

Division of Securities
Utah Department of Commerce
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

**FOURTH DIMENSION FINANCIAL GROUP
RICHARD CLARK JOHNSON III**

Respondents.

**STIPULATION AND CONSENT
ORDER**

**Docket No. SD-08-0069
Docket No. SD-08-0070**

The Utah Division of Securities (the Division), by and through its Director of Enforcement, Dave R. Hermansen, and Richard Clark Johnson III (Johnson), doing business as (DBA) Fourth Dimension Financial Group (4DFG), hereby stipulate and agree as follows:

1. Johnson and 4DFG (Respondents) were the subject of an investigation conducted by the Division into allegations that they violated certain provisions of the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, *et seq.*, as amended (the Act).
2. In connection with that investigation, the Division initially issued an Order to Show Cause against Respondents on July 9, 2008, alleging securities fraud. Criminal charges

were also filed against Johnson¹ on June 24, 2008 in connection with the investigation.

3. Respondents waive any right to a hearing to challenge the Division's evidence and present evidence on their behalf. Respondents understand that by waiving a hearing, they are waiving the requirement that the Division prove the allegations against them by a preponderance of evidence, waiving their right to confront and cross-examine witnesses who may testify against them, to call witnesses on their own behalf, and any and all rights to appeal the findings, conclusions and sanctions set forth in this Stipulation and Consent Order.
4. Respondents understand that they have a right to be represented by counsel, and they voluntarily and knowingly waive the right to have counsel represent them in this matter.
5. Respondents acknowledge that this Stipulation and Consent Order does not affect any enforcement action that might be brought, or may have already been brought, by a criminal prosecutor or any other local, state, or federal enforcement authority.
6. Respondents admit the jurisdiction of the Division over them and over the subject matter of this action.

I. THE DIVISION'S FINDINGS OF FACT

THE RESPONDENTS

7. Johnson was a resident of Utah County at all times relevant to this action. Johnson has

¹ *State of Utah v. Richard Clark 111 Johnson [sic]*, Case No. 081904764, Third Judicial District Court of Utah (2008). Johnson later pleaded guilty to one count of securities fraud, a class A misdemeanor, on March 21, 2011. Johnson was ordered to pay restitution of \$19,400 in connection with the criminal proceeding.

never been licensed in the securities industry in any capacity.

8. 4DFG was a DBA that Johnson and Justin Pehrson initially registered with the Utah Division of Corporations (Corporations) on September 20, 2007. During its existence, Johnson served as the registered agent of 4DFG. As of October 25, 2010, the entity's status with Corporations changed from active to expired.

GENERAL ALLEGATIONS

Investor KK

9. In November 2007, via e-mail, Johnson asked KK if he wanted to participate in a hard money lending deal. At all times relevant to the matters asserted herein, Johnson was in Utah and KK was in Idaho. The majority of their communication took place via e-mail.
10. Johnson told KK the following regarding the investment opportunity:
 - a. Johnson's clients came from referrals;
 - b. Johnson received interest of 5-7 % per month or higher on hard money lending deals, and Johnson would pass on 3-4 % to KK;
 - c. Johnson would use KK's investment to make a loan to a client who was remodeling a home in Alpine, Utah;
 - d. The client needed \$30,000, Johnson was going to lend him \$15,000 to \$20,000 of Johnson's own money, and the loan would be secured by a first position lien on the client's property;

- e. Johnson had six other investors in various deals; and
 - f. Johnson paid an attorney \$3,000 to draft his promissory notes, and Johnson has not had a title company turn them down.
11. On Friday, December 7, 2007, Johnson sent KK an unsigned promissory note via e-mail that Johnson had purportedly issued to a prior investor (DJ) in September 2007. Johnson told KK he would not be able to prepare KK's note until the following Monday, but it would be similar to DJ's note.
 12. In the same December 7, 2007 e-mail, Johnson also said, "we are in a great position if they default (1st position)...to protect our investment, however [the note between Johnson and his client in Alpine] will be a 120 day note." Johnson also told KK that after the 120-day note had matured, Johnson would invest KK's money in another yet-to-be-determined project for the remainder of the 240 days left on KK's note with Johnson.
 13. Johnson failed to tell KK, among other things, that Johnson and his wife filed for bankruptcy in June 2007, and that Johnson had several unpaid civil judgments against him.
 14. On December 11, 2007, Johnson sent KK, via e-mail, a promissory note and instructed KK to initial all three pages, sign and date it, and send it back to Johnson.
 15. The e-mail also contained instructions for KK to wire the money to Johnson's US Bank account and asked that it be done before Friday, so Johnson could wire the funds by 2:00

p.m. on Friday.

16. On December 11, 2007, KK signed the promissory note. Johnson, through 4DFG, promised to pay KK \$20,000 plus interest of 36% per year, in monthly payments of \$600, starting January 15, 2008 and ending December 15, 2008. The note stated that it was secured by any and all assets owned by 4DFG.
17. On December 14, 2007, KK sent, via wire transfer, \$20,000 to 4DFG's bank account at US Bank.
18. Bank records reveal that prior to KK's investment, 4DFG's account balance was approximately \$21.00. The bank records also reveal that KK's funds were not loaned to anyone. Instead, Johnson used them to pay for personal expenses.
19. Shortly after KK invested, Johnson started soliciting additional funds from KK.
20. Johnson told KK he wanted to raise a total of \$1 million to be used to purchase real estate in North Carolina.
21. While discussing the investment opportunity in North Carolina with Johnson, Johnson told KK that he had not secured KK's December 2007 investment, as promised.
22. KK also noticed that Johnson's story about KK's investment and about the various deals Johnson alleged to be involved in began to change.
23. On December 31, 2007, KK told Johnson, via e-mail, "I haven't liked what I've seen with this program and many things have changed or are different from what I was told

originally to get me to invest... You said you have enough investors with enough money to finance all the deals you take... I need you to assign one of them my note and take me off of it.”

24. Johnson responded and asked KK to give Johnson until the end of the week to pay him.
25. On January 5, 2007, Johnson told KK, via e-mail, that if Johnson could find another investor to take over the note, he would, and if not, Johnson would repay the note plus interest by February 10, 2008.
26. In January 2008, KK received one interest payment from Johnson in the amount of \$607.
27. KK has received no additional payments of principal or interest from Johnson² prior to this action.

CAUSES OF ACTION

Securities Fraud under § 61-1-1 of the Act

28. The Division incorporates and re-alleges paragraphs 1 through 27.
29. The promissory notes offered and sold by Respondents to KK are securities under § 61-1-13 of the Act.
30. In connection with the offer and sale of securities to KK, Respondents, directly or indirectly, made false statements, including, but not limited to, the following:

² On February 26, 2008, KK, through his attorney, sued “Ric” Johnson, doing business as 4DFG, for breach of contract in Fourth Judicial District Court, Case No. 080400587. On May 6, 2008, KK obtained a judgment of \$62,550 against Johnson. Johnson was also ordered to pay \$19,400 in restitution to K.K. through the criminal action that commenced June 24, 2008 (case 081904764). Johnson has made full restitution, as ordered in that case.

- a. KK's investment would be loaned to one of Johnson's clients who was remodeling a home in Alpine, Utah;
 - b. The investment would be secured by a first position lien on the client's home;
 - c. The investment matured in 120 days, and Johnson would invest KK's \$20,000 in another project for 240 days, after which KK would receive \$20,600; and
 - d. KK would receive interest of 3% per month for one year on his \$20,000 investment.
31. In connection with the offer and sale of securities to KK, Respondents, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make representations made not misleading:
- a. On June 27, 2007, Johnson and his wife filed for bankruptcy;
 - b. Johnson had several unpaid civil judgments against him;
 - c. Some or all of the information typically provided in an offering circular or prospectus regarding 4DFG, such as:
 - i. 4DFG's business and operating history;
 - ii. Identities of principals in the company along with their experience in this type of business;
 - iii. Financial statements of the company;
 - iv. Current capitalization of the issuer;

- v. The track record of the company to investors;
- vi. Risk factors for investors;
- vii. The number of other investors;
- viii. The liquidity of the investment;
- ix. Discussion of pertinent suitability factors for the investment;
- x. Any involvement of the issuer or the principals in certain legal proceedings, including bankruptcy and prior violation of state or federal securities laws;
- xi. Any conflicts of interest the issuer, the principals, or the agent may have with regard to the investment;
- xii. Whether the investment is a registered security or exempt from registration; and
- xiii. Whether the person selling the investment was licensed.

II. THE DIVISION'S CONCLUSIONS OF LAW

32. Based on the Division's investigative findings, the Division concludes that:
- a. The investment opportunities offered and sold by Respondents are securities under § 61-1-13 of the Act; and
 - b. Respondents violated § 61-1-1(2) of the Act by making untrue statements of

material fact and omitting to state material facts in connection with the offer and sale of securities, disclosure of which was necessary in order to make representations made not misleading.

III. REMEDIAL ACTIONS/SANCTIONS

33. Respondents admit the Division's findings of fact and conclusions of law and consent to the sanctions below being imposed by the Division.
34. Respondents agree to the imposition of a cease and desist order, prohibiting them from any conduct that violates the Act.
35. Johnson agrees that he will be barred from (i) associating³ with any broker-dealer or investment adviser licensed in Utah; (ii) acting as an agent for any issuer soliciting investor funds in Utah; and (iii) from being licensed in any capacity in the securities industry in Utah.
36. Johnson agrees to pay restitution as ordered in the criminal case, *State of Utah v. Richard Clark III Johnson [sic]*, Case No. 081904764, Third Judicial District Court of Utah (2008).⁴

³"Associating" includes, but is not limited to, acting as an agent of, receiving compensation directly or indirectly from, or engaging in any business on behalf of a broker-dealer, agent, investment adviser, or investment adviser representative licensed in Utah. "Associating" does not include any contact with a broker-dealer, agent, investment adviser, or investment adviser representative licensed in Utah incidental to any personal relationship or business not related to the sale or promotion of securities or the giving of investment advice in the state of Utah.

⁴ Johnson made full restitution to investor K.K., in accordance with the terms of his probation (case no. 081904764).

IV. FINAL RESOLUTION

37. Respondents acknowledge that this Stipulation and Consent Order, upon approval by the Securities Commission, shall be the final compromise and settlement of this matter.
38. Respondents further acknowledge that if the Securities Commission does not accept the terms of the Stipulation and Consent Order, it shall be deemed null and void and without any force or effect whatsoever.
39. Respondents acknowledge that the Stipulation and Consent Order does not affect any civil or arbitration causes of action that third parties may have against them, rising in whole or in part from their actions, and that the Stipulation and Consent Order does not affect any criminal causes of action that may arise, or have previously arisen, as a result of the conduct referenced herein.
40. Respondents acknowledge that a violation of this Stipulation and Consent Order is a third degree felony pursuant to § 61-1-21(1)(b) of the Act.
41. The Stipulation and Consent Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect the Stipulation and Consent Order in any way. Upon entry of the Order, any further scheduled hearings are canceled.

Utah Division of Securities

Date: July 25, 2013

By: 
Dave R. Hermansen
Director of Enforcement

Respondent Johnson

Date: 7-21-13

By: 
Richard Clark Johnson III,
individually and on behalf of all
Respondents

Approved:



Paul G. Amann
Assistant Attorney General
A.K.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division has made a sufficient showing of Findings of Fact and Conclusions of Law to form a basis for this settlement.
2. Respondents cease and desist from violating the Utah Uniform Securities Act.
3. Johnson is barred from (i) associating with any broker-dealer or investment adviser licensed in Utah; (ii) acting as an agent for any issuer soliciting investor funds in Utah; and (iii) from being licensed in any capacity in the securities industry in Utah.
4. Johnson pay restitution as ordered in the criminal case, *State of Utah v. Richard Clark III Johnson [sic]*, Case No. 081904764, Third Judicial District Court of Utah (2008).

BY THE UTAH SECURITIES COMMISSION:

DATED this 14 day of August, 2013.



Brent Baker



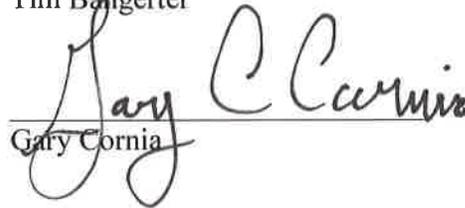
Erik Christiansen



David Russon



Tim Bangerter



Gary Cornia

Certificate of Mailing

I certify that on the 14th day of August, 2013, I mailed, by first-class mail, postage prepaid, a true and correct copy of the Stipulation and Consent Order to:





Executive Secretary