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BRETT O'NEIL

Office of the Montana State Auditor,
Commissioner of Securities and Insurance (CSI)
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Helena, MT 59601
406-444-2040

Attorneys for the CSI

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR**

IN THE MATTER OF:)	CASE NO. SEC-2014-188
)	
PHX FINANCIAL, INC., a.k.a. Blackwall)	
Capital, a Montana licensed broker-dealer;)	CONSENT AGREEMENT AND FINAL
WILLIAM HORBATUK, JR., individually and in)	ORDER
his capacity as a salesperson for PHX Financial, Inc.;)	
HALIL KOZI, a PHX Financial, Inc. employee and)	
Registered Options and Security Futures Principal;)	
ROBERT DELAPLAIN, a PHX Financial, Inc.)	
employee and Chief Compliance Officer;)	
KEVIN CHEN, PHX Financial, Inc.'s Chief)	
Executive Officer; and KENNETH WILLIAMS, a)	
PHX Financial, Inc. employee,)	
)	
Respondents)	

This Consent Agreement and Final Order (Agreement) is entered into by the Office of the Montana State Auditor, Commissioner of Securities and Insurance (CSI), acting pursuant to the authority of the Securities Act of Montana, Mont. Code Ann. § 30-10-101 et seq. (Act), and PHX Financial, Inc., a.k.a. Blackwall Capital (PHX); Halil Kozi (Kozi); Robert Delaplain (Delaplain); Kevin Chen (Chen); and Kenneth Williams (Williams) (collectively Respondents).

RECITALS

WHEREAS, the CSI filed a Notice of Agency Action (Action) on October 28, 2014;

WHEREAS, the CSI's allegations of fact included the following:

- a. The CSI required PHX to place William Horbatuk (Horbatuk), registered salesperson #4316672, on heightened supervision in order for him to qualify as a Montana salesperson;
- b. Delaplain, as PHX's chief compliance officer, was required to submit monthly updates to the CSI and maintain correspondence with Horbatuk's Montana clients;
- c. From May 2013 to June 2014, the CSI had no communication with PHX;
- d. PHX supervisors, specifically Delaplain, failed to communicate with T.K. as required by the heightened supervision agreement;

WHEREAS, the CSI alleged that PHX violated Mont. Code Ann. § 30-10-201(13)(k) by failing to supervise Horbatuk when nobody from PHX submitted monthly updates to the CSI;

WHEREAS, the CSI alleged that Delaplain violated § 30-10-201(13)(k) when he signed exception agreements without contacting the client pursuant to the PHX heightened supervisory agreement with the CSI;

WHEREAS, the CSI and Respondents agree that the best interests of the public would be best served by entering into this Agreement.

NOW, THEREFORE, in consideration of the following mutual undertakings, the CSI and Respondents enter into the following:

STIPULATIONS AND CONSENTS

1. Without admitting or denying any of the CSI's allegations, Respondents stipulate and agree to the following:

- A. At the time of execution of this Agreement, Respondent PHX shall pay a fine of \$30,000.00. The fine must be made payable to the State of Montana and sent to the Office of the Montana State Auditor, Commissioner of Securities

and Insurance, c/o Lisa Monroe, Legal Assistant, 840 Helena Avenue, Helena, MT 59601.

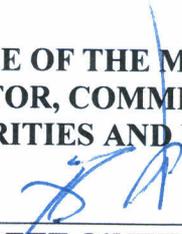
- B. Within ten business days from the execution of this Agreement, Respondent Delaplain shall pay a fine of \$5,000. The fine must be made payable to the State of Montana and sent to the Office of the Montana State Auditor, Commissioner of Securities and Insurance, c/o Lisa Monroe, Legal Assistant, 840 Helena Avenue, Helena, MT 59601.
 - C. At the time of execution of this Agreement, Respondent PHX shall pay restitution in the amount of \$100,117.71 to Montana investor T.K., along with \$12,370.62 in statutory interest, for a combined total of \$112,488.33.
 - D. At the time of execution of this Agreement, Respondent PHX shall pay restitution in the amount \$17,507.26 to Montana investor C.P, along with statutory interest of \$2,163.23, for a combined total of \$19,670.49.
 - E. Within ten business days upon the execution of this Agreement, Respondent PHX shall withdraw its registration in Montana. It shall not reapply for a period of two years.
 - F. Upon signing of the Final Order, Respondent Kozi, Respondent Chen, and Respondent Williams shall be dismissed with prejudice from any CSI action related to events detailed in October 28, 2014 Notice of Agency Action.
2. All parties to this Agreement stipulate and agree as follows:
- A. Respondents acknowledge that they and/or their authorized representative have read and understand each term of this Agreement and that they enter into this Agreement voluntarily and without reservation.

- B. Respondents and the CSI agree that this Agreement resolves the alleged violations set forth in the October 28, 2014, Notice of Agency Action regarding only the undersigned.**
- C. The CSI warrants and represents that so long as Respondents adhere to the terms of this Agreement, the CSI will not bring any further action against Respondents arising from facts known to the CSI as of the date of the Agreement specific to any PHX account in Montana controlled by Horbatuk during his time with PHX.**
- D. With respect to the Recitals, Respondents specifically and affirmatively waive a contested case hearing and their right to appeal under the Montana Administrative Procedure Act, including Title 2, chapter 4, part 7, and elect to resolve this matter on the terms and conditions set forth therein.**
- E. Respondents fully and forever release and discharge the CSI from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or not asserted , known or unknown, foreseen or unforeseen, arising out of the Recitals.**
- F. This Agreement is entered without adjudication of any issue, law or fact. It is entered solely for the purpose of resolving the CSI's investigation and allegations, and is not intended to be used for any other purpose.**
- G. This Agreement constitutes the entire agreement between the parties and no other promises or agreements, either express or implied, have been made by the CSI or by any member, officer, agent, or representative of the CSI to induce Respondents to enter into this Agreement.**

- H. This Agreement may not be modified orally, and any subsequent modifications to this Agreement must be mutually agreed upon in writing to be effective.
- I. This Agreement shall be incorporated into and made part of the attached Final Order issued by the Commissioner of Securities and Insurance, Office of the Montana State Auditor (Commissioner) herein.
- J. Upon the signing of the Final Order by the Commissioner or her representative, this Agreement and Final Order will be an order of the CSI. The CSI has jurisdiction over the enforcement of the Final Order, and failure to comply with it may constitute separate violations of the Act, as provided in Mont. Code Ann. § 30-10-305, and may result in subsequent legal action by the CSI.
- K. This Agreement shall be effective upon signing of the Final Order, at which time the October 28, 2014, Notice of Agency Action against these Respondents will be dismissed.
- L. This Agreement and Final Order are public records under Montana law and as such may not be sealed or otherwise withheld from the public.

DATED this 15th day of APRIL March, 2015

**OFFICE OF THE MONTANA STATE
AUDITOR, COMMISSIONER OF
SECURITIES AND INSURANCE**

By: 

BRETT O'NEIL
Attorney

DATED this 31 day of March, 2015

**PHX FINANCIAL, INC., a.k.a.
BLACKWALL CAPITAL**

By: 

Title: CEO

DATED this 31 day of March, 2015


KEVIN CHEN

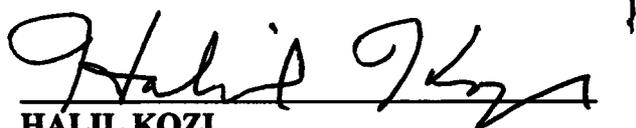
DATED this 31 day of March, 2015


ROBERT DELAPLAIN

DATED this 09 day of ~~March~~ ^{April}, 2015


KENNETH WILLIAMS

DATED this 31 day of March, 2015

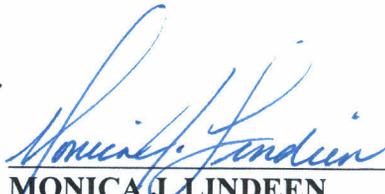

HALIL KOZI

FINAL ORDER

Pursuant to the authority vested by Mont. Code Ann. § 2-4-603 and §§ 30-10-101 et seq., and upon review of the foregoing Consent Agreement and good cause appearing,

IT IS HEREBY ORDERED that the foregoing Consent Agreement between the Office of the Montana State Auditor, Commissioner of Securities and Insurance, and the Respondents PHX Financial, Inc., a.k.a. Blackwall Capital; Robert Delaplain (Delaplain); Kevin Chen; Halil Kozi, and Kenneth Williams is adopted as set forth fully herein. Furthermore, the October 28, 2014, Notice of Agency Action against these specific Respondents is hereby dismissed.

DATED this 13th day of April, 2015.



MONICA J. LINDEEN
Commissioner of Securities and Insurance
Montana State Auditor