

STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION

In the Matter of:

Case No. S-20-0041

KYLE V. ROBERTS,
THE SHORT INTEREST, LLC, and
THE SHORT MANAGER, LLC,

Respondents.

FINAL ORDER TO CEASE AND
DESIST, FINAL ORDER DENYING
USE OF EXEMPTIONS, AND
FINAL ORDER ASSESSING CIVIL
PENALTIES, ENTERED BY DEFAULT

On November 20, 2020, the Director of the Department of Consumer and Business Services for the State of Oregon (“Director”), by and through the Division of Financial Regulation (“Division”), properly served Order to Cease and Desist, Proposed Order Denying Use of Exemptions, Proposed Order Assessing Civil Penalties, and Notice of Right to Administrative Hearing (“the Notice Order”) on Kyle V. Roberts, The Short Interest, LLC, and The Short Manager, LLC. (collectively, “Respondents”).

The Notice Order offered Respondents an opportunity for a hearing, if requested within 20 days from the service of the Notice Order. The Notice Order designated the relevant portions of the Director’s file on this matter, including all materials submitted by a party, as the record for purposes of default. The Notice further informed Respondents that if a hearing was not conducted because a respondent did not timely request a hearing or otherwise defaulted, then the designated portion of the Director’s file and all materials submitted by a party in this case would automatically become part of the contested case record for the purpose of proving a prima facie case.

The Director did not receive any hearing request from Respondents, and the Director did not conduct a hearing.

NOW THEREFORE, after considering the relevant portions of the Division’s file relating to this matter, the Director enters the following Final Order, entered by default.



FINDINGS OF FACT

The Director FINDS that:

1. The Short Interest, LLC (“the Fund”) was an Oregon limited liability company with a principal place of business in Portland, Oregon. The Fund was organized January 13, 2017, and it was administratively dissolved on March 14, 2019.

2. The Short Manager, LLC (“TSM”) was an Oregon limited liability company with a principal place of business in Portland, Oregon. TSM was organized March 22, 2017, and it was administratively dissolved on May 24, 2018.

3. At times material to this order, Kyle V. Roberts (“Roberts”) was the managing member and the registered agent of the Fund. Roberts was also the sole member and the registered agent of TSM. Roberts resides in Portland, Oregon.

4. During 2017, Roberts established two companies, the Fund and TSM, for the purported purpose of pooling funds from investors and using the money to engage in trading of options and other securities on a platform, using a trading strategy based on an algorithm developed by Roberts.

5. Roberts solicited investors to invest their funds with him, the Fund, and TSM (“Respondents”). During 2017, Roberts raised a total of \$480,000 from five investors. One of the investors, “LL”, invested \$330,000 with Respondents in March 2017. LL is a resident of Larchmont, New York.

6. In exchange for the funds LL invested in the Fund, LL received an Operating Agreement issued by Respondents, and he received a Subscription Agreement, dated March 22, 2017, for membership interests in the Fund. Roberts, as the manager, signed the subscription agreement on behalf of the Fund and TSM.

7. Before he invested, LL was introduced to Roberts by a mutual friend at a meeting in New York in February 2017. During that meeting, Roberts represented to LL that Roberts is a sophisticated mathematician, and Roberts developed a mathematical





1 model to analyze and predict the movement of stock prices around target companies’
2 quarterly earning announcements. Using his model to analyze historical stock
3 performance around quarterly earning announcements, Roberts claimed he could identify
4 instances in which options were overvalued and would sell those options, based on his
5 analysis. Roberts said he had identified a means to make significant returns trading
6 options on the stocks of certain companies at and around their earnings announcements,
7 and using his model, Roberts had made phenomenal returns for himself by trading in
8 options identified by his model.

9 8. Respondents described the business of the Fund in an Information Statement
10 dated March 17, 2017, provided to investors, including LL, as follows:

11 The Fund is an Oregon limited liability company based in Portland,
12 Oregon The Fund is managed by The Short Manager, LLC, an Oregon
13 limited liability formed for the purpose of managing the Fund (“the
14 Manager”). Kyle Roberts (“the Principal”) is the sole member of the
15 Manager. The Principal has developed an algorithm, using data-science
16 and statistical modeling tools, to identify specific market conditions that,
17 when present, may enable investor to trade in options and other securities
18 at a higher yield. The initial mission of the Fund will be to exploit an
19 opportunity which the Manager believes exists surrounding the release of
20 quarterly earnings reports by publicly traded U.S. companies. The Fund
21 expects to expand on this strategy and other markets, as the Manager
22 leverages tools of qualitative analysis to discover new profit opportunities
23 in the derivatives markets. The Fund intends to invest substantially all
24 capital received from Investors in publicly-traded options and other
25 securities, and manage the Fund’s investments using the algorithm
26 described above and the Principal’s prior experience trading in securities
generally.

21 9. The Information Statement includes a section on “Management Rights”,
22 which states:

23 The Investors will not have any voting rights or participate in the
24 management or control of the Fund’s business, except as required by law
25 or as may specifically set forth in the Operating Agreement.

24 10. The Operating Agreement, in Article IV Section 4.01, includes a section
25 “Authority of Manager”, which states, in relevant part:
26



The management and operation of the Fund and the determination of its policies will be vested exclusively in the Manager...Except as expressly provided in this Agreement, no action by the Fund or the Manager will require the consent of the Members.

11. The Operating Agreement, in Article V Section 5.01, includes a section “Rights and Duties of Members”, which states:

The Members (in their capacity as such) will not participate in the management or control of the Fund’s business, transact any business for the Fund or have the power to act for or bind the Fund.

12. Before LL invested in the Fund, Roberts represented to LL that Respondents had raised a total of \$165,000 from the other investors.

13. In fact, Respondents had raised a total of \$150,000 from the other investors.

14. Before LL invested in the Fund, Roberts represented to LL that Roberts was personally investing \$5,000 of his own money in the Fund, under his management, to be invested pursuant to his strategy.

15. In fact, Robert did not invest \$5,000 of his own money in the Fund.

16. Around April 2017, Respondents moved approximately \$479,000 of investor funds into a pooled account at a trading platform, and Roberts began trading.

17. Between April 2017 and August 2018, Respondents traded using the investors’ funds. Almost immediately, Respondents began losing significant amounts of the investors’ money, while purportedly following Roberts’ trading model. By the end of 2017, LL incurred losses of approximately 65% of the funds he invested with Respondents. Several investors, including LL, having lost most the funds they invested, exited the program, and the Fund eventually folded. By the time he exited the Fund in 2018, LL lost \$300,200 of his \$330,000 investment principal. By September 2019, less than \$40 remained in the Fund’s trading account.

18. Before LL invested, Respondents did not adequately disclose to LL the use of investors’ funds or the fees Respondents would charge the investors, including LL. The Information Statement includes a section, “Management Fee”, which states:



Initially, the Manager will not charge a management or similar fee. After the six month anniversary of the first investment in the Fund, subject to the approval of a majority in interest of the Investors, the Manager may charge a management fee, which fee will be deducted from the Investors' capital accounts.

19. In fact, Roberts transferred approximately \$1,000 from the Fund's trading account to his bank account five months after receiving money from the investors. In 2018, unbeknownst to LL, Roberts moved approximately \$12,000 from the Fund's trading account to Roberts' personal account at another firm, and used the money for Roberts' own benefit, including payment of his personal expenses.

20. The Information Statement includes a section, "Capital Accounts", which states:

The Manager will establish a capital account for each member. Each member's capital account will initially equal the member's initial capital contribution, and will be increased to reflect any additional capital contributions and any increase in the value of Fund assets allocable to such member, and decreased to reflect any withdrawals or distributions and any decrease in the value of Fund assets or management fees allocable to such member.

21. In fact, the investors' money was pooled in one trading account, and Respondents did not establish a capital account for each investor.

22. At no time has Roberts held an Oregon securities salesperson license.

23. At no time were the membership interests in the Fund registered with the Director under ORS 59.055.

24. On or about March 31, 2017, Respondents filed a Form D for the Fund with the United States Securities and Exchange Commission. Respondents indicated they were operating a pooled investment fund and claimed to be offering securities under the safe harbor provided by Regulation D, Rule 506(b) from the federal securities registration requirements of 15 USCA §77e.

25. Respondents did not file a notice with the Oregon Division of Financial Regulation or pay a notice filing fee to the Division as provided by ORS 59.049.



CONCLUSIONS OF LAW

The Director CONCLUDES that:

26. The membership interests in the Fund that Respondents sold to LL are investment contracts and therefore "securities" under ORS 59.015(19)(a).

27. The membership interests were not registered securities under ORS Chapter 59 and OAR Chapter 441.

28. Respondents sold unregistered securities to LL, in violation of ORS 59.055.

29. Roberts acted as a securities "salesperson" as defined in ORS 59.015(18)(a), by representing an issuer of securities, the Fund, in effecting transactions in securities.

30. Roberts transacted business as a securities salesperson without a license, in violation of ORS 59.165(1).

31. In connection with the sale of the membership interests to LL, Respondents directly and indirectly made untrue statements of material fact in violation of ORS 59.135(2), as more fully described above, regarding the:

- A. amount of money Respondents raised from the other investors;
- B. amount of his own money Roberts invested in the Fund;
- C. use of investor funds; and
- D. fees Respondents would charge in connection with the transactions.

32. In connection with the sale of the membership interests, Respondents directly and indirectly omitted to state material facts in violation of ORS 59.135(2), as more fully described above, regarding the:

- A. actual use of investor funds; and
- B. fees Respondents would charge in connection with the transactions.

ORDERS

The Director issues the following ORDERS:

33. In accordance with ORS 59.245(4), Respondents, and any and all agents,



1 authorized representatives, and entities owned or controlled by Respondents, their
2 successors and assigns, are hereby ORDERED to CEASE AND DESIST from violating
3 ORS 59.055 and ORS 59.135(2), and Roberts is further ORDERED to CEASE AND
4 DESIST from violating ORS 59.165(1).

5 34. As authorized by ORS 59.045(2), the Director hereby DENIES Respondents,
6 and any and all agents, authorized representatives, and entities owned, operated or
7 controlled by Respondents, their successors and assigns, the use of any exemptions that
8 would otherwise be available under ORS 59.025 and ORS 59.035, concerning securities
9 and transactions exempt from the registration requirements of the Oregon Securities Law.

10 35. As authorized by ORS 59.995(1), the Director hereby ORDERS Respondents,
11 jointly and severally, to pay CIVIL PENALTIES totaling \$25,000 for the following
12 violations:

13 A. \$5,000 for violating ORS 59.055; and

14 B. \$20,000 for violating ORS 59.135(2).

15 36. As authorized by ORS 59.995(1), in addition to the civil penalties assessed
16 above, the Director hereby ORDERS Roberts to pay a CIVIL PENALTY of \$5,000, for
17 violating ORS 59.165(1).

18 SO ORDERED this 4th day of March, 2021.

19 ANDREW R. STOLFI, Director
20 Department of Consumer and Business Services

21 /s/ Dorothy Bean —

22 Dorothy Bean, Chief of Enforcement
23 Division of Financial Regulation

24 NOTICE OF RIGHT TO JUDICIAL APPEAL

25 You are entitled to judicial review of this order in accordance with ORS 183.482. You may
26 request judicial review by filing a petition with the Court of Appeals in Salem, Oregon, within
sixty (60) days from the service of this Final Order.