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## *Texas State Securities Board*

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IN THE MATTER OF KP FINANCIAL, § ORDER NO. ENF-22-CDO-1867  
LLC; KEVIN VU PHAM; DANIEL § SOAH Docket 312-21-1666  
AJWANI; AND GERALD JOHNSON §

TO: KP Financials, LLC, 11801 Domain Boulevard, Floor 3, Austin, Texas 78758  
Kevin Vu Pham, 11801 Domain Boulevard, Floor 3, Austin, Texas 78758  
Daniel Ajwani, 11801 Domain Boulevard, Floor 3, Austin, Texas 78758  
Gerald Johnson, 11801 Domain Boulevard, Floor 3, Austin, Texas 78758

### **ORDER AFFIRMING AND MODIFYING EMERGENCY CEASE AND DESIST ORDER NO. ENF-CDO-20-1827**

#### **I. STATEMENT OF THE CASE**

On November 19, 2020, the Securities Commissioner (**Commissioner**) entered an Emergency Cease and Desist Order, **Order No. ENF-CDO-20-1827, (Emergency Order)** against KP Financials, LLC (**KP Financials**), Kevin Vu Pham (**Pham**), Daniel Ajwani (**Ajwani**), and Gerald Johnson (**Johnson**) (collectively, the **Respondents**). In the Emergency Order, the Commissioner ordered the Respondents to cease and desist from:

1. Offering for sale any security in Texas until the security is registered with the Commissioner or is offered for sale pursuant to an exemption from registration under the Texas Securities Act (**Securities Act**);
2. Acting as a securities dealer or agent in Texas until the Respondents are registered with the Commissioner or are acting pursuant to an exemption from registration under the Securities Act;
3. Engaging in any fraud in connection with the offer for sale of any security in Texas; and
4. Offering securities in Texas through an offer containing a statement that is materially misleading or otherwise likely to deceive the public.

The Respondents requested a hearing regarding the Emergency Order. A hearing on the merits was held via Zoom videoconference before an Administrative Law Judge (**ALJ**) at

the State Office of Administrative Hearings (**SOAH**) on November 12, 2021. The record was closed on December 16, 2021.

## II. PROPOSAL FOR DECISION

The ALJ issued a Proposal for Decision (**PFD**)<sup>1</sup> on February 10, 2022, recommending that the Emergency Order should be affirmed with three modifications and making the following Findings of Fact and Conclusions of Law. Neither party filed exceptions to the PFD. The Findings of Fact and Conclusions of Law from the PFD are as follows:

### FINDINGS OF FACT

1. On November 19, 2020, the Texas State Securities Board (**TSSB**) Commissioner (**Commissioner**) entered an Emergency Order against KP Financials, LLC; Kevin Vu Pham; Daniel Ajwani; and Gerald Johnson (**Respondents**).
2. On December 7, 2020, Respondents requested a hearing to set aside the Emergency Order.
3. On March 11, 2021, TSSB docketed this matter with the State Office of Administrative Hearings (**SOAH**).
4. On March 24, 2021, the TSSB staff (**Staff**) sent Respondents a notice of hearing that contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
5. Respondents and Staff waived the requirement that the hearing be held within 10 days of the receipt of the request for hearing.
6. On November 12, 2021, Administrative Law Judge (**ALJ**) Rebecca S. Smith convened a hearing on the merits via Zoom videoconference. Staff was represented by attorneys Jeramy Heintz and Rachel Anderson Rynders. Mr. Pham, Mr. Ajwani, and Mr. Johnson appeared and represented themselves. KP Financials did not appear. The record closed on December 16, 2021, with the deadline to file closing briefs.
7. Staff moved for an entry of default against KP Financials, which was granted.
8. The factual matters asserted against KP Financials in the Notice of Hearing and Emergency Order were deemed admitted.

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<sup>1</sup> The Act was codified effective January 1, 2022. At the time the Emergency Order was issued, the sections of the Act were found in the Texas Revised Civil Statutes. In the PFD, the ALJ referred to the sections of the Act in the text but cited to the recently-codified sections of the Act.

9. Mr. Pham owns KP Financials, which he founded in June 2020.
10. Mr. Ajwani and Mr. Johnson worked with KP Financials.
11. KP Financials offered to sell, and sold, what it called investments in the foreign currency exchange, or forex.
12. Neither Mr. Pham, Mr. Ajwani, nor Mr. Johnson are registered with the Commissioner as dealers or agents.
13. KP Financials' investments in managed forex portfolios have not been registered with the Commissioner, and no permit has been granted for their sale in Texas.
14. Mr. Johnson, acting on behalf of KP Financials, placed an advertisement on Craigslist promoting KP Financials as an investment firm managing client portfolios and trading them in the foreign exchange market. The advertisement stated that the company provided an average of three percent return on investment per month and had a 100 percent client satisfaction rate. In a section labeled "License Info," the advertisement stated, "registering with the Texas SEC and Series 34 Exam."
15. None of the Respondents have taken the Series 34 exam.
16. Alexis Cantrell, an investigator with TSSB, contacted Mr. Johnson in response to the Craigslist advertisement. Ms. Cantrell was acting in an undercover capacity and provided him with a different name.
17. Ms. Cantrell had conversations with Mr. Johnson and Mr. Ajwani, some of which were recorded.
18. In the first conversation, Mr. Johnson described KP Financials as an investment management firm in Austin, Texas with about four years of history that specialized in foreign exchange market trading for their clients. He added that KP Financials had a high customer satisfaction rate and, on average, three to four percent returns. Mr. Johnson also said that KP Financials was the only firm in Texas that offered managed forex portfolios. He described Ms. Cantrell's investment as passive.
19. In Ms. Cantrell's second conversation, Mr. Ajwani said that investing with KP Financials provided minimal risk.
20. Mr. Ajwani and Mr. Johnson told Ms. Cantrell about a royalty payment for bringing in new investors but did not tell her about possible Texas Securities Act violations in accepting such a payment.
21. Mr. Ajwani and Mr. Johnson did not disclose KP Financials' assets or liabilities to Ms. Cantrell.

22. Mr. Ajwani and Mr. Johnson did not take any material steps to identify Ms. Cantrell's investment needs or objectives, identify her risk tolerance or financial circumstances, or to determine if an investment with KP Financials was suitable for her.
23. Mr. Ajwani forwarded Ms. Cantrell what he called the company's ledger, which reflected a series of trades under Mr. Pham's name, including some dated before the formation of KP Financials.
24. Staff did not establish that other companies in Texas offered managed forex portfolios.
25. Before November 2, 2020, the following people or companies invested with KP Financials:

<b>Person or Company</b>	<b>Amount</b>
An Lam	\$20,000
Wendy or Pedro Quevedo-Vargas	\$10,000
Ashley E. Martinez Jaimes	\$3,000
Raquel M. Rodriguez	\$1,500
Juan A. Yruegas	\$1,500
Q&C's Donuts, Inc.	\$760

26. Carlos De Olaguibel heard about KP Financials through his son, who met Mr. Pham and Mr. Ajwani at the gym.
27. Mr. De Olaguibel invested \$10,000 with KP Financials in November 2020.
28. He checked the KP Financials dashboard, which reflected that his funds were invested in foreign currency and that his funds were growing.
29. Despite what was showing on the dashboard, Mr. De Olaguibel's funds were not traded in the foreign currency exchange.
30. Following the entry of the Emergency Order, Mr. De Olaguibel was refunded his money from KP Financials, along with some interest.
31. Respondents' conduct, acts, and practices threatened immediate and irreparable public harm.

## CONCLUSIONS OF LAW<sup>2</sup>

1. TSSB has jurisdiction over Respondents and the subject matter of this disciplinary action pursuant to the provisions of the Texas Securities Act (**Act**). Tex. Gov't Code chs. 4001- 4008.<sup>3</sup>
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. If a party fails to appear for a hearing, the opposing party may move to proceed on a default basis. 1 Tex. Admin. Code § 155.501(a).
4. After a motion for default and upon receiving adequate proof of notice, the ALJ may deem admitted the factual matters asserted in the notice of hearing or non-defaulting party's pleadings. 1 Tex. Admin. Code § 155.501(d)(2).
5. Under Section 23-2 of the Act, on the determination of the Securities Commissioner (**Commissioner**) that the conduct, act, or practice threatens immediate and irreparable public harm, the Commissioner may issue an emergency cease and desist order to a person whom the Commissioner reasonably believes:
  - (1) is engaging in or is about to engage in fraud or a fraudulent practice in connection with:
    - (A) the offer for sale or sale of a security . . .
  - (2) has made an offer containing a statement that is materially misleading or is otherwise likely to deceive the public; or
  - (3) is engaging or is about to engage in an act or practice that violates this Act or a Board rule. Tex. Gov't Code § 4007.104(a).
6. On receiving a request for a hearing from a person who is the subject of an Emergency Cease and Desist Order, the Commissioner must serve notice of the time and place of the hearing. The hearing must be held not later than the 10th day after the date the Commissioner receives the request for a hearing unless the parties agree to a later hearing date. Tex. Gov't Code § 4007.104(d).<sup>4</sup>
7. Respondents were given adequate notice of the hearing. Tex. Gov't Code §§ 2001.051-.052.

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<sup>2</sup> The codification of the Act occurred between the date the initial order was issued and this modification to that order. To help coordinate the references in the original order with those in this modified order, footnotes have been added to include the legal references to the Texas Securities Act as it existed prior to the codification. These footnotes are for informational purposes only and are not modifications to the Conclusions of Law.

<sup>3</sup> Tex. Rev. Civ. Stats. Ann. art. 581-1 - 581-45 (Sections 1 - 45 of the Securities Act).

<sup>4</sup> Section 23-2.D of the Securities Act.

8. At the hearing, the Commissioner has the burden of proof and must present evidence in support of the order. Tex. Gov't Code § 4007.104(d).<sup>5</sup>
9. After the hearing, the Commissioner must affirm, modify, or set aside in whole or part the emergency order. Tex. Gov't Code § 4007.104(e).<sup>6</sup>
10. Respondents' managed portfolios to be traded in the foreign currency exchange were investment contracts and therefore securities. Tex. Gov't Code § 4001.068(a)(1)(O).<sup>7</sup>
11. Respondents violated Section 7 of the Act by offering for sale securities that were not registered with the Commissioner or permitted for sale in Texas. Tex. Gov't Code § 4003.001.
12. Respondents violated Section 12 of the Act by offering securities for sale in Texas without being registered as dealers or agents. Tex. Gov't Code § 4004.051.
13. Respondents made an offer containing statements that are materially misleading or otherwise likely to deceive. Tex. Gov't Code § 4007.104(a).<sup>8</sup>
14. Respondents engaged in fraud in connection with the offer for sale of a security. Tex. Gov't Code §§ 4001.058(a)(1)-(3),<sup>9</sup> 4007.104(a).<sup>10</sup>
15. The findings of fact, conclusions of law, and ordering paragraphs of the Emergency Order should be affirmed, with the following exceptions:
  - a. The reference to Mr. Johnson in Emergency Order Findings of Fact 32 and 46 should be replaced with a reference to Mr. Ajwani.
  - b. The reference to Mr. Johnson in Emergency Order Finding of Fact 51 should be removed.
16. The Commissioner should order Respondents to refund the following amounts to the following clients:

<b>Person or Company</b>	<b>Amount</b>
An Lam	\$20,000

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<sup>5</sup> Section 23-2.D of the Securities Act.

<sup>6</sup> Section 23-2.E of the Securities Act.

<sup>7</sup> Section 4.A of the Securities Act.

<sup>8</sup> Section 23-2.A(2) of the Securities Act.

<sup>9</sup> Section 4.F of the Securities.

<sup>10</sup> Section 23-2.A(1) of the Securities Act.

Wendy or Pedro Quevedo-Vargas	\$10,000
Ashley E. Martinez Jaimes	\$3,000
Raquel M. Rodriguez	\$1,500
Juan A. Yruegas	\$1,500
Q&C's Donuts, Inc.	\$760

### ORDER

IT IS THEREFORE ORDERED that the Emergency Cease and Desist Order, Order No. ENF-20-CDO-1827, issued against the Respondents on November 19, 2020, shall be affirmed and modified as set out in Conclusion of Law #15 (making modifications to Findings of Fact 32, 46, and 51) and #16.

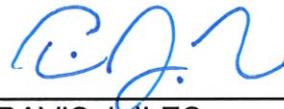
1. It is therefore ORDERED Respondents immediately CEASE AND DESIST from offering for sale any security in Texas until the security is registered with the Securities Commissioner or is offered pursuant to an exemption from registration under the Texas Securities Act.
2. It is further ORDERED that the Respondents immediately CEASE AND DESIST from acting as a securities dealer or agent in Texas until Respondents are registered with the Securities Commissioner or is acting pursuant to an exemption from registration under the Texas Securities Act.
3. It is further ORDERED that Respondents immediately CEASE AND DESIST from engaging in any fraud in connection with the offer for sale of any security in Texas.
4. It is further ORDERED Respondents immediately CEASE AND DESIST from offering securities in Texas through an offer containing a statement that is materially misleading or otherwise likely to deceive the public.
5. It is further ordered that Respondents shall REFUND the following amounts to the following clients:

<b>Person or Company</b>	<b>Amount</b>
An Lam	\$20,000
Wendy or Pedro Quevedo-Vargas	\$10,000
Ashley E. Martinez Jaimes	\$3,000
Raquel M. Rodriguez	\$1,500
Juan A. Yruegas	\$1,500

Q&C's Donuts, Inc.	\$760
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- The Respondents shall pay the refunds to clients within 45 days after this Order becomes final. All refunds shall be made by delivery of a cashier's check to the client and be accompanied by a cover letter identifying the Respondents in this action and this Order. The Respondents shall simultaneously transmit photocopies of refund payments and client letters to the Securities Commissioner.

SIGNED AND ENTERED by the Securities Commissioner on October 27<sup>th</sup>, 2022.



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TRAVIS J. ILES  
Securities Commissioner

## CERTIFICATE OF SERVICE

I hereby certify that on this, the 27<sup>th</sup> of October 2022, true and correct copies of the foregoing Order Affirming Emergency Cease and Desist Order have been sent to the Respondents by certified mail, return receipt requested, to their last known address on Page 1 of this Order; and VIA EFILE TEXAS to the Respondents' representative of record, the Staff representing the Petitioner, and to the State Office of Administrative Hearings:

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