

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

In the Matter of:

Complaint Nos. 342403 & 342441

JOSHUA RUPP
Unregistered

Respondent.

This 3rd day of September, 2020

Issued and entered

NOTICE AND ORDER TO CEASE AND DESIST

Linda Clegg, the Interim Director ("Administrator") of the Corporations, Securities & Commercial Licensing Bureau ("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 Joshua Rupp ("Respondent") to cease and desist from offering or selling unregistered securities; from omitting to state material facts necessary in order to make other statements made, in the light of the circumstances under which they were made, not misleading in connection with the offer and sale of securities; and, from engaging in an act, practice, or course of business that would act as a fraud or deceit on another, contrary to the Securities Act. Respondent is notified of the opportunity to request a hearing in this matter.

I. BACKGROUND

A. The Respondent

1. Joshua Rupp is an individual with last known address in West Olive, Michigan, and is believed to be currently incarcerated in the Ottawa County Jail. Respondent was the promoter for and adviser to a private investment vehicle he marketed to multiple Michigan residents. He is not registered in any capacity under the Securities Act and has not registered any securities offerings under the Securities Act.

B. Findings of Fact

1. The Bureau conducted an investigation of Respondent's activities under the Securities Act in Michigan.
2. The investigation developed evidence that Respondent offered and sold to multiple Michigan residents investment contract securities in a "Percentage Allocation Money Management" or "PAMM" account through IMS LTD, LLC ("IMS"), a Michigan limited liability company owned and operated by Respondent.
3. The PAMM account offered by Respondent through IMS was funded by investments of money from multiple Michigan residents; the investors' fortunes were interwoven with each other and with those of Respondent; investors expected to profit in the proportion of their percentage ownerships of the investment pool; and investors relied solely on the investing acumen and efforts of Respondent and IMS. The PAMM investment contract securities were not registered under the Securities Act and Respondent has not identified a relevant exemption from registration.
4. The investigation developed evidence that Respondent omitted to state material facts necessary to make other statements made not misleading in connection with the offer or sale of the PAMM account securities. Respondent stated to investors that the PAMM account would be invested in securities each day and that, at the end of each day, the account would be moved to a cash position before being invested in securities again the next day. Investors expected to share profits and losses on these daily investment returns. Respondent omitted to state any facts regarding his use of the investment funds to pay personal expenses for himself while whittling the account balances down to nothing. A reasonable investor might consider these omitted facts about using investment funds for personal expenses important when making an investment decision.
5. The investigation developed evidence that Respondent misstated material facts in connection with the offer or sale of securities. Respondent represented to investors that he worked "under his uncle's" securities license and that his activities were legal and properly registered because of his affiliation with his uncle. Respondent, however, was not registered in any capacity under the Securities Act, and had no "uncle" who was licensed. Further, any registered individual under the Securities Act would have a registration personal to their own activities; such registrations are not transferrable to another individual or their securities activities. Respondent's representations that he worked under his uncle's registration could not be plausible under any circumstances, and a reasonable investor might want to know that before investing.

6. The investigation developed evidence that Respondent engaged in an act, practice, or course of business that operated as a fraud on another. Respondent convinced at least one Michigan investor to give Respondent access under power of attorney to the investor's traditional and Roth IRA brokerage accounts. Respondent then used the power of attorney to misappropriate the funds from the investor's account to Respondent's own brokerage account. Thereafter, Respondent used the funds for personal trading and personal expenses. Respondent consistently, fraudulently represented to the investor that he was profitably investing funds on the investor's behalf, when in fact, he was taking them for his own personal gain to the detriment of the investor.

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...

(v) The term includes an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor. As used in this subparagraph, a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors.

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 sections 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:

- (a) Employ a device, scheme, or artifice to defraud.
- (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.
- (c) Engage in an act, practice, or course of business that operates or would operate as a fraud or deceit on another person.

III. CONCLUSIONS OF LAW

1. Respondent Joshua Rupp offered and sold investment contract securities in Michigan which were not federal covered, exempt from registration, or registered, contrary to section 301 of the Securities Act, MCL 451.2301.
2. Respondent Joshua Rupp omitted to state material facts necessary to make other statements made not misleading in connection with the offer or sale of securities when Respondent stated that he would use investor funds to invest in securities, but failed to state that he would use investor funds to pay for his personal expenses. The statements regarding the uses of investment funds were material and were omitted in connection with the offer or sale of securities to multiple Michigan investors, contrary to section 501(b) of the Securities Act, MCL 451.2501(b).
3. Respondent Joshua Rupp misstated a material fact in connection with the offer or sale of securities when he represented to investors that he was able to legally engage in various activities under the Securities Act under his uncle's securities registrations. This statement was false because securities registrations are not transferrable to other individuals in the manner he described, and because it seems he had no uncle with such licenses at all. The representation was fabricated. The statements regarding Joshua Rupp's ability to rely on his uncle's registrations to engage in activities under the Securities Act were false, and were made in connection with the offer or sale of securities to multiple Michigan investors, contrary to section 501(b) of the Securities Act, MCL 451.2501(b).

4. Respondent Joshua Rupp engaged in an act, practice, or course of business that operated as a fraud on or deceit on another person when he convinced an investor to give him authority under power of attorney to trade in the investor's personal accounts, then used the power of attorney to divert the funds to Respondent's own brokerage account for personal trading and personal expenses. Respondent continued to represent to the investor that he was engaging in trading activities for the investor's benefit when that was not the case. Respondent's activities in diverting investor funds to his own use while lying about those uses constituted an act, practice, or course of business that was a fraud on another person in violation of MCL 451.2501(c).

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 and selling unregistered securities, from misstating and omitting to state material facts necessary to make other statements made not misleading in connection with the offer or sale of securities, and from engaging in an act, practice, or course of business that acts as a fraud on another person, 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. To avoid competing with harmed investors for available funds from Respondent, the Administrator intends to impose no civil fine against Respondent in a final order under section 604(4) of the Securities Act, MCL 451.2604(4).
- 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.
- E. The Administrator retains the right to pursue further administrative action against Respondent 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 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:

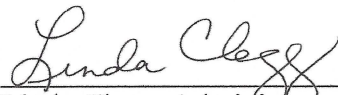
Corporations, Securities & Commercial Licensing Bureau
Regulatory Compliance Division
P.O. Box 30018
Lansing, MI 48909

By email to CSCL-FOIA@michigan.gov

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.
- B. 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.

DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU



Linda Clegg, Administrator and Interim Director
Corporations, Securities & Commercial
Licensing Bureau

9/3/2020
Date