

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

In the matter of:

KEVIN MICHAEL MCCARTHY;
MERCHANT SAVINGS, LLC; and
MASTERMIND WEB DEVELOPMENT LLC.

Docket No. 2020-7-09

AGREEMENT AND ORDER

The State of Idaho, Department of Finance (the "Department"), acting through its Securities Bureau, instituted an investigation into the conduct of Kevin Michael McCarthy, Merchant Savings, LLC, and Mastermind Web Development LLC (collectively "Respondents"). 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 Department and Respondents have agreed to resolve this matter without a public hearing or 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 Respondents consent to the entry of this Order.

RESPONDENTS

1. **Kevin Michael McCarthy** ("McCarthy") is a resident of Idaho Falls, Idaho and the sole member of Merchant Savings, LLC and Mastermind Web Development LLC. McCarthy registered as a broker-dealer agent in 28 states, including Idaho, between July 29, 1986 – December 16, 1996, and with the Financial Industry Regulatory Authority ("FINRA") on April 9, 1990 (Central Registration Depository ("CRD") #1495601). As of June 1, 1998, McCarthy was no longer registered to sell securities in any state and has never been registered as an investment adviser or investment adviser representative.
2. **Merchant Savings, LLC** ("Merchant") d/b/a www.bestwebsites101.com was incorporated in Wyoming in May 2015 and is solely owned and managed by McCarthy. Merchant has never been registered as a broker-dealer or an investment adviser firm.

3. **Mastermind Web Development LLC** (“Mastermind”) was incorporated in Wyoming in January 2020 and is solely owned and managed by McCarthy. Mastermind has never been registered as a broker-dealer or an investment adviser firm.

BACKGROUND

4. Merchant and Mastermind purported to be website design companies specializing in responsive website development and hosting. Design and other services were offered to potential customers through cold calls and advertising on their websites: www.bestwebsites101.com and www.mastermindwebdevelopment.com.
5. Merchant’s mailing address was initially registered as 10678 E Cinnabar Ave, Scottsdale, Arizona. In May 2017, McCarthy changed the address to 500 N. Estrella Parkway, Suite B2, Box 413, Goodyear, Arizona. In May 2018, the address was changed to 1771 Flamingo Road, Suite 122B, Las Vegas, Nevada, which was the company’s sales office for website sales. In May 2019, the address was changed to 2603 Shannon Court, Idaho Falls, Idaho. The business mailing address for Mastermind was registered to the Shannon Court address and their sales office was listed as the Flamingo Road address.
6. In addition to the Flamingo Road address, website sales were also made from their sales offices located at 2082 Business Center Drive, Suite #243, Irvine, California and 1920 E. 17th, Idaho Falls, Idaho.
7. To fund the businesses, Respondents made unsolicited calls and emails offering and selling securities through three sales agents: McCarthy (using the fictitious name of Tom McCoy), Robert Lewis Carella (“Carella”) (using the fictitious name of Robert Johnson), and Brandon Michael Cruz (“Cruz”) (using the fictitious name of Brandon Robertson).

MCCARTHY

8. In 1981, the State of California issued a Cease-and-Desist Order in response to McCarthy’s sales of unregistered securities in coal investments.

9. In 1982, the Commodity Futures Trading Commission (“CFTC”) took enforcement action against McCarthy alleging he induced an investor to invest in commodity futures contracts and committed fraud by misrepresenting and omitting material facts of the investment.
10. In 1987, the State of Wisconsin issued an Order of Prohibition to McCarthy and Atlanta-One, Inc. in connection to the sales of securities by unregistered broker-dealers and unregistered agents.
11. In 1988, the State of Oregon issued a Cease-and-Desist Order in response to dealings by McCarthy. In 1989, this Cease-and-Desist Order involving McCarthy and Atlanta-One, Inc. was resolved through execution of a Consent to Entry of Final Order for violations of Oregon securities laws. These violations included employing unregistered salespersons who solicited and sold securities, devising a system of record keeping designed to conceal violations of registration requirements, filing false documents, failure to supervise and repeated violation of the previous Cease and Desist Order.
12. In 1989, the State of Montana issued a Cease-and-Desist Order in connection with securities registration and fraud violations by McCarthy and Atlanta-One, Inc.
13. In 1998, FINRA took enforcement action against McCarthy, as a principal of Atlanta-One, Inc, for charging customers excessive fees on transactions in foreign currency options. McCarthy was censured and fined.
14. In 1998, the National Association of Securities Dealers (NASD), now FINRA, revoked McCarthy’s registration for failure to pay fines and costs.
15. In 2012, the State of Pennsylvania issued a Summary Order to Cease and Desist against McCarthy and Currency Warriors (“Warriors”) for selling unregistered securities and omitting material facts. Warriors represented itself as a company involved in oil and gas, real estate investments, and other financial products. Warriors issued, offered, and sold securities in the form of limited partnership interests in the business. The Order alleged McCarthy emailed at least one Pennsylvania resident offering returns of 100% profits in 20-months with large

monthly payments. The investor was later told their investment funds would be used to hire additional sales staff to sell financial products.

16. In 2012, the State of California issued a Desist and Refrain Order to SumariaGlobal, LLC (“Sumaria”) and McCarthy, as a sales agent, for selling unregistered securities, sales through unregistered agents, and misrepresentations and omissions of material facts. Sumaria offered and sold securities in the form of investment contracts in a “trust deed investment program” for the purported purpose of raising capital to purchase and resell distressed residential properties in California and Nevada. The Order alleges that McCarthy made unsolicited phone calls and emails to potential investors offering 30% profits, and 10% interest paid every 120-days, and promising the investment program would double investors’ money in less than three-years.
17. In May 2014, the State of California issued a Desist and Refrain Order to McCarthy, K.M. & Associates, LLC (“KM”), Cruz (employee of KM), two Warriors entities, and Intelicloud Holdings Inc. (“Intelicloud”) for selling unregistered securities, acting as an unregistered broker-dealer, sales through unregistered agents, and misrepresentations and omissions of material facts. The Order alleged, that as early as 2007, McCarthy made unsolicited phone calls to potential investors claiming he could double their money in 20-months and the investors would receive monthly income of 10% of their investment by investing in Warriors.
18. McCarthy also solicited and sold investments in Intelicloud, who had filed with the Securities and Exchange Commission a notice of reliance upon Regulation D as an exemption from securities registration. McCarthy told investors that the company was going to merge and go public and the shares of Intelicloud could be sold at a significant profit.
19. Some investors in the companies listed above received partial repayment on their investment, however, no investors listed in the orders received full repayment of their principal nor received the returns promised.

CARELLA

20. Carella is a resident of California has never been registered to sell securities or provide investment advice.
21. Carella used the fictitious name of Robert Johnson and represented served as the National Sales Manager at Merchant since 2011. He claimed he was key in offering investment management and private banking services to new and existing high net worth clientele.

CRUZ

22. Cruz is a resident of California and has never been registered to sell securities or provide investment advice.
23. In 2014, the State of California issued a Desist and Refrain Order to Cruz (the same Order issued to McCarthy, see paragraph nineteen above), as sales agent of KM, for selling unregistered securities, as an unregistered agent, and making misrepresentations and omissions of material facts. The Order stated that Cruz became associated with KM, as early as 2012, and offered and sold securities for KM claiming a 25% return on investment in less than 6 months. Additionally, Cruz sold at least one investor what he claimed were his personal shares of a company called Intelicloud Holdings, he was selling them at half-price, and without disclosing that Pennsylvania had issued a Cease-and-Desist Order to Intelicloud Holdings.

MERCHANT SAVINGS, LLC

24. Beginning in at least February 2016, McCarthy first represented Merchant as a credit card processing company (“Merchant CC”) owned by McCarthy and partners. Merchant CC’s sales pitch to investors included the following claims:
 - a. over 80-years combined history in the banking and finance industries;
 - b. cash flows starting in as early as 90 days and approximately 6 months to turn a healthy profit;
 - c. great returns and monthly payments;

- d. no limit in growth and expectations of considerable growth during the year; and
 - e. McCarthy intended to establish a call center in Phoenix to house a sales force of 10 to further growth.
25. Merchant issued, offered, and sold securities in the form of investment contracts. Merchant provided its investors with a document titled Partnership Agreement with terms of 12 months, and monthly payments ranging from 40-71% of all money obtained through Merchant's efforts.
26. From January 2016 to June 2016, Merchant solicited and sold securities, through McCarthy, to at least ten investors, from nine states, totaling over \$32,000.
27. In March 2016, to obtain additional investor funds, McCarthy offered investor WB an additional investment claiming it was the last unit available until July 2016. However, \$17,985 was deposited into Merchant's bank account from seven investors between WB's investment and July 2016.
28. No evidence supports any sales by Merchant in connection with processing credit cards.
29. Investor funds were used to pay negative bank balances, payments to prior investors, and for McCarthy's own personal use.
30. Beginning in at least July 2016, McCarthy changed his representation of Merchant's business to investors, characterizing it as a mobile web design and hosting company ("Merchant MWD"). The Merchant MWD sales pitch to investors included the following claims:
- a. building the latest website designs and technology;
 - b. Google will not download business websites that do not have the new technology;
 - c. every business in the world must convert to this new technology or be dropped from search lists;
 - d. a potential client base of over 12 million to pick from, at a cost of \$2,600 per site, and \$31 billion up for grabs; and
 - e. having a 5 year window to go after this type of business before the business goes back to rebuild for 2023 technology.

31. Merchant issued, offered, and sold securities in the form of investment contracts. Merchant provided investors with a document titled Partnership Agreement, outlining the Merchant MWD business purposes, with terms ranging from 9 months to 3 years, and promising monthly payments of a calculated total rate of return ranging from 35%-200% depending on the term length.
32. Investors understood their investment funds would be for the general use of the business which included purchasing equipment, hiring designers, and producing web design. Some investor funds were used for those and other business purposes, but others were used to pay negative bank balances, for payments to agents, payments to prior investors, and for McCarthy's own personal use.
33. For four years, Merchant failed to make certain monthly payments on time to investors.
34. Although Merchant failed to make monthly payments as agreed and McCarthy continuously acknowledged the business was not growing nor had funds to pay investors, the Agents continued to solicit investments from new and existing investors using scarcity tactics and claims of great potential profits and monthly payments.
35. In October 2019, McCarthy told investors he would be forming a new LLC to receive funds from his efforts selling/building/hosting websites. These funds would then be distributed pro-rata to approximately 30 partners. Several investors signed a Settlement Agreement and General Mutual Release with Merchant promising repayment of the investment plus 10% interest in connection to the new LLC business.
36. Although a new LLC was set up, only \$500 was paid to Merchant investors through the new LLC's bank account.
37. From July 2016 through January 2020, Merchant, through McCarthy, Cruz, and Carella (collectively "Agents"), sold securities to at least 45 investors, from at least 28 states, totaling over \$740,000.

38. To date, investment funds of \$205,731.00 are outstanding to eighteen Merchant investors, as shown in Table A, attached hereto on Exhibit 1.
39. The securities issued by Merchant were not registered, nor did they qualify for an exemption from the registration requirements.
40. McCarthy, Carella, and Cruz were not registered to sell securities, nor did they qualify for an exemption from the registration requirements.

MASTERMIND WEB DEVELOPMENT LLC

41. Beginning as early as January 2020, Mastermind claimed it was a mobile web design and hosting company using a sales pitch containing the same claims made by Merchant.
42. Mastermind issued, offered, and sold securities in the form of investment contracts. Investors could purchase units, or fractions thereof, in exchange for their investment funds. Mastermind provided its investors with an Agreement with terms of 16 months and a monthly payment ranging from 45%-62%.
43. The Agreements were very similar to Merchant's agreement. The representation of the business function was identical, stating "[Company Name] designs and builds Responsive Mobile Web sites and provides hosting for all types of business throughout America, and derives an income from such business."
44. From February 2020 through August 2020, Mastermind solicited and sold securities, through McCarthy and Cruz, to at least six investors, from four states, totaling \$92,170.
45. Mastermind investors understood that their investment funds would be pooled with other investor funds and used for web design related services. Some investor funds were used for those and other business purposes, but others were used to pay negative bank balances, for payments to agents, payments to prior investors, and for McCarthy's own personal use.
46. No investor funds were deposited into Mastermind's bank account. All investor funds were deposited into a bank account in Merchant's name. From January 2020 through June 2020,

activity in Mastermind's bank account showed total deposits of \$9,500 that were from either McCarthy or Merchant.

47. All Mastermind investors, included in this Order, have received some payments. However, monthly payments were not made as agreed and Mastermind is in arrears to all of its investors.
48. To date, Mastermind owes investment funds of \$48,485.00 to five Mastermind investors, as shown in Table B, attached hereto on Exhibit 1.
49. The securities issued by Mastermind were not registered, nor did they qualify for an exemption from the registration requirements.
50. McCarthy and Cruz were not registered to sell securities, nor did they qualify for an exemption from the registration requirements.

FINDINGS OF VIOLATIONS

OFFER AND SALE OF UNREGISTERED SECURITIES

51. 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. *See SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).
52. The interests in investment contracts issued by Merchant and Mastermind constitute securities within the meaning of Idaho Code § 30-14-102(28).
53. 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."
54. Respondents' offer and sale of securities in, into, and from Idaho, 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

55. 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.
56. 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.”
57. McCarthy offered and sold Merchant and Mastermind’s investment contracts while unregistered 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.

ISSUER OFFER AND SALE OF SECURITIES THROUGH UNREGISTERED AGENTS

58. Idaho Code §30-14-402(d) provides, “Limit on employment or association. It is unlawful for a broker-dealer, or an issuer 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 or issuers unless the agent is registered under subsection (a) of this section or is exempt from registration under subsection (b) of this section.”
59. Merchant and Mastermind (collectively “issuers”) offered and sold securities through Carella, Cruz, and McCarthy (the “issuer agents”). The issuer agents were not registered to sell securities, nor did they qualify for a registration exemption at the time the securities were sold. By offering and selling securities through the unregistered, non-exempt issuer agents, the issuers violated Idaho Code § 30-14-402(d).

FRAUD PROVISIONS

60. 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.”
61. Respondents made the following misrepresentations regarding the investments:
- a. investors would get monthly payments;
 - b. investors would get a return on their investment of 30%, 50%, or more;
 - c. investors would be paid back in full in 12-36 months;
 - d. the investment was low risk;
62. Respondents omitted the following material facts regarding the investments:
- a. failure to make contractual payments to previous investors;
 - b. investor funds would be use for McCarthy’s personal use;
 - c. investor funds would be use repay prior investors;
 - d. risk of the investments;
 - e. liquidity of the investment;
 - f. financial condition of the businesses;
 - g. McCarthy had been subject to numerous securities complaints when licensed as a securities salesperson;
 - h. McCarthy had been subject to numerous state securities enforcement actions;
63. Respondents violated Idaho Code § 30-14-501(2) by misrepresenting and omitting material facts in connection with the sale of securities.
64. Respondents 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 their investors.

65. Respondents violated Idaho Code § 30-14-501(4) by using investor money for their own personal use and to pay prior investors.

ACKNOWLEDGEMENTS AND REMEDIES

66. The parties agree to entry of this Order in lieu of other proceedings.

67. Respondents neither admit to nor deny the Complainant's findings of violations set forth in this Order.

68. Respondents waive their rights to notice and opportunity for hearing on this matter provided by Idaho Code § 30-14-604 and under the contested case provisions of the Idaho Administrative Procedures Act Title 67, Chapter 52, Idaho Code. Respondents further waive their right to seek judicial review of this order. The terms contained in this Order herein constitute the entire agreement between the Department and Respondents.

69. Respondents agree to use their legal name in all future business dealings.

70. Respondents agree to pay restitution in the amount of two hundred fifty-four thousand, two hundred and sixteen dollars (\$254,216.00). Said restitution is joint and severally among respondents

71. Respondents agree to pay a civil penalty in the amount of fifty thousand dollars (\$50,000) for the violations of the Act, pursuant to Idaho Code § 30-14-604(d). The Department agrees to waive \$30,000 of the penalty upon completion of the payment plan terms herein, and if Respondents otherwise comply with the terms of this Order

72. All amounts owed pursuant to this Order that are not paid in full as agreed, 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).

73. Respondents agree to not now, nor in the future, provide investment advice in, into, or from Idaho without complying with the requirements of the Act and its rules.

74. 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.
75. Respondents agree 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.
76. Respondents agree that they shall not deny or contest the Findings of Violations contained in this Order in any present or future: (a) bankruptcy proceeding, or (b) non-criminal proceeding in which the Department is a party (collectively, “proceeding(s)”). Respondents further agree that in any such proceedings, the Findings of Violations contained in this Order may be taken as true and correct and that this Order shall collaterally estop them from re-litigating with the Department or any other state agency, in any forum, the accuracy of the Findings of Violations contained in this Order. In the event Respondents or Respondent’s spouse pursues bankruptcy protection in the future, Respondents further agree that in such bankruptcy proceeding, pursuant to 11 U.S.C. § 523(a)(19), the following circumstances exist:
- a. The obligations incurred as a result of this Order are a result of the conduct set forth in the Findings of Violations in the Order and are for the violation of Idaho state securities laws, pursuant to 11 U.S.C. § 523(a)(19)(A)(i);
 - b. This Order constitutes a judgment, order, consent order, or decree entered in a state proceeding pursuant to 11 U.S.C. § 523(a)(19)(B)(i), a settlement agreement entered into by Respondents pursuant to 11 U.S.C. § 523(a)(19)(B)(ii), and a court order for damages, fine, penalty, citation, restitution payment, disgorgement payment, attorney fee, cost or other payment owed by Respondents pursuant to 11 U.S.C. § 523(a)(19)(B)(iii).
77. In the event Respondents commit future violations of the Act or fail to adhere to the terms of this Order, Respondents acknowledge the Department can incorporate the allegations giving rise to this Order in any future proceeding.

AGREED TO and ACKNOWLEDGED

Dated: 8-2-22

[Signature]
KEVIN MICHAEL MCCARTHY (Signature)

Dated: 8-2-22

[Signature]
MERCHANT SAVINGS, LLC (Signature)

By: [Signature]
Printed Name and Title
KEVIN MCCARTHY

Dated: 8-2-22

[Signature]
MASTERMIND WEB DEVELOPMENT LLC (Signature)

By: KEVIN M. MCCARTHY
Printed Name and Title

IT IS SO ORDERED

DATED this 3rd day of August, 2022.

STATE OF IDAHO
DEPARTMENT OF FINANCE



[Signature]
PATRICIA R. PERKINS, Director
Idaho Department of Finance

Exhibit 1

Table A - Merchant			
Investor	Investment	Repayment	Amount Due
WB	\$9,500.00	\$1,000.00	\$8,500.00
BB	\$36,700.00	\$3,497.00	\$33,203.00
FB	\$5,200.00	\$520.00	\$4,680.00
RB	\$7,800.00	\$1,120.00	\$6,680.00
PG	\$7,500.00	\$85.00	\$7,415.00
MG	\$4,280.00	\$333.00	\$3,947.00
RH	\$3,900.00	\$400.00	\$3,500.00
CK	\$23,200.00	\$3,515.00	\$19,685.00
TL	\$875.00	\$0.00	\$875.00
KL	\$18,700.00	\$3,300.00	\$15,391.00
JN	\$48,340.00	\$11,120.00	\$37,220.00
DP	\$5,400.00	\$920.00	\$4,480.00
MP	\$7,650.00	\$0.00	\$7,650.00
JS	\$10,650.00	\$0.00	\$10,650.00
DS	\$7,800.00	\$3,120.00	\$4,680.00
LT	\$14,100.00	\$1,950.00	\$12,150.00
VV	\$4,000.00	\$825.00	\$3,175.00
RW	\$22,500.00	\$650.00	\$21,850.00
TOTALS	\$238,095.00	\$32,364.00	\$205,731.00

Table B - Mastermind			
Investor	Investment	Repayment	Amount Due
JH	\$41,900.00	\$8,700.00	\$33,200.00
BM	\$11,070.00	\$3,550.00	\$7,520.00
DW	\$6,600.00	\$2,650.00	\$3,950.00
JZ	\$13,200.00	\$9,385.00	\$3,815.00
TOTALS	\$72,770.00	\$24,285.00	\$48,485.00

TOTALS	
Company	Amount
Merchant	\$205,731.00
Mastermind	\$ 48,485.00
TOTALS	\$254,216.00