

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU

In the Matter of:

Complaint No. 325957

GIFFIN MORTGAGE COMPANY, INC.
Unregistered

Respondent.

Issued and entered
This 13th day of January, 2017

RENEWED NOTICE AND ORDER TO CEASE AND DESIST

Julia Dale, the Director of the Corporations, Securities & Commercial Licensing Bureau (the "Administrator"), pursuant to her statutory authority and responsibility to administer and enforce the Michigan Uniform Securities Act (2002), 2008 PA 551, as amended, MCL 451.2101 *et seq.* ("Securities Act"), hereby orders Giffin Mortgage Company, Inc. (GMC) to cease and desist from continuing to directly or indirectly make any untrue statements of material fact, or omit to state material facts necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading, contrary to the Securities Act. Respondent is also notified of the opportunity to request a hearing in this matter.

I. BACKGROUND

A. Respondent

1. GMC is a corporation incorporated under the laws of the State of Michigan. GMC is not registered in any capacity pursuant to the Securities Act in Michigan, nor has it registered any securities offerings pursuant to the Securities Act in Michigan.
2. David R. Giffin – an individual and the sole shareholder of GMC and registered as an investment adviser representative through DRG Investment Advisory Services, LLC (IARD#142293) – ran GMC until his death in 2016.

B. Findings of Fact

1. The Bureau conducted an investigation of the activities of GMC.
2. The investigation developed evidence that Respondent sold securities in the form of notes to investors in Michigan. Many of the note purchasers are also investment advisory clients of DRG Investment Advisory Services, LLC.
3. Several investors are sixty years of age or older.
4. David R. Giffin, through DRG Investment Advisory Services, LLC, published in the firm's ADV Part 2 from March 29, 2011 through March 2, 2012 that any DRG Investment Advisory Services, LLC client who was offered a GMC note would be given a private placement memorandum fully disclosing ownership interests and conflicts of interest.
5. GMC did not provide a private placement memorandum to purchasers of GMC notes at any time after October 1, 2009.
6. Some purchasers of the notes indicated that they learned of the opportunity to invest with GMC directly from David R. Giffin, and that Mr. Giffin described the investments as "wise for retirees"; "safe, steady, not big or flashy return with lots of risk but reliable and in a growing industry"; and having "minimal risk because held by Giffin Mortgage Company".
7. GMC liabilities have exceeded its assets since at least 2008.
8. GMC had negative cash flow in each year from 2008 through 2013.
9. GMC did not provide copies of financial statements to prospective investors after October 1, 2009.
10. Notes issued by GMC promised a five percent rate of return, notwithstanding the fact that the issuer had negative cash flow and negative equity from 2008 until 2013.
11. The Administrator initially issued two Cease and Desist Orders to GMC and Mr. Giffin on December 4, 2015.
12. The parties worked together throughout 2016, and on September 9, 2016, the parties entered into a Consent Order Resolving the Notices and Orders to Cease and Desist.

13. Later in 2016, Mr. Giffin died, and GMC asserted that it would no longer be able to comply with the Consent Order.
14. As a result, the Administrator is now reissuing the original Notice and Order to Cease and Desist to GMC.

II. RELEVANT STATUTORY PROVISIONS

1. Section 102c(c) of the Securities Act, MCL 451.2102c(c), defines “Security”, in part, as:

a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest in or based on the value of that put, call, straddle, option, or privilege on that security, certificate of deposit, or group or index of securities, put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, an investment in a viatical or life settlement agreement; or, in general, an interest or instrument commonly known as a “security”; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing...

2. Section 503(1) of the Securities Act, MCL 451.2503(1), states:

In a civil action or administrative proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the exemption, exception, preemption, or exclusions.

3. Section 501 of the Securities Act, MCL 451.2501, states:

It is unlawful for a person, in connection with the offer, sale, or purchase of a security or the organization or operation of a Michigan investment market under article 4A, to directly or indirectly do any of the following:...

(b) Make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading...

III. CONCLUSIONS OF LAW

1. GMC represented to investors and to the State of Michigan in its Form ADV Part 2 that it would provide a private placement memorandum to investors prior to selling GMC notes between March 29, 2011 and March 2, 2012; however, GMC failed to provide a private placement memorandum to any investor after October 1, 2009. This was a misstatement of material fact, in violation of Section 501(b) of the Securities Act, MCL 451.2501(b).
2. GMC represented to investors that notes issued by GMC were “wise for retirees”; “safe, steady, not big or flashy return with lots of risk but reliable and in a growing industry”; and having “minimal risk because held by Giffin Mortgage Company”. These statements made by GMC were misleading in light of the fact that GMC has had negative equity since at least 2008, and the company’s financial condition was omitted. The statement of fact regarding the company’s solvency was material, necessary in order to make other statements made not misleading, and was omitted, in violation of Section 501(b), MCL 451.2501(b).
3. GMC represented to investors that GMC would pay a fixed five percent rate of return on investments in the company. GMC did not disclose that the company had negative equity and negative cash flow in each year from 2008 through 2013. The omission of GMC’s financial condition was material in light of the promise to pay a fixed five percent rate of return to investors, and it was misleading to omit to state the company’s financial condition in light of the promise to pay such fixed rates of return, in violation of Section 501(b) of the Securities Act, MCL 451.2501(b).

IV. ORDER

IT IS THEREFORE ORDERED, pursuant to section 604 of the Securities Act, MCL 451.2604, that:

- A. GMC shall immediately CEASE AND DESIST from continuing to directly or indirectly make any untrue statement of a material fact or omit to state material facts necessary in order to make other statement made, in the light of the circumstances under which they were made, not misleading, contrary to the Securities Act.
- B. Pursuant to section 604(2) of the Securities Act, this Notice and Order to Cease and Desist is IMMEDIATELY EFFECTIVE.
- C. The Administrator retains the right to pursue further administrative action against GMC under the Securities Act if the Administrator determines that such action is

necessary and appropriate in the public interest, for the protection of investors and is authorized by the Securities Act.

V. NOTICE OF OPPORTUNITY FOR HEARING

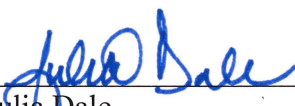
Section 604 of the Securities Act, MCL 451.2604, provides that GMC has 30 days beginning with the first day after the date of service of this Notice and Order to Cease and Desist to submit a written request to the Administrator asking that this matter be scheduled for a hearing. If the Administrator receives a written request in a timely manner, the Administrator shall schedule a hearing within 15 days after receipt of the request. The written request for a hearing must be addressed to:

Corporations, Securities & Commercial Licensing Bureau
Regulatory Compliance Division
P.O. Box 30018
Lansing, MI 48909

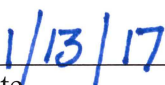
VI. ORDER FINAL ABSENT HEARING REQUEST

- A. Under section 604 of the Securities Act, MCL 451.2604, GMC's failure to submit a written request for a hearing to the Administrator within 30 days after the service date of this **NOTICE AND ORDER TO CEASE AND DESIST** shall result in this order becoming a **FINAL ORDER** by operation of law.

CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU



Julia Dale
Director, Corporations, Securities &
Commercial Licensing Bureau



Date

**STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU**

GIFFIN MORTGAGE COMPANY, INC.
Unregistered

Complaint No. 325957

and

DAVID R. GIFFIN
CRD No. 220235

Complaint No. 325960

Respondents.

_____ /

Issued and entered

This 9th day of September, 2016

**CONSENT ORDER RESOLVING
NOTICE AND ORDER TO CEASE AND DESIST**

A. Relevant information and statutory provisions, under the Michigan Uniform Securities Act (2002) ("the Act"), 2008 PA 551, MCL 451.2101 *et seq.*:

1. On December 18, 2015, the State of Michigan, Department of Licensing and Regulatory Affairs, Corporations, Securities & Commercial Licensing Bureau ("the Bureau") and the Director of the Bureau who serves as the Administrator of the Act ("the Administrator") issued a Notice and Order to Cease and Desist ("cease and desist order") to David R. Giffin ("Giffin") and Giffin Mortgage Company, Inc. ("GMC").
2. The cease and desist order accused Giffin and GMC of violating the Act, specifically MCL 451.2501(b).
3. Giffin and GMC timely requested an administrative hearing, under MCL 451.2604(2) & (3), and subsequently cooperated with the Bureau in an attempt to resolve this matter by exchanging relevant documents and discussing outstanding issues, resulting in the Administrator ordering a settlement of this matter based on the terms and conditions set forth in the Stipulation below.
4. Giffin is registered as an investment adviser representative in Michigan and assigned Central Registration Depository (CRD) No. 220235. GMC is not registered in Michigan under the Act.

5. Giffin and GMC were represented by, and had the advice of, legal counsel throughout the process of resolving the cease and desist order in Michigan.

B. STIPULATION

Giffin, GMC, and the Administrator (collectively, "the Parties") agree that the December 18 2015 cease and desist order will be resolved with the following conditions:

1. Giffin and GMC neither admit nor deny any allegations in the cease and desist order, and Giffin and GMC agree that they will comply with the Act at all times going forward.
2. GMC will make a rescission offer to all promissory note holders that allows those promissory note holders to maintain, rescind, or extend the term of their notes in their complete and absolute discretion by December 31, 2016. Before making that offer, GMC shall obtain audited financial statements (balance sheet, income statement, statement of cash flows, statement of changes in ownership equity, and financial statement footnotes) that must accompany the rescission offer to investors. The rescission offer will explain and provide each investor the option to: (A) Leave his or her principal and any accrued but unpaid interest invested in GMC for such period as is set forth; or (B) be promptly repaid all outstanding accrued but unpaid interest and principal (as set forth below).
3. By no later than forty-five (45) days after the mailing date of this Consent Order, GMC and Giffin will provide the proposed rescission offer letter only (i.e., not enclosures) for the Bureau's review and approval before mailing it to investors. The rescission offer letter must contain the following sentence in the same typeface as all other text: "The State of Michigan has not examined or passed upon the merits of this investment opportunity, and makes no representations or assurances about the quality or suitability of any investment opportunity offered by Giffin Mortgage Company, Inc." The rescission offer must provide investors until December 31, 2016, to maintain their note or make their rescission or extension election. If the investor fails to respond within the required timeframe, GMC will promptly rescind the loan and repay all outstanding principal and accrued interest under the applicable promissory note. The rescission offer must enclose a copy of this Administrative Consent Order. The rescission offer will be accompanied by a detailed private placement memorandum ("PPM"), audited financial statements, and appropriate disclosures prepared with the assistance of GMC and Giffin's counsel that

complies with all applicable Michigan and federal securities laws; however, the PPM will not be provided to or reviewed by the Bureau. With respect to the rescission offer only, disqualification under section 506(d)(1) of Regulation D, 17 CFR 230.506(d)(1), shall not arise as a consequence of this Order or the attached order issued September 9, 2016 by the Administrator concerning custody of client funds. However, this does not necessarily limit the application of 17 CFR 230.506(d)(1) for any other offer.

4. Within seventy-five (75) days after the date of entry of this Consent Order, GMC and Giffin must provide the Bureau written confirmation of the date(s) the rescission offer was mailed to investors (identifying each investor's name and date of mailing) and generally describing any materials enclosed with the letter.
5. If an investor elects rescission, GMC and Giffin must repay that investor all outstanding accrued but unpaid interest and principal within thirty (30) days after receiving notice of the rescission election.
6. By January 31, 2017, GMC and Giffin must provide the Bureau written confirmation of the name of each investor who elected rescission, the date each such investor was repaid, and the total amount each investor was repaid. If GMC and Giffin do not or cannot repay any investor who elected rescission, this Consent Order will become null and void, and the Administrator will be free to take any appropriate enforcement action against GMC and Giffin at that time.
7. GMC will provide a PPM to investors in all future securities transactions.
8. GMC and Giffin will assist the investment adviser involved in these transactions, DRG Investment Advisory Services, LLC, in complying with all requirements of the attached order issued September 9, 2016 by the Administrator concerning custody of client funds.
9. The Administrator will forego any and all fines in the cease and desist order.
10. GMC and Giffin agree to comply with any reasonable investigative demands made by the Bureau in the future for purposes of ensuring compliance with this Consent Order and/or Michigan securities laws.
11. The Parties acknowledge and agree that the Administrator retains the right to pursue any action or proceeding permitted by law to enforce compliance with the provisions of this Consent Order.

12. The Parties further agree that this matter is a public record required to be published and made available to the public, consistent with section 11 of the Michigan Freedom of Information Act, 1976 PA 442, as amended, MCL 15.241. The Administrator currently publishes copies of orders issued under the Act to the Bureau's website and includes a summary of order content in monthly disciplinary action reports separately published on the Bureau's website. The Administrator will also update its Form U6 filed with the CRD, which update will include that the matter was settled by Consent Order wherein Giffin and GMC neither admitted nor denied the violations alleged in the cease and desist order.
13. Giffin and GMC understand and intend that by signing this Consent Order, they are waiving the right, pursuant to the Act, the rules promulgated under that Act and the predecessor Act, and the Administrative Procedures Act, 1969 PA 306, MCL 24.201 *et seq.*, to prior notice and a hearing before an administrative law judge, at which the Bureau would be required to defend any disciplinary action taken under Section 604 of the Act, MCL 451.2604, by presentation of evidence and legal authority and at which they would be entitled to appear with or without an attorney to cross-examine all witnesses presented by the Bureau and to present such testimony or other evidence or legal authority deemed appropriate.

Through their signatures, Giffin and GMC agree to the above terms and conditions.

Dated: 8-30-2016

Signed:

David R. Giffin
David R. Giffin, Respondent

Dated: 8-30-2016


Signed:

David R. Giffin
Giffin Mortgage Company, Respondent

Approved by:

Dated: 8/31/16

Signed:




Timothy L. Teague

Bureau Securities & Audit Division Director

C. ORDER

The Administrator NOW, THEREFORE, ORDERS:

THE TERMS AND CONDITIONS IN THIS CONSENT ORDER ARE BINDING
AND EFFECTIVE PURSUANT TO THE FULLY EXECUTED STIPULATION
ABOVE.



Julia Dale, Bureau Director
(Administrator)