

**EX PARTE ORDER TO CEASE AND DESIST**

The Securities Division of the Vermont Department of Financial Regulation (the Department), pursuant to 9 V.S.A. § 5604 and § 13 of Dept. Reg. 82-1 (Rev), hereby move the Commissioner for an order requiring Future Income Payments LLC and Kohn (collectively “Respondents”) to cease and desist from offering or selling securities in Vermont. The Department files this motion because of violations of 9 V.S.A. §§ 5301, 5401 and 5501 by Respondents and the immediate need to protect the financial health and welfare of Vermont residents. In support of this Motion, the Department states as follows:

**Introduction and Parties**

1. The Department, through its Securities Division, is charged with administering and enforcing the securities laws of the State of Vermont.
2. Future Income Payments L.L.C. (F.I.P.) is a Nevada limited liability company with a business address of 2505 Anthem Village Drive, #E-578, Henderson, Nevada 89052. F.I.P.’s business registration status with the Nevada Secretary of State is in default.
3. Scott Kohn is the manager and CEO of F.I.P. with a residential address of 8628 Titleist Circle, Las Vegas, Nevada 89107-5843.

**Findings of Fact**

4. On or about March 22, 2019, the Division received an inquiry from a Vermont resident (“Complainant”) regarding a 2018 investment in F.I.P. Complainant is aged 79 and retired and resides with her 83 year-old husband, who is also retired.
5. The Complainant alleged that in the Spring of 2018, Complainant, through a Vermont-based insurance agent and registered representative who the Complainant believed to be a financial planner (“the Agent”), learned of an opportunity to invest a lump sum into an F.I.P. product in return for a stream of “interest” payments over approximately 5 years at \$1000 per month.
6. The Complainant further alleged that she invested \$50,000 into F.I.P with the expectation she would be receiving the monthly payments described in paragraph 5 above. Complainant received none of the expected payments nor any communication from F.I.P.
7. After receiving the Complaint, the Division began an investigation into the business activities of Respondents.
8. Based on the Division’s preliminary investigation:

- A. In April 2018, Complainant invested a lump sum of \$50,000 into F.I.P. That sum was supposed to purchase a certain F.I.P. Purchase Agreement instrument, a structured note product that would guarantee an income stream of about \$1000 per month. The check was cashed on April 3, 2018.
  - B. The Agent represented to Complainant that the product would provide a fixed income stream paying higher interest than was available through existing savings accounts.
  - C. At least 4 other Vermont residents, each over the age of 60, invested in the same or a substantially similar F.I.P. product as Complainant. On information and belief, F.I.P. cease making investor payments in or around Spring 2018.
9. On information and belief, Respondents offered, marketed, offered and sold structured note products to Vermont residents as part of a fraudulent scheme.
  10. On information and belief, the funds invested by the Complainant and other Vermont investors were loaned out to other senior citizens at extremely high interest rates.
  11. F.I.P. was recently placed into involuntary Chapter 7 bankruptcy in California by investors, who, on information and belief, are similarly situated to Complainant and the other Vermont investors.
  12. Neither F.I.P. nor Kohn is registered as a broker-dealer nor in any other capacity with the Department.
  13. The securities offered and sold by Respondents are not registered in Vermont, nor exempt from registration.

#### **Violations of Law**

14. Pursuant to 9 V.S.A. § 5301, it is unlawful for a person to offer or sell a security in Vermont unless that security is either registered with the Department or exempt from registration.
15. The structured note products offered and sold by Respondents as "Purchase Agreements" are securities within the meaning of 9 V.S.A. § 5102(28).
16. By issuing or proposing to issue securities, Respondents acted as "issuers" within the meaning of 9 V.S.A. § 5102(17).
17. Because the securities offered and sold by Respondents were neither registered nor exempt, Respondents violated 9 V.S.A. § 5301.
18. Pursuant to 9 V.S.A. § 5401 through 5404, it is unlawful for a person to transact business in Vermont as a broker-dealer, agent, investment adviser or investment adviser representative without first being registered to do so by the Department or exempt from registration.
19. Respondents may have also violated 9 V.S.A. § 5401 and 5402 by holding themselves out as broker-dealers or agents without first being registered with the Department.
20. Pursuant to 9 V.S.A. § 5501(1) and (3), it is unlawful for a person, in connection with the offer to sell or the sale of a security to employ a device, scheme or artifice to defraud or to engage in an act, practice or course of business that operates as a fraud upon another person.

21. Pursuant to 9 V.S.A. § 5501(2), it is unlawful for a person, in connection with the offer to sell or the sale of a security to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. By failing to disclose that the investments offered and sold by FIP were securities which required registration in the State of Vermont, a material omission, Respondents violated 9 V.S.A. § 5501(2).

#### **Commissioner's Authority**

22. Pursuant to 9 V.S.A. § 5604(a)(1), the Commissioner may issue orders or directives to any person to cease and desist from specific conduct if the Commissioner finds that the person has engaged, is engaging or is about to engage in an act, practice or course of business which constitutes a violation of 9 V.S.A. Chapter 150, the Vermont Uniform Securities Act.
23. Pursuant to 9 V.S.A. § 5604(b) and Section 13 of Department Regulation 82-1 (Revised), the Commissioner may issue such orders without prior notice or an opportunity to be heard.
24. In light of the known violations of 9 V.S.A. §§ 5301, 5401 and 5501, and the risk that the financial health and welfare of additional Vermont residents may be affected by Respondents' conduct, an *ex parte* order is appropriate in this case.

#### **Statement of Penalties and Costs**

The Division will seek a penalty up to \$15,000 for each violation and will seek actual costs of investigation. The penalty will be increased by \$5000 per violation for violations involving a person who is a vulnerable adult. The Division may also seek a permanent order to bar Respondents from participating in any securities related business in Vermont.

#### **ORDER**

PURSUANT TO 9 V.S.A § 5604 AND SECTION 13 OF DEPARTMENT REGULATION 82-1 (REVISED), IT IS HEREBY ORDERED:

Respondents F.I.P. and Scott Kohn are ordered to CEASE and DESIST from offering or selling securities in Vermont. Respondents shall not withhold, destroy, mutilate, or by any means falsify any documentary material in their possession that is relevant to their business activities in Vermont.

Dated at Montpelier, Vermont this 2nd day of April 2019.



Michael S. Pieciak, Commissioner