

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

STATE OF IDAHO, DEPARTMENT OF
FINANCE, SECURITIES BUREAU,

Complainant,

vs.

GREGORY LEO KESTEN,

Respondent.

Docket No. 2017-7-15-N

**ORDER TO CEASE AND DESIST
AND NOTICE OF OPPORTUNITY
FOR A HEARING**

The Director of the Idaho Department of Finance ("Director"), being authorized and directed to administer and enforce the *Idaho Uniform Securities Act (2004)* ("Act"), *Idaho Code § 30-14-101 et seq.*, has conducted an investigation and the Director alleges the following facts that constitute a basis for the issuance of an ORDER TO CEASE AND DESIST ("Order") pursuant to *Idaho Code § 30-14-604(a)(1)* requiring Respondent Gregory Leo Kesten to cease and desist from violating the Act by offering or selling unregistered securities to Idaho residents, offering or selling securities without being registered as an agent, and omitting material facts, in connection with the offer, sale, or purchase of securities to Idaho residents. This Order is effective upon the date of issuance.

RESPONDENT

1. **Gregory Leo Kesten** ("Kesten") is a resident of South Jordan, Utah. Kesten was licensed with the Utah Insurance Departments in 2004 and he surrendered his license in 2006. Kesten registered with the State of Arizona and Utah as a registered investment adviser in 2008 and 2009, respectively. Kesten registered as a broker-dealer agent in 1983, Central Registration Depository ("CRD") number 1085407. As of November 2001, Kesten was no longer registered as a broker-dealer agent and, as of June 2010, Kesten was no longer registered as an investment adviser representative.

RECITALS OF FACT

2. 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 one-year promissory notes. Woodbridge sold these securities as First Position Commercial Mortgages (“FPCM”). These promissory notes are considered securities under Idaho Code § 30-14-102(28).
3. 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 mortgage on the property. Woodbridge purportedly then assigned a portion of its first position mortgage on the property to FPCM investors.
4. Woodbridge, and their affiliates, filed for Chapter 11 bankruptcy on December 4, 2017 citing “unforeseen costs associated with ongoing litigation and regulatory compliance.”
5. 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.
6. At no time were securities sold by Woodbridge, in the form of FPCM, registered as securities in Idaho nor did they qualify for an exemption.
7. Kesten solicited and sold FPCM, as an agent of Woodbridge, to at least one Idaho resident, MM. MM invested \$199,798 in approximately May 2016, and Kesten received a commission of \$7,991.40 from this sale.
8. At the time of the above transactions, Kesten was not registered to offer or sell securities in Idaho, nor did he qualify for an exemption.

FINDINGS OF VIOLATIONS

OFFER AND SALE OF UNREGISTERED SECURITIES **(Violation of Idaho Code § 30-14-301)**

9. Idaho Code § 30-14-102(28) defines a "security," in pertinent part, as a note.
10. The promissory notes offered and sold by the Respondent constitute securities within the meaning of Idaho Code § 30-14-102(28).
11. Idaho Code § 30-14-301 provides that "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."
12. Respondent's offer and sale of securities to Idaho residents, without properly registering such securities in Idaho, constitutes a violation of Idaho Code § 30-14-301.

OFFER AND SALE OF SECURITIES BY AN UNREGISTERED AGENT **(Violation of Idaho Code § 30-14-402)**

13. Respondent was acting as an agent of the issuer (Woodbridge) in effecting or attempting to effect purchases or sales of securities as defined by Idaho Code § 30-14-102(2).
14. Idaho Code § 30-14-402 provides, "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."
15. Respondent's offer and sale of securities to Idaho residents without properly registering as an agent of the issuer with the Department constitutes a violation of Idaho Code § 30-14-402.

FRAUD
(Violation of Idaho Code § 30-14-501)

16. 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... 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..."
17. Respondent failed to disclose that neither the securities being offered nor the Respondent were registered as required under the Act. Respondent's omission concerning the registration status of the securities and agents constitutes an omission of a material fact in connection with the sale of a security, in violation of Idaho Code § 30-14-501(2).
18. Idaho Code § 30-14-604(a)(1) provides that if the Director determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of the Act, the Director may issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with the Act. Pursuant to Idaho Code § 30-14-604(b), such Order is effective on the date of issuance and will become final by operation of law if no hearing is requested within the time period stated in Idaho Code § 30-14-604(b). Idaho Code § 30-14-604(g) provides that noncompliance with this Order, and any final order, can be enforced through civil contempt proceedings.
19. Idaho Code § 30-14-604(d) provides that the Director may impose a civil penalty not to exceed five thousand dollars (\$5,000) for each violation in a final order issued under Idaho Code § 30-14-604(c).

CEASE AND DESIST ORDER

The Director, having reviewed the foregoing, and good cause appearing therefore, hereby finds that the Respondent has violated the Idaho Uniform Securities Act (2004), Idaho Code § 30-14-101 *et seq.*, as alleged above.

Now, therefore, it is hereby ordered that the Respondent shall CEASE AND DESIST from violations of the Idaho Uniform Securities Act (2004), and rules promulgated thereunder, to include: offering or selling unregistered securities to Idaho residents; offering or selling securities as an unregistered agent; and engaging in securities fraud (by failing to disclose material facts in connection with the offer or sale of securities to Idaho residents).

Respondent is ordered to pay a civil penalty of \$3,000, pursuant to Idaho Code § 30-14-604(d).

This Order is in the public interest, issued for the protection of investors, and consistent with the purposes of the Act.

THIS ORDER IS EFFECTIVE UPON ITS ISSUANCE.

Dated: October 19, 2020



PATRICIA HIGHLEY, Securities Bureau Chief
Idaho Department of Finance

IT IS SO ORDERED

DATED this 19th day of October, 2020.



STATE OF IDAHO
DEPARTMENT OF FINANCE


PATRICIA R. PERKINS, Director

NOTICE AND OPPORTUNITY FOR A HEARING

The Respondent shall take notice that if the Respondent wishes to contest the foregoing Order to Cease and Desist and Notice of the Opportunity for a Hearing (“Order”), the Respondent shall file a request for hearing pursuant to Idaho Code § 30-14-604(b) within thirty (30) days after the service of this Order. If the Respondent does not timely request a hearing and none is ordered by the Director within that time period, the Order, which includes a civil penalty, becomes final as to the Respondent by operation of law. If a hearing is timely requested or ordered, the Director, after notice of and opportunity for a hearing, may modify or vacate the Order or extend it until final determination.

A request for a hearing must be made in writing and addressed to:

Patricia Highley
Securities Bureau Chief
Idaho Department of Finance
P.O. Box 83720
Boise, Idaho 83720-0031

A copy of such request must also be served upon the Department's counsel, Loren Messerly, Deputy Attorney General, at the same address.

If a hearing is requested or ordered pursuant to Idaho Code § 30-14-604(b), a hearing will be set by the Director within fifteen (15) days after receipt of a timely written request, and such hearing will be conducted pursuant to Chapter 52, Title 67, Idaho Code. A final order may not be issued unless the Director makes findings of fact and conclusions of law in a record pursuant to Chapter 52, Title 67, Idaho Code. The final order by the hearing officer may make final, vacate, or modify the Order.

If the Respondent requires any assistance of the kind the Department provides under the Americans with Disabilities Act (e.g. sign language interpreters, Braille copies of documents) in order to participate in or understand these proceedings, the Department will supply such reasonable assistance upon an advance request.

Should this order become a final order by operation of law, as discussed above, then any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* Idaho Code § 67-5246(4).

Should this order become a final order by operation of law, as discussed above, then pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which a hearing was held, the final agency action was taken, the party seeking review of the order resides, or operates its principal place of business in Idaho, or the real property or personal property that was the subject of the agency action is located. An appeal must be filed within twenty-eight (28) days (a) of the service date of this final order, (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. *See* Idaho Code § 67-5273. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.