

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

STATE OF IDAHO, Department of Finance,
Securities Bureau,

Complainant,

vs.

ROSS CLARK POWELL,

Respondent.

Docket No. 2019-7-05- D

AGREEMENT AND ORDER

The Director of the Department of Finance, State of Idaho ("Director") has instituted an investigation into the conduct of Ross Clark Powell. 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 and Ross Clark Powell 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. **Ross Clark Powell** ("Powell") is a 59 year-old male residing at 2718 Peppermill Run Street, San Antonio, Texas. Powell founded Survival 401k, LLC, which was incorporated in Texas on April 13, 2016. Services provided by Survival 401k include solo 401k, crypto 401k, alternative investments, LLC setup, and breakout 401k. Powell has never been registered to sell securities nor provide investment advice.

BACKGROUND

2. 1 Global Capital, LLC dba 1st Global Capital LLC ("1st Global") was incorporated in June 2013 in Florida and founded by Carl Ruderman. The entity was a commercial lender that offered short-term loans to small and medium sized businesses. 1st Global obtained the funds for these loans through the sales of securities in the form of notes entitled Memorandum of Indebtedness ("MOI").

3. 1st Global claimed the investor proceeds from the MOI notes would be used for funding Merchant Cash Advance Transactions (“MCATs”) which is an alternative funding source for businesses outside of the banking industry.
4. The investment in MOI notes were advertised as being short-term loans yielding double-digit returns with a diversified risk profile. 1st Global claimed that investors historically received a return on investment in excess of 15%.
5. The MOI notes stated that the investor would receive 3% interest on their investment and the investor could receive additional interest based on the allocation to each MCAT and at 1st Global’s discretion. Investments would automatically roll into a new nine-month MOI note unless 1st Global received a written termination agreement from the investor no less than 30 days prior to the MOI note maturity.
6. If an investor elected to terminate their MOI at nine-months, the investor was required to wait for each of the MCATs in their account to unwind to receive repayment of their investment.
7. Investment funds received by 1st Global were commingled or pooled together and subsequently lent to MCAT borrowers. Investor would get a small fractionalized interest in hundreds of MCAT.
8. 1st Global, and their sister company 1st West Capital LLC, filed for chapter 11 bankruptcy on July 27, 2018.
9. On August 23, 2018, the Securities and Exchange Commission (“SEC”) filed a complaint against 1st Global and its affiliates alleging that Carl Ruderman, owner of 1st Global, conducted a nationwide fraud scheme that raised over \$287 million from over 3,400 investors. The SEC’s complaint alleged that 1st Global’s financial records were missing approximately \$50 million dollars of investor funds due to the misappropriation and improper use of the funds.
10. The SEC contends that 1st Global issued unregistered securities in the form of notes, paid unregistered agents to sell the investments, used investor funds for purposes other than cash advances, and made numerous material misrepresentations and omissions to investors.

11. At no time were 1st Global's MOI notes registered as securities in Idaho nor did they qualify for an exemption.
12. Powell solicited and sold MOI notes, as an agent of 1st Global, to Idaho resident KC. KC invested \$50,000, in approximately November 2017, and Powell received a commission of \$1,500 from this sale.
13. At the time of the above transaction, Powell was not registered to sell securities in Idaho, nor did he qualify for an exemption.

FINDINGS OF VIOLATIONS

OFFER & SALE OF UNREGISTERED SECURITIES

14. Investments in notes are "securities" as defined by *Idaho Code §30-14-102(28)*.
15. 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.
16. Powell sold securities in the form of 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

17. *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.
18. 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.


19. Powell offered and sold 1st Capital MOI notes to Idaho residents. Powell 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*.

ACKNOWLEDGMENT AND REMEDIES

20. To economically and efficiently resolve the pending dispute; the parties agree to entry of this Agreement and Order in lieu of other proceedings.
21. Powell neither admits nor denies the Complainant's findings of facts and conclusions of law set forth in this Order.
22. Powell hereby waives any rights he may have to notice and opportunity for hearing on this matter.
23. Powell agrees to pay restitution in the amount of one thousand five hundred dollars (\$1,500).
24. Powell agrees to pay a civil penalty of three thousand dollars (\$3,000) for the violations of the Act, pursuant to *Idaho Code §30-14-604(d)*.
25. Powell will make payments as follows:
- a. Three payments of \$1,500 are due in thirty (30), sixty (60), and ninety (90) days from the date the Director executes this Order
 - b. Payment shall be made to the order of "Idaho Department of Finance."
26. Powell 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.
27. Powell agrees to not claim the availability of, use, or offer or sell securities under any exemptions under the Act without giving written notice to the Director. Said written notice shall be provided at least 10 (ten) day in advance of the proposed activities in Idaho.

28. In the event that the Powell commits future violations of the Act or fail to adhere to the terms of this Order, Powell 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 18th day of July, 2019.

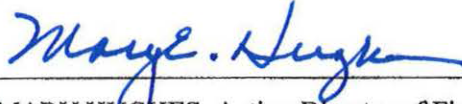


ROSS CLARK POWELL

IT IS SO ORDERED

DATED this 29th day of July, 2019.

STATE OF IDAHO
DEPARTMENT OF FINANCE



MARY HUGHES, Acting Director of Finance

