BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE

OF THE STATE OF IDAHO

STATE OF IDAHO, Department of Finance, Securities Bureau,	)	Docket No. 2011-7-02
Complainant,	)	**CONSENT ORDER TO CEASE AND DESIST**
vs.	)	
KARL KENT SPENCER, dba Yes Funding,	)	
Respondent.	)	

The Director of the Department of Finance ("Director") has instituted an investigation into the conduct of KARL KENT SPENCER ("Spencer"). 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 Director and Respondent have agreed to resolve this matter without a public hearing. Therefore, the Director deems it appropriate and in the public interest that this Consent Order to Cease and Desist ("Consent Order") be entered, and the Respondent consents to the entry of this Consent Order.

RESPONDENT

1. Spencer has resided at 4430 S Trailridge Ave., Boise, ID since August 2002 and he has worked in the mortgage industry for most of the past decade. From August 1998 until July 2002, he worked for Alliance Mortgage in Eugene, Oregon. After returning to Boise, he worked as an independent sales consultant until May 2005. From May 2005 forward he has worked as a loan originator for various mortgage companies in Boise, including Source Mortgage, Statehouse Mortgage and Idaho First Mortgage. On March 2, 2010, Spencer registered Yes Funding as an assumed business name with the

Idaho Secretary of State and he is currently conducting business as a commercial loan originator and hard money lender through Yes Funding.

Background

2. On October 13, 2005, Spencer filed for Chapter 7 bankruptcy protection in the US Bankruptcy Court, District of Idaho, case no. 05-04923-JDP. Spencer was granted a general discharge on January 30, 2006.

3. On December 8, 2010, Spencer consented to the entry of a Cease and Desist Order by the State of Oregon. The Order found that Spencer violated provisions of the Oregon securities law and the Oregon mortgage lender law. The Order found that from 2000 through 2002, Spencer: a) sold unregistered securities, b) transacted business as a securities salesperson without a license, c) omitted to disclose material facts to Oregon investors and d) made untrue statements of material fact to Oregon investors.

4. Oregon's Order describes a scheme where Spencer, while working for an Oregon mortgage lender, solicited his fellow mortgage loan originators and some of his mortgage clients to invest in his company - Kirby of Greater Oregon. In general terms, the Order claims that Spencer told investors that he would use their money to finance the purchase of Kirby vacuum cleaners for local door-to-door Kirby salespersons thereby allowing the local salespersons to purchase vacuum cleaners at a volume discount. Due to the volume purchases, the Kirby salesperson could then make more profit on their vacuum cleaner sales and pay interest on the loan to Spencer who would, in turn, make interest payments on the money placed with him by the investors. Spencer issued promissory notes to the investors who were promised returns varying from 8% to 15% on their investments.

5. The Order states that in reality Spencer did not use investor money to purchase Kirby vacuum cleaners nor did he make arrangements for the purchase and sale of Kirby vacuum cleaners or have any connection with The Kirby Company - the manufacturer of Kirby vacuum cleaners, or the local Kirby salespeople. The Order claims that some

investors received payments from Spencer but that the payments were made from Spencer's own pocket or were from funds given to Spencer by other investors.

6. While neither admitting nor denying the findings, Spencer agreed to cease and desist from violating any provision of the Oregon securities law and the Oregon mortgage lender law and agreed to be barred from participation in several aspects of the financial services industries for the protection of the investing public. Additionally, Spencer agreed to pay the sum of $65,000.00 (sixty-five thousand dollars) to the State of Oregon, as restitution for the unlawful sale of unregistered securities to five Oregon investors.

7. Spencer has not made any payments as agreed and has failed to comply with the terms of the Oregon Cease and Desist Order.

8. As described below, Spencer has continued to engage in schemes to defraud investors since moving to Idaho.

FINDINGS OF VIOLATIONS

Investor JH

9. On or about December 1, 2008, JH invested $3,000.00 with Spencer. JH gave Spencer a personal check and in return received a hand written promissory note on Idaho First Mortgage letterhead in which Spencer agreed to repay, by December 20, 2008, the principal balance plus 12% interest and a 5% loan fee. JH invested an additional $3,000 with Spencer on December 10, 2008. Again, JH gave Spencer a personal check and received Spencer's written promise to repay the principal balance plus 12% interest and an eight point loan fee by January 5, 2009. Spencer told JH that the first two investments would be backed by real estate and would be used for bridge financing. Additionally, Spencer bolstered JH's confidence in the investment by telling JH that he had a million dollars in a UBS brokerage account. Based on these representations, JH invested an additional $1,500.00 in cash with Spencer on December 15, 2008. The investment was evidenced with a promissory note signed by Spencer in which he agreed to repay $1,600.00 to JH on or before December 23, 2008. Spencer told JH the $1,500.00

would be placed with the owner of the local McDonald's restaurants for the purpose of taking the owner's wife on a surprise cruise. JH invested a total of $7,500 with Spencer.

10. JH understood that his investment with Spencer was a passive investment and that he would not have an active role in managing the use of the investment funds or Spencer's business activities.

11. Spencer has not repaid JH any money but on May 5, 2011, Spencer issued a new promissory note to JH promising to repay by December 31, 2011, $13,550, which represents the entire amount owed to JH.

12. Spencer did not tell JH that he filed for bankruptcy in 2005 or that he was going to use investor money to pay for his own living expenses. Had JH known these facts, he would not have invested with Spencer.

Investor ML

13. On February 11, 2011, ML gave Spencer an official check for $3,000 with the understanding that Spencer would use the money for a bridge loan. Spencer represented that he had a commercial loan client that had secured a long-term loan to purchase a restaurant in Eagle, Idaho, and the client needed a bridge loan for short-term cash needs. Spencer provided ML with a hand written promissory note written on YES Funding letterhead in which he agreed to pay ML the principal balance plus an eight point loan fee or $240.00 and 12% interest on or before February 22, 2011.

14. ML understood that his investment with Spencer was a passive investment and that he would not have an active role in managing the use of the investment funds or Spencer's business activities.

15. On February 15, 2011, Spencer emailed ML and solicited another investment opportunity with a maturity date of March 1, 2011. ML declined to invest additional funds with Spencer.

16. Spencer did not repay ML according to the terms of the promissory note but did pay ML $3,000 cash on March 10, 2011.

17. Spencer did not tell ML that: a) he filed bankruptcy in 2005 b) that he was going to use investor funds to pay for his own living expenses, or c) that he was ordered to cease and desist from conducting any securities or mortgage business in the State of Oregon. Had ML known these facts, he would not have invested with Spencer.

Violations

18. The Director has jurisdiction over this matter pursuant to the Act.

19. Spencer offered and sold securities in the form of investment contracts or notes within the meaning of Idaho Code § 30-14-102 (28) of the Idaho Uniform Securities Act (2004).

20. Spencer offered and sold unregistered securities to Idaho residents and at no time relevant to this matter were the securities offered and sold by Spencer registered in Idaho pursuant to Idaho Code § 30-14-301.

21. Spencer transacted business in Idaho as a securities salesperson by selling securities to Idaho residents and at no time relevant to this matter was Spencer licensed to sell securities in Idaho pursuant to Idaho Code § 30-14-402.

22. In connection with the offer or sale of securities, Spencer omitted to advise investors of material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading in violation of the antifraud provisions of the Idaho Uniform Securities Act (2004). The omissions include, but are not limited to, the following:

a) Failing to advise investors that he had filed Chapter 7 bankruptcy in 2005

b) Failing to advise investors that he would be using their investment funds to pay for his own personal living expenses c) Failing to advise investors that he had been ordered to cease and desist from selling

securities in Oregon and that he owed $65,000 to investors pursuant to the Oregon Order.

23. Respondent has violated Idaho Code § 30-14-502 (2).

CEASE AND DESIST ORDER

NOW, THEREFORE, PURSUANT TO IDAHO CODE § 30-14-604(a) (1), IT IS HEREBY ORDERED THAT KARL KENT SPENCER IMMEDIATELY CEASE AND DESIST FROM:

A. Violating the Act, including the cessation of selling or accepting funds for any investment related activity as described above or any other investments.

ACKNOWLEDGMENT, AGREEMENT AND CONSENT BY RESPONDENT

1. The Respondent consents to the entry of this Order.

2. The Respondent admits the violations alleged by the Complainant in this Order.

4. Respondent agrees to not now, or in the future, provide any investment advice or sell securities in or from Idaho.

5. In conjunction with this Order, Respondent agrees to fully cooperate with the Complainant in any further related investigation or enforcement action.

6. Respondent agrees to repay the outstanding note balances to JH and all other promissory note investors prior to January 1, 2012.

7. Respondent waives notice and opportunity for a hearing under Idaho Code § 30-14-604 (b) and (c), and under the contested case provisions of the Idaho Administrative Procedures Act, Idaho Code § 67-5240 *et. seq.*

/
/
/
/
/
/
/

AGREED TO and ACKNOWLEDGED this 20 day of June, 2011.

KARL KENT SPENCER

Dated this 27th day of June, 2011.

STATE OF IDAHO
DEPARTMENT OF FINANCE

MARILYN CHASTAIN
Securities Bureau Chief

IT IS SO ORDERED.

Dated this 27th day of June, 2011.

STATE OF IDAHO
DEPARTMENT OF FINANCE

GAVIN M. GEE, Director

DEPARTMENT OF FINANCE DIRECTOR SEAL STATE OF IDAHO