

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

STATE OF IDAHO, Department of Finance, Securities
Bureau,

Complainant,

vs.

Barry Michael Kornfeld, and
First Financial Tax Group

Respondents.

Docket No. 2017-7-15-C

AGREEMENT AND ORDER

The Director of the Department of Finance, State of Idaho ("Director") has instituted an investigation into the conduct of Barry Michael Kornfeld and First Financial Tax. Pursuant to said investigation, it appears that violations of the *Idaho Uniform Securities Act (2004)* ("Act"), *Idaho Code §30-14-101 et seq.* have occurred. The Director, Barry Michael Kornfeld, and First Financial Tax Group have agreed to resolve this matter without a public hearing. Therefore, the Director deems it appropriate and in the public interest that this Agreement and Order ("Order") be entered and the Respondents consent to the entry of this Order.

RESPONDENTS

1. **Barry Michael Kornfeld** ("Kornfeld") is a 54 year-old male with a last known residence of 5929 NW 84th Terrace #807, Parkland, Florida. He has been licensed as an insurance agent with the Florida Department of Financial Services since 2015 and is the owner of First Financial Tax Group, Inc. Kornfeld registered with the Florida Office of Financial Regulations as a broker-dealer agent and as a registered investment advisor in 1999 and 2002, respectively. He registered with the Financial Industry Regulatory Authority ("FINRA") in 1987 and received a Central Registration Depository ("CRD") number of 1490377. As of June 29, 2007, Kornfeld was no longer registered to sell securities or provide investment advice.
2. In 2008, FINRA barred Kornfeld from acting as a broker or otherwise associating with a broker-dealer firm for failing to appear to give sworn testimony in connection to a FINRA investigation (NASD Rules 2100 and 8210).
3. In 2010, the Securities and Exchange Commission ("SEC") charged Kornfeld with fraud related to mortgage backed securities and barred him from acting as a broker, investment adviser, or otherwise associating with firms that sell securities or provide investment advice to the public.
4. **First Financial Tax Group, Inc.** ("First Financial") registered, as a corporation, with the State of Florida on August 8, 2012 and was subsequently dissolved on September 26, 2012. First Financial

is located at 925 S. Federal Highway #150, Boca Raton, Florida and provides tax services, estate planning, and insurance products. First Financial is owned by Kornfeld and is not registered to sell securities.

BACKGROUND

5. Woodbridge Mortgage Investments Funds 1, 2, 3, 3A, 4, and 5 (“Woodbridge”) are commercial mortgage lenders that lend money to commercial borrowers in exchange for a first position mortgage on the borrower’s commercial real estate. Woodbridge funded the commercial loans with money they raised by selling securities in the form of investment contracts. Woodbridge sold the investment contracts as First Position Commercial Mortgage Loans (“FPCM”). The investment contracts were sold to investors in conjunction with the issuance of one-year 5% promissory notes issued by Woodbridge.
6. Woodbridge pooled FPCM investor proceeds and when sufficient money to fund the commercial loan was raised, the transaction was finalized and Woodbridge obtained a legally recorded first position on the property. After obtaining a first position on the property, Woodbridge purportedly assigned a portion of its first position on the property to FPCM investors.
7. Woodbridge, and their affiliates, filed for chapter 11 bankruptcy on December 4, 2017 citing “unforeseen costs associated with ongoing litigation and regulatory compliance.”
8. On December 20, 2017, the Securities and Exchange Commission (“SEC”) filed a complaint against Woodbridge and its affiliates, alleging that Robert Shapiro, owner of Woodbridge, conducted a nationwide Ponzi scheme that raised over \$1.22 billion from over 8,400 investors. The complaint asserts that Woodbridge issued unregistered securities in the form of promissory notes and paid unregistered agents to sell the investments.
9. At no time were Woodbridge’s investment contracts or promissory notes, for the FPCM loans, registered as securities in Idaho nor did they qualify for an exemption.
10. Kornfeld solicited and sold promissory notes, as Woodbridge’s independent contractor (hereafter agent), to at least one Idaho resident, JF. JF invested \$150,000, in approximately March 2016, and Kornfeld received a commission of \$5,250 for this sale.
11. Kornfeld was not registered to sell securities in Idaho, nor did he qualify for an exemption.

FINDINGS OF VIOLATIONS

OFFER & SALE OF UNREGISTERED SECURITIES

12. Investments in investment contracts and promissory notes are “securities” as defined by *Idaho Code §30-14-102(28)*.
13. Pursuant to *Idaho Code §30-14-301*, 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.
14. *Idaho Code §30-14-202(11)* provides an exemption for transaction in a note... or other evidence of indebtedness secured by a mortgage or other security agreement if the note... or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit.
15. The *Idaho Administrative Code (IDAPA) Rule 55(2)* clarifies that “offered and sold as a unit” means the offer and sale of the entire mortgage or other security agreement to a single purchaser at a single sale.
16. Woodbridge promissory notes are sold to a "pool" of investors and do not qualify for the exemption provided in *§30-14-202(11)*. The exemption is not available for sales of fractional interests in a promissory note (or the "pooling" of multiple investors funds to purchase a single underlying mortgage).
17. Kornfeld sold securities in the form of investment contracts and promissory notes. The securities were not registered, nor did they qualify for a registration exemption at the time they were sold, in violation of *Idaho Code §30-14-301*.

OFFER & SALE OF SECURITIES BY AN UNREGISTERED AGENT

18. *Idaho Code §30-14-102(2)* defines an “agent” 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. Pursuant to *Idaho Code §30-14-402*, 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. Kornfeld offered and sold Woodbridge promissory notes to an Idaho resident. Kornfeld was not registered to sell securities, nor did he qualify for a registration exemption at the time the securities were sold, in violation of *Idaho Code §30-14-402*.

FRAUD PROVISIONS

21. Pursuant to *Idaho Code §30-14-501*, it is unlawful for any person, in connection with the offer, sale, or purchase of a security, directly or indirectly: (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.
22. Omissions:
 - a. Kornfeld failed to disclose that that the security being offered was not registered as required under the Idaho Uniform Securities Act.
 - b. Kornfeld failed to disclose that that he was not registered as an agent to sell the securities being offered as required by the Idaho Uniform Securities Act.
23. Kornfeld violated *Idaho Code §30-14-501(2)* by omitting material facts in connection with the sale of a security.

ACKNOWLEDGMENT AND REMEDIES

1. Respondents agree to the entry of the Order.
2. Respondents acknowledge, without admitting or denying, the findings of violations of Idaho law set forth in this Order.
3. Respondents agree to pay restitution of five thousand, two hundred, fifty dollars (\$5,250). Said restitution is to be paid not later than thirty (30) days from the date the Director executes this Order. Payment shall be made to the "Idaho Department of Finance".
4. Respondents agree to pay a civil penalty of five hundred dollars (\$500) for the violations of the Act, pursuant to *Idaho Code §30-14-604(d)*. Said civil penalty is to be paid not later than thirty (30) days from the date the Director executes this Order. Payment shall be made to the "Idaho Department of Finance".
5. Respondents agree to not now, nor in the future, offer or sell securities in, into, or from Idaho without complying with the requirements of the Act and its rules.

6. In the event that the Respondents commit future violations of the Act or fail to adhere to the terms of this Order, Respondents acknowledge that the Idaho Department of Finance can incorporate the allegations giving rise to this Order in any future proceeding.

AGREED TO and ACKNOWLEDGED this 30TH day of MARCH, 2018.

Barry Kornfeld
BARRY KORNFELD

Barry Kornfeld
FIRST FINANCIAL TAX GROUP

Barry Kornfeld / Principal
Printed Name and Title

IT IS SO ORDERED

DATED this 3RD day of APRIL, 2018.

STATE OF IDAHO
DEPARTMENT OF FINANCE

Gavin M. GEE
GAVIN M. GEE, Director of Finance

