

ADMINISTRATIVE PROCEEDING

BEFORE THE

SECURITIES COMMISSIONER OF SOUTH CAROLINA

IN THE MATTER OF:)	
)	
David Michael Burke and)	ORDER TO CEASE AND DESIST
Komak Investments, LLC,)	
)	File No. 15008
)	
Respondents.)	

WHEREAS, the Securities Division of the Office of the Attorney General of the State of South Carolina (the “Division”) has been authorized and directed by the Securities Commissioner of South Carolina (the “Securities Commissioner”) to administer the provisions of S.C. Code Ann. § 35-1-101, *et seq.*, the South Carolina Uniform Securities Act of 2005 (the “Act”); and

WHEREAS, the Division received information regarding alleged securities-related activities of David Michael Burke (“Burke”) and Komak Investments, LLC (“Komak”) (collectively, the “Respondents”); and

WHEREAS, based on the information received, the Division decided it was necessary and appropriate to open an investigation pursuant to S.C. Code Ann. § 35-1-602 to determine whether the Respondents had violated, were violating, or were about to violate the Act; and

WHEREAS, in connection with the investigation, the Division has determined that evidence exists to support the following findings of fact and conclusions of law:

I. JURISDICTION

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

II. RESPONDENTS

2. Respondent Burke is a South Carolina resident with a last known address of 1766 Ion Avenue, Unit C, Sullivan's Island, South Carolina 29482.
3. Respondent Komak is a South Carolina company with a last known address of 1766 Ion Avenue, Unit C, Sullivan's Island, South Carolina 29482.
4. Respondent Komak was formed on or about July 2, 2012.
5. At all times relevant to this Order, Respondent Burke was the managing member and chief control person of Komak.
6. At all times relevant to this Order, Respondent Burke was an employee of a South-Carolina-registered broker-dealer (the "Broker-Dealer").

III. FINDINGS OF FACT

The Equity Margin Investment

7. In or about February 2013, the Respondents entered into an agreement with a California resident (the "Investor") whereby the Investor would invest with the Respondents (the "Equity Margin Investment").
8. In connection with offering the Equity Margin Investment, the Respondents provided the Investor with a document memorializing the terms of the Equity Margin Investment (the "Equity Margin Facility Agreement").
9. The Equity Margin Facility Agreement stated that the Respondents would seek to create income and growth in equity capital through the implementation of short-term trading strategies.
10. The Equity Margin Facility Agreement further stated that the Equity Margin Investment would pose no financial risk to the Investor.

11. The Equity Margin Facility Agreement further stated that the Investor could expect an annual return of twelve percent (12%) on her investment, or twelve thousand dollars (\$12,000) per year, payable in quarterly installments of three percent (3%), or three thousand dollars (\$3,000) per quarter.
12. Based on the Respondents' representations, the Investor wired \$100,000 to an account controlled by the Respondents on or about February 28, 2013.
13. Contrary to the representations made to the Investor by the Respondents in connection with the offer and sale of the Equity Margin Investment, the Respondents did not substantially implement trading strategies using the Investor's investment.
14. Contrary to the representations made to the Investor by the Respondents in connection with the offer and sale of the Equity Margin Investment, the Investor did not receive quarterly or annual returns on her investment.
15. The Respondents did not disclose the Equity Margin Investment to the Broker-Dealer, and the transaction was not carried on the Broker-Dealer's books.

The Commodities Trading Investment

16. In or about April 2013, the Respondents entered into a second agreement with the Investor whereby the Investor would invest in a second opportunity with the Respondents (the "Commodities Trading Investment").
17. In connection with offering the Commodities Trading Investment, the Respondents provided the Investor with a document memorializing the terms of the Commodities Trading Investment (the "Commodities Trading Agreement").
18. The Commodities Trading Agreement stated that the Respondents would seek to create income by way of a commodities-based trading strategy.

19. The Commodities Trading Agreement further stated that the Respondents would commit \$50,000 in addition to the Investor's contributions to the Commodities Trading Investment.
20. The Commodities Trading Agreement further stated that the Investor would receive ten percent (10%) of all profits up to \$25,000, twenty percent (20%) of all profits up to \$50,000, and thirty percent (30%) of all profits thereafter.
21. Based on the Respondents' representations, the Investor wired \$50,000 to an account controlled by the Respondents on or about May 7, 2013.
22. Contrary to the representations made to the Investor by the Respondents in connection with the offer and sale of the Commodities Trading Investment, the Respondents did not utilize the Investor's investment to substantially implement a commodities-based trading strategy.
23. The Respondents did not disclose the Commodity Trading Investment to the Broker-Dealer, and the transaction was not carried on the Broker-Dealer's books.
24. In connection with the Commodities Trading Investment, the Respondents provided the Investor with fabricated documents purportedly reporting results of the Respondents' trading activities.
25. Respondent Burke represented Respondent Komak in effecting or attempting to effect the above transactions in securities.
26. At no time relevant to the events stated herein was Respondent Komak registered with the Division as a broker-dealer, and no exemption from registration has been claimed by Respondent Komak.
27. At no time relevant to the events stated herein were the securities at issue registered with

the Division or federal covered securities, and no exemption from registration has been claimed by the Respondents.

IV. CONCLUSIONS OF LAW

28. The South Carolina Uniform Securities Act of 2005, S.C. Code Ann. § 35-1-101, *et seq.*, governs the offer and sale of securities in this State.
29. Pursuant to S.C. Code Ann. § 35-1-102(29), investment contracts, stock, and certificates of interest or participation in profit-sharing agreements, *inter alia*, constitute securities.
30. Pursuant to S.C. Code Ann. § 35-1-102(29)(D), an investment contract is “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.”
31. Pursuant to S.C. Code Ann. § 35-1-301, it is unlawful for a person to offer or sell a security in this State unless that security is a federal covered security, exempt from registration, or registered.
32. Pursuant to S.C. Code Ann. § 35-1-102(2), an “agent” includes an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities.
33. Pursuant to S.C. Code Ann. § 35-1-102(4), a “broker-dealer” is a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.
34. Pursuant to S.C. Code Ann. § 35-1-401(a), it is unlawful for an individual to transact business in this State as a broker-dealer unless that individual is registered or exempt from registration.
35. Pursuant to S.C. Code Regs. § 13-501(A)(14), it is unlawful for a broker-dealer to, *inter*

alia, effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design, or contrivance.

36. Pursuant to S.C. Code Regs. § 13-501(B)(6), it is unlawful for an agent to engage in any conduct prohibited by Subsection A of S.C. Code Regs. § 13-501.
37. Pursuant to S.C. Code Regs. § 13-501(B)(2), it is unlawful to effect securities transactions not recorded on the regular books and records of the broker-dealer which the agent represents unless those transactions are authorized in writing by the broker-dealer prior to execution of the transaction.
38. Pursuant to S.C. Code Ann. § 35-1-501, 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.
39. The Equity Margin Investment and the Commodities Trading Investment constitute investment contracts and are thus securities as defined by the Act.
40. The securities offered and sold by the Respondents were not federal covered securities, exempt from registration, nor registered with the United States Securities and Exchange Commission or the Division and were therefore offered and sold in violation of S.C. Code Ann. § 35-1-301.
41. Respondent Komak, on at least two occasions, transacted business in this State as an

unregistered broker-dealer.

42. Respondent Komak, on at least one occasion, employed or associated with an unregistered agent who transacted business on behalf of Komak while that agent was not registered.
43. The Respondents, on at least two occasions and in connection with the offer, sale, or purchase of a security, directly or indirectly (1) employed a device, scheme, or artifice to defraud; (2) made an untrue statement of a material fact or omitted 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) engaged in an act, practice, or course of business that operated or would operate as a fraud or deceit upon another person, in violation of S.C. Code Ann. § 35-1-501.
44. The Respondents induced the purchase or sale of securities by means of a manipulative, deceptive, or fraudulent device, practice, plan, program, design, or contrivance.
45. The activity underlying the Equity Margin Investment and the Commodities Trading Investment constituted “selling away,” which is contrary to an agent’s duty to observe high standards of commercial honor and just and equitable principles of trade in the conduct of his or her business and is a violation of S.C. Code Regs. § 13-501(B)(2).
46. It is in the public interest, for the protection of investors, and consistent with the purposes of the Act that the Respondents be ordered to cease and desist from engaging in the above-enumerated practices, which constitute violations of the Act and pay an appropriate civil penalty for their wrongdoing.

V. CEASE AND DESIST ORDER

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

ORDERED that:

- a. Respondent Komak Investments, LLC and every successor, affiliate, control person, agent, servant, and employee of Komak Investments, LLC and every entity owned, operated, or indirectly or directly controlled by or on behalf of Komak Investments, LLC **CEASE AND DESIST** from transacting business in this State in violation of the Act, in particular, §§ 35-1-301, 35-1-401, 3-1-402(d), and 35-1-501 thereof, and various provisions of the South Carolina Code of Regulations;
- b. Respondent David Michael Burke **CEASE AND DESIST** from transacting business in this State in violation of the Act, in particular, §§ 35-1-301, 35-1-402(c), and 35-1-402(e), and 35-1-501 thereof, and various provisions of the South Carolina Code of Regulations;
- c. Respondent Komak Investments, LLC pay a civil penalty in the amount of fifty thousand dollars (\$50,000) if this Order becomes effective by operation of law, or, if Komak Investments, LLC seeks a hearing and any legal authority resolves this matter, pay a civil penalty in an amount not to exceed \$10,000 for each violation of the Act by Komak Investments, LLC and the actual cost of investigation or proceeding; and
- d. Respondent David Michael Burke pay a civil penalty in the amount of fifty thousand dollars (\$50,000) if this Order becomes effective by operation of law, or, if Burke seeks a hearing and any legal authority resolves this matter, pay a civil penalty in an amount not to exceed \$10,000 for each violation of the Act by Burke, and the actual cost of investigation or proceeding.

IT IS FURTHER ORDERED that, pursuant to S.C. Code Ann. §§ 35-1-604(a)(2) and (3), any exemption from registration with the Division upon which the Respondents may claim

to rely under S.C. Code Ann. §§ 35-1-201(3)(C), (7), or (8); 35-1-202; 35-1-401(b)(1)(D) or (F); or 35-1-403(b)(1)(C), has been and is **PERMANENTLY REVOKED**.

VI. REQUIREMENT OF ANSWER AND NOTICE OF OPPORTUNITY FOR HEARING

Each Respondent is hereby notified that it has the right to a hearing on the matters contained herein. To schedule such a hearing, the Respondent must file with the Securities Division, Post Office Box 11549, Rembert C. Dennis Building, Columbia, South Carolina, 29211-1549, attention: Thresechia Navarro, within thirty (30) days after the date of service of this Order to Cease and Desist, a written Answer specifically requesting a hearing. If a Respondent requests a hearing, the Division, within fifteen (15) days after receipt of a request in a record from the Respondent, will schedule the hearing for that Respondent.

In the written Answer, the Respondent, in addition to requesting a hearing, shall admit or deny each factual allegation in this Order, shall set forth specific facts on which the Respondent relies, and shall set forth concisely the matters of law and affirmative defenses upon which the Respondent relies. If a Respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state.

Failure by a Respondent to file a written request for a hearing in this matter within the thirty-day (30) period stated above shall be deemed a waiver by that Respondent of the right to such a hearing. Failure of a Respondent to file an Answer, including a request for a hearing, shall result in this Order, including the stated civil penalty and any assessed costs, becoming final as to that Respondent by operation of law.

This Order does not prevent the Division or any other law enforcement agency from seeking additional civil or criminal remedies as are available under the Act, including remedies related to the offers and sales of securities by the Respondents set forth above.

ENTERED, this the 9 day of September, 2015.

ALAN WILSON
SECURITIES COMMISSIONER

By: Tracy Meyers
TRACY A. MEYERS
Deputy Securities Commissioner

ISSUANCE REQUESTED BY:



TAYLOR FAW
Assistant Attorney General
Securities Division
Rembert C. Dennis Building
1000 Assembly Street
Columbia, South Carolina 29201

STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
SECURITIES DIVISION

CERTIFICATE OF SERVICE AND
AFFIDAVIT OF COMPLIANCE
File Number 15008

I hereby certify that I served upon the individual/entity listed below a copy of the document indicated below and dated September 9, 2015, by serving a copy of said document upon the Securities Commissioner of the State of South Carolina and by placing a copy of said document in the United States mail, certified mail, return receipt requested, first class postage prepaid and addressed to:

Komak Investments, LLC
c/o David M. Burke
1766 Ion Avenue, Unit C
Sullivans Island, SC 29482

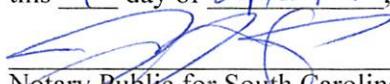
Document(s): Subpoena

Mailed September 9, 2015 from Columbia, South Carolina.

I further hereby certify, swear and affirm that, service of the above-listed entity is in compliance with Section 35-1-611, Code of Laws of South Carolina.

By: 
Thresechia P. Navarro
South Carolina Attorney General's Office
Securities Division
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-4731

Subscribed and sworn to before me on
this 9 day of September, 2015.


Notary Public for South Carolina

My commission expires: 7/2/18