by electronic mail to:

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Davy Crockett Tower, 8th Floor
500 James Robertson Parkway
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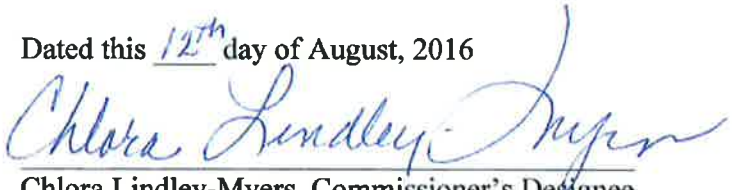
Rebekah L. Shulman
Shackelford Bowen McKinley & Norton, LLP
47 Music Square East
Nashville, TN 37203
rshulman@shackelfordlaw.net

Dated this 12th day of August, 2016



Chlora Lindley-Myers, Commissioner's Designee
Tennessee Department of Commerce and Insurance
500 James Robertson Parkway
Davy Crockett Tower
Nashville, TN 37243

THE LAW OFFICES OF
FRANK A. LIGHTMAS JR., LLC

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March 21, 2016

Via FedEx and Email to frank.borger-gilligan@tn.gov

Frank Borger-Gilligan
Assistant Commissioner for Securities
Tennessee Department of Commerce and Insurance
Davy Crockett Tower
8th Floor
500 James Robertson Parkway
Nashville, TN 37243

Re: *Tennessee Securities Division v. Broad Street Ventures, LLC, Douglas Dyer and James H. Brennan*, Order No. 2016-007

Dear Mr. Borger-Gilligan:

This law firm represents Broad Street Ventures, LLC, Douglas Dyer and James H. Brennan (collectively "Respondents") in connection with the above-referenced proceeding instituted by your office that resulted in the *Ex Parte* Order to Cease and Desist issued by Commissioner Julie Mix McPeak dated February 22, 2016 ("the Order"). This letter is written to advise you that Respondents hereby request a hearing as to all matters raised in the Order. Please direct all further correspondence and communications to me. Also, I would request that you return an acknowledgment of receipt of this request to me in the enclosed, stamped, self-addressed envelope. Thank you.

Very truly yours,

Frank Lightmas

Frank A. Lightmas, Jr.

vr

Petitioner
EXHIBIT NO. 1
7/7/16 C. BERTRAM

EXHIBIT
A