

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

STATE OF IDAHO, Department of Finance,
Securities Bureau,

Complainant,

vs.

TWH Annuities & Insurance Agency, Inc.

Respondent.

Docket No. 2017-7-15-L

AGREEMENT AND ORDER

The Director of the Department of Finance, State of Idaho ("Director") has instituted an investigation into the conduct of TWH Annuities & Insurance Agency, Inc. Pursuant to said investigation, it appears to the Department of Finance that violations of the *Idaho Uniform Securities Act (2004)* ("Act"), *Idaho Code §30-14-101 et seq.* have occurred. The Director and TWH Annuities & Insurance Agency, Inc. 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 Respondent consents to the entry of this Order.

RESPONDENT

1. **TWH Annuities & Insurance Agency, Inc.** ("TWH") was incorporated in the State of California on July 26, 1993 and is located at 650 E. Parkridge Ave, Suite 112, Corona, California. TWH has been licensed with the California Department of Insurance since September 1993.
2. TWH is not registered, in Idaho, to sell securities.

BACKGROUND

3. 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 promissory notes issued by Woodbridge.

4. 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 deed of trust on the property. After obtaining a first position deed of trust on the property, Woodbridge purportedly assigned a portion of its first position deed of trust on the property to FPCM investors.
5. Woodbridge, and their affiliates, filed for chapter 11 bankruptcy on December 4, 2017 citing “unforeseen costs associated with ongoing litigation and regulatory compliance.”
6. 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.
7. It is the Department of Finance’s position that 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.
8. At least one TWH producer (hereafter agent) solicited and sold the promissory notes which included:
 - a. **Douglas Crook** (“Crook”) is a 62-year-old Oregon resident who has been licensed with the State of Oregon’s Insurance Department since 2006 and has not held a securities license since 2009. He solicited and sold the promissory notes to at least one Idaho resident, JA.

9. TWH received \$500 in commissions from JA's investment of \$50,000, in approximately December 2017, which was solicited and sold through Crook.
10. TWH's agent, who sold Woodbridge promissory notes to an Idaho resident, was not registered to sell securities in Idaho, nor did he qualify for an exemption.
11. At the time of the above transaction, TWH was not registered as a broker-dealer in Idaho, nor did the company 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. The Department of Finance contends that the 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. The Department of Finance contends that TWH's agent 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 BROKER-DEALER

18. *Idaho Code §30-14-102(4)* defines a "broker-dealer" as a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.

19. Pursuant to *Idaho Code §30-14-401*, it is unlawful for an individual to transact business in this state as a broker-dealer unless the person is registered under this chapter as a broker-dealer or is exempt from registration as a broker-dealer.

20. The Department of Finance contends that TWH transacted business in Idaho as a broker-dealer. TWH was not registered as a broker-dealer, nor did they qualify for a registration exemption at the time the securities were sold, in violation of *Idaho Code §30-14-401*.

OFFER & SALE OF SECURITIES BY UNREGISTERED AGENTS

21. The Department of Finance contends that agents, associated with TWH, assisted TWH by effecting, or attempting to effect, the sales of Woodbridge's FPCM's to Idaho residents.

22. 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.

23. Pursuant to *Idaho Code §30-14-402(d)* it is unlawful for a broker-dealer engaged in offering, selling or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers unless the agent is registered under

subsection (a) of this section or is exempt from registration under subsection (b) of this section.

24. The Department of Finance contends that TWH associated with and compensated agents that were not registered to sell securities, nor did the agents qualify for a registration exemption at the time the investment contracts were sold, in violation of *Idaho Code §30-14-402(d)*.

FRAUD PROVISIONS

25. 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.

26. Omissions:

- a. The Department of Finance contends that TWH failed to disclose that that they were not registered as a broker-dealer to sell the securities being offered as required by the Idaho Uniform Securities Act.

27. The Department of Finance contends that TWH omitted material facts in connection with the sale of a security in violation of *Idaho Code §30-14-501(2)*.

ACKNOWLEDGMENT AND REMEDIES

28. Respondent agrees to the entry of the Order.
29. Respondent neither admits nor denies the findings of violations of Idaho law set forth in this Order.
30. In order to resolve this matter without additional costs or expense to the State of Idaho and Respondent, the respondent agrees to pay restitution in the amount of five hundred dollars (\$500). 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."

31. In order to resolve this matter without additional costs or expense to the State of Idaho and Respondent, the respondent agrees to pay a civil penalty of one thousand dollars (\$1,000) 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."

32. Respondent agrees 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.

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


AGREED TO and ACKNOWLEDGED this 12th day of October, 2018.


TWH ANNUITIES & INSURANCE AGENCY, INC.

IT IS SO ORDERED

DATED this 22ND day of OCTOBER, 2018.

STATE OF IDAHO
DEPARTMENT OF FINANCE


GAVIN M. GEE, Director of Finance

