

BEFORE THE SECURITIES COMMISSIONER
OF THE STATE OF KANSAS



In the Matter of:

John F. Germes

Docket No. 20E007
KSC No. 2018-6516

Respondent.

Pursuant to K.S.A. 17-12a604

AMENDED DEFAULT FINAL ORDER

This matter comes for consideration by the Securities Commissioner of Kansas (“Commissioner”) upon the *Application for Order* (“*Application*”), filed herein by the Staff of the Office of the Kansas Securities Commissioner (“KSC Staff”) on July 24, 2019.

Summary of Proceedings

In the *Application*, KSC Staff requested the Commissioner to issue an order under K.S.A. 17-12a604 to impose a \$1,700 civil penalty against Respondent under the Kansas Uniform Securities Act (“KUSA”).

Based on the *Application*, the Commissioner issued a *Notice of Intent to Issue Order* (“*NOI*”) on July 25, 2019. The *NOI* notified Respondent that if the allegations set forth in the *Application* are found to be true, through either administrative adjudication, failure of Respondent to make a timely request for hearing, or default by Respondent, the Commissioner intended to enter an order against the Respondent, which may include one or more of the sanctions or remedies enumerated under K.S.A. 17-12a604.

The *NOI* further notified Respondent that if Respondent wished to contest the allegations in the *Application* or offer evidence and argument to mitigate them or the sanctions or remedies to be imposed, then Respondent must file a request for hearing, in the manner and form prescribed by K.A.R. 81-11-3 and K.A.R. 81-11-5, within thirty-three (33) days of the date of mailing on the *Certificate of Service* accompanying the *NOI*. The *NOI* also notified Respondent that, if a request for hearing is not timely filed, the Commissioner may issue a final order, including the sanctions and remedies described above, without further proceedings.

A *Certificate of Service* filed by the Administrative Clerk indicates that a copy of the *Application*, *NOI*, and *Certificate of Service* were sent to Respondent on July 26, 2019, by certified mail, return receipt requested, by first-class mail, postage prepaid, and by electronic mail. To date, Respondent has not filed a request for hearing.

Having reviewed the *Application* and the file, the Commissioner finds and orders as follows:

Findings of Fact

1. Respondent John F. Germes (“Respondent” or “Germes”) is an individual with a last-known address of . Germes is a licensed insurance agent in the State of Kansas.
2. In July 2017, Germes acted as an agent of Woodbridge Mortgage Investment Fund 3A, LLC (“Woodbridge 3A”) in effecting the sale of a promissory note issued by Woodbridge 3A to a Kansas investor, for which Germes received a commission.

3. At the time of this sale, the promissory note was not registered as a security under the KUSA as required. Additionally, Germes was not registered as an agent under the KUSA as required.

Woodbridge Investments

4. Woodbridge 3A was part of a group of affiliated entities (collectively, “the Woodbridge Entities”) that were used by an individual named Robert Shapiro (“Shapiro”) to perpetrate a nationwide Ponzi scheme.
5. Specifically, between no later than July 2012 through December 2017, Shapiro used a web of more than 275 limited liability companies to perpetrate a Ponzi scheme in which he raised more than \$1.22 billion from over 10,000 investors nationwide.
6. The Woodbridge Entities were in the business of extending short-term loans to third-party borrowers. As part of each loan, the third-party borrower gave a First Position Commercial Mortgage (“FPCM”) in favor of the particular Woodbridge Entity that extended the loan.
7. To raise funds for the loans to the third-party borrowers, the Woodbridge Entities sold promissory notes to investors. Proceeds from the sale of each promissory note were then used by the Woodbridge Entity, which sold the note to extend a loan to a particular third-party borrower. Once the Woodbridge Entity received the FPCM from the borrower, the Woodbridge Entity then assigned a pro-rata portion of the FPCM to the investors whose funds were used to extend the loan.

8. As part of each short-term loan, the third-party borrower was to make regular monthly interest payments to the Woodbridge Entity that extended the loan, which would in turn generate the investment returns for the purchasers of the promissory notes.
9. The promissory notes sold by the Woodbridge Entities generally promised to pay investors an annual interest rate of five to eight percent. Interest payments to investors were to be made monthly and the principal was to be paid at the end of each note's respective term.
10. The Woodbridge Entities used independent sales agents to solicit purchases of the promissory notes, which agents were paid commissions for each sale.
11. During the scheme, Shapiro used at least \$368 million of new investor funds to pay fictitious returns or profits to existing investors. Further, Shapiro used approximately \$64.5 million of investor funds to pay commissions to agents who sold the promissory notes to investors.
12. On December 4, 2017, the Woodbridge Entities filed for chapter 11 bankruptcy in the United States Bankruptcy Court for the District of Delaware. On February 15, 2019, the bankruptcy court issued an order confirming the *First Amended Joint Chapter 11 Plan of Liquidation*, which established the Woodbridge Liquidation Trust to hold and administer trust assets and make distributions to beneficiaries, including investors who purchased promissory notes from the Woodbridge Entities. The Woodbridge Liquidation Trust is currently asserting legal and

equitable claims against agents to recover the commissions paid for the sale of Woodbridge promissory notes.

Germes and the Promissory Note

13. Germes initially became aware of the Woodbridge promissory notes on the internet and conducted some research regarding the promissory notes for several months.
14. In July 2017, Germes recommended that
purchase a promissory note from Woodbridge 3A. The were
long-time insurance clients of Germes and are Kansas residents.
15. Germes recommended the Woodbridge 3A promissory note to the because
he believed it was a safe investment, and the notes could be redeemed in a year.
Germes believed that the Woodbridge 3A promissory notes were not a security
based on materials provided by the Woodbridge Entities.
16. On or about July 25, 2017, the and Woodbridge 3A signed a promissory
note (“the Promissory Note”) and a loan agreement. Under the loan agreement,
the agreed to loan \$340,000 to Woodbridge 3A. Under the Promissory
Note, Woodbridge 3A promised to pay the the principal amount of
\$340,000 by December 1, 2018, plus monthly payments of interest at a rate of 7%
per annum.
17. Between the purchase of the Promissory Note and the commencement of
the Woodbridge Entities’ bankruptcy, the received a total of \$5,571.66 in

interest payments from Woodbridge 3A. The have not received payment of the principal amount owed under the Promissory Note from Woodbridge 3A.

18. Germes received a two percent commission, equaling \$6,800, from the Woodbridge Entities for his role in effectuating the sale of the Promissory Note to the .
19. At no time has Germes been registered under the KUSA in any capacity.

Conclusions of Law

20. The Commissioner has jurisdiction over Respondent and this matter.
21. The Promissory Note is a security as that term is defined in K.S.A. 17-12a102(28).
22. The Promissory Note is not a federal security, as that term is defined in K.S.A. 17-12a102(7), and is not exempt from registration under K.S.A. 17-12a201 through 17-12a203.
23. Germes violated K.S.A. 17-12a301 by offering and selling the Promissory Note.
24. In effecting the sale of the Promissory Note, Germes was an agent, as that term is defined in K.S.A. 17-12a102(2), of Woodbridge 3A, and was not exempt from registration under K.S.A. 17-12a402(b).
25. Germes violated K.S.A. 17-12a402 by transacting business in this state as an agent when Germes was neither registered under the KUSA nor exempt from registration.

IT IS THEREFORE ORDERED by the Commissioner that Respondent is assessed a civil penalty of \$1,700.

ISSUED BY THE COMMISSIONER.

Entered at Topeka, Kansas, this 15th day of January, 2019.



A handwritten signature in blue ink, reading "Jeffrey S. Wagaman", is written over a horizontal line.

Jeffrey S. Wagaman
Kansas Securities Commissioner

NOTICES

- (1) A party to this action may petition the Commissioner for reconsideration within 15 days after service of a final order, following the procedures in K.S.A. 77-529. Under K.S.A. 77-528, a party may petition for a stay of effectiveness of this order until the time at which a petition for judicial review would no longer be timely.
- (2) This order may be subject to judicial review. The agency officer to receive service of a petition for judicial review on behalf of the Office of the Kansas Securities Commissioner is Jack Clayton Johnson, Chief Regulatory Counsel, at 1300 SW Arrowhead Road, Topeka, Kansas 66604.