

**STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT**

IN THE MATTER OF:

KADESHA KIRKMAN, BRENDA SMITH,

LOCKHART and ROSENBURGH, INC.

and

CREATIVE INVESTMENT STRATEGIES, INC.,

RESPONDENTS.

File No. 1600733

ORDER OF PROHIBITION

TO RESPONDENTS: Kadesha Kirkman
Lockhart and Rosenberg, Inc.
c/o Robert A. Habib
Attorney at Law
77 W. Washington St.
Suite 1506
Chicago, IL 60602

WHEREAS, the above-captioned matter came to be heard on October 12, 2017, pursuant to the Notice of Hearing dated June 14, 2017, served on the Respondents by Petitioner Secretary of State, and the record of this matter, under the Illinois Securities Law of 1953 [815 ILCS 5] ("the Act"), has been reviewed by the Secretary of State or his duly authorized representative.

WHEREAS, the rulings of the Hearing Officer on the admission of evidence and all motions are deemed proper and are hereby concurred with by the Secretary of State.

WHEREAS, the proposed Findings of Fact, Conclusions of Law and Recommendations of Hearing Officer James L. Kopecky in the above captioned matter have been read and examined.

WHEREAS, the following proposed Findings of Fact of the Hearing Officer are hereby adopted as the Findings of Fact of the Secretary of State:

1. The Illinois Securities Department ("Department") issued a Notice of Hearing on June 14, 2017, with the hearing set for June 14, 2017.
2. The Department properly served the Notice of Hearing on Respondent Kirkman and Respondent Lockhart and Rosenberg, Inc. The Notice of Hearing included a statement of the time, place, and nature of the hearing, along with the other information required under Section 130.1102 of the Rules and Regulations. Respondents stipulated that service was proper and they took no issues with the Notice of Hearing.

The Department stated for the record that Respondent Creative Investment Strategies, Inc. was dismissed and that if it pursued an action against Brenda Smith it would do so in a different action and, therefore, Brenda Smith is not a Respondent in this matter. Accordingly, the hearing proceeded only as to Respondents Kadesha Kirkman and Lockhart and Rosenberg, Inc. Therefore, the term "Respondents" refers only to the two remaining Respondents.

3. Respondent Kadesha Kirkman, ("Respondent Kirkman") is an individual with a last known business address of 20180 Governors Hwy., Suite 210, Olympia Fields, IL 60461.
4. Respondent Lockhart and Rosenberg, Inc., ("Respondent Lockhart and Rosenberg") is an Illinois corporation with a current status of "active" and has a last known address of 20180 Governors Hwy, Suite 210 Olympia Field, IL 60461. It is controlled by Respondent Kirkman and affiliated with an entity called Chicago Wealth Builders, which is also controlled by Respondent Kirkman.
5. SC, an Illinois resident ("Investor"), found Chicago Wealth Builders on the internet and through its website connected with Respondents Kirkman and Lockhart and Rosenberg. Respondent Kirkman represented his Christian company and that he had an investment program through which she could invest in real estate.
6. On or about October 28, 2013, Investor paid \$20,000 for a promissory note ("Note #1") with Chicago Wealth Builders and signed by Respondent Kirkman. Note #1 promised to pay 10.00% interest per annum.
7. On or about January 28, 2014, Investor paid \$40,000 for a promissory note ("Note #2") with Respondent Lockhart and Rosenberg and signed by Respondent Kirkman. Note #2 promised to pay 20.00% interest per annum.
8. On or about March 24, 2014, Investor paid \$35,000 for a promissory note ("Note #3") with Respondent Lockhart and Rosenberg and signed by Respondent Kirkman. Note #3 promised to pay 26.50% interest per annum.

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9. On or about July 01, 2014, Investor paid \$32,000 for a promissory note ("Note #4") with Respondent Lockhart and Rosenberg and signed Respondent by Kirkman. Note #4 promised to pay 10.00% interest per annum.
10. On or about April 18, 2014, Investor paid \$89,711.60 for a promissory note ("Note #5") with Respondent Lockhart and Rosenberg and signed by Respondent Kirkman. .
11. Note #5 is dated April 18, 2014, signed by Respondent Kirkman (as "Borrower"), on behalf of Respondent Lockhart and Rosenberg, and Investor (as "Mortgagor") and provides, in part:

("Borrower") promises to pa the principal amount of Eighty Nine Thousand Seven Hundred Eleven, Dollars and Sixty cent (\$89,711.60), together with interest at the rate of 15% per annum on the unpaid balance from April 17, 2017, until paid in full. Minimum interest to be paid is 15% per annum on the unpaid balance or \$40,370.22 which ever [sic] is greater due with annual interest payments due every April 17 until the end of the note.
12. Note #5 provides "[b]orrower will pay this loan in full at the 36 month term and is [d]ue on April 17, 2017 and will be for all principal and all accrued interest not yet paid."
13. On or about December 28, 2015, Respondent Kirkman solicited and induced Investor to pay \$32,000 for a promissory note ("Note #6").
14. Note #6 is dated December 28, 2015, signed by Respondent Kirkman (as "Borrower"), on behalf of Respondent Lockhart and Rosenberg, and Investor (as "Mortgagor") and provides, in part:

[Respondent] Lockhart and Rosenberg, Inc ("Borrower") promises to pay to [Investor] ("Lender") the principal amount of Thirty Two Thousand, Dollars (\$32,000), together with interest at the rate of 12% per annum on the unpaid balance from December 28, 2015, until paid in full. Minimum interest to be paid is 12% per annum on the unpaid balance or \$3,840.00.
15. Note #6 provides "[b]orrower will pay this loan in full at the 6 month two week term and is [d]ue on June 28, 2016 and will be for all principal and all accrued interest not yet paid."
16. On or about March 25, 2016, Respondent Kirkman solicited and induced Investor to pay \$75,000 for a promissory note ("Note #7").
17. Note #7 is dated March 25, 2016, signed by Respondent Kirkman (as "Borrower"), on behalf of Respondent Lockhart and Rosenberg, and Investor (as "Mortgagor") and provides in part:

("Borrower") promises to pay to [Investor] ("Lender")...the principal amount of Seventy Five Thousand, Dollars (\$75,000), together with interest at the rate of 26% per annum on the unpaid balance from March 25, 2016, until paid in full. Minimum interest to be paid is 26% per annum on the unpaid balance or \$19,500 whichever [sic] is greater with Quarterly Interest payments due 3 months from date of note.

18. Note #7 provides "[b]orrower will pay this loan in full at the 12 month term and is [d]ue on March 25, 2017 and will be for all principal and all accrued interest not yet paid."
19. On or about June 28, 2016, Respondent Kirkman solicited and induced Investor to sign a promissory note for \$32,000 ("Note #8") because Note #2 was becoming due and Respondents lacked the funds to repay Investor according to the terms of the note.
20. Note #8 is dated June 28, 2016, signed by Respondent Kirkman (as "Borrower"), on behalf of Respondent Lockhart and Rosenberg, and Investor (as "Mortgagor") and provides, in part:

("Borrower") promises to pay to [Investor] ("Lender")...the principal amount of Thirty Two Thousand, Dollars (\$32,000), together with interest at the rate of 12% per annum on the unpaid balance from June 28, 2016, until paid in full. Minimum interest to be paid is 12% per annum on the unpaid balance or \$3,840.00.
21. Note #8 provides "[b]orrower will pay this loan in full at the 6 month two week term and is [d]ue on December 28, 2016, 2017 and will be for all principal and all accrued interest not yet paid."
22. Notes # 5, #6, #7 and #8 provide that "[a]ny warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter" shall constitute an event of default.
23. Respondents failed to file an application for Notes #1, #2, #3, #4, #5, #6, #7 and #8 with the Illinois Securities Department and as a result the promissory notes were not registered as such prior to their offer and sale in the State of Illinois.
24. Respondents did not register or file an application to register as a dealer, salesperson, investment adviser, or investment adviser representative with the State of Illinois.
25. Interest was to be paid on the promissory notes and profits from the investments were to be derived solely from the efforts of Respondent Kirkman and Respondent Lockhart and Rosenberg and their investments in real estate.

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26. Respondents commingled Investor's funds with other Lockhart and Rosenberg funds in an account they used for personal business. Respondents did not inform Investor that they would commingle funds.
27. Investor invested a total of approximately \$203,000.00 with Respondents.
28. Investor received payments totaling \$76,081.00, and only in the beginning; the payments did not continue as required by or pursuant to the notes.
29. On or about March 3, 2010, Respondent Kirkman filed for individual bankruptcy. Respondents did not inform Investor of the bankruptcy filing.
30. On or about February 3, 1998, Respondent Kirkman was convicted of unlawful use of an access devise (a stolen credit card) a felony violation. Respondents did not inform Investor of the felony conviction.
31. In or about May 2010, Respondent Kirkman had civil judgments entered against him. Respondents did not inform Investor of the civil judgments.
32. In or about May 2009, Respondent Kirkman had a judgment entered against him. Respondents failed to inform Investor of the judgment.
33. Respondents defaulted on the promissory notes and failed to pay the principal and interest due.

WHEREAS, the following proposed Conclusions of Law made by the Hearing Officer are correct and are hereby adopted as the Conclusions of Law of the Secretary of State:

1. The Department's Burden of Proof in an administrative proceeding is preponderance of the evidence. *See* 5 ILCS 100/10-15. In an administrative hearing the Department's burden of proof is by a preponderance of the evidence. An administrative decision should not be overturned unless the agency exercised its authority in an arbitrary and capricious manner or the decision is contrary to the manifest weight of the evidence." *See Van Dyke v. White* 2016 IL App (4th) 141109 ¶ 34.
2. The Department properly served the Notice of Hearing on Respondents.
3. The burden of proving an exemption from the registration provisions is on the Respondent.
4. The Illinois Securities Act defines a "security" to include "any note . . . evidence of indebtedness . . ." *See* Section 2.1. Further, Illinois courts apply the *Reeves* test to determine if a note constitutes a security. In *Reeves v. Ernst & Young*, 110 S.Ct.

945 (1990) the Supreme Court set forth a test for determining whether a promissory note is a security, and held that that the test begins with a rebuttable presumption that every note is a security. 110 S.Ct. at 951. The court found that a family of seven types of notes does not constitute securities. Under the Act and under the Supreme Court's holdings in *Reeves* the promissory notes at issue here constitute securities.

5. Respondents' activities described herein involve the offer and sale of securities as those terms are defined in Sections 2.1, 2.5 and 2.5a of the Illinois Securities Law of 1953 [815 ILCS 5/1 *et seq.*] ("Act").
6. Section 5 of the Act provides, *inter alia*, "all securities except those set forth under Section 2a of this Act ... or those exempt ... shall be registered ... prior to their offer or sale in this State."
7. Section 12.A of the Act provides, *inter alia*, it shall be a violation of any person to offer or sell any security except in accordance with the provisions of the Act.
8. Section 12.C of the Act provides, *inter alia*, that it shall be a violation of the Act for any person to act as a dealer, salesperson, investment adviser, or investment adviser representative, unless registered as such, where registration is required, under the provisions of this Act.
9. Section 12.D of the Act provides, *inter alia*, it shall be a violation for any person "[t]o fail to file with the Secretary of State any application, report or document, required to be filed under the provisions of this Act or any rule or regulation made by the Secretary of State pursuant to this Act ..."
10. Respondents failed to present evidence or meet their burden of proving an exemption from the registration provisions of the Act.
11. Respondents violated Sections 12.A, 12.C and 12.D of the Act by failing to register the promissory notes as securities and failing to register as salespersons.
12. Section 12.F of the Act provides, *inter alia*, it shall be a violation of the Act for any person "[t]o engage in any transaction, practice or course of business in connection with the sale or purchase of securities which works or tends to work a fraud or deceit upon the purchaser or seller thereof."
13. Section 12.F of the Illinois Securities Act reads the same as Section 17(a)(3) of the Securities Act of 1933. Accordingly, the violations of Section 12.F do not require a finding that the Respondents acted with scienter.

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14. The Department met its burden of proof and its showing that Respondents commingled funds and may not have purchased real estate in accordance with their representations and, therefore, violated Section 12.F of the Act.
15. Section 12.G of the Act provides, *inter alia*, it shall be a violation of the Act for any person “[t]o obtain money or property through the sale of securities by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.”
16. The Department did not meet its burden of proving that Respondents omitted a material fact that necessary to make a statement made not misleading. The Department did not prove that the omission of the bankruptcy filing, civil judgments, or the 1998 conviction, were material and did not prove that their omissions made an affirmative representation not misleading.
17. Section 12.I of the Act provides, *inter alia*, it shall be a violation of the Act for any person, “[t]o employ any device, scheme or artifice to defraud in connection with the sale or purchase of any security, directly or indirectly.”
18. The Department met its burden of proof and proved that Respondents commingled funds and may not have purchased real estate in accordance with their representations constitutes a scheme to defraud and violated Section 12.I of the Act
19. Section 11.E(1) of the Act provides, *inter alia*, if the Secretary of State finds that the offer or sale or proposed offer or sale of any securities by any person is fraudulent, or would work or tend to work a fraud or deceit, or is being offered or sold in violation of Section 12 of the Act, the Secretary of State may by written order permanently prohibit or deny the registration of the securities or the exemption from registration for the securities.
20. Section 11.E(2) of the Act provides, *inter alia*, if the Secretary of State finds that any person has violated subsections C,D,E,F,G,H,I,J or K of Section 12 of the Act, the Secretary of State may by written order permanently prohibit the person from offering or selling any securities in Illinois.
21. Section 11.E(4) of the Act provides, *inter alia*, the Secretary of State, after finding that any provision of the Act has been violated, may impose a fine as provided by rule, regulation, or order not to exceed \$10,000, for each violation of the Act and may charge as costs of investigation all reasonable expenses, including attorney’s fees and witness fees.

WHEREAS, the Hearing Officer recommends that the following requests be granted:

1. An Order be entered against Respondents Kadesha Kirkman and Lockhart and

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Rosenburg, Inc. in the form of a permanent order of prohibition against each from offering or selling securities in or from the State of Illinois.

2. An Order be entered against Respondents Kadesha Kirkman and Lockhart and Rosenburg, Inc. imposing a fine, jointly and severally, in the amount of \$40,000.00.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. An Order is entered against Respondents Kadesha Kirkman and Lockhart and Rosenburg, Inc. in the form of a **permanent order of prohibition** against each from offering or selling securities in or from the State of Illinois.
2. An Order is entered against Respondents Kadesha Kirkman and Lockhart and Rosenburg, Inc. imposing a fine, jointly and severally, in the amount of \$40,000.00.

Dated this 8th day of February 2018.



JESSE WHITE

Secretary of State
State of Illinois

Attorney for the Department:
Paula K. Bouldon
69 W. Washington, Suite 1220
Chicago, IL 60602
312-793-3384