

**ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF SOUTH CAROLINA**

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| IN THE MATTER OF: |) | |
| |) | |
| Richard Gary Abend (CRD No. 4689658), |) | CONSENT ORDER Matter No. 20201773 |
| |) | |
| |) | |
| Respondent. |) | |
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I. PRELIMINARY STATEMENT

Pursuant to the authority granted to the Securities Commissioner of South Carolina (the “Securities Commissioner”) under the South Carolina Uniform Securities Act of 2005, S.C. Code Ann. § 35-1-101, *et seq.* (the “Act”), and delegated to the Securities Division of the Office of the Attorney General (the “Division”) by the Securities Commissioner, the Division conducted an investigation into the securities-related activities of Richard Gary Abend (CRD No. 4689658) (the “Respondent”), and in connection with its investigation, the Division has determined that Respondent violated the Act.

Without admitting or denying the findings of fact and conclusions of law set forth below, except as to the jurisdiction of the Securities Commissioner over the Respondent and the subject matter of this proceeding, which are admitted, the Respondent, having been advised of his right to counsel, expressly consents to the entry of this Consent Order, which resolves the allegations against him set forth herein. The Respondent elects to waive permanently any right to a hearing and appeal under S.C. Code Ann. § 35-1-609, with respect to this Consent Order.

II. JURISDICTION

1. The Securities Commissioner has jurisdiction over this matter pursuant to S.C. Code Ann. § 35-1-601(a).

III. RESPONDENT

2. The Respondent was, between October of 2016 and November of 2016 (the “Relevant Time Period”), a resident of the State of South Carolina. The Respondent was, during the Relevant Time Period, registered with the Division as an investment adviser representative. The Respondent has been registered as an investment adviser representative with the Division since August of 2015. Prior to that time, between 2003 and 2004 and again between 2006 and 2007, the Respondent was registered with the Division as an agent affiliated with a broker-dealer.

3. The Respondent is also registered with the South Carolina Department of Insurance as an insurance producer affiliated with Greenville Wealth Management (“GWM”).

IV. FINDINGS OF FACT

6. Future Income Payments, LLC (“FIP”) was a Delaware limited liability company with a registered agent, Agents and Corporations, Inc., located at 1201 Orange Street, Suite 600, One Commerce Center, Wilmington, Delaware 19801.

7. Scott Kohn was the sole owner and manager of FIP.

8. FIP’s business model revolved around the sourcing and sale of retirees’ recurring income from pension benefits.

9. FIP sought out pensioners who were in need of additional income (the “Pensioners”). FIP would offer Pensioners a lump sum of money or a loan for an assignment of all or a portion of their pensions for a set period of time.

10. In order to raise the money to purchase the pension streams, FIP offered the income from the pension streams (the “FIP Product”) to investors seeking consistent returns for their investments (the “FIP Investors”).

11. FIP was able to locate large numbers of FIP Investors through a network of insurance agents and investment adviser representatives (the “FIP Agents”).

12. FIP compensated the FIP Agents with transaction-based compensation.

13. Various consumer protection and regulatory agencies investigated and brought lawsuits against FIP in response to its scheme. *See, e.g., Commonwealth of Virginia Ex Rel. Mark R. Herring, Attorney General v. Future Income Payments, LLC, et al.*, Civil Action No. CL18000527-00 (Hampton County, March 6, 2018); *Illinois v. Future Income Payments, LLC*, No. 2018CH000142 (7th Judicial Circuit Sangamon County, April 18, 2018); *State of Minn. v. Future Income Payments, LLC et al.*, No. 27-CV-17-12579 (City. of Hennepin Dist. Ct., Sep. 26, 2017); and *In re Future Income Payments, LLC* (N.Y. Dept. Fin. Serv. Oct. 20, 2016).

14. By April 2018, FIP could not sustain the scheme, and the scheme collapsed. The FIP Investors ceased receiving the income from the FIP Product.

15. On March 12, 2019, Kohn and FIP were indicted by a federal grand jury in the District of South Carolina. *United States v. Scott A. Kohn and Future Income Payments, LLC* (6:19-cr-000239-CRI, March 12, 2019). Among various charges, the indictment alleged that “[a]s state regulators began prohibiting FIP from operating in various states and pensioners struggled under a usurious payment regime imposed on them, FIP diverted new investor funds flowing into the business to fund payments to earlier investors to keep the scheme and artifice operational. In this manner, the investment program operated by FIP was a ‘Ponzi scheme[,]’” and “[t]he operation of the scheme and artifice surrounding FIP allowed [Kohn] to live a lavish lifestyle.”

16. On April 4, 2019, the Division published an Order to Cease and Desist against Scott Kohn and FIP.¹

17. After spending six months as a fugitive, Scott Kohn was captured by U.S. Marshalls on a San Diego, California beach on September 21, 2019.² He has been charged with conspiracy to commit wire fraud and mail fraud. He is currently awaiting trial.

18. During the Relevant Time Period, the Respondent operated as a FIP Agent in South Carolina.

19. During the Relevant Time Period, the Respondent sold a FIP Product to a South Carolina FIP Investor for \$141,000. Respondent received approximately \$9,870 in transaction based compensation (the “Commissions”).

20. During the Relevant Time Period, Respondent was not registered with the Division as an agent or exempt from such registration.

21. The Respondent, due to his experience, his registration with the Division as an investment adviser representative, and previous registration as an agent, either knew or should have known that it was not lawful to sell unregistered non-exempt securities in South Carolina.

22. The Respondent, due to his experience, his registration with the Division as an investment adviser representative, and previous registration as an agent, either knew or should have known that it was not lawful to sell securities, registered or otherwise, for transaction based compensation in South Carolina without being registered as an agent.

¹ In the matter of Future Income Payments, LLC; FIP, LLC; and Scott A. Kohn – Order to Cease and Desist (4/4/2019), <http://2hsvz0l74ah31vgcm16peuy12tz.wpengine.netdna-cdn.com/wp-content/uploads/2019/04/Order-to-Cease-and-Desist-4.5-01935944xD2C78.pdf>

² Brown, Kirk. “[U.S.] Marshals capture Scott Kohn, accused in Greenville of preying on veterans and investors.” *The Greenville News*, 23 Sept. 2019, <https://www.greenvilleonline.com/story/news/local/2019/09/23/marshals-capture-scott-kohn-accused-sc-preying-veterans/2418273001/>. Accessed 1 July 2020.

V. CONCLUSIONS OF LAW

23. The FIP Product is a security, pursuant to S.C. Code Ann. § 35-1-102(29).
24. The FIP Product was neither registered with the Division, nor exempt from registration, pursuant to S.C. Code Ann. § 35-1-201.
25. The Respondent offered and sold a security, which was neither registered with the Division, nor exempt from such registration, in violation of S.C. Code Ann. § 35-1-301.
26. Offering or selling a security that is neither registered with the Division nor exempt from such registration constitutes a willful failure to comply with the Act, pursuant to S.C. Code Ann. § 35-1-412(d)(2).
27. The Respondent acted as an agent in connection with the offer and sale of a security in South Carolina, as defined by S.C. Code Ann. § 35-1-102(2).
28. The Respondent was neither registered as an agent with the Division, nor exempt from such registration in violation of S.C. Code Ann. § 35-1-402(a).
29. Acting as an agent in connection with the offer and sale of a security, without being registered with the Division as such or exempt from registration, constitutes a willful failure to comply with the Act, pursuant to S.C. Code Ann. § 35-1-412(d)(2).
30. The Respondent's two violations of the Act provides the basis for this order.
31. This order is appropriate and in the public interest, pursuant to the Act.

VI. ORDER

NOW THEREFORE, pursuant to S.C. Code Ann. § 35-1-604(a)(1), it is hereby **ORDERED** that:

- a. The Respondent and every successor, affiliate, control person, agent, servant, and employee of the Respondent, and every entity owned, operated, or indirectly or directly controlled by or on behalf of the Respondent, shall **CEASE AND DESIST** from transacting securities business in this State in violation of the Act; and
- b. The Respondent shall pay a civil penalty in the amount of twenty thousand dollars (\$20,000.00).
- c. The Respondent has disgorged the Commissions to the investor. Because of the Respondent's remedial efforts, the civil penalty ordered in section (b), *supra*, is hereby **SUSPENDED**.
- d. The Respondent expressly consents and agrees that his registration with the Division as an investment adviser representative is hereby **REVOKED** and that he is **PERMANENTLY BARRED** from participating in any aspect of the securities industry in or from the State of South Carolina.

Upon execution by the Securities Commissioner, this Consent Order resolves Matter Number 20201773 as to the Respondent.

As part of this Consent Order, the Respondent agrees that he: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in this Consent Order or creating the impression that this Consent Order is without factual basis; and (ii) will not make or permit to be made any public statement to the effect that the Respondent does not admit the allegations, without also stating that the Respondent does not deny the allegations. If the Respondent breaches this agreement, the Securities Commissioner may vacate

this Consent Order. Nothing in this paragraph affects the Respondent's: (i) testimonial obligations or (ii) right to take differing legal or factual positions in litigation or other legal proceedings.

This Consent Order should not be interpreted to waive any (i) criminal cause of action, (ii) private cause of action that may have accrued to investors as a result of the activities detailed in this Consent Order, or (iii) other causes of action that may result from activities of the Respondent not detailed in this Consent Order.

ENTERED, this the 25th day of AUGUST, 2021.

12TH NOVEMBER, 2021

AW

ALAN WILSON
SECURITIES COMMISSIONER

By: Alan Wilson
ALAN WILSON
Securities Commissioner
State of South Carolina

Respondent

Richard Gary Abend
Richard Gary Abend

Date: ~~8-25-2021~~ AW
11-12-2021

South Carolina Attorney General's Office Securities Division

By: Jonathan B. Williams
Jonathan B. Williams
Assistant Deputy Attorney General

Date: 11/15/21