

registered address of 4111 Ingersoll Ave. #1208, Des Moines, Iowa 50312. ATC filed a fictitious name resolution adopting the name Optional Health Technologies (“OHT”) as a fictitious name for ATC.

4. Kessler and ATC shall hereinafter collectively be referred to as “Respondents.”

5. From February 2022 to present, Respondents engaged in acts and practices within the state of Iowa that constitute cause for a cease and desist order, civil penalties, and other relief under Iowa Code chapter 502 and Iowa Administrative Code chapter 191—50.

II. FINDINGS OF FACT

6. Pursuant to Iowa Code § 502.611(2), Respondents appointed the securities administrator as their agent for service of process by engaging in acts, practices, or courses of business prohibited or made actionable by Iowa Code chapter 502 or a rule adopted pursuant to this chapter.

7. ATC is not, nor has it ever been, registered as a broker-dealer authorized to sell securities in the state of Iowa. ATC has never filed a claim of exemption from registration with the Division.

8. Kessler is not, nor has he ever been, registered as a securities agent or investment adviser representative in the state of Iowa. Kessler has never filed any claims of exemption from registration with the Division on behalf of Kessler.

9. Kessler is the owner and president of ATC.

10. Kessler had the power to formulate, direct, control, and be a primary participant in ATC’s acts and practices.

11. Kessler knew or should have known that ATC’s acts and practices constituted violations of Iowa law as alleged herein.

Fraudulent Investment Agreement

12. In April 2022, Iowa resident M [REDACTED] M [REDACTED] filed a complaint with the Iowa Attorney General's Office. Ms. M [REDACTED] alleged that Respondents defrauded her mother J [REDACTED] E [REDACTED], an elderly Iowa investor. Ms. M [REDACTED] alleged in her complaint that Kessler defrauded Ms. E [REDACTED] by inducing her to invest over \$80,000.00 in the ATC business for a future return profit, but the investment failed to yield any returns and Kessler kept the principal.

13. The Iowa Attorney General's Office referred the complaint to the Division, which initiated its investigation in April 2022.

14. Some time prior to February 2022, Kessler met Ms. E [REDACTED] online, and the two entered into a romantic relationship.

15. On February 3, 2022, Kessler and Ms. E [REDACTED] entered into a written financial arrangement ("Agreement") that included a number of recitals providing context for the Agreement. According to the recitals in the Agreement, Ms. E [REDACTED] asked Kessler if she could become a director and business partner in ATC's new business plan involving the purchase and resale of red light therapy technology through Miracle Light Group, distributed through OHT. In the Agreement, Respondents described OHT's red light therapy opportunity as

an incredible business plan with one of the top manufacturers in the United States to bring this technology to Professionals like Chiropractors and Physical Therapists. The company has launched in 2022 and has the full backing of DNA Vibe, the manufacturer to WHITE Label their full line of products through: ASK the Coach Inc. dba/Optimal Health Technologies.

16. The Agreement stated that Ms. E [REDACTED] was experiencing health issues and had experienced a "lapse in her otherwise secure financial future," framing the arrangement as "a simple document to let [Ms. E [REDACTED]] help understand what her goals and future intentions are concerning her retirement and improvement in health." The Agreement described this investment

as “just one of the strategies [Ms. E █████] will use to make sure her retirement years are fruitful and allow her to enjoy her life to the fullest.”

17. Per the Agreement, Ms. E █████ was to invest \$80,000.00 in ATC for the red light therapy business venture. Those funds were to be secured from a home equity loan obtained on Ms. E █████’s primary residence, a condominium in Waukee, Iowa, that Ms. E █████ owned outright without a mortgage.

18. In exchange for this investment, Ms. E █████ obtained a 30% equity interest in ATC, and Kessler agreed to pay Ms. E █████ 8% annual interest from April 4, 2022, through April 3, 2025. Kessler also agreed to contribute \$350.00 per month to the repayment of Ms. E █████’s home equity loan.

19. The Agreement further provided that should Ms. E █████ request “distributions” before April 3, 2025, Ms. E █████ would owe 50% of the monthly payment due on the home equity loan which was to be deducted from her payout of the “distributions” made to that date. Kessler made a personal guarantee to Ms. E █████ for the principal amount of the loan.

20. Prior to entering into the Agreement, Respondents did not inform Ms. E █████ that they were not registered to sell securities in Iowa, nor did they provide Ms. E █████ with financial information about ATC, including assets, liabilities, profits, losses, cash flow, and other financial data.

21. On March 25, 2022, Ms. E █████ closed on a home equity loan on her Waukee, Iowa, condominium through Mutual of Omaha Mortgage, Inc. The loan amount totaled \$100,000.00 at an interest rate of 3.990% for a loan term of 360 months. After deducting costs and fees, Ms. E █████ received \$93,818.26. Ms. E █████ then gave \$80,000.00 of those funds to Kessler. On April 4, 2022, Kessler deposited the \$80,000.00 in an ATC business checking account under his

control ending in 0156.

22. Nine days later, on April 13, 2022, Kessler transferred \$25,031.73 from the ATC checking account ending in 0156 to his personal checking account ending in 9938.

23. The day after that, April 14, 2022, Kessler transferred \$45,000.00 from the ATC checking account ending in 0156 to his personal checking account ending in 9938.

24. Notably, in March 2022, prior to receiving the investment from Ms. E [REDACTED], the total ending balance in the ATC business account 0156 was \$220.60, and the total ending balance of Kessler's 9938 personal checking account was \$49.31.

25. In April 2022, after transferring out \$70,031.73, the ending balance for the business account 0156 was \$9,630.00, and the ending balance for the personal account 9938 was \$42,127.43.

26. On June 28, 2022, Kessler wrote a check to Ms. E [REDACTED] for \$30,000.00. Kessler wrote "PAY OFF LOAN" on the memo line. Ms. E [REDACTED] deposited the check that day. Ms. E [REDACTED] believed this payment came from the initial investment she made with ATC. Kessler told Ms. E [REDACTED] he invested the remainder of the funds "in the stock market," but never provided Ms. E [REDACTED] documentation for these purported investments.

27. On August 13, 2022, Kessler bought a 2014 Chevrolet Corvette for \$52,000.00. At no time prior to the purchase of the Chevrolet Corvette did Kessler have \$52,000.00 in his personal account. Kessler stated to a Division investigator that Ms. E [REDACTED] had told him to use the money she had invested into the ATC business purchase the car.

28. Kessler never invested the \$80,000.00 from Ms. E [REDACTED] into a red light therapy business.

29. Ms. E [REDACTED] never participated in, nor had any control or managerial powers over, ACT

or OHT, or any business referenced in the Agreement, and did not perform any duties for ACT or OHT nor had any involvement in any red light therapy business. Further, Ms. E [REDACTED] had no control or managerial powers over the funds that she invested pursuant to the Agreement. Ms. E [REDACTED] expected to derive profits from this investment through Kessler's exclusive management of her funds.

30. To date, Ms. E [REDACTED] has not been repaid for the full amount of the \$80,000.00 loan. Kessler told a Division investigator that he was making a payment of \$476.84 per month towards the loan from his bank account. Kessler has paid Ms. E [REDACTED] approximately \$45,258.88 back from the initial \$80,000.00, leaving a remaining balance of \$34,741.12 on the initial loan.

Criminal Conviction

31. Following a complaint to criminal authorities by Ms. E [REDACTED]'s daughter, Kessler was arrested for theft and securities fraud regarding the investment scheme perpetrated against Ms. E [REDACTED].

32. On September 22, 2023, in the Iowa District Court for Dallas County, Kessler entered a written *Alford* plea of guilty to theft in the second degree in violation of Iowa Code §§ 714.1(1) and 714.2(2), a class D felony, and securities fraud in violation of Iowa Code § 502.501(1), a class D felony.

33. On January 26, 2024, the court entered judgment against Kessler finding him guilty on both counts. The Court sentenced Kessler to a suspended term of imprisonment for five years on both counts, to run concurrently, and two fines of \$1,025.00, one of which was suspended.

Prior Division Action

34. On June 12, 2003, Kessler entered a consent order with the Division after the Division filed a statement of charges alleging Kessler failed to register as a business opportunity seller,

failure to file business opportunity disclosure statements, failure to provide business opportunity disclosure statements and misrepresentation and omissions in the offer or sale of a business opportunity. Kessler agreed by consent order to “cease and desist from all future violations of the Iowa Business Opportunity Promotions Act and will comply with all current Iowa laws and regulations relating to the doing or transacting of business opportunities in the State of Iowa.” In the Matter of Professional Employment Planners Alan Steven Kessler Also Known As Allan Steven Kessler, 2003 WL 23699017, at *1.

III. CONCLUSIONS OF LAW

COUNT I

Sale of Unregistered Security

35. Iowa Code § 502.102(28)(d) defines “security” in relevant part, to include,

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.

(See also Iowa Administrative Code rule 191—50.1).

36. Iowa Code § 502.301 states that it is unlawful for a person to offer or sell a security in this state unless the security is a federal covered security; the security, transaction, or offer is exempted from registration; or the security is registered.

37. Courts, including the Iowa Supreme Court, have long held that the purpose of the Iowa Securities Act, Iowa Code Ch. 502, sometimes referred to as the blue sky law, is to “protect the public from deceit perpetrated in the sale of securities.” *Midwest Management Corp. v. Stephens*, 291 N.W.2d 896, 901 (Iowa 1980); *State ex rel. Miller v. Pace*, 677 N.W.2d 761, 767 (Iowa 2004); *Renewable Fuels, Inc. v. Iowa Ins. Comm'r*, 752 N.W.2d 441, 446 (Iowa Ct. App. 2008).

38. Additionally, courts have held that another primary purpose of blue sky laws is “the

suppression of fraudulent practices and the protection of the public from their own gullibility.”

State ex rel. Miller v. Pace, 677 N.W.2d at 767 (Iowa 2004); *Lolkus v. VanderWilt*, 141 N.W.2d 600, 603 (Iowa 1966).

39. The investment Respondents offered and sold to Ms. E [REDACTED] is a security under Iowa Code § 502.102(28). Ms. E [REDACTED] was motivated by the expectation of receiving profits when she purchased the security. Ms. E [REDACTED] expected to derive a profit solely or primarily from the managerial efforts of Respondents in purchasing and selling red light therapy technology.

40. Ms. E [REDACTED] had no managerial powers over her investment in ATC. She did not have control over how her investment funds was used, nor did she have the power to direct ATC to sell her investment. Ms. E [REDACTED]'s involvement was limited to providing monetary funds for Respondents to purchase, manage, and sell the red light therapy technology.

41. A common enterprise existed due to ATC obtaining money from Ms. E [REDACTED] to allegedly enable ATC to make red light therapy investment purchases and sales without any further interaction by Ms. E [REDACTED] in order for both parties to derive a profit exclusively through ATC's efforts. While the contract indicated Ms. E [REDACTED] would be a “director” and “business partner” in the OHT enterprise, Ms. E [REDACTED] in fact never performed any such duties for ATC nor had any involvement in any red light therapy business.

42. Respondents have not made any claim of exemption from registration under Iowa Code §§ 502.201, 502.202, or 502.203, nor have any filings been made with the Division's Securities Bureau for any such exemption.

43. The security described above is not registered with the state of Iowa and is not exempt from registration.

44. Respondents have not filed an exemption from registration on the basis that the security

is a federally covered security, nor is the security, in fact, a federally covered security.

45. Respondents' acts and practices violate Iowa Code § 502.301, subjecting Respondents to the imposition of a civil penalty, an order requiring Respondents to cease and desist from engaging in such acts or practices, the imposition of investigation costs, restitution, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code § 502.604.

COUNT II
Unregistered Broker-Dealer

46. Iowa Code § 502.102(4) defines "broker-dealer" in part as "a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account."

47. Iowa Code § 502.401 prohibits transacting in this state as a broker-dealer without being registered or exempt from registration.

48. ATC offered and sold securities that promised 8% returns on an annual basis in the state of Iowa.

49. ATC engaged in the business of effecting transactions in securities when Respondents sold securities to Ms. E [REDACTED], an older Iowa consumer.

50. ATC is not registered as a broker-dealer to effect transactions in securities in the state of Iowa, nor does it fall under any exemptions.

51. ATC's acts and practices violate Iowa Code § 502.401, subjecting ATC to the imposition of a civil penalty, an order requiring ATC to cease and desist from engaging in such acts or practices, the imposition of investigation costs, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code § 502.604.

COUNT III
Unregistered Securities Agent

52. Iowa Code § 502.102(2) defines an “agent” in securities 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 represents an issuer in effecting or attempting to effect purchases or sales of the issuer’s securities.”

53. Iowa Code § 502.402 prohibits an individual from acting as a securities agent in Iowa without being registered or exempt from registration.

54. Kessler worked on behalf of ATC to offer and sell securities in a red light therapy business to Ms. E [REDACTED] in the state of Iowa.

55. Kessler is not, nor has he ever been, registered as a securities agent in the state of Iowa.

56. Kessler does not meet any of the registration exemptions found in Iowa Code § 502.402(2).

57. Kessler’s acts and practices violate Iowa Code § 502.402, subjecting Kessler to the imposition of a civil penalty, an order requiring Kessler to cease and desist from engaging in such acts or practices, the imposition of investigation costs, restitution, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code § 502.604.

COUNT IV
Securities Fraud

58. Iowa Code § 502.501 states,

It 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 the statements made, in light of the circumstances under which they were made, not misleading; or

3. To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

59. Iowa Code § 502.501A(1) states:

A broker-dealer or agent shall not effect a transaction in, or induce or attempt to induce the purchase or sale of, any security in this state by means of any manipulative, deceptive, or other fraudulent scheme, device, or contrivance, fictitious quotation, or in violation of this chapter. A broker-dealer or agent shall not recommend to a customer the purchase, sale, or exchange of a security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and other relevant information known by the broker-dealer.

60. Respondents did not use any of the funds obtained from Ms. E [REDACTED] to purchase red light therapy devices.

61. Respondents have paid back Ms. E [REDACTED] \$30,000.00 of the principal amount of the investment. However, Respondents have not paid back the remaining principal amount nor any interest payments. Ms. E [REDACTED] never realized the 8% yearly return on her investment as guaranteed by Kessler.

62. In the offer, sale, or purchase of a security, Respondents omitted material facts, including, but not limited to, that Respondents were not registered to sell securities in Iowa and financial information including assets, liabilities, profits, losses, cash flow, and other financial data of ATC.

63. Respondents also made untrue statements of material fact. Respondents told Ms. E [REDACTED] that the funds were to be used to purchase and resell red light therapy technology, but Respondents never used the funds for that purpose. Respondents later told Ms. E [REDACTED] that \$50,000.00 of the funds were invested in the stock market but provided Ms. E [REDACTED] no proof of or information about any such investments.

64. Respondents acted in a fraudulent or deceitful manner by inappropriately using Ms.

E█████'s investment funds. After returning \$30,000.00 of the initial investment to Ms. E█████, Kessler purchased a new vehicle for \$52,000.00 using funds obtained from Ms. E█████ that Kessler had transferred from the ATC account to his personal bank account.

65. On January 26, 2024, Kessler was convicted of one count of securities fraud in violation of Iowa Code §§ 502.501 and 502.508(1)(a).

66. Under Iowa Code § 502.604, the Commissioner may issue a summary cease and desist order when the Commissioner determines that a person has engaged, is engaging, or is about to engage in any act or practice that is a violation of Iowa Code chapter 502.

67. Respondents' acts and practices constitute fraudulent and deceptive practices in the state of Iowa pursuant to Iowa Code §§ 502.501 and 502.501A(1), subjecting Respondents to the imposition of a civil penalty, an order requiring Respondents to cease and desist from engaging in such acts or practices, the imposition of investigation costs, restitution, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code § 502.604.

IV. POLICY REASONS

68. It is contrary to the public interest to permit Respondents to engage in the business of securities without being properly licensed.

69. It is contrary to the public interest to permit the sale of a security without the security being properly registered in the state of Iowa.

70. ATC is an active business and is engaging, or may engage, in fraudulent and deceptive practices. It is contrary to the public interest to permit Respondents to continue to use fraudulent and deceptive practices in the state of Iowa.

71. In addition to creating or facilitating consumer deception and confusion, Respondents'

use of unfair methods and deceptive acts in conducting the business of securities places legitimate broker-dealers and agents who do not use such methods, acts, and practices at a competitive disadvantage *vis a vis* Respondents.

V. ORDER

IT IS THEREFORE ORDERED that, pursuant to the powers granted to the Commissioner of Insurance by Iowa Code chapter 502:

- A. Respondents and any employees, agents, representatives, or any other person working on Respondents' behalf, shall, pursuant to Iowa Code § 502.604, immediately cease and desist offering or selling a security in this state unless or until the security is properly registered by the Division or the Division determines that the offer is exempt from registration in this state;
- B. Respondents and any employees, agents, representatives, or any other person working on Respondents' behalf, shall, pursuant to Iowa Code § 502.604, immediately cease and desist acting as broker-dealers or securities agents in this state unless and until they are properly registered by the Division to do so or the Division determines that the person is exempt from registration in this state;
- C. Respondents and any employees, agents, representatives, or any other person working on Respondents' behalf, shall, pursuant to Iowa Code § 502.604, immediately cease and desist engaging in any prohibited conduct, including but not limited to, engaging in any fraudulent, deceptive, manipulative, or misleading conduct during communications with current or prospective investment clients;
- D. Restitution in the amount of \$34,741.12 is assessed, made payable to the Iowa Insurance Division, to be credited to the Iowa Settlement Fund, to be distributed to the

impacted consumer; and

E. This Order may be enforced pursuant to Iowa Code chapters 502 and 505, and additionally, by any collection remedies available to the State of Iowa Department of Revenue for unpaid ordered monetary amounts.

SO ORDERED on the 22nd day of January, 2025.



DOUGLAS M. OMMEN
Iowa Insurance Commissioner

Copies to:

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askessler7711@gmail.com

Ask the Coach Inc.
d/b/a Optimal Health Technologies
4111 Ingersoll Ave. #1208
Des Moines, IA 50312
and
1936 S. Warrior Lane
Waukee, IA 50263

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause, or their attorney, at their respective addresses disclosed on the pleadings on January 22, 2025.

RESPONDENTS

By: First Class Mail () Personal Service
 Restricted certified mail, return receipt Email - *Kessler only*
() Certified mail, return receipt () _____

Signature: Brooke Hohn
Brooke Hohn

NOTICE OF RIGHT TO REQUEST HEARING

YOU ARE NOTIFIED that you may request a contested case proceeding and a hearing on this matter within thirty (30) days from the date that the order is issued according to Iowa Code § 507A.10. This request must be in writing and filed to the attention of the Enforcement Bureau: enforcement.filings@iid.iowa.gov.

If requested, a notice of the hearing shall be prepared by the Division and shall be issued no later than thirty (30) days from the date of receipt of a timely request for a contested case proceeding and hearing. The resulting hearing will be held in accordance with Iowa Administrative Code chapter 191—3.

NOTICE OF FINAL ORDER AND FAILURE TO REQUEST A HEARING

If you fail to request a hearing within thirty (30) days of the date of this Cease and Desist Order, the Order shall become final by operation of law and shall be enforceable by the Commissioner of Insurance in an administrative or court proceeding.

NOTICE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES AND RIGHT TO SEEK JUDICIAL REVIEW

The failure to request a hearing may constitute a failure to exhaust your administrative remedies and limit the issues subject to judicial review. You may seek judicial review of this Order pursuant to Iowa Code chapter 17A after the Order becomes final.

NOTICE OF PENALTIES FOR VIOLATION OF THIS ORDER

YOU ARE NOTIFIED that a person or insurer who violates this Order shall be deemed in contempt of this Order. The Commissioner may petition the district court to hold a hearing to enforce the order as certified by the Commissioner. The district court may assess a civil penalty against you and may issue further orders as it deems appropriate.