

STATE OF NORTH CAROLINA



Department of The
Secretary of State

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**NC Secretary of State
Securities Division**

In the Matter of:)

THE NORTH CAROLINA SECURITIES DIVISION,)

Petitioner,)

vs.)

McGrath & Associates, Inc.)
12A Bay Street)
Asheville, North Carolina 28801)

Respondent.)

**FINAL CONSENT
ORDER**

FILE NO. 14-SEC-078

WHEREAS, McGrath & Associates, Inc. (hereinafter, "McGrath") is an investment adviser registered with the State of North Carolina, doing business as Holcombe & McGrath with its principal place of business at 12A Bay Street, Asheville, North Carolina 28801; and

WHEREAS, the Secretary of State of the State of North Carolina (the "Secretary of State"), as Administrator of the North Carolina Investment Advisers Act (North Carolina General Statutes, Chapter 78C), the Securities Division of the Department of the Secretary of State (the "Securities Division"), and Respondent have negotiated this Consent Order; and

WHEREAS, Respondent has cooperated with the Securities Division by responding to inquiries, providing documentary evidence and other materials relating to the Securities Division's investigation into certain activities undertaken by Respondent; and

WHEREAS, Respondent elects to permanently waive any right to judicial review or a hearing and appeal under Chapter 78C (the North Carolina Investment Advisers Act) or Chapter

150B of the North Carolina General Statutes (the Administrative Procedure Act) with respect to this Consent Order.

NOW, THEREFORE, the Securities Administrator, acting through her duly appointed Deputy Securities Administrator, pursuant to and under all authority granted by the North Carolina Investment Advisers Act, and with consent of Respondent, does hereby enter into this Consent Order in settlement of the above-captioned matter.

I.

JURISDICTION AND CONSENT

Respondent admits the jurisdiction of the Securities Division, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Consent Order, and consents to the entry of this Consent Order by the Deputy Securities Administrator.

II.

FINDINGS OF FACT

The Securities Administrator, acting by and through her duly appointed Deputy Securities Administrator, makes the following findings of fact regarding an investigation into a registration violation by Respondent:

1. McGrath holds itself out to the public and transacts business as an investment adviser with a principal place of business at 12A Bay Street, Asheville, North Carolina, 28801.
2. At its inception, McGrath was federally registered as an investment adviser with the Securities and Exchange Commission (the "SEC"). The SEC terminated McGrath's federal registration as an investment adviser on May 3, 2012, because McGrath no longer met the minimum amount of assets under management required to qualify for federal registration with the SEC.
3. McGrath became registered as an investment adviser with the State of North Carolina on February 17, 2012.
4. At this time, McGrath employed an investment adviser representative, Robert Baschnagel ("Baschnagel").
5. McGrath completed Baschnagel's application for registration as an investment adviser

- representative via the online Form U-4, but failed to make sure that the application was properly filed with the Securities Division for review and approval.
6. According to McGrath, its failure to properly register Baschnagel as an investment adviser representative for the firm was not intentional, but instead due to a technical computer error in the online registration process.
 7. As a result, Baschnagel transacted business on behalf of McGrath in the State of North Carolina as an investment adviser representative from February 17, 2012 until May 8, 2014.
 8. Baschnagel did not become registered as an investment adviser representative in the State of North Carolina until May 13, 2014.
 9. On May 7, 2014, the Securities Division completed a pre-exam review of McGrath. During the review, the Securities Division discovered that Baschnagel was employed and transacting business in the state as an investment adviser representative of McGrath.
 10. On May 7, 2014, the Securities Division called McGrath and informed President and Owner, Susan McGrath, of the firm's failure to register Baschnagel as an investment adviser representative in violation of the registration provisions of the North Carolina Investment Advisers Act.
 11. In order to come into compliance, McGrath immediately submitted Baschnagel's application for registration as an investment adviser representative with the firm to the Securities Division on May 8, 2014.
 12. Baschnagel is fully qualified for registration as an investment adviser representative. Baschnagel's U-4 did not contain any material disclosures or customer complaints, and he holds the designation of Certified Financial Planner which exempts him from taking and passing the examinations required to qualify for registration as an investment adviser representative. Baschnagel earned his designation as a Certified Financial Planner on September 1, 2005.
 13. The Securities Division accepted Baschnagel's application for registration as an investment adviser representative with McGrath on May 13, 2014.
 14. McGrath subsequently and voluntarily retained a compliance consultant to recommend various improvements to its investment advisory business. McGrath immediately implemented these improvements.

15. No member of the investing public or existing client of McGrath has ever complained to the Securities Division regarding the investment advisory services provided by either McGrath or Baschnagel.

BASED UPON THE FOREGOING findings of fact, and consistent with the consent and stipulation of Respondent, the Securities Administrator makes the following:

**III.
CONCLUSIONS OF LAW**

1. The Securities Administrator has jurisdiction over the subject matter of this proceeding and over the person of Respondent.
2. McGrath is an “investment adviser” as that term is defined in N.C.G.S. § 78C-2(1).
3. Baschnagel is an “investment adviser representative” as that term is defined in N.C.G.S. § 78C-2(3).
4. N.C.G.S. § 78C-16(b) makes it unlawful for any person required to be registered as an investment adviser under the Act to employ an investment adviser representative unless the investment adviser representative is registered pursuant to the Act.
5. The entry of this Consent Order is in the public interest for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the North Carolina Investment Advisers Act.

**IV.
ORDER**

NOW, THEREFORE, with the consent and agreement of Respondent, it is **HEREBY ORDERED AND AGREED** that:

Respondent agrees, from and after the date of this signed Consent Order, to execute proper and timely filings of the Form U4 so that any investment adviser representative employed with McGrath is properly registered in compliance with the North Carolina Investment Advisers Act.

Respondent agrees to contribute the sum of Two Thousand Five Hundred Dollars (\$2,500.00) in settlement of this investigation, to be deposited in the Investor Protection and

Education Trust Fund in accordance with N.C.G.S. § 147-54.5.

Respondent, by execution of this Consent Order, waives any right to a hearing or judicial review thereof. Said Respondent affirmatively states that it has freely agreed to the signing of this Consent Order, and that no threats, promises or offers of any kind, other than as stated in this document, have been made by the Securities Administrator, Deputy Securities Administrator, any member of the staff of the Securities Division, or any agent or employee of the Department of the Secretary of State in connection with the signing of this Consent Order.

This Consent Order is a resolution only of the issues relating to the registration of Respondent's investment adviser representative, and does not apply to or affect other provisions of the North Carolina Investment Advisers Act.

This Consent Order shall become final upon entry.

WITNESS MY HAND AND THE OFFICIAL SEAL of the North Carolina Department of Secretary of State, this is the 27th day of January, 2015.

Time of entry: 9:34 A.M.



**ELAINE F. MARSHALL
SECRETARY OF THE STATE OF NORTH
CAROLINA and
SECURITIES ADMINISTRATOR**

By: 
**DAVID S. MASSEY
DEPUTY SECURITIES ADMINISTRATOR**

**CONSENT TO ENTRY OF FINAL ORDER BY
MCGRATH & ASSOCIATES, INC.**

I, Susan McGrath, on behalf of McGrath & Associates, Inc., state that I have read the foregoing Order and that I know and fully understand the contents hereof; that I voluntarily consent to the entry of this Order on behalf of McGrath & Associates, Inc., without any force or duress, expressly waiving any right to a hearing, judicial review or other procedures in this matter; I understand that this Order is a public record document.

Dated this the 21st day of January, 2015.

**AGREED TO:
MCGRATH & ASSOCIATES, INC.**

By: *Susan McGrath*
Susan McGrath
President

**STATE OF NORTH CAROLINA
COUNTY OF Buncombe**

Sworn to and Subscribed before me this the
21 day of January, 2015

Robert E. Baschnagel
Robert E. Baschnagel Notary Public

My commission expires: 9/21/2019

