

Division of Securities
Utah Department of Commerce
160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760
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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

THOMAS E. JOHNSON, CRD#6725414

Respondent.

**STIPULATION AND CONSENT
ORDER**

Docket No. SD-23-0006

The Utah Division of Securities (“Division”), by and through its Director of Compliance, Kenneth O. Barton, and Respondent Thomas E. Johnson (“Johnson” or “Respondent”) hereby stipulate and agree as follows:

1. Respondent has been the subject of an investigation by the Division into allegations that he violated the Utah Uniform Securities Act (“Act”), Utah Code Ann. § 61-1-1, et seq., as amended.
2. On or about January 26, 2023 the Division initiated an administrative action against Respondent by filing a Petition to Censure and Impose a Fine.
3. Respondent hereby agrees to settle this matter by way of this Stipulation and Consent Order (“Order”). If entered, the Order will fully resolve all claims the Division has against Respondent pertaining to the Petition.

4. Respondent admits that the Division has jurisdiction over him and the subject matter of this action.
5. Respondent hereby waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.
6. Respondent has read this Order, understands its contents, and voluntarily agrees to the entry of the Order as set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Respondent to enter into this Order, other than as described in this Order.
7. Respondent understands that he may be represented by legal counsel in this matter, understands the role that counsel would play in defending and representing his interests, and knowingly and of his own will and choice waives his right to have counsel represent him in this proceeding.

I. FINDINGS OF FACT

8. Johnson is a resident of Rocky Comfort, Missouri. He was licensed in Utah as an investment adviser representative of Aspen Capital Management, LLC ("ACM"), CRD#226559, from November 2016 to April 2019 while living in Utah. Johnson was employed in the securities industry from November 2016 until December 2021 and has passed the FINRA Series 65 exam. Johnson is not currently licensed in the securities industry. Johnson has never been licensed to sell securities.
9. ACM, a Utah limited liability company, is an investment adviser firm located at 1150 South Bluff Street, Suite 6, in St. George, Utah. ACM has been licensed as an investment adviser in Utah since September 2015. ACM is owned and managed by John R. Crosier ("Crosier"), CRD#2787111, and Chad E. Loveland ("Loveland"),

CRD#2837851. According to ACM's Compliance Policies and Procedures Manual ("Compliance Manual"), Crosier and Loveland are both responsible for general supervision of ACM and its representatives. Crosier is ACM's Chief Compliance Officer and Loveland is ACM's Chief Financial Officer.

10. Separate actions against ACM, Crosier, Loveland and others were filed contemporaneously with this action. Those actions are pending.

The Woodbridge Ponzi Scheme Sold by ACM Representatives

11. Woodbridge Group of Companies, LLC ("Woodbridge") is a defunct Delaware limited liability company registered with the Delaware Division of Corporations on December 11, 2014. Woodbridge and numerous related entities were owned and controlled by Robert H. Shapiro ("Shapiro") and purported to be in the business of short-term commercial lending secured by commercial real estate.
12. Woodbridge used a nationwide network of sales agents, including Johnson, Crosier, Loveland and others to solicit investors to purchase Woodbridge investments in the form of promissory notes ("Woodbridge notes") that were allegedly secured by real property.¹ Investors were told their monies would be loaned to third-party borrowers and would earn interest of at least 6% annually. Woodbridge was a safe investment, so the story went, because real estate securing the loans could be foreclosed upon and sold in the event of borrower default. Finally, Woodridge notes were also safe, according to Woodbridge, because it allowed no more than 60% of a property's appraised value to be encumbered by a loan.

¹ Woodbridge offered first-position commercial mortgage ("FPCM") notes as well as "Mezzanine" notes which paid a higher interest rate. Both were purportedly secured by real estate.

13. In reality, Woodbridge operated as a Ponzi scheme.² The Woodbridge notes were not secured, so investors never actually held any lien or legally enforceable interest on the properties. Woodbridge collapsed in December 2017 when it stopped making payments to investors and declared bankruptcy.³ According to a civil action filed by the United States Securities and Exchange Commission (“SEC”)⁴ Shapiro used a web of more than 275 limited liability companies he owned and controlled (“Shapiro entities”) to perpetrate the scheme. Despite receiving more than \$1 billion from investors, only \$13.7 million in interest income was generated by Woodbridge from truly unaffiliated third-party borrowers. Instead, nearly all of the so-called third-party borrowers were actually Shapiro entities with no revenue or bank accounts, which never paid any interest on the loans. Shapiro misappropriated investor monies for personal use, to fund a lavish lifestyle, pay interest to earlier investors and pay commissions to sales agents, including the ACM investment adviser representatives.
14. In April 2019, Shapiro was indicted and charged with conspiracy to commit mail fraud and wire fraud, conspiracy to commit money laundering, mail fraud, wire fraud, and evasion of payment of federal income taxes, all of which are federal felony crimes.⁵ In August 2019, Shapiro entered into a plea agreement and was sentenced to 25 years in

² A Ponzi scheme is an investment fraud where existing investors are paid purported returns with monies invested by later investors.

³ On December 4, 2017, Woodbridge filed a Chapter 11 bankruptcy in the United States Bankruptcy Court for the District of Delaware, Case No. 17-12560 (JKS).

⁴ See *SEC v. Robert H. Shapiro et al.*, Case Number 1:17-cv-24624, filed in the United States District Court for the Southern District of Florida.

⁵ See *United States v. Shapiro*, Case Number 19-20178-CR, filed in the United States District Court for the Southern District of Florida.

federal prison. In settling the SEC civil case, Woodbridge and Shapiro agreed to a court order to pay more than \$1 billion in restitution, civil penalties and interest.

15. The Division's examination into the sales of Woodbridge notes in Utah revealed that in selling Woodbridge investments, Johnson acted as an unlicensed agent and sold unregistered securities.

Woodbridge Notes

16. In sales materials Woodbridge promoted itself as a well-established, successful company with "35 years of real estate and investment experience." The Woodbridge investments sold by Respondent included 12-month FPCM promissory notes and 18-month Mezzanine promissory notes paying annual interest between 6.5 and 7%, paid monthly, with investors' principal returned at the end of the term. In the event of a borrower default, the notes were allegedly secured by real property which was appraised at a value higher than the amount of the loan.
17. In practice, however, the notes were not secured by real property, making the Woodbridge notes unsecured promissory notes for which investors had no legal, enforceable interest in the event of borrower default. The Woodbridge notes are promissory notes and investment contracts, both of which are securities under Section 61-1-13 of the Act.
18. Johnson heard about Woodbridge through his insurance business⁶ before licensing with ACM in November 2016, but did not really consider selling it until after he joined ACM. He later learned more about it from ACM investment adviser representative Daniel J.

⁶ Johnson and two other ACM representatives, Daniel J. Matheson and Eric F. Bullock worked together at Altus Retirement Services, LLC, an insurance agency.

Matheson (“Matheson”)⁷ and discussed it further with Crosier. Matheson and Crosier had both been selling Woodbridge notes at that time and reported their clients were happy with the investment, which Johnson took into consideration in deciding to sell it. Crosier told Johnson he had conducted extensive due diligence on Woodbridge.

19. Crosier told Johnson Woodbridge could not be sold through ACM because it was not a security, but could be sold on an individual basis, directly through Woodbridge. Crosier offered no explanation why Woodbridge was not a security. Johnson also was later told by Kim Tavares (“Tavares”), a Woodbridge “Associate Consultant” who was the primary Woodbridge contact for ACM representatives, that Woodbridge was not a security and no license was needed to sell it, but no reason was provided. Johnson never saw any analysis in writing or legal opinion of why Woodbridge was not a security. He understood Woodbridge to be a “promissory note backed by mortgage.” Although during his interview Johnson told the Division he believed he had disclosed Woodbridge as an outside business activity, neither his Form U4 nor ACM Outside Business Activity forms made any such disclosure.
20. Johnson conducted no personal due diligence before selling Woodbridge but relied on Crosier’s claims. Johnson knew, however, that several states had taken regulatory actions against Woodbridge, found it to be a security, and that Woodbridge was not allowed to be sold in those states. When interviewed by the Division, Johnson did not recall the source of that information, except that it was not Crosier or Loveland. He did ask Woodbridge about it and was given reassurances such that “the way I understood it, nothing really happened to Woodbridge” as a result of the state actions. Johnson also

⁷ Matheson was named as a Respondent in a separate Division action.

believed at the time that even if Woodbridge was a security, there would be no problem selling it because he held a securities license: "...that's wrong thinking because it's you know, unregistered. But at the time that was... that was my thought."

21. Tavares sent Johnson marketing material and brochures about Woodbridge, which he shared with a handful of existing insurance clients, four of whom ultimately invested in Woodbridge FPCM notes during the summer of 2017:

<u>Investor:</u>	<u>Date:</u>	<u>Amount invested:</u>	<u>Sales Compensation:</u>
MG	6/12/2017	\$33,414.00	\$ 835.35
KF	6/13/2017	64,608.89	1,615.22
VF	6/14/2017	25,716.00	642.90
AF	8/14/2017	67,325.15	1,683.13
TOTAL:		\$191,064.04	4,776.60

22. All investors' monies were qualified retirement funds. Woodbridge FPCM notes at the time paid a "gross return" of 9% of the amount invested that the sales agent could split between the amount of annual interest paid to the investor and compensation to the agent. Although he was told he could take up to 5% as a commission, Johnson did not think that was fair to investors, so he gave all four investors 6.5% interest rate and received the least compensation of any ACM agent, 2.5%.
23. One client, AF, asked Johnson for proof that her name had been recorded on the real property as a first position lien. When he contacted Woodbridge for that information, he received "the run around" and the information was not provided.
24. Because Woodbridge collapsed within months of their investments, Respondents' clients lost nearly all of their principal:

<u>Investor:</u>	<u>Interest Received</u>	<u>Principal Lost:</u>
MG	\$ 736.04	32,677.96
KF	1,213.21	63,395.68
VF	566.47	25,149.53
AF	899.54	66,425.61
TOTAL LOSSES:		\$187,648.78 ⁸

25. After Woodbridge's collapse, Johnson told the Division he disgorged his \$4,776.60 in compensation by sending checks to each investor for what he received from Woodbridge. Those payments have been verified by the Division.

II. CONCLUSIONS OF LAW

Unlicensed Agent under Section 61-1-3(1) of the Act

26. It is unlawful under Section 61-1-3(1) for a person to transact business in this state as an agent unless the person is licensed. Johnson was not licensed as an issuer-agent or broker-dealer agent to sell Woodbridge at any time. Johnson acted as an unlicensed agent by conducting securities transactions through and receiving transaction-based compensation from Woodbridge, in violation of Section 61-1-3(1) of the Act.

Sale of Unregistered Securities under Section 61-1-7 of the Act

27. The Woodbridge investments offered and sold by Johnson are securities as defined under Section 61-1-13 of the Act. Section 61-1-7 of the Act prohibits the sale of securities unless they are "registered under this chapter," "exempted under Section 61-1-14," or

⁸ A Liquidation Trustee was appointed in the Woodbridge bankruptcy action to liquidate assets. As of the date of this Order, Johnson's investors have received payments totaling approximately 50% of their principal through the Woodbridge Liquidation Trust.

“federal covered securit[ies] for which a notice filing has been made...”. The Woodbridge securities were not registered with the Division, do not qualify for any exemption from registration, and are not federal covered securities for which any notice filing was made, in violation of Section 61-1-7 of the Act.

III. REMEDIAL ACTION/SANCTIONS

28. Respondent neither admits nor denies the Division’s Findings and Conclusions, but consents to the sanctions below being imposed by the Division.
29. Respondent agrees to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in this state.
30. Respondent agrees to provide truthful testimony and cooperation to the Division, including production of documents and providing information informally without the necessity of a subpoena or other process, in any Division action involving ACM, Crosier and Loveland, and any individuals under investigation as a result of their affiliation with ACM.
31. The Division acknowledges that prior to this action being filed, Respondent voluntarily disgorged his compensation of \$4,776.60 to investors. Pursuant to Utah Code Ann. Section 61-1-6 and in consideration of the factors contained in Utah Code Ann. Section 61-1-31, the Division imposes a fine of \$3,000.00 to be paid within thirty (30) days following entry of this Order.

IV. FINAL RESOLUTION

32. Respondent acknowledges that this Order, upon approval by the Utah Securities Commission (“Commission”), shall be the final compromise and settlement of this matter. Respondent acknowledges that the Commission is not required to approve this

Order, in which case the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, Respondent expressly waives any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

33. If Respondent materially violates any term of this Order, after notice and an opportunity to be heard before an administrative law judge solely as to the issue of a material violation, Respondent consents to entry of an order in which:
- a. Respondent admits the Division's Findings and Conclusions as set forth in this Order; and
 - b. Any unpaid portion of the fine becomes immediately due and payable.


Notice of the violation will be sent to Respondent's last known address. If Respondent fails to request a hearing within ten (10) days following notice there will be no hearing and the order granting relief will be entered. In addition, the Division may institute judicial proceedings against Respondent in any court of competent jurisdiction and take any other action authorized by the Act or under any other applicable law to collect monies owed by Respondent or to otherwise enforce the terms of this Order. Respondent further agrees to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

34. Respondent acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Respondent also acknowledges that any civil, criminal,

arbitration or other causes of actions brought by third-parties against him have no effect on, and do not bar, this administrative action by the Division against him.

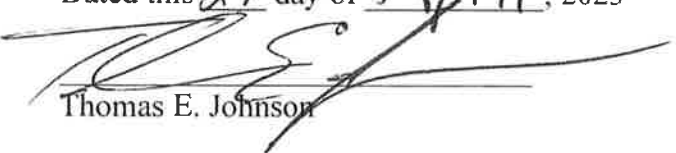
35. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way. Upon entry of the Order, any further scheduled hearings are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 3rd day of August, 2023




Kenneth O. Barton
Senior Compliance Manager
Utah Division of Securities

Dated this 24th day of April, 2023



Thomas E. Johnson

Approved:



Jennifer Korb
Stephen Gillies
Mark Holliday
Assistant Attorneys General
Utah Attorney General's Office
Counsel for Division


ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which Respondent neither admits nor denies, are hereby entered.
2. Respondent shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in the State of Utah.
3. Respondent shall provide truthful testimony and cooperation to the Division, including production of documents and providing information informally without the necessity of a subpoena or other process, in any Division action involving ACM, Crosier and Loveland, and any individuals under investigation as a result of their affiliation with ACM.
4. Pursuant to Utah Code Ann. §61-1-6, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, Respondent shall pay a fine of \$3,000.00 within thirty (30) days of entry of this Order.


BY THE UTAH SECURITIES COMMISSION:

DATED this day of August 10th, 2023


Dawn Dachenhausen


Lyndon L. Ricks


Lyle White


Mark Zimbleman

Certificate of Mailing

I certify that on the 11th day of August, 2023, I sent a true and correct copy of the Stipulation and Consent Order to:

Thomas E. Johnson
2527 Route JJ
Rocky Comfort, MO 64861

Certified Mail # 7019 2970 0000 5343 4419



Executive Secretary