

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

Case No. S-20-0034

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ARKANSAS SECURITIES DEPT.

IN THE MATTER OF
KUETTEL CAPITAL LLC and
ADAM J. KUETTEL

FINAL ORDER

On this day, the matter of Kuettel Capital LLC and Adam J. Kuettel (“Respondent”) came before Eric Munson, the Arkansas Securities Commissioner (“Commissioner”). A hearing was held on October 13, 2020, in the Diamond Mine Hearing Room of the Arkansas Securities Department (“Department”) pursuant to the Notice of Hearing dated August 5, 2020.

The Commissioner issued an order summarily suspending the registrations of Kuettel Capital LLC (KC) and Adam J. Kuettel as an investment adviser (IA) and investment adviser representative (IAR) on June 22, 2020. The hearing was held at the request of the respondent with Jim Brader, Deputy Commissioner and General Counsel with the Arkansas Insurance Department (“Hearing Officer”), presiding pursuant to his appointment by the Commissioner. The Department was represented by Theodore Holder, Senior Staff Attorney with the Department. The respondent appeared *pro se*.

FINDINGS OF FACT

1. Adam J. Kuettel (Respondent), CRD No. 5473537, is the chief executive officer and founder of Kuettel Capital LLC, CRD No. 174575. Kuettel is registered as an investment adviser representative of KC. At all times relevant to this matter Kuettel was a resident of northwest Arkansas. KC is a state registered investment adviser formed by Kuettel and registered in Arkansas on February 12, 2015. Its address is 609 SW 8th Street, Bentonville, Arkansas 72712.
2. KC and Kuettel made representations to the public about how investment advice would be rendered to clients in the Brochure, which in accordance with Rule 302.02(g)(1)(A), Rules of the Arkansas Securities Commissioner, is a document required to be filed with the Arkansas Securities Department at least yearly and which is required to be given to prospective clients. It sets out the IA's qualifications and business practices. In the Brochure KC and Kuettel purported to give each client an investment recommendation based on the client's specific circumstances, goals and risk tolerances. KC purported to use an "active trading strategy" and not such things as index-based funds, robo-advisers or "trendy investments." This was said to be a "mathematical approach" based on research. Frank Smith, a professor at Colorado State University, was identified as the person who did this research for KC. The Brochure listed and briefly discussed four methods of analysis that could

be used for investment strategy: technical analysis, fundamental analysis, cyclical analysis and modern portfolio theory. The risk of each method was also set forth.

3. In three different sections setting forth the screening (selecting for purchase) of securities for different types of funds, the Brochure stated that KC would only consider stocks worth more than \$10 per share. Stocks with a price this low are usually known as microcap stocks, which are issued by companies that have a low capitalization. They are often not traded on national stock exchanges and are often hard to value. They often do not have to file the same detailed financial statements with the United States Securities and Exchange Commission (SEC) required of larger firms. Information about these companies and the value of the stock is not often easy to find. Because of low volume trading in these stocks, they are subject to wild swings in price. A purchase of a large number of shares can easily drive the price up, and the sale of a large number of shares can easily drive the price down.

4. KC and Kuettel made representations to the public about how investment advice would be rendered to clients in the KC website. The theme of individually tailored investment advice geared to the individual circumstances, invest goals and risk tolerance of each investor was continued in the website. Representations were made on the website that a great deal of scholarly research would go into each client's investment advice.

5. After urging new clients to give him complete discretion to make all decisions in their accounts without getting permission from the clients or even notifying the clients of any actions in the account, most clients gave Kuettel complete discretion. He used that discretion not to tailor advice and action (which were the same since he had complete discretion in all but a few accounts), but to do the same thing in the vast majority of accounts.
6. Kuettel placed large amounts of microcap stocks in most accounts.
7. Kuettel placed large amounts of securities used for hedging and held them for much longer a time than that for which the issuers of those securities designed them. These were inverse and leveraged exchange traded funds (ETFs) and exchange traded notes (ETNs), (collectively, Non-traditional exchange traded products, NT-ETPs). ETFs are index funds traded on exchanges as though they are equity stocks, and ETNs are notes (debt securities) traded on exchanges as though they are equity stocks. Inverse ETFs and ETNs are keyed to a particular index or market and designed to fluctuate inversely to that index or market. Leveraged ETFs and ETNs increase or decrease in value by multiples, usually of two or three. For example, a leveraged ETF or ETN keyed to the Standard & Poor 500 index (S&P 500) will deliver returns of two or three times the change in the S&P 500. An inverse ETF or ETN will deliver the opposite of the change in the index

to which it is keyed, delivering a loss as the index rises and a gain as it falls. These ETFs and ETNs can be both inverse and leveraged. An inverse leveraged ETF or ETN will deliver a multiple gain or loss of the inverse of the change in the index, e.g., a 20% loss on a 10% gain in the index. These are hedging tools that are designed to accomplish their promised return in one day. The prospectuses of each one of them state this clearly and prominently, usually on the first or second page, often including boldface and italicized lettering for emphasis. These NT-ETPs all reset on a daily basis.

8. There is a widespread consensus in the securities industry that keeping NT-ETPs in an account for more than one day is a risky thing, often resulting in huge losses. This consensus is built on regulatory advisories, many papers by academics and securities experts, the financial press and more. Of the regulatory advisories, the most notable are a regulatory notice from the Financial Industry Regulatory Authority (FINRA) and a companion investor alert from the United States Securities and Exchange Commission (SEC) issued in 2009. These sources of information were and still are public documents accessible to all and especially to investment advisers.
9. Kuettel's actions in placing large amounts of microcap stocks and NT-ETPs in his clients' accounts led to substantial losses, approximately \$26 million in losses on a total of approximately \$41 million of assets under management.

10. In the brochure and on the KC website Kuettel represented that he was a Certified Financial Planner (CFP). This designation is awarded by the Certified Financial Planners Board of Standards (CFP Board). It requires an amount of education before the designation is awarded and some ongoing education to maintain it. The CFP Board takes disciplinary action against individuals for violations of its rules. The Brochure in this case was filed in April 2019. The CFP website shows that Kuettel was a CFP but that the designation was suspended for most of 2017 for a suspension imposed on him by the Financial Regulatory Authority (FINRA) that included a \$10,000 fine. After that suspension, Kuettel never took steps to reinstate his CFP designation. The CFP website states that he is not certified as a CFP.

11. On the KC website Kuettel represents that he is an Accredited Portfolio Management Advisor, which is a designation awarded by the College for Financial Planning. The website of the College for Financial Planning shows that he has no such designation. Although he apparently had this certification in 2012, it has lapsed, and he has not taken steps to reinstate it.

CONCLUSIONS OF LAW

SECURITIES FRAUD

ARK. CODE ANN. § 23-42-307(2)

RULE 308.02(y), RULES OF THE ARKANSAS SECURITIES COMMISSIONER

12. By representing to the public in the Brochure and in KC's website that clients of KC and Kuettel would receive investment recommendations and strategies tailored to each client's individual investment objectives, financial situation and risk tolerances, but actually employing a single strategy to all, Kuettel engaged in an act practice or course of business which operates or would operate as a fraud or deceit upon another, which is a violation of Ark. Code Ann. § 23-42-307(2) and Rule 308.02(y), Rules of the Arkansas Securities Commissioner.

*SECURITIES FRAUD
ARK. CODE ANN. § 23-42-307(3)*

13. By representing to the public in the Brochure and in KC's website that Kuettel would never recommend the purchase of stock worth less than \$10 a share (microcap stock) and then investing client resources in significant amounts of microcap stock, Kuettel made an untrue statement of a material fact in the course of investment advice, a violation of Ark. Code Ann.

*UNSUITABLE RECOMMENDATIONS
RULE 308.02(a), RULES OF THE ARKANSAS SECURITIES COMMISSIONER*

14. By recommending and making purchases in significant amounts of NT-ETPs and also holding them in client accounts for much longer than one day, as the

prospectuses of such securities plainly state clearly on the first several pages and which there was an industry wide consensus was an inappropriate practice, which led to substantial losses, KC and Kuettel made recommendations to clients without a reasonable basis for believing the recommendations were suitable for the clients based on all available information. By recommending and making purchases in significant amounts of microcap stocks, which are not appropriate for most investors because of their volatility, KC and Kuettel made recommendations to clients without a reasonable basis for believing the recommendations were suitable for the clients based on all available information. These recommendations constituted a fraudulent, deceptive, dishonest or unethical practice of an investment adviser in violation of Rule 308.02(a), Rules of the Arkansas Securities Commissioner.

*DISHONEST USE OF CERTIFICATIONS
RULE 308.02(x), RULES OF THE ARKANSAS SECURITIES COMMISSIONER*

15. By using two certifications that he did not have, Certified Financial Planner (CFP) and Accredited Portfolio Management Advisor (APMA), in the Brochure and on the KC website, Kuettel used these certifications in the provision of advice as to the value or advisability of investing, purchasing or selling securities that indicated that Kuettel had special certification or training in advising clients which was misleading,

a fraudulent, deceptive, dishonest or unethical practice of an investment adviser pursuant to Rule 308.02(x), Rules of the Arkansas Securities Commissioner.

ORDER

Having found the violations of the Arkansas Securities Act and Rules of the Arkansas Securities Commissioner set out above, the Hearing Officer affirms the summary order issued by the Commissioner on June 22, 2020 in all respects and hereby orders that order to remain in effect indefinitely.

IT IS SO ORDERED this 1st day of December, 2020.



Jim Brader
HEARING OFFICER