

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

In the matter of:)	
)	
)	
Timothy L McCarty, and Palmetto)	CONSENT ORDER
Financial Associates of South Carolina,)	Matter No. 20184570
LLC, a/k/a Palmetto Financial)	
Associates, LLC,)	
)	
)	
Respondents.)	
)	

I. PRELIMINARY STATEMENT

Pursuant to the authority granted to the Securities Commissioner of South Carolina (the “Securities Commissioner”) under the South Carolina Uniform Securities Act of 2005, S.C. Code Ann. § 35-1-101, *et seq.* (the “Act”) and delegated to the Securities Division of the Office of the Attorney General (the “Division”) by the Securities Commissioner, the Division conducted an investigation into the securities-related activities of Timothy L. McCarty (“McCarty”) and Palmetto Financial Associates of South Carolina, LLC a/k/a Palmetto Financial Associates, LLC (“PFA”) (collectively, the “Respondents”), and, in connection with its investigation, the Division has determined that the Respondents violated the Act.

Without admitting or denying the findings of fact and conclusions of law set forth below, except as to the jurisdiction of the Securities Commissioner over the Respondents and the subject matter of this proceeding, which are admitted, the Respondents, having been advised of their right to counsel, expressly consent to the entry of this Consent Order, which resolves the

allegations against them as set forth herein. The Respondents elect to waive permanently any right to a hearing and appeal under S.C. Code Ann. § 35-1-609, with respect to this Consent Order.

II. JURISDICTION

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

III. THE RESPONDENTS

2. McCarty was a resident of the State of South Carolina between February, 2017, and February, 2018 (the “Relevant Time Period”).

3. McCarty has never been registered with the Division in any capacity.

4. McCarty is registered with the South Carolina Department of Insurance as an insurance producer.

5. PFA is a for-profit company founded, operated, and owned by McCarty. According to the Office of the South Carolina Secretary of State, McCarty is the registered agent for Palmetto Financial Associates of South Carolina, LLC. PFA has never possessed any form of license to operate in the insurance industry, nor has it ever been registered with the Division in any capacity.

IV. FINDINGS OF FACT

6. Future Income Payments, LLC (“FIP”) was a Delaware limited liability company with a registered agent, Agents and Corporations, Inc., located at 1201 Orange Street, Suite 600, One Commerce Center, Wilmington, Delaware 19801.

7. Scott Kohn was the sole owner and manager of FIP.

8. FIP's business model revolved around the sourcing and sale of retirees' recurring income from pension benefits.
9. FIP sought out pensioners who were in need of additional income (the "Pensioners"). FIP would offer the Pensioners a lump sum of money or a loan for an assignment of all or a portion of their pensions for a set period of time.
10. In order to raise the money to purchase the pension streams, FIP offered the income from the pension streams (the "FIP Product") to investors seeking consistent returns for their investments (collectively the "Investors;" individually an "Investor").
11. FIP was able to locate large numbers of Investors through a network of insurance agents and investment adviser representatives (the "FIP Agents").
12. FIP compensated the FIP Agents with transaction-based compensation.
13. Various consumer protection and regulatory agencies investigated and brought lawsuits against FIP in response to its scheme. *See, e.g., Commonwealth of Virginia Ex Rel. Mark R. Herring, Attorney General v. Future Income Payments, LLC, et al.*, Civil Action No. CL18000527-00 (Hampton County, March 6, 2018); *Illinois v. Future Income Payments, LLC*, No. 2018CH000142 (7th Judicial Circuit Sangamon County, April 18, 2018); *State of Minn. v. Future Income Payments, LLC et al.*, No. 27-CV-17-12579 (City of Hennepin Dist. Ct., Sep. 26, 2017); and *In re Future Income Payments, LLC* (N.Y. Dept. Fin. Serv. Oct. 20, 2016).
14. By April 2018, FIP could not sustain the scheme, and the scheme collapsed. At that time, the Investors ceased receiving the income from the FIP Product.

15. On March 12, 2019, Scott Kohn and FIP were indicted by a federal grand jury in the District of South Carolina. *United States v. Scott A. Kohn and Future Income Payments, LLC* (6:19-cr-000239-CRI, March 12, 2019). Among various charges, the indictment alleged that “[a]s state regulators began prohibiting FIP from operating in various states and pensioners struggled under a usurious payment regime imposed on them, FIP diverted new investor funds flowing into the business to fund payments to earlier investors to keep the scheme and artifice operational. In this manner, the investment program operated by FIP was a ‘Ponzi scheme[],’” and “[t]he operation of the scheme and artifice surrounding FIP allowed [Kohn] to live a lavish lifestyle.”

16. On April 4, 2019, the Division published an Order to Cease and Desist against Scott Kohn and FIP.¹

17. After spending six months as a fugitive, Scott Kohn was captured by United States Marshals on a San Diego, California, beach on September 21, 2019.² He has been charged with conspiracy to commit wire fraud and mail fraud. He is currently awaiting trial.

18. The Division found no evidence that the Respondents had any direct contact with Scott Kohn.

¹ In the matter of Future Income Payments, LLC; FIP, LLC; and Scott A. Kohn – Order to Cease and Desist (4/4/2019), <http://2hsvz0174ah31vgcm16peuy12tz.wpengine.netdna-cdn.com/wp-content/uploads/2019/04/Order-to-Cease-and-Desist-4.5-01935944xD2C78.pdf>

² Brown, Kirk. “[U.S.] Marshals capture Scott Kohn, accused in Greenville of preying on veterans and investors.” *The Greenville News*, 23 Sept. 2019, <https://www.greenvilleonline.com/story/news/local/2019/09/23/marshals-capture-scott-kohn-accused-sc-preying-veterans/2418273001/>. Accessed 1 July 2020.

19. The Respondents operated as FIP Agents in South Carolina. McCarty processed his FIP Product sales through PFA.

20. PFA sent Investors' applications to an insurance product wholesaler, Shurwest, LLC, in Scottsdale, Arizona.

21. The Respondents sold the FIP Product to 7 different Investors during the Relevant Time Period. The Respondents' FIP Product sales totaled \$634,600.22. FIP paid the Respondents \$24,460.08 in commissions for their sale of the FIP product.

22. Subsequent to his sale of the FIP Product, McCarty learned that his clients' FIP and related insurance applications had been altered after he sent them to Shurwest for processing. After he learned of the alterations, McCarty contacted both the Division and the South Carolina Department of Insurance to report his concerns.

23. McCarty claims that, during the Relevant Time Period, he did not know that the FIP Product was a security or that it could potentially cause his clients financial harm.

24. Several Investors to whom the Respondents sold the FIP Product filed suit against the Respondents when the FIP Scheme collapsed. At the time of the collapse, the Respondents' customers were exposed to significant losses related to their purchase of the FIP Product.

V. CONCLUSIONS OF LAW

25. The FIP Product is a security, pursuant to S.C. Code Ann. § 35-1-102(29).

26. The FIP Product was neither registered with the Division, nor was it exempt from registration, pursuant to S.C. Code Ann. § 35-1-201.

27. The Respondents offered and sold securities, which were neither registered with the Division, nor exempt from such registration, in violation of S.C. Code Ann. § 35-1-301.

28. Offering or selling a security that is neither registered with the Division nor exempt from such registration constitutes a willful failure to comply with the Act, pursuant to S.C. Code Ann. § 35-1-412(d)(2).

29. The Respondents acted as agents, as defined by S.C. Code Ann. § 35-1-102(2), in connection with the offer and sale of securities in South Carolina.

30. The Respondents were neither registered as agents with the Division, nor exempt from such registration in violation of S.C. Code Ann. § 35-1-402(a).

31. Acting as an agent in connection with the offer and sale of securities, without being registered with the Division as such or exempt from registration, constitutes a willful failure to comply with the Act, pursuant to S.C. Code Ann. § 35-1-412(d)(2).

32. The Respondents' 14 willful violations of the Act provide the basis for this Consent Order.

33. This Consent Order is appropriate and in the public interest, pursuant to the Act.

VI. ORDER

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

ORDERED that:

- a. Each of the Respondents and every successor, affiliate, control person, agent, servant, and employee of each of the Respondents, and every entity owned, operated, or indirectly or directly controlled by, or on behalf of each of the

Respondents, shall **CEASE AND DESIST** from transacting business in this State in violation of the Act, and, in particular, §§ 35-1-301 and 35-1-402 thereof;

- b. The Respondents shall jointly and severally pay a civil penalty in the amount of \$40,000.00;
- c. The Respondents have agreed to disgorge certain of their commissions to be paid to the Investors through the Investors' civil litigation. Because of the remedial efforts of the Respondents, the civil penalty ordered in paragraph b, *supra*, is hereby **SUSPENDED**;
- d. McCarty expressly consents and agrees that he is **PERMANENTLY BARRED** from participating in any aspect of the securities industry in or from the State of South Carolina; and
- e. McCarty, in his capacity as PFA's sole manager and control person, expressly consents and agrees that PFA is **PERMANENTLY BARRED** from participating in any aspect of the securities industry in or from the State of South Carolina.

Upon execution by the Securities Commissioner, this Consent Order resolves Matter Number 20184569 as to the Respondents.

As part of this Consent Order the Respondents agree that they: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in this Consent Order or creating the impression that this Consent Order is without factual basis; and (ii) will not make or permit to be made any public statement to the effect that

the Respondents do not admit the allegations of this Consent Order, or that this Consent Order contains no admission of the allegations, without also stating that the Respondents do not deny the allegations. If the Respondents breach this agreement, the Securities Commissioner may vacate this Consent Order. Nothing in this paragraph affects the Respondents': (i) testimonial obligations or (ii) right to take differing legal or factual positions in litigation or other legal proceedings.

This Consent Order should not be interpreted to waive any (i) criminal cause of action, (ii) private cause of action that may have accrued to investors as a result of the activities detailed herein, or (iii) other causes of action that may result from activities of the Respondent not detailed in this Consent Order.

ENTERED, this the 27 day of January, 2021.

ALAN WILSON
SECURITIES COMMISSIONER

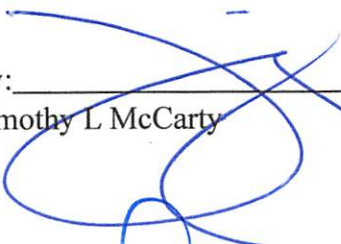
By: Alan Wilson
ALAN WILSON
Securities Commissioner
State of South Carolina

Respondent:

Timothy L. McCarty

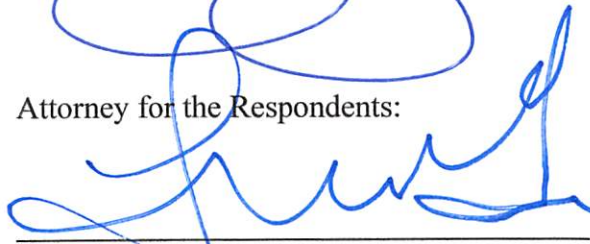
Date: 12/30/2021

Respondent Palmetto Financial Associates of South Carolina, LLC, a/k/a Palmetto Financial Associates, LLC:

By: 
Timothy L. McCarty

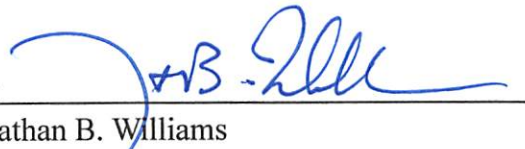
Date: 12/30/2021

Attorney for the Respondents:


Thomas William McGee, III
Nelson Mullins Riley & Scarborough LLP

Date: 1/4/2022

South Carolina Attorney General's Office Securities Division:

By: 
Jonathan B. Williams
Assistant Deputy Attorney General

Date: 1/25/22