

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **SECURITIES DIVISION**

4 IN THE MATTER OF DETERMINING
5 whether there has been a violation of the
6 Securities Act of Washington by:

7 ERNEST M. DILL, INVESTMENT & ESTATE
8 STRATEGIES, LLC, and ERNEST DILL d/b/a
9 INVESTMENT & ESTATE STRATEGIES,

Respondents.

Order No. S-06-160-07-SC01

STATEMENT OF CHARGES AND NOTICE
OF INTENT TO ENTER AN ORDER TO
CEASE AND DESIST AND DENY FUTURE
SECURITIES REGISTRATIONS

THE STATE OF WASHINGTON TO:

Ernest M. Dill
Investment & Estate Strategies, LLC
Ernest Dill d/b/a Investment & Estate Strategies

10 **STATEMENT OF CHARGES**

11 Please take notice that the Securities Administrator of the State of Washington has reason to believe
12 that Respondents Ernest M. Dill, Investment & Estate Strategies, LLC, and Ernest Dill d/b/a Investment &
13 Estate Strategies, have each violated the Securities Act of Washington, and that their violations justify the
14 entry of an order pursuant to RCW 21.20.110 and RCW 21.20.390 against each of them to cease and desist
15 from such violations. The Securities Administrator finds as follows:

16 **TENTATIVE FINDINGS OF FACT**

17 ***I. RESPONDENTS***

18 1. Ernest Marion Dill (“Dill”), CRD No. 841921, is a Washington resident currently residing in Everett,
19 Snohomish County. Dill has been continuously registered as a securities salesperson and/or investment
20 adviser representative with the Securities Division (“the Division”) since April 1984. He was registered
21 with Investment & Estate Strategies as an investment adviser representative from June 1995 to December
22 31, 2006, when his investment adviser registration was terminated for failure to renew.

1 2. Investment & Estate Strategies, LLC (“the LLC”), IARD No. 115789, was a state-registered
2 investment adviser managed by Respondent Dill. The firm was organized October 10, 1994 as a Washington
3 for-profit limited liability company. The LLC was first registered with the Division as an investment adviser
4 in June 1995. In 2003 the LLC failed to renew its business license, and on October 31, 2003, the LLC was
5 dissolved. Dill was the managing member of the LLC.

6 3. After the dissolution of the LLC, Dill continued to operate his investment adviser business using the
7 name Ernest Dill d/b/a Investment & Estate Strategies (“IES”). In July 2006, Dill updated his Form ADV,
8 indicating he was conducting his advisory business in Washington as the sole owner and operator of IES.
9 The investment adviser registration of IES was terminated December 31, 2006, for failure to renew.

10 ***III. NATURE OF THE VIOLATIONS***

11 **A. Dishonest & Unethical Practice**

12 4. In 1997 Mrs. A, an Oregon resident and trustee of a \$6,000,000 estate, entered into an agreement
13 with Respondents Dill and the LLC. The “Investment Advisory Service Client Agreement” (“the
14 Agreement”) provided that Dill and the LLC would manage the estate assets, dispense investment advice,
15 and furnish financial, tax, and estate planning services. In consideration, Mrs. A agreed to pay an
16 advisory fee of .75% based on the assets under management, calculated and billed quarterly in arrears.

17 5. In Section II, “Fees to Advisor,” the Agreement provided that if Mrs. A requested termination of
18 services, she would receive “a refund for the pro-rated fees not yet earned at that time.” In Section V,
19 “Termination,” the Agreement provided that either party could cancel the Agreement “at any time or for
20 any reason upon five days written notice to the other party.” The provision further provided that in the
21 event the Agreement was cancelled, “any fees paid to Advisor will be refunded on a pro-rated basis.”

22 6. Mrs. A, was subsequently advised by associates of Dill that for tax planning purposes it would be
23 beneficial for the estate to pre-pay the investment advisory fees. Though Respondents’ contract did not

1 provide for pre-payment of advisory fees, Respondent Dill agreed to accept pre-paid fees subject to the
2 termination and refund provisions of the Agreement. On May 1, 2000, Respondent Dill sent Mrs. A an
3 e-mail requesting a check, made out to the LLC, for \$82,500 in pre-paid advisory fees. The advisory fees
4 were to provide for nine quarters of asset management, investment advice, and financial, tax, and estate
5 planning services. The nine-quarter period was to start June 1, 2000 and end September 30, 2002.

6 7. On June 7, 2000, Mrs. A sent Respondents Dill and the LLC a check for \$82,500 in pre-paid
7 advisory fees. The check was written to the LLC and deposited in the LLC's bank account.

8 8. In June 2001, Mrs. A discovered that the tax and estate planning services provided by
9 Respondents' associates had been faulty. On August 22, 2001, pursuant to the terms of the Agreement,
10 Mrs. A terminated the Agreement and requested the pro-rated refund of her pre-paid advisory fees.
11 Contrary to their representations and the terms of the Agreement, Respondents Dill and the LLC failed to
12 refund the unearned portion of the pre-paid advisory fees. The failure to make a pro-rated refund resulted
13 in Mrs. A. being charged an unreasonable investment advisory fee.

14 B. Minimum Financial Requirements

15 9. Respondent Dill and IES have discretionary authority over their client accounts, though they do not
16 have custody of the funds or securities. Investment advisers with discretionary authority must maintain a
17 minimum net worth of \$10,000. Respondents Dill and IES provided the Division with a net worth and
18 income statement in August 2006 showing a negative net worth of some \$50,000. As of December 2006,
19 Respondent Dill has failed to make any showing he meets the minimum net worth requirements.

20 C. Books and Records

21 10. On August 10, 2006, the Division conducted an examination of Respondents Dill and IES. The
22 examination revealed that Respondents Dill and IES have not maintained, and could not produce, many of the
23

1 normal business records required to be maintained by an investment adviser, including organizational records,
2 accounting records, and financial statements.

3 11. The examination further revealed that Respondents Dill and IES have not maintained, and could not
4 produce, many of the special fiduciary records required to be maintained by an investment adviser, including
5 written communications, order memoranda, and due diligence files.

6 D. Investment Adviser and Investment Adviser Representative Registrations

7 12. In August 2003, Mrs. A filed a written letter of complaint with Respondents Dill and the LLC. In
8 October 2003, the LLC was administratively dissolved, and IES became a d/b/a of Respondent Dill. In
9 April 2004, a civil judgment for \$37,500 was entered against Respondent Dill pursuant to a divorce
10 proceeding. In July 2004, Dill filed a bankruptcy petition in the U.S. Bankruptcy Court for the Western
11 District of Washington. In January 2005, Respondent Dill moved to New Mexico and transferred his
12 investment advisory business there. Between January 2000 and August 2006, Respondent Dill's advisory
13 business had shrunk from approximately 100 clients with some \$16 million in assets under management to 13
14 clients with less than \$2 million in assets under management.

15 13. Form ADV requires prompt updates of changes in primary business name, form of organization,
16 business address, client information, and the location of the investment advisory books and records. Form
17 U4 requires prompt reporting of certain customer complaints, civil judgments, and bankruptcies.

18 14. Respondent IES and/or the LLC failed to promptly file amended Form ADV with the IARD to
19 report those events. Furthermore, Respondent Dill failed to promptly file amended Form U4 with the
20 CRD to report those events.

1 **III. PUBLIC INTEREST**

2 15. The Securities Administrator finds that the conduct described above presents a threat to the
3 investing public, and that it is in the public interest to enjoin future violations of the Securities Act and to
4 deny future securities registrations of Respondents.

5
6 Based on the foregoing Tentative Findings of Fact, the following Conclusions of Law are made:

7 **CONCLUSIONS OF LAW**

8 1. Respondent Investment & Estate Strategies, LLC has willfully violated RCW 21.20.020, the
9 investment adviser anti-fraud provision of the Securities Act, by failing to make a pro-rated refund of the
10 pre-paid advisory fee, which resulted in charging Mrs. A an unreasonable advisory fee.

11 RCW 21.20.020(1)(c) provides that it is unlawful for an investment advisor to engage in any dishonest or
12 unethical practice as the director may define by rule. WAC 460-24A-220(10) defines charging an
13 unreasonable advisory fee as a dishonest and unethical practice. Pursuant to RCW 21.20.110(1)(g), the
14 violation provides grounds to deny Respondent's future securities registrations.

15 2. Respondent Ernest Dill d/b/a Investment & Estate Strategies has willfully failed to maintain the
16 minimum financial requirements for an investment adviser with discretionary authority. WAC 460-24A-
17 170(1) requires that investment advisers with discretionary authority over client funds or securities
18 maintain a minimum net worth of \$10,000. Pursuant to RCW 21.20.110(1)(b), the violation provides
19 grounds to deny Respondent's future securities registrations.

20 3. Respondents Ernest Marion Dill, Investment & Estate Strategies, LLC, and Ernest Dill d/b/a
21 Investment & Estate Strategies have each willfully failed to promptly file updated Forms ADV and U4
22 with the IARD/CRD. WAC 460-24A-205 requires that investment advisers and investment adviser
23

1 representatives promptly report changes with IARD/CRD. Pursuant to RCW 21.20.110(1)(b), the
2 violation provides grounds to deny Respondents' future securities registrations.

3 4. Respondent Ernest Dill d/b/a Investment & Estate Strategies has willfully failed to make and keep
4 true, accurate, and current books and records, including organizational records, accounting records, financial
5 statements, written communications, order memoranda, and due diligence files. WAC 460-24A-200 requires
6 that investment advisers make and keep true, accurate, and current books and records. Pursuant to RCW
7 21.20.110(1)(b), the violation provides grounds to deny Respondent's future securities registrations.

8 5. Pursuant to RCW 21.20.110(6), Respondent Ernest Marion Dill, as the managing member of
9 Investment & Estate Strategies LLC, and as the sole owner and operator of Ernest Dill d/b/a Investment &
10 Estate Strategies, is liable to the same extent as those entities for violations committed by those entities.

11 12 **NOTICE OF INTENT TO ORDER RESPONDENTS TO CEASE AND DESIST**

13 Based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator
14 intends to order that Respondents Ernest Marion Dill, Investment & Estate Strategies, LLC, and Ernest Dill
15 d/b/a Investment & Estate Strategies, their officers, directors, employees, partners, agents, affiliates,
16 subsidiaries, predecessors, and successors, shall each cease and desist from violating RCW 21.20.020, the
17 investment adviser anti-fraud provision of the Securities Act.

18 19 **NOTICE OF INTENT TO DENY FUTURE SECURITIES REGISTRATIONS**

20 Pursuant to RCW 21.20.110(1), and based upon the above Tentative Findings of Fact and Conclusions of
21 Law, the Securities Administrator intends to order that any future application by Respondents to register as an
22 investment advisor, broker-dealer, investment advisor representative, or securities salesperson shall be denied.

1 **AUTHORITY AND PROCEDURE**

2 This Statement of Charges is entered pursuant to the provisions of RCW 21.20.110 and RCW
3 21.20.390, and is subject to the provisions of RCW 21.20.120 and Chapter 34.05 RCW. Respondents may
4 each make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND
5 AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges. If a Respondent does
6 not request a hearing, as to that Respondent, the Securities Administrator intends to adopt the foregoing
7 Tentative Findings of Fact and Conclusions of Law as final, and enter a final order against that
8 Respondent enjoining future violations of the Securities Act and denying future securities registrations.
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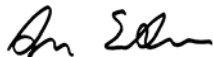
11 DATED and ENTERED this 2nd day of January, 2007.

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13 _____
14 MICHAEL E. STEVENSON
15 Securities Administrator

16 Approved for entry by:

Presented by:

17 

18 SUZANNE E. SARASON
19 Program Manager
20 Compliance & Examinations Unit

21 

22 ANTHONY W. CARTER
23 Enforcement Attorney
24 Compliance & Examinations Unit