

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

In the Matter of:

Complaint No. 331938

ALEX SMITH
Unregistered

Respondent.

This 28th day of August, 2017

NOTICE AND ORDER TO CEASE AND DESIST

Julia Dale, the Director (“Administrator”) of the Corporations, Securities & Commercial Licensing Bureau (“the Bureau”), 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 Alex Smith (“Respondent”) to cease and desist from offering or selling unregistered Atos Limited securities, and to cease and desist from misstating material facts in connection with the offer and sale of a security, contrary to the Securities Act. Respondent is also notified of the opportunity to request a hearing in this matter.

I. BACKGROUND

A. The Respondent

1. Alex Smith¹, on behalf of Atos Limited, offered and sold options to a Michigan investor. Alex Smith is not registered in any capacity pursuant to the Securities Act in Michigan.

B. Findings of Fact

1. The Bureau received information that Respondent may be offering and selling Atos Limited securities in the State of Michigan, and initiated an investigation to review Respondent’s activities under the Securities Act.

¹ It is unclear if Alex Smith is an alias, or if Alex Smith is the Respondent’s real name.

2. The investigation developed evidence that Respondent offered and sold multiple Atos Limited stock options to a Michigan investor, AS. The stock options offered and sold to AS were not registered, and Respondent has not identified any exemption, exception, preemption, or exclusion justifying the failure to register the Atos Limited stock options.
3. The investigation developed evidence that Respondent represented to AS that the Atos Limited stock options were insured by AIG to minimize the risk of loss to investors. AS contacted AIG, and was informed that there was no such insurance purchased for Atos Limited stock options sold by Respondent. A reasonable investor might consider the existence of risk-mitigating insurance important to his or her investment decision.
4. AS was 60 years of age or older at the time of the stock options sales.

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 301 of the Securities Act, MCL 451.2301, states:

A person shall not offer or sell a security in this state unless 1 or more of the following are met:

- (a) The security is a federal covered security.
- (b) The security, transaction, or offer is exempted from registration under section 201 to 203.

(c) The security is registered under this act.

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^[2] 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...

4. 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.

III. CONCLUSIONS OF LAW

1. Respondent Alex Smith offered and Atos Limited sold stock option securities in Michigan which were not federally covered, exempt from registration, or registered, in violation of section 301 of the Securities Act, MCL 451.2301.
2. Respondent Alex Smith misrepresented a material fact in connection with the offer and sale of a security when it represented to AS that the Atos Limited stock options it sold to him were insured by AIG to mitigate risk of loss, when in fact, no such insurance existed, resulting in AS losing his entire investment, contrary to section 501 of the Securities Act, MCL 451.2501.

IV. ORDER

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

- A. Respondent shall immediately CEASE AND DESIST from offering or selling unregistered securities and from misstating material information in connection with the offer and sale of securities, 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.

[² A “material” fact is one that a reasonable investor might consider important to his or her investment decision. *People v Cook*, 89 Mich App 72 (1979).]

- C. In her Final Order, the Administrator, under section 604(4) of the Securities Act, MCL 451.2604(4), intends to impose a civil fine of \$40,000.00 against Respondent.
- D. Pursuant to section 508 of the Securities Act, MCL 451.2508, a person that willfully violates the Securities Act, or an order issued under the Securities Act, is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$500,000.00 for each violation, or both. An individual convicted of violating a rule or order under this act may be fined, but shall not be imprisoned, if the individual did not have knowledge of the rule or order.

V. NOTICE OF OPPORTUNITY FOR HEARING

Section 604 of the Securities Act, MCL 451.2604, provides that Respondent 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, the Respondent'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. The **FINAL ORDER** includes the imposition of the fines cited described in section IV.C., and the fine amounts set forth below will become due and payable to the Administrator within sixty (60) days after the date this order becomes final:

\$40,000.00 – Alex Smith, under section 604 of the Securities Act, MCL 451.2604.

- B. CIVIL FINE payments should be payable to the STATE OF MICHIGAN and contain identifying information (e.g., names and complaint numbers) and mailed to the following address:

Notice & Order to Cease & Desist
Alex Smith (CN 331938)

Corporations, Securities & Commercial Licensing Bureau
Final Order Monitoring
P.O. Box 30018
Lansing, MI 48909

- C. Failure to comply with the terms of this Order within the time frames specified may result in additional administrative penalties, including the summary suspension or continued suspension of all registrations held by Respondent under the Securities Act, the denial of any registration renewal, and/or the denial of any future applications for registration, until full compliance is made. Respondent may voluntarily surrender or withdraw a registration under the Securities Act; however, the surrender or withdrawal will not negate the summary suspension or continued suspension of the relevant registrations or any additional administrative proceedings if a violation of this Order or the Securities Act occurred.
- D. Failure to pay the civil fines within six (6) months after this Order becomes final may result in the referral of the civil fines to the Michigan Department of Treasury for collection action against Respondents.

CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU



Julia Dale, Director, Corporations, Securities
& Commercial Licensing Bureau

8/28/17
Date