

**ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF SOUTH CAROLINA**

IN THE MATTER OF:

Franklin Delano McCrea, Jr.,

Respondent.

**ORDER TO CEASE AND DESIST
File No. 12005**

WHEREAS, the Securities Division of the Office of the Attorney General of the State of South Carolina (the “Division”) has been authorized and directed by the Securities Commissioner of South Carolina (the “Securities Commissioner”) to administer the provisions of S.C. Code Ann. § 35-1-101, *et seq.*, the South Carolina Uniform Securities Act of 2005 (the “Act”); and

WHEREAS, the Division received information regarding alleged activities of Franklin Delano McCrea, Jr. (“McCrea” or the “Respondent”), which, if true, would constitute violations of the Act; and

WHEREAS, the information led the Division to open and conduct an investigation of the Respondent pursuant to S.C. Code Ann. § 35-1-602; and

WHEREAS, the Division has determined that evidence exists to support the following findings of fact and conclusions of law:

I. JURISDICTION

1. The Securities Commissioner has jurisdiction over this matter pursuant to S.C. Code Ann. § 35-1-601(a).

II. RESPONDENT

2. Franklin Delano McCrea, Jr. is a resident of Charleston County, South Carolina, with a last known address of 959 East Main Street #1662, North Charleston, South Carolina, 29419.

III. FINDINGS OF FACT

3. In or about 2008, the Respondent began marketing, through the Internet and other mediums, an investment opportunity in a collateralized mortgage obligation (the “Alleged CMO”).¹

Investor A

4. In the summer of 2008, a resident of Clark County, Nevada (“Investor A”) searching for an investment opportunity which would bring an above-market rate of return, found the Respondent’s offering of the Alleged CMO on the Internet.

5. Following Investor A’s initial contact with him, the Respondent falsely stated to Investor A that he was “registered in the SEC/FED’s database.”

6. The Respondent further falsely claimed that that he had worked for six (6) years for a major South Carolina law firm and was “affiliated with over 100 law firms nationwide,” and that he had represented the estate of the late hotel magnate Leona Helmsley, having sold multiple properties on its behalf.

¹ Collateralized mortgage obligations are a type of mortgage-backed security that represents claims to specific cash flows from large pools of home mortgages. See SEC.gov | Collateralized [sic] Mortgage Obligations (CMOs), <https://www.sec.gov/answers/tcmos.htm> (last visited June 30, 2014)

7. The Respondent induced Investor A to wire his twenty-five thousand dollar (\$25,000) investment in the Alleged CMO to the bank account of a South Carolina attorney located in North Charleston, South Carolina (the “North Charleston Attorney”).

8. The Respondent failed to direct Investor A’s money to the Alleged CMO and instead substantially all of Investor A’s investment was diverted to the account of a third party wholly unconnected to the real estate industry and was subsequently used in part to pay various personal expenses with the remainder being withdrawn from the account in cash.

9. To date, the Respondent has refused to provide any documentation to or return any funds to Investor A.

Investor B

10. In early 2009, a resident of King County, Washington (“Investor B”), became aware of the Respondent’s offering of the Alleged CMO.

11. Investor B contacted the Respondent by phone and discussed investing in the Alleged CMO.

12. Following the Respondent’s instructions, Investor B wired his twenty-five thousand dollar (\$25,000) investment in the Alleged CMO to the North Charleston Attorney’s account.

13. Rather than being invested in the Alleged CMO, substantially all of Investor B’s funds were disbursed to the Respondent through three checks drawn on the North Charleston Attorney’s account each with a memo line stating “fee payment.”

14. Subsequent to his investment, Investor B was solicited by the Respondent to wire several thousand additional dollars to the Respondent, allegedly for various fees related to the Alleged CMO.

15. Investor B made numerous attempts to contact the Respondent after his investment, but rather than provide information on the Alleged CMO, the Respondent threatened to physically harm Investor B and his family.

16. At no time did the Respondent inform either Investor A or Investor B that in 2007, he had been adjudicated guilty of swindling in violation of S.C. Code Ann. § 16-13-320.

IV. CONCLUSIONS OF LAW

17. The South Carolina Uniform Securities Act of 2005, S.C. Code Ann. § 35-1-101, *et seq.*, governs the offer and sale of securities in this State.

18. Pursuant to S.C. Code Ann. § 35-1-102(29), investment contracts, stock, and certificates of interest or participation in profit-sharing agreements, *inter alia*, constitute securities.

19. Pursuant to S.C. Code Ann. § 35-1-301, it is unlawful for a person to offer or sell a security in this State unless that security is registered, a federal covered security, or exempt from registration.

20. Pursuant to S.C. Code Ann. § 35-1-402(a), it is unlawful for an individual to transact business as an agent in this State unless that individual is registered or exempt from registration.

21. Pursuant to S.C. Code Ann. § 35-1-501, it is unlawful for a person in connection with the offer or sale of a security in this State: (1) to employ a scheme, device, or artifice to defraud; (2) to make an untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading; or (3) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

23. Pursuant to S.C. Code Ann. §35-1-604(a)(1), if the Securities Commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of the Act or a rule adopted or order issued under the Act, the Securities Commissioner may issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with the Act.

24. Pursuant to S.C. Code Ann. § 35-1-604(b), an order issued under § 35-1-604(a) is effective on the date of issuance and must include a statement of any civil penalty or costs of investigation sought, a statement of the reasons for the order, and notice that, within fifteen (15) days after the receipt of a request in a record from a Respondent, the matter will be scheduled for a hearing.

25. The Alleged CMO offered and sold by the Respondent constituted a security as defined by the Act.

26. The Alleged CMO offered and sold by the Respondent was not a federal covered security, exempt from registration, nor registered with the United States Securities and Exchange Commission or the Division and was therefore sold in violation of the Act.

27. The Respondent acted as an agent in the offer and sale of the Alleged CMO without being registered as such in violation of the Act.

28. The Respondent sold securities in this State: (1) while employing a scheme, device, or artifice to defraud; (2) through the making of untrue statements of material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading; and (3) by engaging in an act, practice, or course of business that operated as a fraud or deceit upon another person.

29. It is in the public interest, for the protection of investors, and consistent with the purposes of the Act that the Respondent be ordered to cease and desist from engaging in the above enumerated practices which constitute violations of the Act and pay an appropriate civil penalty for his wrongdoing.

V. CEASE AND DESIST ORDER

NOW THEREFORE, pursuant to S.C. Code Ann. § 35-1-604(a)(1), it is hereby **ORDERED** that:

- a. The Respondent and every successor, affiliate, control person, agent, servant, and employee of the Respondent, and every entity owned, operated, or indirectly or directly controlled by or on behalf of the Respondent **CEASE AND DESIST** from transacting business in this State in violation of the Act, and, in particular, § 35-1-301, § 35-1-402, and § 35-1-501 thereof; and
- b. The Respondent pay a civil penalty in the amount of Sixty Thousand Dollars (\$60,000) if this Order becomes effective by operation of law, or, if the Respondent seeks a hearing and any legal authority resolves this matter, pay a

civil penalty in an amount not to exceed Ten Thousand Dollars (\$10,000) for each violation of the Act by the Respondent, and the actual cost of the investigation or proceeding.

IT IS FURTHER ORDERED that, pursuant to S.C. Code Ann. § 35-1-604(a)(2) and (3), any exemption from registration with the Division that the Respondent may claim to rely upon under S.C. Code Ann. §§ 35-1-201(3)(C), (7), or (8); 35-1-202; 35-1-401(b)(1)(D) or (F); or 35-1-403(b)(1)(C), has been and is **PERMANENTLY REVOKED**.

VI. REQUIREMENT OF ANSWER AND NOTICE OF OPPORTUNITY FOR HEARING

The Respondent is hereby notified that he has the right to a hearing on the matters contained herein. To schedule such a hearing, the Respondent must file with the Securities Division, Post Office Box 11549, Rembert C. Dennis Building, Columbia, South Carolina, 29211-1549, attention: Thresechia Navarro, within thirty (30) days after the date of service of this Order to Cease and Desist, a written Answer specifically requesting a hearing. If the Respondent requests a hearing, the Division, within fifteen (15) days after receipt of a request in a record from the Respondent, will schedule the hearing for the Respondent.

In the written Answer, the Respondent, in addition to requesting a hearing, shall admit or deny each factual allegation in this Order, shall set forth specific facts on which the Respondent relies, and shall set forth concisely the matters of law and affirmative defenses upon which the Respondent relies. If the Respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation shall, he so state.

Failure by the Respondent to file a written request for a hearing in this matter within the thirty-day (30) period stated above shall be deemed a waiver by the Respondent of the right to

such a hearing. Failure of the Respondent to file an Answer, including a request for a hearing, shall result in this Order, including the stated civil penalty and any assessed costs, becoming final as to the Respondent by operation of law.

This Order does not prevent the Division or any other law enforcement agency from seeking additional civil or criminal remedies as are available under the Act, including remedies related to the offers and sales of securities by the Respondent set forth above.

CONTINUING TO ENGAGE IN ACTS DETAILED BY THIS ORDER AND/OR SIMILAR ACTS MAY RESULT IN THE DIVISION'S FILING ADDITIONAL ADMINISTRATIVE ACTIONS AND/OR SEEKING FURTHER ADMINISTRATIVE FINES. WILLFUL VIOLATION OF THIS ORDER COULD RESULT IN CRIMINAL PENALTIES PURSUANT TO S.C. CODE ANN. § 35-1-508.

ENTERED, this the 21st day of July, 2014.

ALAN WILSON
SECURITIES COMMISSIONER

By: Tracy A. Meyers
TRACY A. MEYERS
Deputy Securities Commissioner

ISSUANCE REQUESTED BY:



IAN P. WESCHLER
Assistant Attorney General
Securities Division
Rembert C. Dennis Building
1000 Assembly Street
Columbia, S. C. 29201

STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
SECURITIES DIVISION

CERTIFICATE OF SERVICE AND
AFFIDAVIT OF COMPLIANCE
File Number 12005

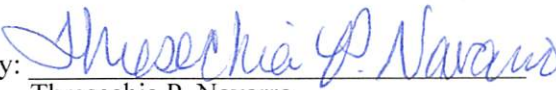
I hereby certify that I served upon the individual/entity listed below a copy of the document indicated below and dated July 21, 2014, by serving a copy of said document upon the Securities Commissioner of the State of South Carolina and by placing a copy of said document in the United States mail, certified mail, return receipt requested, first class postage prepaid and addressed to:

Franklin Delano McCrea, Jr.
959 East Main Street #1662
North Charleston, SC 29419

Document(s): Order to Cease and Desist

Mailed July 21, 2014 from Columbia, South Carolina.

I further hereby certify, swear and affirm that, service of the above-listed entity is in compliance with Section 35-1-611, Code of Laws of South Carolina.

By: 
Thresechia P. Navarro
South Carolina Attorney General's Office
Securities Division
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-4731

Subscribed and sworn to before me on
this 21 day of July, 2014.


Notary Public for South Carolina

My commission expires: 3/30/16