

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE
OF THE STATE OF IDAHO**

In the matter of:

THOMAS WAYNE IVES.

Docket No. 2020-7-13-A

AGREEMENT AND ORDER

The State of Idaho, Department of Finance (the “Department”), acting through its Securities Bureau, instituted an investigation, as authorized by the Idaho Uniform Securities Act (2004) (“Act”), Idaho Code § 30-14-101 *et seq.*, into the conduct of Thomas Wayne Ives (“Respondent”). The Department and Respondent have agreed to resolve this matter without a public hearing or formal adjudication of this matter. Therefore, the Director of the Department (“Director”) deems it appropriate and in the public interest that this Agreement and Order (“Order”) be entered, and the Respondent consents to the entry of this Order.

FINDINGS OF FACT

1. Thomas “Thom” Wayne Ives (“Ives”) is a resident of Eagle, Idaho and a general partner of Clearwater Real Properties, GP (“CRP, GP”). During all relevant times, Ives was not registered to sell securities or provide investment advice, nor did he qualify for an exemption from the registration requirements.
2. CRP, GP and a related company, Clearwater Real Properties, LP (“CRP, LP”), were entities that were marketed to investors as businesses involved in residential real estate development and construction projects.
3. In 2013, CRP, LP registered in Idaho and filed with the SEC under Regulation D, Rule 506 claiming an exemption from registration under the Securities Act of 1933, however they lost their exemption with general solicitation through their website. During all relevant times, the securities issued by CRP, LP did not meet federal or State of Idaho requirements.
4. CRP, GP was marketed as an Idaho general partnership, however CRP, GP was never registered to conduct business in any state. Additionally, CRP, GP’s business structure was that of a limited partnership as there was no expectation that investors would be active in generating profits and were often referred to as “silent partners.” During all relevant times, the securities issued by CRP, GP were not registered, nor did they qualify for an exemption from the registration requirements.
5. Beginning at least as early as October 2013, CRP, LP and CRP, GP offered and sold securities in the form of investment contracts in Idaho. The purported purpose of the securities offerings was to pool investor funds to invest or fund the purchase and repair of residential real property through its principals or through third party lenders.
6. CRP, LP and CRP, GP’s investors were provided offering documents, advertising, and verbal

information that contained many misrepresentations and omissions including, but not limited to:

- a. Risks of the investment;
 - b. Use of investor funds;
 - c. The success and expertise of those running the investment and its projects;
 - d. The safety and securitization of the investors' funds;
 - e. Fiduciary duty of those running the investment; and
 - f. The liquidity of the invested funds.
7. Initially, Ives' involvement with CRP, GP was as an investor and general partner. He was responsible for marketing CRP, LP and CRP, GP to investors and bringing in new investors.
 8. Ives solicited and sold investment contracts, as an agent of CRP, GP and CRP, LP, to at least two Idaho residents¹:
 - a. Investor E invested \$50,000 in CRP, GP in January 2015; and
 - b. Investor Q invested \$20,000 in CRP, LP in May 2015.
 9. Ives claimed, to both investors, that their investment funds would be used on a residential property referred to as "Mountain View" and the investors would receive a profit after the property was sold.
 10. The investor's funds were not used for real estate investments as promised. Instead, investor funds were used by the other owner of CRP, LP, CRP, GP, and for their builder's personal use. It does not appear Ives' was aware of how the funds were misappropriated by other members of CRP.
 11. The Mountain View property was sold in April 2017. For years after the Mountain View property sold, investors were continuously misled that they would receive their investment funds back once the property was sold.
 12. To date, no investors have received any profit or had their investment principal returned in connection with their investment in CRP, LP or CRP, GP.
 13. The Department agrees not to hold Ives joint and severally liable for other investors in CRP, but only the investors named in this Order.

CONCLUSIONS OF LAW

OFFER AND SALE OF UNREGISTERED SECURITIES

14. Idaho Code § 30-14-102(28) defines a "security," in pertinent part, as an investment contract. An investment contract is an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor.
15. The investment contracts issued by CRP, GP and CRP, LP constitute securities within the

¹ In the interest of privacy, initials are used for investors/victims, rather than full names.

meaning of Idaho Code § 30-14-102(28).

16. Idaho Code § 30-14-301 provides, “It is unlawful for a person to offer or sell a security in this state unless: (a) The security is a federal covered security; (b) The security, transaction or offer is exempted from registration under sections 30-14-201 through 30-14-203, Idaho Code; or (c) The security is registered under this chapter.”
17. Ives’ offer and sale of securities, in the form of an interest in a limited partnership and a general partnership acting as a limited partnership, in, into, and from Idaho, without properly registering such securities in Idaho, constitute violations of Idaho Code § 30-14-301.

OFFER AND SALE OF SECURITIES BY AN UNREGISTERED AGENT

18. Idaho Code § 30-14-102(2) defines an “agent,” in part, as an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or who represents an issuer in effecting or attempting to effect purchases or sales of the issuer’s securities.
19. Idaho Code § 30-14-402 provides, “(a) Registration requirement. It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration as an agent under subsection (b) of this section.”
20. Ives’ offer and sale of CRP, GP and CRP, LP securities while unregistered, nor exempt from registration to sell securities at the time the securities were sold, constitute violations of Idaho Code § 30-14-402.

FRAUD PROVISIONS

21. Idaho Code § 30-14-501 provides, “It is unlawful for any person, in connection with the offer, sale, or purchase of a security, directly or indirectly: (1) employ a device, scheme, or artifice to defraud; (2) To make an untrue statement of 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 were made, not misleading; (3) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person; or (4) To divert investor money to the personal use of the issuer, offeror or seller, or to pay prior investors without specifically disclosing that use before receiving the investor’s money.”
22. Ives omitted the following material facts regarding the CRP, LP and CRP, GP investments:
 - a. Failed to disclose he did not do any meaningful due diligence on the builder;
 - b. Failed to inform investors the security being offered was not registered as required under the Act; and
 - c. Failed to inform investors he was not registered as an agent to sell the securities being offered as required by the Act.
23. Ives violated Idaho Code § 30-14-501(2) by misrepresenting and omitting material facts in connection with the sale of securities.

24. Ives violated Idaho Code § 30-14-501(3) by engaging in an act, practice, or course of business that operated as a fraud or deceit upon investors.

ACKNOWLEDGEMENT AND REMEDIES

25. The parties agree to entry of this Order in lieu of other proceedings.
26. Respondent admits to the Department's Findings of Fact and Conclusion of Law set forth in the Order.
27. Respondent represents that all information provided to the Department in connection with the investigation relating to the Order is true, accurate, and complete.
28. Respondent agrees to pay restitution of \$70,000.00. Said restitution is to be paid not later than 30 days from the date the Director executes this Order. Payment shall be made to the Idaho Department of Finance.
29. Respondent agrees to pay an administrative penalty of \$20,000 for the violations of the Act, pursuant to Idaho Code § 30-14-604(d). The Department agrees to waive \$15,000 of the penalty upon completion of the payment terms herein, and contingent upon the Respondents compliance with all terms of this Order.
30. Penalty is to be paid not later than 30 days from the date the Director executes this Order. Payment shall be made to the "Idaho Department of Finance."
31. Respondent agrees to cease and desist from any further violation of the Act and Rules promulgated thereunder, including specifically, not to solicit or sell securities in or from Idaho unless in compliance with the Act and Rules.
32. Respondent agrees to not claim the availability of any exemption from registration for securities or under the Act without giving prior written notice to the Director. Said written notice, as determined by the Director, shall be provided at least ten (10) days in advance of the proposed activities in Idaho and will be subject to the Department's review.
33. Respondent acknowledges that the Department has standing to enforce this Order in judicial or administrative processes otherwise authorized under the laws and regulations of the State of Idaho. In the event the Respondent fails to comply with the terms of this Order, the Department may seek enforcement of the Order in any court of competent jurisdiction to enjoin the Respondent from engaging in any acts or practices that constitute a violation of this Order and to enforce compliance with the terms of the Order, to include the payment of restitution and penalties as prescribed within this Order.
34. Respondent agrees that all amounts owed pursuant to this Order, which are not paid according to the terms of the Order, can be recorded, enforced, and satisfied in the same manner as a judgment of a court, pursuant to Idaho Code § 30-14-604 (f) and (g).
35. Respondent waives their right to notice and opportunity for hearing on this matter provided by

Idaho Code § 30-14-604 and under the contested case provision of the Idaho Administrative Procedures Act, Idaho Code § 67-5240 *et seq.* Respondent further waives their right to seek judicial review of this Order. The terms contained in this Order constitute the entire agreement between the Department and Respondent.

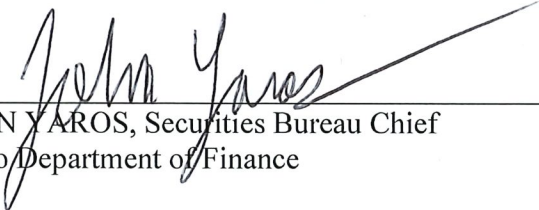
36. In the event Respondent commits future violations of the Act or fails to adhere to the terms of this Order, Respondent acknowledges that the Department can incorporate the allegations giving rise to this Order in any future proceeding.

AGREED TO and ACKNOWLEDGED

Dated: 8/2/2023


THOMAS WAYNE IVES (Signature)

Dated: 8/11/2023


JOHN YAROS, Securities Bureau Chief
Idaho Department of Finance

IT IS SO ORDERED

DATED this 1st day of August, 2023.



STATE OF IDAHO
DEPARTMENT OF FINANCE


PATRICIA R. PERKINS, Director
Idaho Department of Finance