

BEFORE THE SECURITIES COMMISSIONER
OF THE STATE OF KANSAS



In the Matter of:

Joseph A. McArdle

Docket No. 21E051

KSC No. 2016-6368

Respondent.

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

DEFAULT FINAL ORDER

This matter comes for consideration by the Securities Commissioner of Kansas (“Commissioner”) upon the *Application for Order* (“*Application*”), filed by the Staff of the Office of the Kansas Securities Commissioner (“KSC Staff”) on December 9, 2020, and the *Motion for Default Order* (“*Motion for Default*”), filed by KSC Staff on November 12, 2021.

Summary of Proceedings

In the *Application*, KSC Staff requested the Commissioner to issue an order under K.S.A. 17-12a604 imposing a civil penalty of \$12,500 against Joseph A. McArdle (“McArdle”) for violations of the Kansas Uniform Securities Act, K.S.A. 17-12a101 *et seq.* (“KUSA”).

Based on the *Application*, the Commissioner issued a *Notice of Intent to Issue Order* (“*NOI*”) on January 22, 2021. The *NOI* notified McArdle 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 McArdle, the

Commissioner intended to enter an order against McArdle, which may include one or more of the sanctions or remedies enumerated under K.S.A 17-12a604(b).

The *NOI* further notified McArdle if he 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 McArdle 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 McArdle that if he did not timely file a request for hearing the Commissioner may issue a final order, including the sanctions and remedies described above, without further proceedings.

A *Certificate of Service* filed with the Administrative Clerk on January 27, 2021, indicates that on that date copies of the *Application* and *NOI* were mailed to McArdle at 9815 State Line Road, Kansas City, Missouri, by certified mail, return receipt requested, and by regular mail, first-class postage prepaid, and also sent to McArdle by email. According to the *Motion for Default*, the copies sent by certified mail were returned to KSC Staff on February 18, 2021, marked as unclaimed. The copies sent by regular mail were not returned. KSC Staff received no response from McArdle by email.

A *Certificate of Service* filed with the Administrative Clerk on February 2, 2021, indicates that on that date copies of the *Application* and *NOI* were mailed to McArdle at P.O. Box 14006, Surfside Beach, South Carolina, by certified mail, return receipt requested, by regular mail, first-class postage prepaid, and also sent to McArdle by email. According to the *Motion for Default*, the copies sent by certified mail were returned to

KSC Staff on March 22, 2021, marked as unclaimed. The copies sent by regular mail were not returned. KSC Staff received no response from McArdle by email.

To date, McArdle 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 Joseph A. McArdle (“McArdle”) is an individual with a last-known address of [REDACTED]. McArdle has never been registered under the KUSA in any capacity.
2. From August 2014 through October 2017, McArdle acted as an agent of Future Income Payments, LLC, (“FIP”) in effecting the sale of Purchase Agreements for a product commonly referred to as “Structured Cash Flows” to eight clients, for which McArdle received commissions.
3. At the time of the sales, the Purchase Agreements were not registered as a security under the KUSA as required. Additionally, McArdle was not registered as an agent for FIP, as required by the KUSA.

FIP Investments

4. FIP is a Nevada limited liability company. Since at least 2011 through April 2018, FIP’s owner and president Scott A. Kohn (“Kohn”) used the company to perpetrate a nationwide Ponzi scheme. When FIP ceased doing business in April 2018, FIP owed approximately \$300 million to over 2,600 investors nationwide.

5. FIP was in the business of making lump sum payments or loans to individuals entitled to monetary disbursements from pensions, lotteries, annuities, and other future income streams. In exchange for receiving these lump sum payments or loans, the recipients assigned all or a portion of their monetary disbursements from their future income streams to FIP. Individuals who assigned their future income streams to FIP in exchanges for lump sum payments or loans were referred to as “original sellers.”
6. To raise funds for the lump sum payments or loans, FIP entered into Purchase Agreements with investors whereby FIP sold its interests in the future income streams to investors as what was commonly referred to as “Structured Cash Flows.”
7. Under the Purchase Agreements, FIP agreed to establish and maintain accounts to receive future income stream payments from the original sellers for distribution to investors. FIP further agreed to maintain a “shortfall account” and a “reserve account” to protect investors in the event original sellers defaulted on their obligation to remit their future income streams to FIP.
8. FIP generally promised investors a return of 6.5 to 8 percent under the Purchase Agreements with monthly payments to be paid to investors over a term of five to ten years.
9. FIP used independent sales agents to solicit purchases of the Purchase Agreements, which agents were paid commissions for each sale.

10. During the scheme, Kohn used new investor funds to pay fictitious returns or profits to previous investors. Further, Kohn used investor funds to pay commissions to agents who sold the Purchase Agreements to investors.
11. On March 12, 2019, FIP and Kohn were indicted by a federal grand jury in the District of South Carolina. On April 19, 2019, the United States District Court for the District of South Carolina appointed a receiver to manage the assets and liabilities of FIP and Kohn. The FIP receivership is currently asserting legal and equitable claims against agents to recover commissions paid for the sale of the Structured Cash Flows.

McArdle and his Clients' Purchase Agreements

12. In 2012, McArdle received an unsolicited telephone call from Joseph P. Hipp ("Hipp"), a representative of FIP who managed and oversaw investor solicitations for FIP products. During the call, Hipp told McArdle about FIP and the Purchase Agreements that could be used to invest with FIP.
13. In selling FIP Purchase Agreements, McArdle partnered with Peggy Gollither ("Gollither"). McArdle and Gollither evenly split commissions they received for the sale of FIP Purchase Agreements to their clients. According to their arrangement, McArdle was the point of contact with FIP and Gollither assisted with their clients' purchase of the Purchase Agreements.
14. From August 2014 through October 2017, eight of McArdle's and Gollither's clients purchased Purchase Agreements from FIP based upon McArdle's and

Golliher's recommendation. Their clients invested a cumulative total of \$1,772,154.05 in Purchase Agreements with FIP. McArdle and Golliher received commissions from FIP of approximately five percent, totaling \$98,894.49, for their role in effecting the sale of the FIP Purchase Agreements. McArdle and Golliher evenly split these commissions, with McArdle and Golliher each receiving commissions totaling \$49,447.24.

15. At no time was McArdle registered as an agent of FIP under the KUSA.

Conclusions of Law

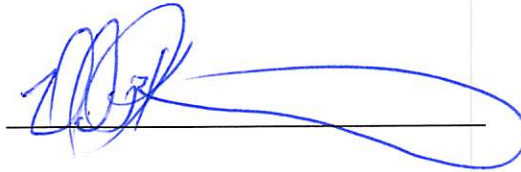
16. The Commissioner has jurisdiction over McArdle and this matter.
17. The Purchase Agreements described herein are securities as that term is defined in K.S.A. 17-12a102(28).
18. The Purchase Agreements are not federal covered securities, as that term is defined in K.S.A. 17-12a102(7) and are not exempt from registration under K.S.A. 17-12a201 through 17-12a203.
19. McArdle violated K.S.A. 17-12a301 by offering and selling the Purchase Agreements.
20. In effecting the sale of the Purchase Agreements, McArdle was an agent of FIP, as that term is defined in K.S.A. 17-12a102(2) and was not exempt from registration under K.S.A. 17-12a402(b).

21. McArdle violated K.S.A. 17-12a402 by transacting business in this state as an agent when McArdle was neither registered under the KUSA nor exempt from registration.

IT IS THEREFORE ORDERED by the Commissioner that McArdle is assessed a civil penalty of \$12,500.00.

ISSUED BY THE COMMISSIONER.

Entered at Topeka, Kansas, this 10th day of December, 2021.



Daniel J. Klucas
Securities Commissioner of Kansas

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, Assistant General Counsel, at 1300 SW Arrowhead Road, Topeka, Kansas 66604.