

1 **STATE OF OREGON**
2 **DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**
3 **DIVISION OF FINANCE AND CORPORATE SECURITIES**

4 In the Matter of:

Case No. S-14-0059

5 Invest Northwest, L.L.C., and
6 Kevin Michael Winder

7 Respondents.

ORDER TO CEASE AND DESIST;
ORDER ASSESSING CIVIL PENALTIES;
ORDER DENYING EXEMPTIONS; ORDER
REVOKING RESPONDENTS' SECURITIES
LICENSES; AND CONSENT TO ENTRY OF
ORDER

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9 WHEREAS, the Director of the Department of Consumer and Business Services
10 for the State of Oregon (hereinafter "the Director"), acting by the authority of the Oregon
11 Securities Law, Oregon Revised Statutes Chapter 59, has conducted an investigation of
12 Respondents and concluded that violations of Oregon law have been committed;

13 WHEREAS the Director, acting by and through the Division of Finance and
14 Corporate Securities ("DFCS") issued a Notice Order against Respondents on November
15 6, 2014, and Respondents timely requested a request for hearing;

16 WHEREAS Respondents wish to resolve this matter with the Director;

17 WHEREAS Respondents submit to the jurisdiction of the Director, but otherwise,
18 Respondents neither admit nor deny the Findings of Fact and Conclusions of Law set
19 forth in Sections I and II below;

20 NOW THEREFORE, as evidenced by the signatures subscribed on this Order,
21 Respondents hereby CONSENT to entry of this Order upon the Director's Findings of
22 Fact and Conclusions of Law.

23 **I. FINDINGS OF FACT**

24 The Director FINDS that at all times relevant to this Order:

25 1. **Invest Northwest, L.L.C. ("Invest NW")** was a State of Oregon licensed
26 investment adviser (IARD No. 155212) doing business at 1800 State Street, Salem,
Oregon 97301.

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350 Winter Street NE, Suite 410
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b. Investors

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2 8. Beginning on or about June 2013, DFCS began an investigation into
3 certain promissory notes that were sold by Respondents in Oregon to residents who were
4 retired or nearing retirement.

5 9. On or about January 25, 2013, JT entered into a client contract with Invest
6 NW. JT had no experience investing in real estate, nor was JT an accredited investor.

7 10. JT's investment objective with Invest NW provided: "Goal in this
8 portfolio with Pensco is to achieve 6% to 7% returns backed by real estate. Income
9 producing property will most likely provide the security. Other income producing assets
10 may be used."

11 11. On or about January 22, 2013, Winder advised JT to rollover \$149,834.47
12 from JT's pension to a self-directed IRA with Pensco Trust Company.

13 12. On or about February 14, 2013, Winder recommended and sold JT a
14 \$149,000 unsecured promissory note that BR issued personally. Respondents did not
15 disclose BR's financial situation.

16 13. In connection with JT's transaction, Winder represented that JT's
17 investment would be secured by an interest in real estate, namely a trust deed; that way, if
18 the issuer of the promissory note defaulted, JT would be able to foreclose on the securing
19 property. However, on September 22, 2014, Winder informed DFCS that JT's
20 investment was not secured by any interest in real property.

21 14. On or about February 15, 2013, JT's investment funds were deposited into
22 a bank account controlled by Peg Leg at Wells Fargo. Winder and BR had control over
23 Peg Leg's bank account.

24 15. Between February 15, 2013 and March 7, 2013, JT's investment funds
25 were used to pay for goods and services that were unrelated to Oregon-based real estate
26 projects.



1 16. In 2014, Winder reached a civil settlement with JT.

2 17. On or about March 20, 2012, LH entered into an investment advisory
3 contract with Invest NW. LH had no experience investing in real estate.

4 18. LH's investment objective with Invest NW stated: "To invest in real
5 estate. Real estate 1st trust deeds. Goal is to diversify away from the stock market."
6 Furthermore, LH specifically told Winder that she did not want to invest any funds in
7 trucking business.

8 19. Between January 17, 2013 and February 12, 2013, LH purchased two
9 promissory notes (totaling \$250,000) based on Winder's recommendations. In
10 connection with LH's \$250,000 investment, Winder represented that LH's investment
11 was secured by an interest in real property.

12 20. On or about January 17, 2013, Winder gave a LH a trust deed on 4803-
13 4833 Future Dr., Salem, Oregon, 97305. However, at the time that Winder gave LH the
14 trust deed, Winder was aware that another investor had a first position on the same
15 property. Thus, Winder did not disclose that LH's trust deed had an inferior position on
16 the securing property.

17 21. LH's \$250,000 investment was made in two transactions: the first
18 occurred on or about January 17, 2013, when LH purchased a \$90,000 promissory note
19 issued by Paperboy, a company that Winder controlled. The note had a maturity date of
20 January 31, 2014, promised to pay 7% interest per annum, and paid \$525 monthly as
21 interest.

22 21. On or about February 14, 2013, Winder transferred LH's \$90,000
23 investment from a bank account controlled by Paperboy to Peg Leg's bank account at
24 Wells Fargo. LH's funds were subsequently used to pay for trucking operations in North
25 Dakota.

26



1 22. The second transaction occurred on or about February 12, 2013, when
2 Winder recommended and sold to LH a \$160,000 promissory note that BR issued
3 personally. The note had a maturity date of January 31, 2014, promised 7% interest per
4 annum, and a monthly payment of \$933.33 in interest. Winder did not disclose BR's
5 financial situation to LH.

6 23. On February 19, 2013, LH's \$160,000 investment funds were deposited
7 into Peg Leg's bank account at Wells Fargo. Again, LH's investment funds were used to
8 pay for trucking operations in North Dakota.

9 24. In 2014, Winder reached a civil settlement with LH.

10 25. On or about October 30, 2012, JCC entered into an investment advisory
11 contract with Invest NW. JCC had no experience in real estate investing.

12 26. JCC's investment objective with Invest NW stated: "she is retiring in May.
13 We are rolling money to Pensco and looking to achieve 6% annual return using
14 investments backed by income producing properties, (1st Trust Deeds) trust deeds,
15 income producing investments."

16 27. On or about October 30, 2012, Winder recommended that JCC rollover
17 \$150,000 from an employer maintained 401k plan to a self-directed IRA with Pensco
18 Trust Company

19 28. On or about December 6, 2012, Winder recommended and sold to JCC a
20 \$150,000 unsecured promissory note that BR had issued personally. JCC's note had a
21 maturity date of January 1, 2017, promised 6% interest per annum, and a monthly
22 payment of \$750 in interest.

23 29. Winder further represented to JCC that her investment would be secured
24 by an interest in real property, but Winder did not disclose a particular property, nor was
25 any interest in real property given to JCC in connection with the transaction.

26

1 31. JCC’s investment funds were deposited into Peg Leg’s bank account and
2 used to pay for goods and services unrelated to Oregon-based real estate projects.

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4 **c. Promissory Notes Were Not Registered**

5 32. Paragraphs 1-31 are incorporated and re-alleged.

6 33. DFCS has no record of any securities being registered by any issuer of
7 promissory notes sold by Respondents.

8 **II. CONCLUSIONS OF LAW**

9 The Director **CONCLUDES** that:

10 1. The Director has jurisdiction over the Respondents for the violations
11 described below. ORS 59.235. These violations occurred in the State of Oregon.

12 2. Invest NW is licensed with DFCS as a “state investment adviser” as
13 defined by ORS 59.015(20)(a).

14 3. Winder is licensed with DFCS as an “investment adviser representative”
15 as defined by ORS 59.015(8)(a).

16 4. The investments sold by Winder to JT, LH, and JCC are “securities” either
17 as “investment contracts,” “notes,” or “evidence of indebtedness,” as defined by ORS
18 59.015(19)(a).

19 5. The investments sold by Respondents were not registered as securities
20 with DFCS, nor were such securities exempt from registration under Oregon or Federal
21 law.

22 6. Invest NW and Winder are fiduciaries who have a duty to act primarily for
23 the benefit of Invest NW clients, pursuant to OAR 441-205-0145(1). Respondents did not
24 comply with their fiduciary obligation owed to clients JT, LH and JCC.

25 7. Invest NW and Winder, directly or indirectly, in connection with the sale
26 or purchase of securities to JT, LH and JCC, made untrue statements or materially

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1 omitted to state a material fact necessary in order to make the statements made, in light of
2 the circumstances under which they were made, not misleading in violation of ORS
3 59.135(2).

4 8. Invest NW and Winder engaged in unethical business practices by making
5 recommendations to JT, LH, and JCC regarding purchases and sales without reasonable
6 grounds to believe the recommendations were suitable for the clients, in violation of ORS
7 59.205(2) and OAR 441-205-0145(1)(a).

8 9. Invest NW and Winder engaged in unethical business practices by
9 borrowing client funds, in violation of ORS 59.205(2) and OAR 441-205-0145(1)(f).

10 10. Invest NW and Winder failed to adequately disclose Winder's outside
11 business activities on Form ADV, in violation of ORS 59.175(6), ORS 59.205(14), OAR
12 441-175-0105, and ORS 59.195(2), which requires licensed state investment advisers and
13 investment adviser representatives to promptly amend any document filed with the
14 Director which is or becomes incomplete or inaccurate in any material respect.

15 11. Invest NW and Winder offered and sold unregistered securities; namely
16 promissory notes, that were not exempt from registration, in violation of ORS 59.055.

17 **III. ORDER**

18 1. The Director, pursuant to ORS 59.245(4), hereby ORDERS Respondents
19 Invest NW and Winder to CEASE AND DESIST from:

- 20 A. offering or selling unregistered securities by violating ORS 59.055;
- 21 B. engaging in unethical business practices by violating OAR 441-205-
22 0145(1)(a) and (1) (f); and,
- 23 C. violating any provision of the Oregon Securities Law or the Rules
24 promulgated thereunder.

25 2. Respondent Invest NW's state investment adviser license is REVOKED,
26 effective sixty (60) days from entry of this Order. Upon entry of this Order, Invest NW

1 will file Form ADV-W (withdrawal) on the IARD and provide written notice of
2 withdrawal to all Invest NW clients.

3 3. Respondent Winder's state investment adviser representative license is
4 REVOKED, effective sixty (60) days from entry of this Order. Upon entry of this Order,
5 Winder will file Form ADV-W (withdrawal) on the IARD and provide written notice of
6 withdrawal to all Invest NW clients.

7 4. The Director, pursuant to ORS 59.205(2), PERMANENTLY BARS
8 Respondents from acting as investment advisers or investment adviser representatives in
9 the State of Oregon.

10 5. The Director, pursuant to ORS 59.045(2), DENIES Respondents the use
11 of the securities and transactions exemptions that would otherwise be available under
12 ORS 59.025, and ORS 59.035, respectively.

13 6. The Director, pursuant to ORS 59.995, hereby ASSESSES a \$120,000
14 civil penalty against Invest NW and Winder to be paid jointly and severally, as follows:.

- 15
- 16 A. Respondents will pay the Director \$10,000 within sixty days of entry of
17 this Order.
- 18 B. The Director will SUSPEND the collection of \$110,000 of the civil
19 penalty for three years; provided, however, Respondents shall satisfy the
20 investors' debt identified at Exhibit A within such timeframe and provide
21 written proof of such satisfaction to DFCS. If the debts referenced in
22 Exhibit A are satisfied within three years, and the terms of this Order are
23 complied with, the Director will waive the collection of the remaining
24 \$110,000 civil penalty.
25
26



1 7. Respondents stipulate and agree that the civil penalty assessed in
2 Paragraph 6 of Section III is not dischargeable under 11 U.S.C. 523(a)(7).

3 10. Should any provision of this Consent Order require interpretation or
4 enforcement, Respondents stipulate and agree to the jurisdiction of the Marion County
5 Circuit Court, Salem, Oregon.

6 11. The entry of this Consent Order in no way limits further remedies which
7 may be available to the Director under Oregon law.

8 **IT IS SO ORDERED.**

9 Dated this 12th day of May, 2015, at Salem, Oregon.

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12 PATRICK M. ALLEN, Director
13 Department of Consumer and Business Services

14 /s/ David Tatman
15 David C. Tatman, Administrator
16 Division of Finance and Corporate Securities

17 By: /s/ Kevin Michael Winder 4-24, 2015
18 Kevin Michael Winder Date

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CORPORATE CONSENT TO ENTRY OF ORDER

I, Kevin Michael Winder, state that I am and was at all relevant times to this Consent Order, the managing member of Invest Northwest, L.L.C., and I am authorized to act on its behalf. I have read the foregoing Consent Order. Invest Northwest, L.L.C. has been represented by counsel in this matter. Invest Northwest, L.L.C. voluntarily enters into this Consent Order.

Dated this 24 day of April, 2015.

By: /s/ Kevin M. Winder
Kevin Michael Winder
For Invest Northwest, L.L.C.

State of OREGON
County of Marion

Signed and sworn to (or affirmed) before me on April 24th, 2015,
by /s/ Kevin M. Winder.

/s/ Doug A. Bradel
Notary Public - State of Oregon

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Exhibit A

Start Date	Client	Initial Loan Amount	Current Amount	End Date
10/11/12	LA	\$14,000	\$14,000	10/01/15
11/13/12	LA	\$135,000	\$135,000	11/13/17
12/06/12	JCC	\$150,000	\$150,000	01/01/17
03/15/13	JM	\$160,000	\$160,000	05/01/16
03/18/13	GW	\$90,000	\$90,000	05/01/16
05/14/13	CS	\$123,000	\$123,000	07/01/14
05/15/13	NH	\$25,000	\$20,388	05/15/15
05/15/13	TH	\$100,000	\$81,551	05/15/15
05/22/13	MS	\$56,000	\$56,000	06/01/14

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