

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>STATE OF IOWA, ex rel., DOUG OMMEN, IOWA INSURANCE COMMISSIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>BECKSTONE PARTNERS, LLC, DESFINED, LLC, EAST KING MANAGEMENT, LLC, and THE CORPORATE LEASING COMPANY, LLC,</p> <p>Respondents.</p>	<p>Case No. CVCV067472</p> <p>ORDER APPOINTING RECEIVER, GRANTING TEMPORARY AND PERMANENT INJUNCTIVE RELIEF AND GRANTING OTHER EQUITABLE REMEDIES</p>
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An evidentiary hearing was held in this matter on July 5, 2024. Petitioner appeared through Assistant Attorney General Kevin Protzmann. There were no other appearances. The hearing was reported.

After hearing evidence from Petitioner at the hearing, and after reviewing the Petition for Appointment of Receiver, Temporary and Permanent Injunctive Relief, and Other Equitable Remedies (the Petition), the court finds the following facts, reaches the following conclusions and enters the following Order:

FINDINGS OF FACT

Defendant Beckstone Partners, LLC (Beckstone), in concert with DesFined, LLC (DesFined), East King Management, LLC (EKM) and The Corporate Leasing Company, LLC (CLC) (collectively, Defendants) publicly advertised and generally solicited opportunities for potential investors to enter into investment contracts with Defendants. Specifically, Defendants purported to own certain real properties, and Defendants solicited investors by offering to sell these

real properties and to manage the rental of the properties thereafter, which would generate guaranteed returns on investment through rental payments. These investment contracts were structured by having investors provide a down payment to Defendants and finance the rest of the purchase with an interest-only note to satisfy the remaining purchase price of the property. Upon execution of the investment contract, the properties were to be managed by Defendant EKM, with promises that tenants were guaranteed for certain periods of time that would generate rental income for the investor.

Despite selling these investment contracts under these terms, Defendants at the time of the transaction did not have any interest in the real properties they purported to sell to their investors. Rather, Defendants would take the principal down payments they received from investors and would use these monies to enter into installment contracts with the actual owners of the real properties, thereby acquiring only a partial interest in the properties after having purported to sell them to their investors.

Defendants' contracts with the actual owners of these real properties did not provide Defendants free and clear title to the properties. Rather, Defendants would provide down payments in cash as well as promissory notes where, after making satisfactory payments, Defendants would acquire free and clear title to the properties from the actual owners after ten years. Essentially, Defendants entered into installment contracts to acquire an interest in properties they had already purported to sell to their investors as part of the investment contracts.

When Defendants purported to sell these properties to their investors, they also charged their investors a dollar amount for the properties that greatly exceeded the actual purchase price Defendants paid when they acquired their subsequent interest in the property.

For example, on June 10, 2021, Defendants purported to sell certain residential property in

Windsor, Pennsylvania, to an investor for \$164,900.00, payable with a down payment of \$64,900.00 and a ten-year promissory note of \$100,000.00 payable to Defendants at an annual 5% interest rate. As part of the inducement, Defendants promised the investor an annual cash flow of \$5,285.00 per year, calculable after deducting the annual debt service payment, property management fees, property insurance, and property taxes from the investor's guaranteed the rental income from possessing the property.

However, Defendants did not have any interest in this property when they purported to sell the property on June 10, 2021. On July 12, 2021, Defendants actually acquired an interest in the property in Windsor, Pennsylvania, from SPG Capital, LLC, for a total price of \$120,000.00, based on an initial down payment of \$20,000.00 along with a ten-year promissory note of \$100,000.00 payable to SPG Capital, LLC, at an annual 5% interest rate. Defendants did not acquire free and clear title from SPG Capital, LLC, when they entered into this installment contract. They could not acquire such title until they completed ten years of satisfactory payments on the promissory note. When Defendants purported to sell this property in Windsor, Pennsylvania, to their investor, the sale price – \$164,900.00 – was 37.42% higher than the actual purchase price Defendants paid to SPG Capital, LLC – \$120,000.00.

The investment contract for the property in Windsor, Pennsylvania, was typical of the investment contracts Defendants sold to at least nine other investors with millions of dollars in sales. Defendants repeatedly purported to sell investment contracts to investors when Defendants lacked any interest in the properties subject to investment, and they promised to provide free and clear title to their investors when Defendants did not have – and never could have – such title. Defendants also inflated the cost of these investment contracts when selling their fictitious interests to investors in an amount roughly 35% higher on average than what Defendants would later pay

to the actual owner.

In addition to these residential investment contracts, Defendants also offered promissory notes to potential investors, each purchasable for a principal amount of \$25,000.00. Defendants offered a guaranteed 10% annual return on these promissory notes that were payable by Defendants over a period of 27 months, or \$208.33 in monthly interest. Upon maturity of the note after 27 months, investors were promised the return of the full principal amount in addition to a payoff bonus. Some or all of these promissory notes were backed by two residential properties: (1) the residence and associated land colloquially known as 1819 Buffalo Road in West Des Moines, Iowa, and (2) the residence and associated land colloquially known as 2909 Woodland Road in West Des Moines, Iowa.

Promissory notes of this nature were sold to multiple investors, and many of the promissory notes reached maturity on March 22, 2024. Defendants, however, failed to consistently make required interest payments to their investors as promised.

On February 28, 2024, Defendants sold the residence at 2909 Woodland Road and received proceeds placed in an associated bank account totaling \$400,687.18. In addition to failing to make required monthly interest payments to their investors, Defendants also failed to pay any of the principal owed to their investors who had purchased notes which matured on March 22, 2024, despite Defendants having assets from the February 2024 sale of the 2909 Woodland Road property that were sufficient to pay the principal payments due and payable on March 22, 2024. Rather than paying their investors such principal, Defendants only paid out a sum less than \$9,000.00 from the bank account for interest payments due to investors. While making less than \$9,000.00 in payments to investors, Defendants transferred over \$21,000.00 to the personal bank account of their organizer and operator, Brett Timothy Immel, and spent thousands of dollars more

on his personal expenses, including \$7,793.67 on travel (flights and hotels), \$6,657.81 on food and drink, \$4,506.81 on medical and dental expenses, and \$3,653.51 on loans for a personal vehicle and ATV, among other personal expenses.

Defendants also offered to sell units of Defendant DesFined, LLC, monies which would go towards commercial real estate with a carwash on the premises. However, the carwash burned down in October 2022, and Defendants did not execute the purchase of such property with their investors' money.

The Iowa Insurance Division determined the aforementioned investment contracts and promissory notes offered by Defendants constituted securities as defined by Iowa Code section 502.102(28). The court finds that Defendants did not register these securities with any state or federal regulatory agencies.

Finally, the court received a professional statement from Petitioner's counsel during the July 5, 2024, hearing indicating that SPG Capital, LLC, has filed a civil action against Defendants in Pennsylvania, alleging fraud and requesting as a form of relief that SPG Capital, LLC's installment contracts selling interest in residential property to Defendants be nullified and that SPG Capital, LLC, be given free and clear title to all such properties. Put another way, time is of the essence in this matter.

CONCLUSIONS OF LAW

A security as defined in Iowa Code section 502.102(28) includes, among other things, a note, debenture, evidence of indebtedness, or investment contract. The court therefore concludes that the promissory notes offered and sold by Defendants for \$25,000.00 constitute securities under Iowa law.

Under section 502.102(28)(d), a security also includes "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 and a ‘common enterprise’ means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors.” The court therefore concludes that Defendants’ residential investment contracts constitute securities because Defendants’ investors had an expectation of profits to be derived primarily from the efforts of Defendants, and there was a “common enterprise” in which the fortunes of the investors were interwoven with Defendants.

Pursuant to Iowa Code section 502.301, no person or entity may offer or sell a security in Iowa unless the security is a federal covered security, the security, transaction, or offer is exempted from registration, or the security is registered. Pursuant to Iowa Code section 502.202(11), a mortgage/promissory note is an exempt transaction if:

- a. The note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit.
- b. A general solicitation or general advertisement of the transaction is not made.
- c. A commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this chapter as a broker-dealer or as an agent.

Iowa Code § 502.202(11).

Pursuant to Iowa Code section 502.503(1), Defendants have the burden of proving any exemption, exception, or exclusion they may claim. In the instant matter, Defendants have failed to provide any evidence showing an exemption, exception, or exclusion to the registration requirement for any of the securities they offered and/or sold. Rather, the evidence before the court indicates that the securities offered and sold by Defendants – promissory notes and investment contracts – were not registered, were not federal covered securities, and were not exempt from

registration. Regarding the mortgage exemption, the weight of evidence indicates Defendants' securities were generally solicited and that Defendants compensated themselves for each transaction. The court therefore concludes that Defendants offered and sold unregistered, non-exempt securities in violation of section 502.301.

Pursuant to Iowa Code section 502.501,

[i]t is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly: 1. To employ a device, scheme, or artifice to defraud; 2. To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in 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.

Iowa Code § 502.501.

In the instant matter, Defendants purported to sell properties to investors in which they did not possess any title or interest. Defendants did not have – and never did acquire – free and clear title to any residential property that was the subject of any investment contract they sold to investors. Defendants purported to convey title to these investors that could be resold to a subsequent buyer, when in fact Defendants had a contractual interest in the properties that could not be sold or transferred. Defendants also purported to sell their fictitious ownership interests in these properties at a marked-up price that was generally 35% higher than the price Defendants paid for the properties, and Defendants sold their ownership interests at this inflated price even though the timing of purchases was such that investor money was required even to allow Defendants to acquire their limited installment contract interest in the properties.

Further, Defendants issued promissory notes promising 10% interest, a return of principal in 27 months, and 1% bonus payoffs. Defendants failed to make many monthly interest payments on these notes, and, despite having the means to do so, Defendants failed to return investors'

principal when many of these notes matured on March 22, 2024.

The court concludes that Defendants, in violation of section 502.501, employed devices, schemes, and artifices to defraud their investors with respect to Defendants' investment contracts and promissory notes. The court also concludes that Defendants, in violation of section 502.501, made untrue statements of material fact to their investors and omitted material facts necessary to make their statements to their investors not misleading. The court further concludes that Defendants, in violation of section 502.501, engaged in acts, practices, and a course of business that operated – and continues to operate – as a fraud and deceit upon its past, present, and prospective future investors.

ORDER

In consideration of the court's findings of fact and conclusions of law, the court enters the following Order:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the relief sought in the Petition is granted. Pursuant to Iowa Code section 502.603, the Iowa Insurance Commissioner (the Commissioner) is appointed as receiver for Defendants.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the asset freeze Order entered on June 21, 2024, continues in full force and effect until the Commissioner as receiver takes control of the relevant asset, at which time the asset freeze as to that asset is dissolved and is of no further force and effect.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commissioner is authorized to determine the timing and amount of payment of all receivership expenses and to fully control the receivership funds pursuant to section 502.603 without further order of the court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the

authority granted to the Commissioner under section 502.603, the Commissioner is further authorized to take authority over any and all assets of Defendants, including any bank accounts, property purportedly owned by the companies, or other assets, including the property and assets identified in the June 21, 2024, Order and any future properties and assets belonging to Defendants discovered by the Commissioner in the future.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commissioner is further authorized to analyze whether there are assets sufficient to pay the liabilities, including restitution, to Defendants' investors, and to relinquish control of any property that does not have positive equity in it, and to sell assets that do have positive equity for purpose of providing investor restitution.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commissioner is further authorized to take authority over any insurance policies issued by any insurance company to fund liabilities of Defendants, and to change beneficiaries or ownership of such insurance policies if the Commissioner in his discretion deems it necessary.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commissioner is further authorized to consolidate Defendants' bank accounts, including any bank accounts belonging to Defendants discovered by the Commissioner in the future.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commissioner is further authorized, consistent with any applicable state laws and rules of procedure, to assume responsibility for Defendants in the civil action filed against them in Pennsylvania by SPG Capital, LLC, and in any other pending or future civil action filed against Defendants that is occurring or may occur.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants and their

owners, including Brett Timothy Immel, and any members, managers, agents, employees, successors, assigns, contractors, or others who may claim authority over contracts or otherwise, and all other persons or entities associated with them are ordered to:

- a. Take all steps needed to locate and transfer to the control of the Commissioner all assets of Defendants, including any and all properties in which Defendants purportedly hold ownership interest, and all bank accounts and/or insurance policies of Defendants. All assets shall be transferred to the Commissioner immediately upon the issuance of this Order and in no event later than 4:30 p.m. CDT on July 11, 2024;
- b. Provide to the Commissioner any and all of Defendants' records relating to their business activities, including but not limited to contracts, bank statements, and communications with any other party;
- c. Cooperate with any directive of the Commissioner issued in his capacity as receiver; and
- d. Cooperate with the Commissioner in his capacity as receiver in the ongoing civil litigation in Pennsylvania against Defendants and in any other civil litigation against Defendants that is or may become pending.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants are enjoined from engaging the following:

- a. Offering or selling unregistered, non-exempt securities;
- b. Exercising any control over assets of Defendants, and any of its property or assets in a matter inconsistent with the directives of the Commissioner as receiver;
- c. Receiving or spending any of Defendants' money from any accounts or assets, including any insurance policies, and properties any entity purportedly owns or has an interest in, inconsistent with the directives of the Commissioner as the receiver of such funds; and
- d. Taking any other actions which would interfere with the duties of the Commissioner as receiver.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a status conference shall be scheduled in this matter under a separate Order entered upon the filing of a motion for

same by Petitioner.



State of Iowa Courts

Case Number
CVCV067472

Case Title
STATE OF IOWA EX REL DOUGLAS OMMEN VS
BECKSTONE PRTRNS ETAL
OTHER ORDER

Type:

So Ordered

Jeanie Vaudt, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2024-07-08 17:39:16