STATE OF IDAHO
COUNTY OF KOOTENAI } SS
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CLERK DISTRICT COURT

DEPUTY

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR KOOTENAI COUNTY

STATE OF IDAHO, DEPARTMENT OF FINANCE, SECURITIES BUREAU, Plaintiff, vs. MORTGAGE UNDERWRITERS, LLC, a/k/a MORTGAGE UNDERWRITER, LLC, formerly an Idaho limited liability company d/b/a NEVERLOSEAGAIN.COM; and ROBERT KEVIN MYERS, an individual, Defendants.	Case No. CV03-1994 **VERIFIED COMPLAINT** Fee Category: Exempt

COMES NOW the State of Idaho, Department of Finance, Securities Bureau, Gavin M. Gee, Director (Department), by and through its counsel, A. René Martin, Deputy Attorney General, and upon information and belief complains and alleges as follows:

ASSIGNED TO
JUDGE MITCHELL

1.

This action is brought pursuant to the Idaho Securities Act, Title 30, Chapter 14, Idaho Code (the Act), and in particular Idaho Code § 30-1442, wherein the Director is authorized to bring actions seeking injunctive and other relief against defendants who have either violated or are about to violate provisions of the Act or any rule promulgated thereunder.

2.

The acts and practices alleged herein comprising violations of law by the above-named Defendants occurred in the conduct of trade and commerce in Kootenai County, Idaho, and elsewhere in the state of Idaho.

DEFENDANTS

(ROBERT KEVIN MYERS)

3.

Robert Kevin Myers (Myers), Defendant herein, at all times relevant hereto was an Idaho resident. Myers is married to Laurel Myers. Their last known address is 2409 E. Woodstone Drive, Hayden, Idaho 83835. Myers has never been registered with the Department as a broker-dealer or salesman under the Act.

4.

From approximately 1986 to 2001, Myers worked primarily in the mortgage brokering or mortgage banking businesses in Utah and Idaho. In 1996, Myers was president and owner of Nationwide Mortgage, Inc., a mortgage brokerage business that was disciplined by the Department in 1996 for engaging in unlicensed activity in violation of the Idaho Residential Mortgage Practices Act, Idaho Code § 26-3101 *et seq.* Nationwide Mortgage, Inc., was later

licensed with the Department as a mortgage broker under that Act beginning September 6, 1996. Nationwide Mortgage, Inc.'s mortgage broker license was withdrawn on or about November 19, 1997. After the termination of the mortgage brokerage license of Nationwide Mortgage, Inc., Myers worked as a mortgage broker for other Idaho mortgage brokerage businesses, until at least sometime in 2001.

5.

Myers filed at least six bankruptcy petitions during the time period between December of 1986 and February of 1999, receiving at least three bankruptcy discharges during that time period.

(MORTGAGE UNDERWRITERS, LLC)

6.

In 1998, Myers formed Defendant Mortgage Underwriters, LLC, sometimes known as Mortgage Underwriter, LLC (MU). MU was registered as a limited liability company with the Idaho Secretary of State's Office on August 6, 1998. Myers was president and manager of MU. MU was purportedly in the business of providing mortgage brokers with a service for accessing mortgage loans through an Internet site, under the business name "NeverLoseAgain.com." MU was to receive revenues from mortgage brokers' annual fees for subscribing to such service as well as from user fees. Interests in MU have never been registered with the Department as a security for offer or sale to Idaho residents.

7.

When MU was formed in 1998, Myers, along with his wife Laurel Myers, purportedly owned approximately 87% of MU, with the remainder of the company being owned by three other individuals.

FACTS

8.

From approximately 1998 through January of 2001, Myers offered and sold "shares" of his and his wife's interests in MU to Idaho investors and investors residing elsewhere, constituting the offer and sale of securities in the form of investment contracts. Myers represented to investors that their investment monies would be used for the business purposes of MU. In some cases, Myers awarded "shares" in MU to investors who recruited additional investors to purchase "shares" in MU. Myers represented to some investors that purchasing a "share" in MU required an investment of $12,000.

9.

Myers was not registered with the Department as a broker-dealer or securities salesman when the offer and sale of securities referenced in ¶ 8 above took place, nor were such securities registered with the Department. During that time period, Myers raised a total of approximately $528,500 from various investors who purchased "shares" or partial "shares" of his interest in MU, with approximately $244,000 of that total constituting the investment monies of Idaho investors.

10.

In offering and selling the securities to Idaho investors referenced in ¶ 8 above, Myers represented to such investors that the investors' money would be used to further MU's business interests. In fact, Myers used all or a portion of such monies for his and/or his wife's personal expenses, including making charitable contributions to their church, paying their monthly mortgage payments, and paying their personal credit card bills and other personal expenses. In selling such securities to Idaho investors, Myers failed to provide to investors material information, including the fact that his mortgage brokering business, Nationwide Mortgage, Inc., had been disciplined by the Idaho Department of Finance, and that he had previously filed bankruptcy petitions on numerous occasions.

11.

MU failed to generate adequate revenue and the business failed in approximately 2001. The investors in MU, including numerous Idaho investors, lost all of their investment monies.

(VICTIMS R.P. AND M.P.)

12.

R.P. and M.P. are a married couple who resided in Coeur d'Alene, Idaho at all times relevant hereto. On or about February 14, 2000, Myers offered and sold to R.P. and M.P a security in the amount of at least $6,000, purportedly as an investment in MU. Myers told R.P. and M.P. that such funds would be invested in MU for the purposes of a reverse merger for MU.

13.

In fact, Myers misappropriated and converted all or a portion of the investment monies of R.P. and M.P. to his own use.

(VICTIMS C.A. AND D.A.)

14.

C.A. and D.A. are a married couple who resided in Coeur d'Alene, Idaho at all times relevant hereto. On or about February 15, 2000, Myers offered and sold to C.A. and D.A. a security in the amount of at least $24,000, purportedly as an investment in MU. C.A. and D.A. invested an additional $5,000 in MU by giving a check in that amount to Myers on or about June 23, 2000. The total investment in MU by C.A. and D.A. was $29,000.

15.

In fact, Myers misappropriated and converted all or a portion of the investment monies of C.A. and D.A. to his own use.

(VICTIMS R.D. AND C.D.)

16.

R.D. and C.D. are a married couple who resided in Sandpoint, Idaho during all times relevant hereto. On or about February 14, 2000 and again on May 15, 2000, Myers offered and sold to R.D. and C.D. a security in the total amount of at least $12,000, purportedly as an investment in MU.

17.

In fact, Myers misappropriated and converted all or a portion of the investment monies of R.D. and C.D. to his own use.

(VICTIMS S.B. AND P.B.)

18.

S.B. and P.B. are a married couple who resided in Coeur d'Alene, Idaho during all times relevant hereto. On or about June 12, 1998, Myers offered and sold to S.B. and P.B. a security in the amount of at least $15,000, purportedly as an investment in MU.

19.

In fact, Myers misappropriated all or a portion of the investment monies of S.B. and P.B. to his own use.

(VICTIMS UNNAMED OR AS YET UNKNOWN)

20.

During the time period between 1998 and at least 2001, Myers offered and sold securities to other Idaho investors who are not named here, in the total amount of at least $182,000, in addition to the amounts set forth in paragraphs 1 through 19 above, most or all of which monies Myers misappropriated and converted to his own use. Further, during the same time period, Myers offered and sold securities to Idaho investors who may not yet have been identified, in amounts not yet known, and misappropriated and converted all or a portion of such investment monies to his own use, all of which will be proven at trial.

COUNT ONE: FAILURE TO REGISTER SECURITIES

21.

The allegations set forth in paragraphs 1 through 20 above are fully incorporated herein by this reference.

22.

Beginning on a date uncertain, but at least since January 1, 1998, the Defendants sold or offered for sale, either directly or indirectly, or aided and abetted in the offer or sale, securities in the form of investment contracts to Idaho residents and others.

23.

The securities offered or sold by the Defendants were not registered with the Department as required by Idaho Code § 30-1416, and were not exempt from such requirement.

24.

Defendants' failure to register such securities constitutes a violation of Idaho Code § 30-1416.

COUNT TWO: FAILURE TO REGISTER AS A BROKER-DEALER OR SALESMAN.

25.

The allegations set forth in paragraphs 1 through 24 above are fully incorporated herein by this reference.

26.

At all times relevant to this complaint, the Defendants were not registered by the Department as a broker-dealer or salesman to offer for sale securities, as required by Idaho Code § 30-1406. Therefore, the Defendants have either transacted business in the state of Idaho as a broker-dealer or salesman without having been properly registered by the Department, or have acted as broker-dealers or issuers, and employed a salesman who was not registered under the Act.

27.

Myers' failure to register as a broker-dealer or salesman under the Act constitutes a violation of Idaho Code § 30-1406.

COUNT THREE: VIOLATIONS OF THE ANTI-FRAUD PROVISIONS OF THE ACT / OMISSIONS

28.

The allegations set forth in paragraphs 1 through 27 above are fully incorporated herein by this reference.

29.

The Defendants violated Idaho Code § 30-1403(2), an anti-fraud provision of the Act, in that in connection with the offer, sale or purchase of a security, directly or indirectly, they omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The Defendants' omissions include, but are not limited to, the following:

(A) Failing to disclose to offerees and/or investors that the securities offered and sold were not registered with the Department, as required by the Act;

(B) Failing to disclose to offerees and/or investors that the Defendants were not registered with the Department as broker-dealers or salesmen, as required by the Act;

(C) Failing to disclose to offerees and/or investors Myers' history of bankruptcy filings and bankruptcy discharges;

(D) Failing to disclose to offerees and/or investors that Myers had previously owned a mortgage brokerage company that had been disciplined by the Department;

(E) Failing to disclose to offerees and/or investors that their investment monies would be used in whole or in part to pay Myers' and/or his wife's personal expenses and salaries;

(F) Failing to disclose to offerees and/or investors the true financial circumstances of MU.

COUNT FOUR: VIOLATIONS OF THE ANTI-FRAUD PROVISIONS OF THE ACT / MISREPRESENTATIONS

30.

The allegations set forth in paragraphs 1 through 29 above are fully incorporated herein by this reference.

31.

The Defendants violated Idaho Code § 30-1403(2), an anti-fraud provision of the Act, in that they made untrue statements of material fact in connection with the offer and sale of securities in Idaho. The Defendants' misrepresentations include, but are not limited to, the following:

(A) The Defendants represented to Idaho offerees and investors that their investment monies would be used to fund a reverse merger, when in fact such funds were used to pay Myers' and/or his wife's personal expenses and salaries;

(B) The Defendants represented to Idaho offerees and investors that MU's website was generating a large number of "hits," when in fact most of such "hits" were the result of Myers' directing his secretary to generate hits for the website;

(C) The Defendants misrepresented MU's profitability by providing offerees and investors with unrealistic pro forma earning projections;

(D) The Defendants misrepresented to some offerees and investors that neither Myers nor his wife would be paid salaries by MU.

COUNT FIVE: VIOLATION OF THE ANTI-FRAUD PROVISIONS OF THE ACT / ACTS, PRACTICES, COURSES OF BUSINESS

32.

The allegations set forth in paragraphs 1 through 31 above are fully incorporated herein by this reference.

33.

The Defendants violated Idaho Code § 39-1403(3), an anti-fraud provision of the Act, in that in the course of offering or selling securities in Idaho or aiding and abetting in the same, they engaged in acts, practices, and courses of business which operated as a fraud or deceit upon other persons. The Defendants' acts, practices, and courses of business which operated as a fraud or deceit include, but are not limited to, the pattern of misappropriation and conversion of investment funds to Myers' own use, and the pattern of omissions and misrepresentations referenced in Counts One through Four above.

PRAYER FOR RELIEF

WHEREFORE, the Department prays for a Judgment in favor of the Department and against the Defendants as follows:

(1) That the Defendants be adjudged to have violated the Idaho Securities Act as alleged in the Verified Complaint filed herein;

(2) That the Defendants be permanently enjoined from engaging in any acts, practices, courses of business, omissions, and misrepresentations which would constitute violations of the Idaho Securities Act, Title 30, Chapter 14, Idaho Code, as authorized by Idaho Code § 30-1442(3), and in particular, that they be permanently enjoined from:

(A) Selling or offering for sale nonexempt securities in any form in the state of Idaho until such time as the securities have been registered with the Department in accordance with Title 30, Chapter 14, Idaho Code;

(B) Selling or offering for sale nonexempt securities in any form in the state of Idaho until such time as the Defendants have registered as broker-dealers or salesmen for a broker-dealer or issuer with the Department, in accordance with Title 30, Chapter 14, Idaho Code;

(C) While engaged in or in connection with the offer, sale or purchase of any security:

(1) Employing any device, scheme or artifice to defraud any investors or prospective investors;

(2) Making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in

light of the circumstances under which they are made, not misleading;

(3) Engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person;

(4) Aiding, abetting, counseling, inducing or cause any other person to engage in any of the types of conduct described in paragraphs (C)(1), (C)(2), or (C)(3) above.

(3) That the Defendants be prohibited from claiming the availability of, using, or offering or selling securities under any exemption under the Act without receiving the prior written consent of the Director;

(4) That the Defendants be ordered to restore to each person in interest any consideration which may have been acquired or transferred in violation of the Idaho Securities Act, and that the court award a money judgment in the amount of at least $244,000, or such amount as determined by the proof, as restitution for the Idaho victims of the Defendants' violations of the Act, pursuant to Idaho Code § 30-1442(3)(a);

(5) That the Defendants be ordered to pay a civil penalty to the Department in the amount of $10,000 for each violation of the Act, pursuant to Idaho Code § 30-1442(3)(b);

(6) That the Department be awarded attorney fees and costs incurred in the preparation and prosecution of this action and reimbursement for investigative efforts, pursuant to Idaho Code § 30-1442(3)(c). If judgment is taken by default herein, that $10,000 is a reasonable sum for the same;

(7) For such further relief as this Court may deem equitable and just under the circumstances.

DATED this 14th day of March, 2003.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

A. RENÉ MARTIN
Deputy Attorney General