

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION
25 CAPITOL STREET
CONCORD, NH 03301

CONSENT ORDER
IN THE MATTER OF:

David A. Herlicka - CRD # 2627062
White Birch Brewing, LLC

I-2018000000

- I. For purposes of settling the above-captioned matter, and in lieu of administrative proceedings, David A. Herlicka (hereinafter "Herlicka") and White Birch Brewing, LLC (hereinafter "WBB") has submitted an offer of settlement which the New Hampshire Department of State, Bureau of Securities Regulation (the "Bureau") has determined to accept. Accordingly, without admitting or denying the facts or allegations contained herein, Herlicka and WBB do hereby consent to the following undertakings and sanctions:

THE FACTS

1. David A. Herlicka currently of Amherst, New Hampshire, was a broker-dealer agent of NYLIFE Securities LLC ("NYLIFE") until he resigned in August of 2011 while in the midst of an internal investigation regarding false financial information provided in connection with applications he submitted for life insurance policies. Upon departing from NYLIFE in August 2011, Herlicka's securities licensure with the Bureau was voluntarily terminated. Since 2011, and as of the date of this Consent Order, Herlicka does not hold any securities licenses with the Bureau. Herlicka is currently in a Chapter 7 bankruptcy, New Hampshire case number 19-11247-BAH.
2. White Birch Brewing, LLC is a brewery currently located in Nashua, New Hampshire. According to the State of New Hampshire's Corporation Division, WBB was originally formed by Herlicka's brother, William Herlicka, in March of 2009 and originally located in Hooksett, New Hampshire. William Herlicka has since parted ways with WBB and no longer retains any ownership interest. As of the date of this Consent Order, Herlicka is a majority owner of WBB. WBB is currently in a Chapter 11 bankruptcy proceeding, New Hampshire case number 19-10622-BAH.
3. In the spring of 2017, the Bureau received a complaint against Herlicka and WBB on behalf

of a family trust that had loaned nine hundred sixty-two thousand dollars (\$962,000) to WBB in October 2014 in exchange for a 2% ownership interest in WBB and 8% interest on the loaned funds, payable after 90 days. The family trust has since resolved a civil matter against Herlicka and WBB relating, in part, to this transaction.

4. The Bureau has completed its investigation and has determined that Herlicka individually, and while acting on behalf of WBB, made material misrepresentations and omissions in connection with the sale of an ownership interest in WBB to the family trust discussed above. The Bureau also determined that Herlicka individually, and while acting on behalf of WBB, made material misrepresentations and omissions in connection with the sale of an ownership interest in WBB to at least one additional investor of WBB in the summer of 2015.

THE LAW

1. Herlicka and WBB are both a “person” within the meaning of N.H. RSA 421-B:2, XVI and 421-B:1-102(39).
2. The sale of an ownership interest in WBB to the family trust discussed above constituted a “sale” under N.H. RSA 421-B:2, XIX and N.H. RSA 421-B:1-102(49).
3. The ownership interest of WBB sold to the family trust discussed above is a “security” under N.H. RSA 421-B:2, XX(a) and N.H. RSA 421-B:1-102(53)(a).
4. Pursuant to NH RSA 421-B:3, it is unlawful for any person, in connection with the sale of any security, directly or indirectly, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading. The Bureau has determined that Herlicka and WBB are in violation of this provision for making material misrepresentations and omissions in connection with the sale of ownership interests in WBB, as discussed above.
5. Pursuant to N.H. RSA 421-B:6-604(a)(1), if the secretary of state determines that a person has engaged, is engaging, or is about to engage, in an act, practice, or course of business constituting a violation of this chapter or an order issued under this chapter, or that a person has, is, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or an order issued under this chapter, the secretary of state may issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter. Herlicka and WBB are subject to this provision.
6. Pursuant to N.H. RSA 421-B:6-604(d), in a final order, upon hearing, the secretary of state

may bar a person from licensure or registration. Herlicka and WBB are subject to this provision.

7. Pursuant to N.H. RSA 421-B:6-604(g), in a final order, the secretary of state may charge the actual cost of an investigation or proceeding for a violation of this chapter or an order issued under this chapter. Herlicka and WBB are subject to this provision.

II. In view of the foregoing, Herlicka and WBB agrees to the following undertakings and sanctions:

1. Herlicka and WBB agree that they voluntarily consented to the entry of this Consent Order and represent and aver that no employee or representative of the Bureau has made any promise, representation, or threat to induce their execution.
2. Herlicka and WBB agree to waive their right to an administrative hearing and any appeal therein under this chapter.
3. Herlicka and WBB agrees that this Consent Order is entered into for the purpose of resolving only the administrative matter as described herein (Case No. I-2018000000). This Consent Order shall have no collateral estoppel effect, or serve as an admission of liability or wrongdoing by Herlicka or WBB, in any other lawsuit, proceeding, or action. Likewise, this Consent Order shall not be construed to restrict the Bureau's right to initiate an administrative investigation or proceeding relative to conduct by Herlicka or WBB or its agents that the Bureau has no knowledge of at the time of the date of final entry of this Consent Order. This Consent Order does not resolve any potential criminal liability that may arise from this matter. Additionally, Herlicka and WBB knowingly agree to waive their right to assert a claim of double jeopardy in any criminal action that may arise from this matter.
4. Herlicka and WBB agrees not to take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in this Consent Order or create the impression that the Consent Order is without factual basis. Nothing in this provision affects Herlicka's past sworn testimony to the Bureau or Herlicka and WBB's testimonial obligations or right to take any legal positions in administrative proceedings or in litigation, in which the Bureau is not a party.
5. Herlicka agrees to be permanently barred from any securities licensure in any capacity in the State of New Hampshire as presently codified in N.H. RSA 421-B.
6. Herlicka and WBB agree to cease and desist from soliciting or selling securities in the State of New Hampshire, other than to accredited investors of WBB as defined by 17 CFR § 230.501 and in compliance with all other federal and state securities laws. This shall not prohibit WBB or Herlicka from transferring member interests in WBB as part of a

confirmed Chapter 11 Plan of reorganization in accordance with the terms of such confirmed Plan and in compliance with all other federal and state securities laws.

7. Herlicka and WBB agree to pay five thousand dollars (\$5,000) in investigative costs to the Bureau. Herlicka and WBB agree to make payments of \$75.00 per month until the entire balance is paid. Payments shall be received by the Bureau by the first of the month and shall be made by 1) United States postal money order, certified check, bank cashier's check, or bank money order; 2) made payable to the State of New Hampshire; and 3) hand-delivered or mailed to the Bureau of Securities Regulation, Department of State, State House, Room 204, Concord, New Hampshire, 03301.

III. Based on the foregoing, the Bureau deems it appropriate and in the public interest to accept and enter into this Order. **THEREFORE, IT IS HEREBY ORDERED THAT:**

1. Herlicka and WBB cease and desist from soliciting or selling securities in the State of New Hampshire, other than to accredited investors of WBB as defined by 17 CFR § 230.501 and in compliance with all other federal and state securities laws.
2. Herlicka is permanently barred from any securities licensure in any capacity in the State of New Hampshire, as presently codified in N.H. RSA 421-B.
3. Herlicka and WBB pay five thousand dollars (\$5,000) in investigative costs to the Bureau as outlined above.
4. Herlicka and WBB comply with all other undertakings outlined herein.

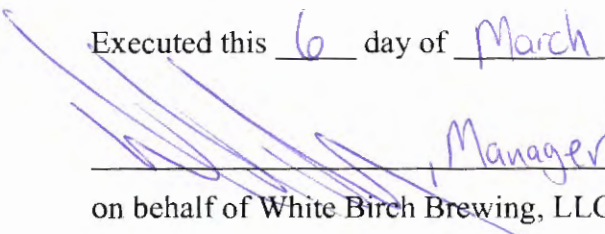
SO ORDERED.

Executed this 6 day of March 2020.



David A. Herlicka

Executed this 6 day of March 2020.


_____, Manager
on behalf of White Birch Brewing, LLC
(Please print name below)

David A. Herlicka, Manager

Entered this 11th day of March 2020.

Barry Glenn

Barry Glenn, Director
N.H. Bureau of Securities Regulation

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