

**BEFORE THE SECURITIES COMMISSIONER
OF THE STATE OF KANSAS**



In the Matter of:

VESTECH SECURITIES, INC. (CRD No. 41409),
EARLE W. EVANS, III (CRD No. 202874),

Docket No. **17E010**
KSC No. 2014-6160

Respondents.

_____/
Pursuant to K.S.A. 17-12a412 & K.S.A. 17-12a604

**ORDER TO CEASE AND DESIST AND NOTICE OF INTENT TO IMPOSE
ADMINISTRATIVE SANCTIONS**

Staff for the Office of the Kansas Securities Commissioner (“KSC Staff”) allege that sufficient evidence exists to provide cause under K.S.A. 17-12a412 and K.S.A. 17-12a604 to invoke administrative sanctions against the Respondents pursuant to the Kansas Uniform Securities Act (“KUSA”). If the allegations set forth below are found to be true, through either administrative adjudication, failure of the Respondents to make a timely request for hearing, or default of the Respondents, it is the intention of KSC Staff to seek an order from the Commissioner to impose sanctions upon the Respondents. Such sanctions may include, *inter alia*, revocation of registration, suspension of registration, conditions or limitations on registration, censure, bar or suspension from association with an investment adviser or broker-dealer registered in the State of Kansas, fines, restitution, disgorgement, an order for costs, and/or a permanent cease and desist order.

If the Respondents wish to contest the facts alleged below or offer evidence and argument to mitigate those facts, then the Respondents must file a request for hearing within 33 days after the date of mailing on the *Certificate of Service* attached to this Order. The request for hearing must be in the manner and form prescribed by K.A.R. 81-11-3 and K.A.R. 81-11-5, and it must

be filed with the Office of the Kansas Securities Commissioner, 109 SW 9th Street, Suite 600, Topeka, Kansas, 66612. The request for hearing must be verified under oath by the Respondents. If the Respondents dispute any of the allegations set forth below, Respondents shall specifically deny such allegations or such allegations will be deemed admitted by the Respondents. If a request for hearing is not timely filed, the Commissioner may issue a final order without further proceedings.

I. FINDINGS OF FACTS

1. Respondent Vestech Securities, Inc. (“Vestech” or “Firm”), CRD No. 41409, is a Kansas corporation formed on March 13, 1996.
2. Vestech’s principal place of business is located at 11477 Olde Cabin Road, Suite 310, St. Louis, Missouri, 63141 (“St. Louis Office”). (005099-005150). The Firm also has a branch office located at 8100 East 22nd Street North, Suite B, Building 600, Wichita, Kansas, 67226 (“Wichita Office”).
3. Vestech has been registered with the Office of the Kansas Securities Commissioner (“KSC”) as a broker-dealer since October 22, 1996 and an investment adviser (“IA”) since July 2, 2004, and is therefore subject to the Kansas Securities Commissioner’s (“Commissioner”) jurisdiction.
4. Respondent Earle W. Evans, III (“Evans”), CRD No. 202874, is an individual residing at 
5. Evans has been registered with the KSC as a broker-dealer agent since October 22, 1996, and an investment adviser representative (“IAR”) since July 2, 2004, and is therefore subject to the Commissioner’s jurisdiction.

6. On November 19, 2014, a routine compliance examination of Vestech was initiated by Heather L. Gallagher (“Gallagher”), KSC Staff Attorney, on behalf of the Commissioner when Staff Attorney Gallagher issued a document request letter to Vestech via United States Postal Service (“USPS”) regular mail.
7. At the time of the exam, Evans was President, Chief Compliance Officer (“CCO”), an IAR, majority owner, and sole person in control of Vestech.
8. On or about February 26, 2015, Randy Mullikin, KSC Director of Compliance and Enforcement, and Staff Attorney Gallagher conducted an interview with Evans at the Wichita Office.
9. On or about February of 2016, Evans hired John Huang (“Huang”), CRD No. 2659909, to be Vestech’s Financial and Operations Principal (“FINOP”), CCO, and person in control of everyday compliance issues.
10. Multiple follow-up document requests were issued to Vestech via USPS regular mail and email.
11. As an IA, Vestech provides asset management services through the selection and ongoing review of third party money managers. At the time of the examination, Vestech utilized the services of three third party money managers. Vestech also provided solicitation services for one third party firm.
12. Multiple deficiencies were discovered throughout the examination process, some of which were repeat violations from the previous examinations performed by KSC Senior Examiners Shelly Welch (“Welch”) and Hugo Mayer (“Mayer”) (KSC File Nos. 2007-5338 and 2011-5823).
13. An Order against Respondents Vestech and Evans is in the public interest.

Real Premium Partners Appreciation, LLC

14. Real Premium Partners Appreciation, LLC (“RPPA” or “Fund”) was a Kansas limited liability company (“LLC”), established on March 2, 2011 and forfeited on July 15, 2016.
15. RPPA’s principal office was located at Vestech’s Wichita Office. RPPA offered limited interests in itself. Each holder of an interest of RPPA was a member of RPPA and held a proportional interest in the LLC.
16. RPPA’s objective was to invest money in a private equity fund established by FISCO Appreciation Management, LLC, a federally registered investment advisory firm (“FISCO”).
17. An investment advisory agreement detailing the arrangement between RPPA and Evans was not provided.
18. The PPM provides that the offering commenced on March 17, 2011. The offering ceased operations on or about March 13, 2015.
19. The PPM named Evans, the President and majority owner of Vestech, as the placement agent and manager of the Fund.
20. Evans was responsible for managing and controlling the affairs of RPPA and had ultimate authority in all matters affecting RPPA’s business and operations.
21. Evans hired a local Certified Public Accountant (“CPA 1”) in order to handle the day-to-day functions of RPPA, such as prepare quarterly investment result reports, track RPPA’s accounting operations, approve fee withdrawals from Vestech, and create tax documents.

RPPA’s Expenses and Fees

22. According to the RPPA PPM,
 - a. RPPA was to maintain capital accounts for the members which initially would be credited with the amount of each member’s respective capital contribution.

- b. All profits and losses of RPPA were to be allocated among the members in accordance with their respective capital accounts.
 - c. Each member's capital account was to be adjusted to reflect any expenses of RPPA which were borne by the Fund.
 - d. All of the normal and recurring operating expenses of RPPA, including rent, utilities, telephone, insurance, equipment expense and administrative salaries, but excluding investment expenses, were to be borne by Evans.
 - e. The investment expenses of RPPA, including, custodial, brokerage, tax, legal, and administrative expenses, commissions, and auditing and accounting fees were to be borne by RPPA.
 - f. RPPA was to pay all expenses arising in connection with the indemnification of Evans and others for certain other losses or expenses, except to the extent such losses or expenses arose from his own gross negligence or willful malfeasance or under circumstances in which indemnification is prohibited under federal securities laws and other applicable laws.
 - g. RPPA would pay Evans, as a wrap fee, a monthly management fee of one-twelfth of one percent of the value of RPPA's investment in FISCO Appreciation.
 - h. This management fee was to be calculated and paid in arrears. (000959).
23. When funds were due to Evans as compensation for his management services, money was withdrawn from FISCO and deposited into RPPA's Intrust Bank account ("RPPA Bank Account").
24. Payments to Vestech were then withdrawn from the RPPA Bank Account via checks written by Evans to Vestech's Intrust Bank account ("Vestech Bank Account").

25. Evans and his unregistered assistant were the only people with signatory power on the RPPA Bank Account.

Evans Self-Report

26. On March 7, 2015 at 2:44 P.M., Staff Attorney Gallagher received a phone call from Evans.
27. During said phone call, Evans stated that he thought that about one percent of RPPA's funds were missing, which he approximated was worth about \$20,000. Evans stated that he didn't know what error had occurred and what had happened to the missing money.

RPPA Analysis

28. Staff Attorney Gallagher requested that Evans perform an analysis of RPPA in order to determine what happened to the Fund's missing money. Evans opted to hire a different local CPA firm, separate and distinct from CPA 1 discussed above, to conduct a review.
29. A CPA of said firm ("CPA 2") reviewed RPPA's activities during 2012-2015.
30. CPA 2 prepared a report that indicated the following, *inter alia*:
- a. A comparison between RPPA's accounting records to quarterly statements received from FISCO did not reveal any discrepancies.
 - b. No exceptions were noted in the calculation of the monthly management fee due from RPPA to Vestech/Evans.
 - c. Payments to Vestech were made in excess of the computed management fees, which resulted in a balance due from Vestech to RPPA.
 - i. For example, on January 17, 2013, a management fee of \$1,178.16 was due from RPPA to Vestech. On January 24, 2013, check 1017 was written on the RPPA Bank Account for \$15,198.00 to Vestech. Said check was signed by

- Evans. While it appears that Vestech was owed an additional \$3,874.00 in fees that were incurred previous to January 2013, the withdrawal on January 24, 2013 was \$10,145.84 greater than the total funds that were due to Vestech.
- ii. Another example occurred about two months later. On February 17, 2013, a management fee of \$1,204.11 was due from RPPA to Vestech. On March 5, 2013, check 1018 was written on the RPPA Bank Account for \$6,816.26 to Vestech. Said check was signed by Evans. This withdrawal was \$5,612.15 greater than the fees that were due to Vestech.
 - iii. From December of 2012 to January of 2015, Evans wrote and signed RPPA Bank Account checks on 10 separate occasions that were greater than the computed management fees and overall balance due to Vestech.
 - iv. The amount of excessive funds that were withdrawn from the RPPA Bank Account and deposited into the Vestech Bank Account totaled approximately \$26,115.45.
- d. Evans used RPPA funds to pay for a previous private placement's accounting fees.
- i. On July 26, 2013, check 1024 was written on the RPPA Bank Account for \$10,378.24 to CPA 1. Said check was signed by Evans. The word "Fees" was written on the check's memo line.
 - ii. CPA 2 was able to determine that \$4,531.25 of said check was paid to CPA 1 for fees that CPA 1 earned while working on a previous private placement managed by Evans.
 - iii. The RPPA PPM did not state that RPPA funds would be used to pay for another private placement's fees.

- e. Due to the excessive fee withdrawals and the amount of fees paid by RPPA to CPA 1 as compensation for services that CPA 1 performed on a previous private placement managed by Evans, RPPA ended conducting business with a \$30,646.70 deficit.
 - f. Said deficit was charged to RPPA's members as an expense.
- 31. Staff Attorney Gallagher requested that Evans submit RPPA's final accounting documents in order to further investigate what happened to the missing funds.
 - 32. Similar to CPA 2's findings, CPA 1's final accounting statements show that an administrative fee of \$30,869.54 was charged to RPPA and its members on December 31, 2014.

Evans' Subsequent Actions

- 33. Evans stated to Staff Attorney Gallagher on more than one occasion via phone call that he was going to require that each RPPA member sign an agreement ("Settlement Agreement") before he released their funds to them.
- 34. Staff Attorney Gallagher requested that Evans submit a copy of said document.
- 35. Staff Attorney Gallagher received an unexecuted copy of a document that purports to be the Settlement Agreement.
- 36. The Settlement Agreement stated, *inter alia*, that the signing RPPA member would release Vestech, and other firms that were involved, from any claims, causes of action, or debts that they currently had or would arise, known or unknown, accrued or un-accrued, related to or arising out of any events and occurrences which involved RPPA.
- 37. On or about April 29, 2016, the KSC issued a subpoena to Intrust Bank. Intrust Bank responded by providing, *inter alia*, the bank statements for the RPPA Bank Account and Vestech Bank Account for 2013-2015.

38. According to the RPPA Bank Account statements,
 - a. On or about December 30, 2014, RPPA's Bank Account received a deposit from FISCO for \$1,572,745.00, the vast majority of the wealth that was invested in FISCO, minus a \$15,886.00 holdback.
 - b. FISCO transferred the holdback to RPPA's Intrust Bank account on or about March 13, 2015.
 - c. On or about May and June of 2015, RPPA's members were paid the value of their investments minus the deficit charged as an expense.
39. Evans told Staff Attorney Gallagher that Evans required each RPPA member to sign the Settlement Agreement before he released their funds to them.

Previous FINRA Action

40. The Firm entered into an Acceptance, Waiver, and Consent with the Financial Industry Regulatory Authority ("FINRA") on June 4, 2012, in relation to activities that took place with one of the Firm's prior private placements; FINRA Case No. 2010021776301.
41. According to the Form U6, filed by FINRA on the Central Registration Depository ("CRD"):
 - a. The Firm received a \$30,000 payment from a private placement offering which was made in error.
 - b. The Firm disbursed the erroneous \$30,000 payment, rather than retaining it in cash, resulting in the Firm falling below its \$5,000 minimum net capital requirement.
 - c. Evans learned that the Firm's accounting treatment of the payment was incorrect but failed to notify the Firm's off-site FINOP.

Written Advisory Agreements

42. During the examination process, Staff Attorney Gallagher requested that the Firm submit a copy of all of its current investment advisory client contracts.
43. The Firm provided a written response that stated that a total of 33 advisor managed accounts were identified. According to the Firm's current client list, Vestech is an adviser to 14 accounts and a solicitor to 19 accounts.
44. The response further stated that of the investment advisory accounts, two client contracts could not be located.
45. The Firm also submitted documents to satisfy said request. Based on those documents, Staff Attorney Gallagher was able to determine that:
 - a. Three other investment advisory contracts were missing.
 - b. Five investment advisory agreements submitted by Vestech were not in compliance with K.A.R. 81-14-5(d)(13) due to the fact that the contracts (1) incorrectly stated the services that Vestech was providing to the client, (2) did not list the amount of fees to be paid to Vestech by the client, (3), did not name Vestech or Evans as a party to the contract, and/or (4) were not signed by the client.
 - c. The Firm did not make, keep, and maintain investment advisory contracts in compliance with K.A.R. 81-14-5(d)(13) for 10 of Vestech's 14 investment advisory clients.

Solicitor Disclosure Document

46. During the examination process, Staff Attorney Gallagher requested that the Firm submit a copy of its written solicitor disclosure document.

47. In response to said request, the Firm provided a written response that did not address the solicitor disclosure document that it is required to be furnished to each solicited client according to K.A.R. 81-14-5(f)(6).
48. In response to the same request, Vestech submitted a Subscription Agreement for 13 of the 19 clients that it solicited on behalf of a third party.
49. Said Subscription Agreement does not does not include the information required of a solicitor disclosure document according to K.A.R. 81-14-5(f)(6).
50. Vestech was unable to submit a solicitor disclosure document in compliance with K.A.R. 81-14-5(f)(6) for each of its 19 solicited clients.
51. Failing to maintain evidence of the Firm creating and maintaining a solicitor disclosure document is a repeat violation from Senior Examiner Welch's previous examination (KSC File No. 2011-5823).
52. Vestech was unable to submit proof that it had furnished a solicitor disclosure document to each of its solicited clients.

Annual Review

53. During the examination process, Staff Attorney Gallagher requested on two separate occasions that the Firm submit a copy of its two previous internal annual reviews conducted by the Firm.
54. In response, Vestech provided a written document stating that the Firm had performed annual internal inspections in each of the last six years.
55. The Firm also stated in said document that Evans performed an annual inspection for the year of 2015, but records and supporting documents were not kept on file and a report was not created to evidence the inspection.

56. Vestech was unable to submit proof that it had performed an internal annual review during its two previous years of business.

Written Supervisory Procedures

57. During the examination process, Staff Attorney Gallagher requested that the Firm submit a copy of its written supervisory procedures.

58. In response, Vestech submitted a document titled “The Written Supervisory Procedures of Vestech Securities, Inc.”

59. Staff Attorney Gallagher reviewed said document and determined that it was inadequate because it primarily only listed policies and procedures that applied to the Firm’s broker-dealer side of its business.

60. On a separate occasion, the Firm provided a written document that stated, *inter alia*, “Vestech relied on the Written Supervisory Procedures (WSP) for the broker dealer operations to administer RIA operations. The WSP does not include supervisory procedures for the investment advisory operations.”

61. Maintaining inadequate written supervisory procedures is a repeat violation from Senior Examiner Welch’s previous examination (KSC File No. 2011-5823).

Client List

62. During the examination process, Staff Attorney Gallagher requested that the Firm submit a list of Vestech’s current clients on four separate occasions.

63. The Firm did not submit a client list in response to the first request.

64. In response to the second and third requests, the Firm submitted incomplete client lists that didn’t conform to said requests.

65. In a document submitted by the Firm in response to the requests for a current client list, the Firm submitted a written document that stated that Huang was unable to locate a master list or database containing customer information.

Amendments to Form ADV

66. Vestech's Form ADV, Part 2 filed on the Investment Adviser Registration Depository ("IARD") on September 30, 2013, was deficient for the following reasons:
- a. The date on the first page was listed as September 15, 2001. Said date should have been updated or the form itself should have been updated since September 15, 2001;
 - b. It responded to Items 1-8, rather than Items 1-19 as required by the Form ADV Uniform Application for Investment Adviser Registration Part 2: Uniform Requirements for the Investment Adviser Brochure and Brochure Supplements ("Part 2 Instructions");
 - c. All of the required disclosable events, such as the judgments/liens filed against Evans discussed below in subsection *Amendments to Form U4*, were not discussed pursuant to the Part 2 Instructions; and
 - d. A Part 2B for Evans was not filed with the IARD.
67. According to the Part 2 Instructions Item 4(B), the Firm must describe the types of advisory services that it offers.
- a. According to the Firm's current client list, Vestech admitted that it serves as a solicitor for a third party firm.
 - b. Vestech does not disclose that it offers said service within its Form ADV, Part 2, Item 4 and how this service differs greatly, in terms of additional and ongoing client contact, from the selection of third party money managers.

68. According to the Firm's Form ADV, Part 1A, Item 8(C) and Form ADV, Part 2B, Item 16, the Firm does not receive discretionary authority from clients to select the type of securities and amount of securities to be bought or sold for its clients.
- a. The contracts between Evans, one of the third party money managers, and the corresponding clients appear to give Evans discretion.
 - b. Said contracts name Evans as the "Advisor" and Evans signed said contracts on the line titled "Advisor Acceptance".
 - c. Said contracts give the Advisor full investment discretion.
69. A Form ADV, Part 2B was filed on another person's behalf as a part of the Firm's Form ADV, Part 2B on the IARD.
- a. Staff Attorney Gallagher discussed said portion of the Form ADV, Part 2B with Huang on May 19, 2016, via email and by phone.
 - b. Huang stated that said person does not currently conduct business on behalf of the Firm as an IAR.
70. On its Form ADV, Part 1, the Firm disclosed that it had a website located at <http://vestechsecurities.com>. Staff Attorney Gallagher performed a search for said website and it did not exist.
71. Form ADV deficiencies is a repeat violation from the previous examinations conducted by Senior Examiners Welch and Mayer (KSC File Nos. 2007-5338 and 2011-5823).

Amendments to Form U4

72. The Firm did not promptly file an amendment to Evans' Form U4 on the CRD to reflect the following material changes:

- a. A judgment/lien that was granted to an individual on October 20, 2011, in the District Court of Sedgwick County, Kansas for the amount of \$2,766.15; Case No. 11LM11441. According to Evans' Form U4, Evans learned of the judgment/lien on November 14, 2011. Evans first reported said event on April 6, 2015.
 - b. A judgment/lien that was granted to the Kansas Department of Revenue on April 10, 2014, in the District Court of Sedgwick County, Kansas for the amount of \$10,000; Case No. 2014-ST-001227-IC. According to Evans' Form U4, Evans learned of the judgment/lien on January 26, 2015. Evans first reported said event on April 21, 2015.
73. Failing to properly update the Firm's IAR's Form U4 is a repeat violation from Senior Examiner Mayer's previous examination (KSC File No. 2011-5823).

Firm Submissions to KSC Staff

74. Staff Attorney Gallagher issued a request letter to Vestech via USPS regular mail on November 19, 2014 ("First Request").
75. The First Request asked that the firm provide the following, *inter alia*: (1) a list of the Firm's current investment advisory clients; (2) a copy of the Firm's written solicitor disclosure document; (3) a written description of how the Firm documents the initial delivery of Form ADV, Part 2 or any other disclosure document given in lieu of said document; (4) a list of the client billing statements for the two previous periods; (5) a list of any website, blog, or other portal through which information the Firm or an associated person has published on the Internet; (6) a written description explaining the method for the retention, preservation, and archiving of electronic media; (7) copies of any correspondences with any regulatory agency or self-regulatory organization within the last 24 months; (8) a list of all clients who have instructed the Firm to direct their account

activity to a particular broker-dealer; (9) a list of all broker-dealers used by the Firm; and (10) a list of all private placements, investment partnerships, trusts, or any other pooled investment vehicles formulated or offered by the registrant, or any associated person, to an investment advisory client or prospective investment advisory client within the last 24 months.

76. In response to the First Request, Vestech provided documentation on December 29, 2014, that included a Fax Transmittal Sheet used as a cover sheet. The Fax Transmittal Sheet stated “Enclosed is per your request. Not complete. Will try to finish it next week.” (000167). Said sheet was signed by Evans’ assistant.
77. Vestech did not provide a response to the First Request items listed above in Paragraph 75.
78. Staff Attorney Gallagher issued a second request to Vestech via email on March 6, 2015 (“Second Request”).
79. The Second Request asked that the firm provide the following, *inter alia*,: (1) a list of the Firm’s current investment advisory clients, and (2) a copy of all invoices submitted by the Firm to collect investment advisory fees.
80. In response to the Second Request, Vestech provided (1) an incomplete client list that did not contain the information that was requested, and (2) copies of invoices for one of the three third party money manager’s clients.
81. Staff Attorney Gallagher issued a third request to Vestech via email and USPS regular mail on March 2, 2016 (“Third Request”).
82. The Third Request asked that the firm provide the following, *inter alia*,: (1) a list of the Firm’s current investment advisory clients; (2) a written description of how the Firm

documents the initial delivery of Form ADV, Part 2; (3) a copy of the Firm's privacy notice and the document used to track the initial and annual delivery of the Firm's privacy notice to clients; (4) a copy of each current client's contract or agreement with the Firm; (5) a copy of the Firm's written solicitor disclosure document; (6) a list of the fees billed to each investment advisory client for the two previous periods; (7) copies of the last two internal reviews conducted by the Firm; and (8) a copy of the Firm's written agreements with any third party money managers.

83. On March 17, 2016, Vestech provided the following with regards to the Third Request:
- a. In response to the request for a client list, Vestech submitted an incomplete client list that did not contain the information that was requested.
 - b. In response to the request for a written description of how the firm documents the initial delivery of Form ADV, Part 2, Vestech provided a document stating "While some client account files includes copies of the Form ADV, [there is] no notation or a log of Form ADV distributed to clients when an account is opened[.] There is no record of Form ADV provided to clients on [an] annual basis."
 - c. In response to the request for a copy of the Firm's privacy notice and the document used to track the initial and annual delivery of the Firm's privacy notice to clients, Vestech submitted a document stating "Vestech delivers firm disclosure document to client through a Tri-Party clearing service agreement established with [third party firm]. A copy of the disclosure document and a log of accounts that received the disclosure are also included in the response." According to the current client list submitted by the Firm, approximately 24 of Vestech's clients aren't serviced by said third party firm.

- d. In response to the request for a copy of each current client's contract with the Firm, Vestech provided a written response that stated that two investment advisory client contracts could not be located
- e. The Firm also provided documents to satisfy said request. Based on those documents, Staff Attorney Gallagher was able to determine that (1) three other investment advisory contracts were missing, and (2) five other investment advisory agreements submitted by Vestech were not in compliance with K.A.R. 81-14-5(d)(13). Therefore Vestech did not create and maintain contracts in compliance with K.A.R. 81-14-5(d)(13) for 10 of its 14 investment advisory clients.
- f. In response to the request for a copy of the firm's written solicitor disclosure document, Vestech submitted a written response that did not address the solicitor disclosure document that it is required to furnish to each solicited client according to K.A.R. 81-14-5(f)(6).
- g. The Firm also provided a Subscription Agreement for 13 of its 19 solicited clients to satisfy said request. Staff Attorney Gallagher reviewed said documents and determined that they did not contain a solicitor disclosure document in compliance with K.A.R. 81-14-5(f)(6).
- h. In response to the request for a list of the fees billed to each investment advisory client for the two previous periods, Vestech submitted copies of invoices for the clients of one of the three third party money managers.
- i. In response to the request for copies of the last two internal reviews conducted by the Firm, Vestech submitted a written document stating that the Firm had performed annual internal inspections in each of the last six years.

- j. The Firm also stated in said document that Evans performed an annual inspection for the year of 2015, but records and supporting documents were not kept on file and a report was not created to evidence the inspection.
 - k. Vestech was unable to submit proof that it had performed an internal annual review during its two previous years of business.
 - l. In response to the request for a copy of the Firm's written agreements with any third party money managers, Vestech submitted an incomplete response that included a contract between itself and one of the three third party money managers.
84. Vestech submitted multiple documents that (1) were not requested, and/or (2) were not relevant to the examination. For example, Vestech submitted (1) documents for individuals who aren't current clients of the Firm, and (2) documents that didn't satisfy Staff Attorney Gallagher's requests..
85. Vestech also provided a number of duplicate documents, sometimes within the same submission.

II. CONCLUSIONS OF LAW

86. The Commissioner has jurisdiction over Respondents and this matter.
87. Pursuant to K.S.A. 17-12a604(a), the Commissioner may issue an order directing the Respondents to cease and desist from engaging in an act, practice, or course of business constituting a violation of the KUSA and KAR.
88. According to K.S.A. 17-12a412(d)(13), a person may be disciplined if the person has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years.

89. Pursuant to K.S.A. 17-12a412(d)(9), a person may be disciplined if the person has failed to reasonably supervise an IAR if the IAR was subject to the person's supervision and committed a violation of the KUSA within the previous 10 years.
90. According to K.S.A. 17-12a412(d)(8), a person may be disciplined if the person fails to keep or maintain sufficient records to permit an audit disclosing the condition of the registrant's business.
91. Pursuant to K.S.A. 17-12a412(c), discipline for violations of K.S.A. 17-12a412(d)(13), K.S.A. 17-12a412(d)(9), and K.S.A. 17-12a412(d)(8) may include: (1) a censure; (2) a bar or suspension from association with an IA or broker-dealer registered in this state; (3) a civil penalty of up to \$25,000 for each violation; (4) an order requiring the registrant to pay restitution for any loss or disgorge any profits arising from a violation, including, in the Administrator's discretion, the assessment of interest from the date of the violation at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto; (5) an order charging the registrant with the actual cost of an investigation or proceeding; or (6) an order requiring the registrant to cease and desist from any action that constitutes a ground for discipline, or to take other action necessary or appropriate to comply with the KUSA.
92. Under K.S.A. 17-12a412(h), Respondent Evans is a control person of Respondent Vestech and is subject to discipline to the same extent as Vestech for the aforementioned violations of the Kansas Uniform Securities act. During the relevant time period, Evans was the President, CCO, majority owner, and sole control person of Vestech.

I. Failure to Observe High Standards of Commercial Honor and Just and Equitable Principles of Trade

93. In violation of K.A.R. 81-14-5(c), Respondents Vestech and Evans failed to observe high standards of commercial honor and just and equitable principles of trade in the conduct of the Firm's business and failed to act primarily for the benefit of the firm's clients when Respondents:
- a. Misappropriated approximately \$4,531.25 of RPPA's funds to pay for a previous private placement's accounting fees managed by Evans.
 - b. Deducted excessive funds from the RPPA Bank Account and deposit them into the Vestech Bank Account on 10 separate occasions for a total value of approximately \$26,115.45.

II. Failure to Reasonably Supervise an Investment Adviser Representative

94. In violation of K.S.A. 17-12a412(d)(9), Respondent Vestech failed to reasonably supervise its IAR Evans due to the following:
- a. In violation of K.A.R. 81-14-5(c), Respondent Vestech permitted Evans to deduct excessive funds from the RPPA Bank Account and deposit them into the Vestech Bank Account on 10 separate occasions for a total value of approximately \$26,115.45.
 - b. In violation of K.A.R. 81-14-5(c), Respondent Vestech permitted Evans to use approximately \$4,531.25 of RPPA's funds to pay for a previous private placement's accounting fees managed by Evans.
 - c. In violation of K.A.R. 81-14-4(b), Respondent Vestech permitted Evans to fail to maintain true, accurate and current books and records, resulting in Evans'

inability to account for an estimated one percent of RPPA's funds, or approximately \$20,000.00.

- d. In violation of K.A.R. 81-14-4(b)(10), Respondent Vestech permitted Evans to fail to make, keep, and maintain a copy of a written advisory agreement entered into by the Firm with all Firm clients.
- e. In violation of K.A.R. 81-14-5(d)(13), Respondent Vestech permitted Evans to fail to create and maintain written advisory agreements that were in compliance with said regulation with all Firm clients.
- f. In violation of K.A.R. 81-14-5(f)(6), Respondent Vestech permitted Evans to fail to create and maintain a solicitor disclosure document in compliance with said regulation.
- g. In violation of K.A.R. 81-14-10(a)(1), Respondent Vestech permitted Evans to fail to conduct a review, at least annually, of the businesses in which the Firm engages, that was reasonably designed to assist in detecting violations of and achieving compliance with the KUSA, Kansas Administrative Regulations ("K.A.R."), and other applicable laws and regulations.
- h. In violation of K.A.R. 81-14-10(a)(2), Respondent Vestech permitted Evans to fail to maintain reasonably designed Firm supervisory procedures to assist the Firm in detecting and preventing violations of and achieving compliance with the KUSA, KAR, and other applicable laws, regulations, and rules of self-regulatory organizations.
- i. In violation of K.A.R. 81-14-4(b)(8), Respondent Vestech permitted Evans to fail to make and keep a list or other record of all accounts that identifies the accounts in

which the adviser is vested with any discretionary power with respect to the funds, securities, or transactions of any client.

- j. In violation of K.A.R. 81-14-1(b)(3)(A), Respondent Vestech permitted Evans to fail to promptly update and file with the IARD updates to the Firm's Form ADV, Part 2.
- k. In violation of K.A.R. 81-14-5(d)(6), Respondent Vestech permitted Evans to misrepresent the qualifications of the IA, IAR, or any employee of the IA, or misrepresent the nature of the advisory services being offered or fees to be charged for the service due to the fact that the Firm: (1) did not disclose that it is a solicitor; (2) did not disclose that it obtains full investment discretionary authority in the case of some of its clients (3) filed a Form ADV, Part 2B for an individual who is not currently employed by the Firm; and (4) disclosed that it had a website located at <http://vestechsecurities.com> that doesn't exist.
- l. In violation of K.A.R. 81-14-1(c)(3), Respondent Vestech permitted Evans to fail to promptly update and file his own Form U4 with the CRD to disclose the following:
 - i. A judgment/lien that was granted to an individual on October 20, 2011, in the District Court of Sedgwick County, Kansas for the amount of \$2,766.15; Case No. 11LM11441; and
 - ii. A judgment/lien that was granted to the Kansas Department of Revenue on April 10, 2014, in the District Court of Sedgwick County, Kansas for the amount of \$10,000; Case No. 2014-ST-001227-IC.

**III. Failure to Keep or Maintain Sufficient Records to Permit an Audit
Disclosing the Condition of the Registrant's Business**

95. In violation of K.S.A. 17-12a412(d)(8), Respondent Vestech failed to keep or maintain sufficient records to permit an audit disclosing the condition of the registrant's business by providing a response to:

- a. The First Request that failed to respond to 10 requested items.
- b. The Second Request that included incomplete documents.
- c. The Third Request that included incomplete documents and written statements from the Firm admitting that certain documents that the Firm is required to create and maintain by statute or regulation are not created and maintained.
- d. All of Staff Attorney Gallagher's requests with documents (1) for people who are not current clients of the Firm, (2) that didn't satisfy or properly respond to the requests, and/or (3) duplicate documents sometimes contained within the same submission.

Based on the above, KSC Staff alleges that a Final Order to Cease and Desist and an Order Imposing Administrative Sanctions should be granted against Respondents Vestech and Evans due to the Respondents' failure to (1) observe high standards of commercial honor and just and equitable principles of trade in the conduct of the Firm's business and act primarily for the benefit of the firm's clients, (2) reasonably supervise an investment advisor representative, and (3) keep or maintain sufficient records to permit an audit disclosing the condition of the registrant's business

III. ORDER

NOW, WHEREFORE, it is hereby Ordered that Respondents Vestech and Evans are prohibited from violating or materially aiding in any violations of K.A.R. 81-14-5(c) by deducting excess

fees from client accounts and using client funds to pay for services that were not previously agreed to.

TAKE NOTICE that the Commissioner, pursuant to K.S.A. 17-12a604(a), shall file a Final Order requiring the Respondents to cease and desist from any action that constitutes a ground for discipline, including K.A.R. 81-14-5(c).

TAKE NOTICE that the Commissioner, pursuant to K.S.A. 17-12a604(b), shall impose against the Respondents, in a Final Order, a civil penalty of up to \$25,000 for each violation of K.A.R. 81-14-5(c), not to exceed one million dollars \$1,000,000 unless Respondents request a hearing within 30 days after service of this Order.

IT IS SO ORDERED BY THE COMMISSIONER.

Entered at Topeka, Kansas, this 25th day of October, 2016,



Joshua A. Ney
Kansas Securities Commissioner

CERTIFICATE OF SERVICE

On this 20th day of October, 2016 I was provided a copy of the aforementioned process on behalf of the Office of the Securities Commissioner. I promptly sent notice of the process to the address below, being the address set forth in the recipient's consent to service of process or last known address. The process was sent via first class and certified mail, receipt requested to:

Vestech Securities, Inc.
11477 Olde Cabin Road, Suite 310
St. Louis, MO 63141

Earle W. Evans, III
8100 East 22nd Street North, Suite B,
Building 600
Wichita, KS 67226



Nickie Oathout