



BEFORE THE IOWA INSURANCE COMMISSIONER

| | | |
|-----------------------|---|-------------------------------|
| IN THE MATTER OF |) | |
| |) | Division No. 86463 |
| RANDALL A. FINER, |) | |
| 607 S Lincoln Street |) | MODIFIED FINAL ORDER TO CEASE |
| Lake Mills, IA 50450, |) | AND DESIST WITH |
| |) | RESTITUTION AND COSTS |
| Respondent |) | |

This matter came before Commissioner of Insurance Nick Gerhart upon motion. The Respondent after receiving notice by personal service on April 22, 2015 failed to appear on May 22, 2015 at the motion hearing. After being fully informed of the matter, the Commissioner issues the following modified final order to cease and desist with restitution and costs:

I. PARTIES AND JURISDICTION

1. The Commissioner of Insurance, Nick Gerhart, administers and enforces Iowa Code chapter 502 relating to the regulation of securities. Rosanne Mead has been designated by the Commissioner as Securities Administrator (the Administrator) to administer the Iowa Uniform Securities Act, Iowa Code, chapter 502.

2. Randall A. Finer (Respondent) is an individual with a last-known mailing address of 607 S. Lincoln St., Lake Mills, IA 50450.

II. PROCEDURAL BACKGROUND

3. On February 4, 2015, Securities Administrator Mead filed a statement of charges alleging that Respondent was in violation of Iowa Code chapter 502 by selling unregistered securities, by making in connection with the offer and sale of those securities untrue statements of material fact and omitting material facts which made statements misleading, and transacting business as a securities agent without registration (“Statement of Charges”).

4. On February 4, 2015, Commissioner Gerhart issued a summary order to cease and desist with other relief (“Summary Order”).

5. Respondent was personally and properly served with the Summary Order and the Statement of Charges on February 12, 2015 by the Winnebago County Sheriff.

6. Respondent has not requested a hearing, nor did he file an answer to the Statement of Charges.

III. FINDINGS OF FACT

7. During the period of January 1, 2013 through September 2014, Respondent received funds and assets from persons (“Investors”) for the purpose of investing their funds in stocks, commodities, options or other similar investments.

8. The Respondent delivered notes for these funds and assets to the Investors in the state of Iowa as evidence of investment contracts in which his ability to return principal and interest was derived primarily from his efforts in “day trading”, “investing in the Dow” and “investing in Standard & Poor’s.”

9. On or about September 22, 2014, the Division became aware that Respondent was contacting individuals and asking them to deliver funds to him for investment purposes. (See affidavit of Jamie Johnson, Exhibit A filed with Statement of Charges.)

10. Respondent has never been registered as a broker-dealer, securities agent, investment adviser or an investment adviser representative with the Division.

11. The National Futures Association is designated by federal law as the self-regulatory organization that administers registration of persons and organizations that intend to do business as futures professionals. Respondent is not registered with the National Futures Association in any capacity.

12. The Division has no record of a registration, a request for an exemption from registration or notice of federal covered preemption of the securities offered or sold by Respondent.

13. The Division contacted Respondent by letter dated January 8, 2015 (See Exhibit B to Statement of Charges) and requested that Respondent appear at the offices of the Division for an interview. Respondent refused to appear in a letter received January 21, 2015 (See Exhibit C filed with Statement of Charges). Respondent's reply included a page titled "promissory note."

14. Among other things, Respondent told potential Investors in connection with his offers and sales, that he was engaged in one or more of the following: "day trading" or "investing in the Dow" or "investing in Standard & Poors." Respondent told potential Investors that the money given to him would be used for one of those purposes.

15. Respondent provided Investors with documents titled "promissory note" (See Exhibit 1 of Exhibit A filed with Statement of Charges) which is similar but not identical to the promissory note filed in response to the Division's request.

16. Respondent received funds and assets from Investors for the purpose of investing their funds in stocks, commodities, options or other similar investments.

17. Investigators reviewed business records and documents involving Respondent's transactions with investors.

18. Respondent solicited Investors to participate in an investment program evidenced by promissory notes in the state of Iowa during the period of July 2011 through January 2015.

19. Securities Bureau investigator Jamie Johnson has submitted Exhibit D, a summary of the number of Investors from whom Respondent solicited investment funds in the State of Iowa along with the investment amounts depicted on the promissory notes.

20. Respondent offered and sold 39 investment contracts with promissory notes with a cumulative face value of \$614,272 to a known total of 24 different investors in the state of Iowa. Each promissory note included a promise to pay interest ranging from 10% - 30%. (See Exhibit D.)

21. A part of the investment strategy with Respondent by one of the Investors, the investor delivered silver coins to the Respondent valued at approximately \$20,000.00. Respondent represented to this investor that the silver coins were to be used as collateral.

22. Respondent did not invest all of the monies received from the Investors as he promised.

23. Respondent deposited the funds in a checking account at a bank that was titled in his name only.

24. Respondent did transfer some funds to various broker-dealers, clearing firms or futures commission merchants.

25. Respondent used funds from the account referenced in paragraph 23 to pay personal expenses and to deposit and withdraw cash.

IV. VIOLATIONS OF IOWA UNIFORM SECURITIES ACT

COUNT ONE – Unregistered Securities

26. Paragraphs 1- 25 are incorporated herein by reference.

27. Respondent has offered and sold, and has materially aided others in the offer and sale of unregistered “promissory notes” as investment contracts as part of what he calls a “day trading” program.

28. These investments are securities within the definition of Iowa Code section 502.102(28).

29. The securities were not registered with the Securities Administrator as required by Iowa Code §§ 502.303, 502.304 or 502.304A.

30. Respondent has not made any claim of exemptions from registration in Iowa Code §§ 502.201 or 502.202.

31. Respondent has not made any claim that the securities are federal covered under the preemption provisions in Iowa Code § 502.302.

32. Respondent has violated Iowa Code § 502.301, by offering and selling unregistered, non-exempt and non-federally covered securities in Iowa and should be ordered to cease and desist.

33. This action is necessary and appropriate, in the public interest, for the protection of investors, and consistent with the purposes fairly intended by the provisions of Iowa Code Chapter 502.

COUNT TWO - UNREGISTERED AGENT

34. Paragraphs 1-33 are incorporated herein by reference.

35. Respondent is not registered as a securities agent in the state of Iowa.

36. Respondent has acted in a way that requires registration as a securities agent.

37. Respondent has violated Iowa Code § 502.402, and should be ordered to cease and desist from acting as a securities agent.

38. This action is necessary and appropriate, in the public interest, for the protection of investors, and consistent with the purposes fairly intended by the provisions of Iowa Code chapter 502.

COUNT THREE – UNTRUE STATEMENTS OF MATERIAL FACTS

39. Paragraphs 1 - 38 are incorporated herein by reference.

40. In connection with the offer and sales of securities, Respondent made untrue statements of material facts including, but not limited to, the following:

- a. That investment funds would be used exclusively for day trading;
- b. That Respondent had the necessary training and experience to guarantee a return of 20% and more on day trading; and
- c. That Respondent would take no commissions or fees on the investments other than those profits in the account in excess of the 20% return.

41. Respondent has violated Iowa Code § 502.501 by making untrue statements of material facts.

42. This action is necessary and appropriate, in the public interest, for the protection of investors, and consistent with the purposes fairly intended by the provisions of Iowa Code chapter 502.

COUNT FOUR - OMISSION OF MATERIAL FACTS

43. Paragraphs 1-42 are incorporated herein by reference.

44. Respondent omitted material facts in the sale of securities including:

- a. The information that demonstrated Respondent did not possess the necessary training and experience to guarantee a return of 20% and more on day trading;

b. The information that Respondent would commingle investors' funds in his personal checking account and use investor funds to pay personal expenses;

c. The information that Respondent was not registered to sell securities in the state of Iowa; and

d. The information that the securities are unregistered.

45. Respondent has violated Iowa Code § 502.501 by omitting material facts.

46. This action is necessary and appropriate, in the public interest, for the protection of investors, and consistent with the purposes fairly intended by the provisions of Iowa Code chapter 502.

COUNT FIVE – NONCOMPLIANCE WITH INVESTIGATIVE DEMAND

47. Paragraphs 1-46 are incorporated herein by reference.

48. On January 7, 2015, the Division delivered to Respondent an investigative letter by the Division requiring the Respondent file a statement in response to nine interrogatories.

49. On January 20, 2015, Respondent filed a letter with the Division responding to item number 1 in the investigative letter, but unresponsive to item numbers 2 through 8.

50. Respondent has violated Iowa Code § 502.602.

51. This action is necessary and appropriate, in the public interest, for the protection of investors, and consistent with the purposes fairly intended by the provisions of Iowa Code chapter 502.

V. CONCLUSIONS OF LAW

1. Iowa Code § 502.102.28 includes “note”, “evidence of indebtedness” and “investment contract” within the definition of a security. “Investment contract” within the

definition of a security is an investment of money in a common enterprise with the expectation of profit to be derived primarily from the efforts of persons other than investors. The interests offered and sold by Respondent as described in the above findings of fact constitute securities.

2. Iowa Code § 502.301 provides that it is unlawful for any person to offer or sell any security in this state unless (1) it is a federal covered security, (2) the security, transaction or offer is exempted under §§ 502.201 through 502.203; or (3) it is registered with the Administrator. The conduct described in the above findings of fact constitutes a violation of this section.

3. Iowa Code § 502.402 provides that it is unlawful for an individual to transact business in this state as an agent unless he is registered under § 502.406, or exempt from registration. The conduct described in the above findings of fact constitutes a violation of this section.

4. Iowa Code § 502.503.1 provides that “[i]n a civil or administrative proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.”

5. Iowa Code § 502.501 provides that it is unlawful, in connection with the offer, sale or purchase of any security (1) to employ any device, scheme, or artifice to defraud, (2) to make any untrue statement of a 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 are made, not misleading or (3) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person. The conduct described in the above findings of fact constitutes a violation of this section.

6. Iowa Code § 502.604 provides, in part, that:

1. If the administrator 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 this chapter or a rule adopted or order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may do any of the following:

a. 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 this chapter.

....

2. An order under subsection 1 is effective on the date of issuance. Upon issuance of the order, the administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any restitution order, civil penalty, or costs of investigation the administrator will seek, a statement of the reasons for the order, and notice that, within thirty days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the administrator within thirty days after the date of service of the order, the order, including an order for restitution, the imposition of a civil penalty, or a requirement for payment of costs of investigation sought in the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

7. The offer or sale of unregistered securities, as described in the above findings of fact, constitutes an illegal practice under Iowa Code § 502.604.

8. Transacting business as an unregistered agent, as described in the above findings of fact, constitutes an illegal practice under Iowa Code § 502.604.

9. The untrue and omitted material facts in connection with the Respondent's offer and sale of securities, constitutes an illegal practice under Iowa Code § 502.604.

10. The failure to comply with the Division's request to file a statement responsive to the investigative interrogatories 2 through 8, constitutes an illegal practice under Iowa Code § 502.604.

VI. ORDERS

IT IS THEREFORE ORDERED that:

A. Respondent shall cease and desist from any violation of Iowa Code §502.301, and specifically from offering or selling, or materially aiding others in the offer or sale of any notes, investment contracts, stock or any other securities in the state of Iowa, unless the securities are registered or Respondent has provided at least 30 days prior to any offer or sale, written notice to the Administrator of an applicable exemption or preemption as a federal covered security;

B. Respondent shall cease and desist from acting as a securities agent in violation Iowa Code §502.402;

C. Respondent shall cease and desist from any violation of Iowa Code §502.501, and specifically from making untrue statements of material facts or omitting to state material facts in connection with the offer or sale of any securities.

IT IS FURTHER ORDERED that Respondent shall pay within thirty days of this order to the state of Iowa the amount of \$614,272, plus interest calculated according to the terms of each promissory note, as restitution to be delivered to investors filing claims with the Administrator;

IT IS FURTHER ORDERED that Respondent shall, within thirty days of this order, deliver \$20,000 in silver coins received from one of his investors to the Winnebago County Sheriff, or such other Iowa law enforcement official as designated by the Administrator;

IT IS FURTHER ORDERED that Respondent shall pay within thirty days of this order to the state of Iowa the amount of \$8,000 as costs of investigation and prosecution.

This Order shall be served upon the Respondent.

SO ORDERED on this 26 day of May, 2015.



NICK GERHART
Commissioner of Insurance

Exhibit D

Order for Restitution regarding Randall A. Finer, IID Docket No.86463

| Investor | Totals | Notes |
|-----------|----------------------|----------|
| 1 | 20,000 | 2 |
| 2 | 10,000 | 1 |
| 3 | 10,000 | 2 |
| 4 | 23,000 | 3 |
| 5 | 51,500 | 1 |
| 6 | 7,500 | 1 |
| 7 | 40,000 | 3 |
| 8 | 40,000 | 2 |
| 9 | 125,000 | 2 |
| 10 | 100,000 | 1 |
| 11 | 5,000 | 1 |
| 12 | 65,000 | 3 |
| 13 | 10,000 | 1 |
| 14 | 15,000 | 2 |
| 15 | 5,000 | 1 |
| 16 | 5,000 | 1 |
| 17 | 5,000 | 1 |
| 18 | 2,500 | 1 |
| 19 | 5,000 | 1 |
| 20 | 10,000 | 1 |
| 21 | 20,000 | 1 |
| 22 | 7,500 | 1 |
| 23 | 10,000 | 2 |
| <u>24</u> | <u>22,272</u> | <u>4</u> |
| | 614,272 | 39 |