

FINDINGS OF FACT

6. On or about March 22, 2019, the Securities Division received a complaint from a Vermont resident (Complainant) regarding a 2018 investment in a Future Income Payments (FIP) product. At that time, Complainant was 79 and resided with her 83-year-old husband, who was also retired.
7. The Complainant alleged that in the Spring of 2018, Complainant, through Respondent, learned of an opportunity to invest a lump sum into an FIP product in return for a stream of “interest” payments over approximately 5 years at \$1,000 per month.
8. The Complainant further alleged that on the recommendation of Respondent, she invested \$50,000 into FIP with the expectation she would be receiving the monthly payments described in paragraph 9 above.
9. After receiving the complaint, the Securities Division began an investigation into the business activities of both FIP and Respondent.
10. The Securities Division’s investigation identified the following facts:
 - A. In April 2018, at the recommendation of Respondent, Complainant invested a lump sum of \$50,000 into FIP. She obtained the funds by liquidating an annuity and selling mutual funds. That sum was supposed to purchase a certain FIP Purchase Agreement instrument, a structured note product that would guarantee an “income stream” comprising five years of predetermined, fixed monthly payments of about \$1,000 per month. Complainant made her investment by check made out to FIP in the amount of \$50,000, which was cashed on April 3, 2018.
 - B. Complainant never received the Purchase Agreement contract nor any other evidence of her investment. Complainant received no payments from FIP.
 - C. Complainant was retired, had limited net worth, and a low risk tolerance.
 - D. Respondent accessed the FIP notes through American Senior Benefits and his previous employer Essential Retirement Services (ERS), a local

insurance agency. The American Senior Benefits product platform offered the FIP product and a range of insurance products. American Senior Benefits is an insurance marketing organization with no securities registration, and the FIP product was the only non-insurance product offered on the platform.

- E. At the recommendation of Respondent, at least 4 other Vermont residents, each over the age of 60, invested a total of over \$200,000 in the same or a substantially similar FIP product as Complainant.
- F. FIP ceased making any investor payments in or around Spring 2018.
- G. In 2015 and 2016, FIP was disciplined by regulators in California, Washington, and New York for predatory lending practices; by early 2018, FIP was the subject of multiple other regulatory actions across the country for employing a fraudulent scheme and engaging in predatory lending.
- H. By 2019, FIP was subsequently the subject of an involuntary bankruptcy proceeding and a state receivership. FIP and its principal, Scott Kohn, were also indicted on federal criminal charges.
- I. Information regarding the above regulatory actions was public and thus available to Respondent with minimal due diligence.
- J. Based on the Securities Division's investigation, Examination Under Oath of Louis Olave, and related communications with Respondent, a Cease and Desist Order was entered on May 13, 2019 prohibiting FIP from selling securities in Vermont.

11. Since the time of the above-described investigation and Order, the Department, through its Insurance Division, has received an additional complaint regarding Respondent, and Respondent has been the subject of a FINRA arbitration action, both arising from his recommendations that Vermont investors purchase FIP structured note products. The FINRA arbitration was resolved against Respondent.

12. FIP offered, marketed, and sold structured note products to Vermont residents as part of a fraudulent scheme, and on information and belief, the funds invested by Vermont residents were loaned out to other senior citizens at extremely high interest rates.
13. Respondent furthered the fraudulent scheme by recommending the FIP structured note product to at least five Vermont residents.
14. The FIP structured note products are securities within the meaning of 9 V.S.A. § 5102(28).
15. The FIP securities recommended and sold by Respondent are not registered in Vermont, nor exempt from registration. At all times relevant herein, these securities were neither registered in Vermont nor exempt from registration.
16. Despite the fact he was a registered representative of Questar, Respondent failed to perform adequate due diligence with respect to the FIP structured note product.
17. The FIP structured note product was a non-traditional product offering an unusually high rate of return. As a result, additional due diligence was appropriate to ensure it was a legitimate product. Moreover, the FIP structured note was not a product suitable for investors with a low risk tolerance or a modest net worth.
18. Respondent failed to notify Questar of the recommendation and sale of the above-described securities and failed to record the transactions in Questar's records.
19. In connection with the above conduct by Respondent and resulting alleged violations of FINRA rules, Respondent submitted on March 24, 2021 a Letter of Acceptance, Waiver and Consent (AWC) pursuant to FINRA Rule 9216. FINRA accepted the AWC on April 7, 2021. Pursuant to this AWC, Respondent was required to pay a fine of \$5000 and was subjected to a three-month suspension from associating with any FINRA member firm. The suspension period is to run from May 3, 2021 through August 2, 2021.

CONCLUSIONS OF LAW

20. Pursuant to 9 V.S.A. §§ 5412(b) and 5604(a), and after notice and the opportunity for hearing, the Commissioner may enter an Order to suspend, revoke or condition a person's securities registration for violations of Section 5412(d) of the Vermont Uniform Securities Act (VUSA).
21. Pursuant to 9 V.S.A. § 5604(a) and (d), and after notice and an opportunity for hearing, the Commissioner may enter an Order imposing a financial penalty of up to \$15,000 per violation or a total of \$1,000,000 for violations of the VUSA.
22. 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.
23. The structured note products offered and sold by Respondent as "Purchase Agreements" are securities within the meaning of 9 V.S.A. § 5102(28).
24. Because the securities offered and sold by Respondent were neither registered nor exempt from registration, Respondent violated 9 V.S.A. § 5301.
25. Because Respondent violated 9 V.S.A. § 5301, the Commissioner may impose financial penalties upon him.
26. Pursuant to V.S.R. § 3-2 (e)(3), it is unlawful for a person to recommend a securities product which the person should know, based on reasonable inquiry, is unsuitable for a customer.
27. By recommending and selling the FIP structured note product to Vermont customers without having performed adequate due diligence regarding the product, Respondent recommended a product which was unsuitable for those customers. As a result, Respondent violated V.S.R. § 3-2 (e)(3).
28. By recommending and selling the FIP structured note to customers who had a low risk tolerance and limited net worth, Respondent recommended a product which was unsuitable for those customers. As a result, Respondent violated V.S.R. § 3-2(e).
29. By violating V.S.R. § 3-2(e)(3), Respondent also violated 9 V.S.A. § 5412(d)(13).
30. Because Respondent violated 9 V.S.A. § 5412(d)(13), the Commissioner may enter an Order suspending his securities registration.

31. Because Respondent was the subject of an AWC with FINRA, he violated 9 V.S.A. § 5412(d)(5)(c), and the Commissioner may enter an Order suspending his securities registration.
32. It is a violation of V.S.R. § 3-2(e)(23) for an agent to effect a securities transaction without recording that transaction on the books and records of the agent's broker-dealer, unless the transaction is authorized in writing by the broker-dealer in advance.
33. By offering and selling to Vermont customers the FIP structured note product without obtaining prior authorization or recording the transactions on Questar's books and records, Respondent violated V.S.R. § 3-2(e)(23).
34. By violating V.S.R. § 3-2(e)(23), Respondent also violated 9 V.S.A. § 5412(d)(13).

CONSENT ORDER

35. If Respondent fails or neglects to comply with any of the terms set forth in this Stipulation and Consent Order, the Department may, on written notice to Respondent, institute any legal or administrative proceedings it deems appropriate to enforce the Order and to seek such other appropriate sanctions, and Respondent shall consent to the entry of judgment for any unpaid balance.
36. Respondent shall pay an administrative penalty of \$5000, within 30 days of the entry of this Stipulation and Consent Order, to the Vermont Financial Services and Victim Restitution Fund.
37. Respondent's license to sell securities in Vermont shall be suspended from May 3, 2021 through August 2, 2021. Respondent shall not conduct any securities business nor service any Vermont clients during the suspension period.
38. Nothing in this Stipulation and Consent Order shall be construed as limiting the Commissioner's authority to investigate Respondent for matters not resolved herein or for unrelated matters.

39. Nothing herein shall be construed as limiting any private right of action a person may have.
40. Respondent acknowledges that this Stipulation and Consent Order constitutes a valid order duly rendered by the Commissioner and agrees to be fully bound by it.
41. Respondent acknowledges that this Order constitutes a finding by the Commissioner that Respondent has violated Vermont law as set forth above and agrees not to contest such findings.
42. Respondent acknowledges that noncompliance with any term of this Order shall constitute a violation of a lawful order of the Commissioner.
43. Respondent consents to the entry of this Order and acknowledges that his consent is given freely and voluntarily and that no promise has been made to induce it except as otherwise stated herein.
44. Respondent voluntarily waives his right to a hearing and to judicial review of this matter, including his right to a hearing before the Commissioner or his designee and all other procedures otherwise available under Vermont law, the rules of the Department, and the provisions of Title 3, Chapter 25.
45. Respondent further acknowledges the Commissioner retains jurisdiction over this matter for purposes of enforcing the Order.
46. This Order shall be governed by and construed under the laws of the State of Vermont.

Dated at Montpelier, Vermont this 30 day of April 2021.

Vermont Department of Financial Regulation

By: 

Jennifer Rood, Asst General Counsel

Louis Olave, Respondent


