

**STATE OF VERMONT
DEPARTMENT OF FINANCIAL REGULATION**

IN RE:)
EDUCATOR OF TRUTH, AND HIS OR HER)
SUCCESSORS, A CORPORATION SOLE, DBA)
EDUCATIONAL EMPOWERMENT CORP.)
AND) **DOCKET NO. 23-001-S**
MARK LAURENCE DONALD EMERSON)

EX PARTE ORDER TO CEASE AND DESIST

Based on the Motion for Ex Parte Order to Cease and Desist (the “Motion”) filed by the Securities Division of the Vermont Department of Financial Regulation (the “Department”) pursuant to 9 V.S.A. § 5602 and § 5604 and Department Regulation No. 2022-01, the Commissioner makes the following Findings of Fact and Conclusions of Law and enters the following Order:

I. FINDINGS OF FACT

Respondents

1. Educator of Truth, and His or Her Successors, a corporation sole, is a Nevada corporation doing business as Educational Empowerment Corporation (“EEC”). EEC’s principal place of business is Austin, Texas.
2. Mark Laurence Donald Emerson is the President and co-founder, with his son Jonathan Emerson, of EEC.

The Algebra Victory Securities Offering

3. Respondents conduct their business on the internet, through a website accessible to the general public at: <http://www.algebravictory.org/invest/> (the “Algebra Victory”

Website”).

4. Respondents are offering securities in an investment vehicle they call Algebra Victory Sacred Investment, via a prospectus, available online at <https://algebravictory.org/invest/AlgebraVictory.Prospectus.2023.01.31.pdf> (the “Prospectus”). The stated purpose of the offering is to fund production and marketing of an online algebra course for home-schooled students called “Algebra Victory.” (Prospectus at 11).
5. The current Prospectus is dated February 27, 2023, but earlier versions of the Prospectus were published on the Internet. For example, Department staff has a copy of a Prospectus dated January 31, 2023. It is unclear exactly when Respondents began soliciting investors, but it appears to have been at least as early as January 31, 2023. (Prospectus at 1)¹.
6. Respondents claim that the Algebra Victory securities are offered in Vermont pursuant to “9-150-5201(7)”, which appears to refer to the non-profit exemption found at 9 V.S.A. § 5201(7). (Prospectus at 78). The offering has not been filed with the Securities Division.
7. Respondents permit Vermont residents and other investors to purchase investment units in Algebra Victory through the Main Sacred Investment Form, available on the Algebra Victory Website. See <http://www.algebravictory.org/invest/charmform.html>.
8. The Prospectus represents that the proceeds will be used to fund production and marketing of an online algebra course for home schooled students, taught by Mark Emerson. The Prospectus indicates that as many as 81 lessons are planned, and at least 500 videos of

¹ Page number citations herein refer to the Prospectus dated February 27, 2023.

Mark Emerson teaching, but only lessons 1-5 will initially be available in the product's forecasted launch in autumn 2023. (*See, e.g.*, Prospectus at 11, 15). The Prospectus discloses that the business has yet to secure office space, hire a sales and administrative workforce (projected to be 43 people), and begin production of the online lessons. (Prospectus at 22-28).

9. The offering is for an aggregate maximum of \$5 million in securities, which it calls "charms." (Prospectus at 1). A total of ten million charms are authorized by the issuer's articles of incorporation, of which approximately one million are involved in the present offering, with the precise number depending on the increments in which they are purchased. The price of each charm varies by the number of charms purchased, according to six bulk packages of differing sizes. Thus, the price per charm can fluctuate between \$4.50 and \$7.00, depending on the size of investment (largest bulk buyers receiving the lowest price). (*See* Prospectus at 2).
10. Charms are offered in one of two forms: "stars" and "hearts". Returns on "star" investments are paid to investors, and Respondents claim these returns may be taxable, while returns on "heart" investments are paid to a nonprofit entity controlled or designated by the investor, and Respondents claim that such investments are tax-deductible donations.
11. At this time, it is unknown whether any Vermont investor has invested in the Algebra Victory offering.

The Lack of Registration and Public Protections

12. Respondents are not registered with the Vermont Department of Financial Regulation to offer or sell securities in Vermont.

13. The Algebra Victory offering is not registered or permitted for sale in Vermont, nor does it qualify for any exemption from registration pursuant to the Vermont Uniform Securities Act, 9 V.S.A. §§ 5101-5617 (the “Securities Act”).
14. Respondents are not registered with the United States Securities and Exchange Commission (the “SEC”).
15. Respondents did not file or cause to be filed a registration statement with the SEC in connection with the offer and sale of Algebra Victory.
16. Without any legal support, Respondents claim that they are operating under an exemption from the federal securities laws pursuant to 15 U.S.C. § 77c(a)(4). (Prospectus at 61).
17. Through the Prospectus, Respondents claim that they are offering securities in Vermont under the non-profit exemption and that the securities are exempt from any required filing with the Securities Division. (Prospectus at 78). However, Respondents do not account for the fact that the Department has narrowed the exemption by regulation. V.S.R. § 5-4 has narrowed the statutory exemption **and requires issuers to file for the exemption at least thirty days prior to solicitation.**
18. Respondents have not filed for the non-profit exemption.²

The Ongoing Threat to The Financial Health and Welfare of Vermonters

19. In addition to being offered without an exemption, the Algebra Victory offering documents contain financial projections and predicted rates of return on investment that compel the

² Moreover, if Respondents were to file for exemption, it would fail on the merits, as the exemption is only available for nonprofit-issued debt securities. 9 V.S.A. § 5201(7) expressly states that the exemption only applies to securities that are “not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person.” While “stars” do not confer voting rights as common stock shares typically do, their only stated function is to facilitate distribution of the Issuer’s net earnings to purchasers. These purchasers are arguably stockholders and are thus “other persons” than the Issuer. The Issuer’s claim otherwise is conclusory and unsupported. In other words, the offering is not of any type of security eligible for the § 5201(7) exemption.

inference of fraud. To establish a rough industry benchmark, Kaplan, Inc., a firm with nearly a century of experience offering private and individual instruction in a variety of formats and in a broad range of academic subjects and professional certifications, holding a commanding market position and employing a workforce of approximately 12,000 people, has recently produced annual gross revenues of approximately \$1.3-1.4 billion. In comparison, the Prospectus predicts that Algebra Victory—a venture that has yet to produce or sell its product, has yet to acquire any necessary infrastructure, has yet to recruit its workforce, and plans to offer precisely one course delivered by precisely one instructor—will generate annual gross revenues in 2027 exceeding \$1.4 billion. (Prospectus at 57). The Algebra Victory offering would be denied registration or an exemption in Vermont because the financial projections and predicted rates of return on investment compel the inference of fraud.

20. The Algebra Victory offering’s projected annual rates of return also raise concerns with the Securities Division. An offering predicting in firm language or impliedly warranting in any way that it will generate an annual return of 10% would receive heightened scrutiny from the Securities Division and a directive to revise the language prior to effectiveness. In contrast, cumulative returns on investment in Algebra Victory are predicted to range from 2,093% to 3,242% through 2027. (Prospectus at 2, 51). The Prospectus insists these predictions are “reasonable” and “definitely NOT ‘a slice of pie in the blue sky.’” (Prospectus at 2, 12).
21. Projected enrollment figures for the Algebra Victory course also raise concerns regarding the plausibility and feasibility of the venture. The Prospectus states that the U.S. population of homeschooled students is approximately 3.1 million students. (Prospectus at 31). The

Prospectus posits that 1.55 million people, which equals half of the home school population, will enroll in Algebra Victory. (Prospectus at 31). The Five-Year Financial Projection table (Prospectus at 50) uses a 2027 enrollment figure exceeding the entire home-school population: 3,657,588.

22. These projections raise concerns and indicate that, even if Algebra Victory were to apply for registration of its securities in Vermont, the Department would have to closely analyze whether the offering was viable and legal under Vermont law. 9 V.S.A. § 5306(a)(7) authorizes a withholding of effectiveness from offerings that “will work or tend to work a fraud upon purchasers or would so operate.” The statutory language indicates there are no applicable scienter requirements, though circumstances suggest that scienter might not be an insurmountable hurdle. While comparatively brief, Section 9.4 of the Algebra Victory Prospectus presents a valuation of the Issuer, EEC. This section—in its entirety—materially misrepresents EEC’s pre-offering valuation as \$132,551,301. (Prospectus at 52).

II. CONCLUSIONS OF LAW

23. Pursuant to 9 V.S.A. § 5301, “[i]t is unlawful for a person to offer or sell a security in this State unless: (1) the security is a federal covered security; (2) the security, transaction, or offer is exempted from registration under sections 5201 through 5203 of this chapter; or (3) the security is registered under this chapter.”
24. Pursuant to 9 V.S.A. § 5102(28), the term “security” includes notes, investment contracts, evidence of indebtedness, and related types of participation in profit-sharing agreements. Section 5102(28)(D) specifies that the Securities Act’s definition of security 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 and 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.” *Id.* (codifying the definition set forth in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946), commonly referred to as the “*Howey test*”).

25. The Algebra Victory products offered by Respondents are securities within the meaning of 9 V.S.A. § 5102(28).
26. The Algebra Victory products were neither federal covered securities nor registered with the Department nor exempted from registration when Respondents offered or sold them to Vermont investors.
27. Accordingly, Respondents are — and have for some time been — in violation of 9 V.S.A. § 5301.

III. COMMISSIONER’S AUTHORITY

28. 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, which spans 9 V.S.A. § 5101 to § 5617.
29. Pursuant to 9 V.S.A. § 5604(b) and Section 1.04(O) of the Department of Financial Regulation No. 2022-01, the Commissioner may issue orders without prior notice or opportunity to be heard.
30. Pursuant to 8 V.S.A. § 13 and 9 V.S.A. § 5602(b), the Commissioner may require the production of records.

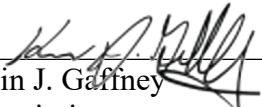
31. In light of the immediate need to protect the financial health and welfare of Vermont residents who may be affected by Respondents' conduct or otherwise harmed by Respondents' violations of the Vermont Uniform Securities Act identified herein, an *ex parte* order is appropriate in this case.

IV. ORDER

32. Based on the findings of fact and conclusions of law identified above, IT IS HEREBY ORDERED:

- A. Respondents shall cease and desist from the offer and sale of Algebra Victory securities to Vermont residents, except to the extent any such offer or sale is properly registered or exempt from the registration requirements of the Securities Act; and
- B. Respondents shall not withhold, destroy, mutilate, or by any means modify or falsify any documentary material, electronic records, or other information in their possession that is relevant to this matter or that involves or relates in any way to any other agreements of any kind entered into by Respondents in connection with the Algebra Victory offering. The Securities Division requests that any such documents involving Vermont residents be ordered to be produced within 10 days of the Order.

Dated at Montpelier, Vermont this 14th day of March 2023.



Kevin J. Gaffney
Commissioner
Vermont Department of Financial Regulation