Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
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: **NON-PERFORMING NOTES, LLC, and MARK ALAN KEMP** Respondents.	**AFFIDAVIT OF SERVICE AND NON RESPONSE** **Docket No. SD 08-0087** **Docket No. SD 08-0088**

I, Pam Radzinski, first being duly sworn, depose and state as follows:

1. I am the Executive Secretary for the Department of Commerce Division of Securities (the Division).

2. As executive secretary for the Division, I am responsible for supervising the mailing of the Division's Orders to Show Cause and for receiving any responses filed by respondents.

3. On August 14, 2008, the Division mailed, by regular and certified mail, an Order to Show Cause dated August 13, 2008, to Non-Performing Notes, LLC and Mark Alan Kemp along with a Notice of Agency Action (Notice), advising them that a default order would

be entered if they failed to appear at a hearing set for Tuesday October 7, 2008, or file a written response to the Order to Show Cause. The Notice designated the adjudicative proceeding as formal.

4. On August 18, 2008, the return receipt portion of the certified mailing sent to Non-Performing Notes at 51 West Center Street, Orem, UT was returned, showing delivery on August 15, 2008. Despite evidence of delivery, the envelope that was signed for as received was also returned with a forwarding address for Non-Performing Notes at 711 East 550 South, Orem, UT.

5. On August 27, 2008, the Division re-mailed the Order to Show Cause and NOAA to Non-Performing Notes at 711 East 550 South, Orem, UT. The envelope was returned as unclaimed on September 29, 2008, showing two attempts at delivery on August 28, 2008, September 4, 2008.

6. On September 9, 2008, the Division mailed a letter, via certified mail, to Mark Alan Kemp and Non-Performing Notes, informing them that the date of the administrative hearing had been changed to Tuesday, October 14, 2008, at 9am, at the Division.

7. On September 15, 2008, the return receipt portion of the certified mailing (notice of change of hearing date) sent to Non-Performing Notes, LLC at 51 West Center Street, Orem, UT, was returned, showing delivery on September 12, 2008.

8. On September 22, 2008, the return receipt portion of a certified mailing sent to Non-Performing Notes at 711 East 550 South, Orem, UT was returned as having been

delivered. Mark Alan Kemp signed the return receipt.

9. On October 9, 2008, the return receipt portion of a certified mailing (the notice of change of date) sent to Mark Alan Kemp at 711 East 550 South, Orem, UT was returned to the Division. The envelope was returned as unclaimed on October 1, 2008, showing two attempts at delivery on September 11, and 27, 2008.

10. None of the envelopes sent by regular mail were returned.

11. A hearing was convened on October 14, 2008. None of the Respondents appeared and none filed a Response.

12. As of the date of this Affidavit, none of the Respondents have filed the required response.

DATED this 10TH day of ~~October~~ NOVEMBER 2008.

PAM RADZINSKI
Executive Secretary

SALT LAKE COUNTY)
) ss.
STATE OF UTAH)

Signed and subscribed to before me this 10th day of November 2008.

NOTARY PUBLIC
SUSAN M. JONES
160 East 300 South 2nd Floor
Salt Lake City, Utah 84111
COMMISSION EXPIRES
March 12, 2010
STATE OF UTAH

Susan M Jones
Notary Public

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

IN THE MATTER OF: **NON-PERFORMING NOTES, LLC,** and **MARK ALAN KEMP,** Respondents.	**NOTICE OF ENTRY OF DEFAULT AND ORDER** **Docket No. SD 08-0087** **Docket No. SD 08-0088**

I. BACKGROUND

A formal adjudicative proceeding was initiated by the Division's Order to Cease and Desist, and Order to Show Cause (OSC) and Notice of Agency Action (Notice) dated August 13, 2008, against Non-Performing Notes and Mark Alan Kemp along with a Notice of Agency Action (Notice), advising them to file an answer or appear at a hearing set for Tuesday October 14, 2008 or default would be entered against them. A hearing was convened. But no responses were received or filed by any respondent.

II. FINDINGS OF FACT

1. On August 14, 2008, the Division mailed, by regular and certified mail, an Order to Show Cause dated August 13, 2008, to Non-Performing Notes, LLC and Mark Alan Kemp

along with a Notice of Agency Action (Notice), advising them that a default order would be entered if they failed to appear at a hearing set for Tuesday October 7, 2008, or file a written response to the Order to Show Cause. The Notice designated the adjudicative proceeding as formal.

2. On August 18, 2008, the return receipt portion of the certified mailing sent to Non-Performing Notes at 51 West Center Street, Orem, UT was returned, showing delivery on August 15, 2008. Despite evidence of delivery, the envelope that was signed for as received was also returned with a forwarding address for Non-Performing Notes at 711 East 550 South, Orem, UT.

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8. None of the envelopes sent by regular mail were returned.

9. A hearing was convened on October 14, 2008. None of the Respondents appeared and none filed a Response.

10. Non-Performing Notes, LLC (Non-Performing Notes) is a Nevada limited liability company. The company registered in Nevada on September 13, 2004, but its registration was revoked November 1, 2007 for failure to renew. Mark Alan Kemp and Angela Marie DiGiovanni were members of Non-Performing Notes. Non-Performing Notes has never been registered as a business entity in Utah.

11. Mark Alan Kemp (Kemp) is a resident of Utah County, Utah.

12. In January 2006, after LM attended Kemp's real estate seminar in Arizona, Kemp contacted LM about investing in foreclosures. Communications between Kemp, in Utah County, Utah, and LM, in Arizona, took place by both telephone and e-mail.

13. Kemp told LM he could earn an 18-20% profit in a short period of time by buying properties that are in foreclosure then quickly selling them for a profit.

14. Kemp said turn-around on the homes could happen in nine months, so profit could be realized in a short period of time.

15. Kemp told LM for an investment to purchase the foreclosures, Non-Performing Notes would issue LM a Promissory Note secured by a Trust Deed on the property purchased, so no risk was involved.

16. Kemp did not provide LM with any of the information typically provided in an offering circular or prospectus regarding Non-Performing Notes.

17. Kemp also failed to disclose to LM that five civil judgments had been entered against him totaling $338,610, that Kemp filed for bankruptcy in 1999, and that Kemp was convicted of embezzlement and theft in 1992.

18. On January 19, 2006, LM wired $20,000 to the Non-Performing Notes account at Wells Fargo Bank. For this investment, LM received a "Promissory Note Secured by Deed of Trust" dated January 19, 2006, signed by Kemp on behalf of Non-Performing Notes, LLC on February 1, 2006. At LM's request, the note was issued to LM's wife.

19. The note promised to pay principal plus interest of 20% per year in one balloon payment on or before October 19, 2006. The note further stated that it is secured by a trust deed on the real property at 1201 Valencia Drive NE, Albuquerque, NM 87110.

20. LM believed his investment was being used to purchase the property. He did not authorize its use for any other purpose.

21. Kemp and LM remained in contact with each other, both by telephone and e-mail. In an

e-mail dated March 2, 2006, LM asked Kemp to send him information on Kemp's April real estate training and additional investment opportunities.

22. Kemp responded the same day with a training flyer and information on two properties, one in California and one in Maine. LM immediately responded, "This is great! I can have the $65K wired to you tomorrow or Monday. Would you recommend one of these deals over the other? Please do the promissory note in my wife's name again."

23. In the final e-mail on March 2, 2006, Kemp stated, "The Maine deal is better protection. I'll get the Promissory done and sent over. Here are the wiring instructions incase [sic] you don't have them from last time."

24. On March 4, 2006, LM wired $65,000 to the Non-Performing Notes account at Wells Fargo Bank, to be applied to the Maine property (38 Larrabee's Landing Rd., Yarmouth, ME 04096). This note was also to pay principal plus 20% annual interest in one balloon payment nine months after issuance.

25. Although he has asked for it many times, LM has not received the Promissory Note for this investment. LM has also asked repeatedly for copies of the Trust Deeds supposedly securing his notes, but has not received them.

26. LM believed his investment was being used to purchase the property. He did not authorize its use for any other purpose.

27. When Kemp failed to pay the $20,000 Promissory Note on October 19, 2006, LM made e-mail inquiries about payment. Kemp finally responded to the third such inquiry on

November 1, 2006, stating the owners had filed bankruptcy and he was "still in those deals". Kemp asked LM for wiring instructions so Kemp could make interest payments to LM with money from "another deal."

28. On November 2, 2006, LM received a wire transfer from the Non-Performing Notes account at Wells Fargo for $8,549.97. LM has received no additional payments.

29. After sending repeated e-mails over several months with no response, LM retained an attorney and filed suit against Kemp in Arizona. The suit resulted in a default judgment against Kemp.

Properties

30. Records of the Bernalillo County, New Mexico Clerk's Office were searched on-line for the address 1201 Valencia Drive NE, Albuquerque, New Mexico.

31. There is no recording giving Non-Performing Notes any right, title or interest in the New Mexico property. There is no recording giving LM any right, title or interest in the New Mexico property.

32. Records of the Cumberland County, Maine Register of Deeds were searched on-line for the address 38 Larrabee's Landing Road, Yarmouth, Maine. Recorded documents reveal the property is owned by Donald and Donna Bialek.

33. On November 15, 2004, a "Corporate Assignment of Mortgage" was executed assigning the Bialek's mortgage with Greenpoint Mortgage Funding, Inc. to Non-Performing Notes, LLC. This document was recorded on July 27, 2005.

34. On April 13, 2006 Non-Performing Notes, LLC executed an "Assignment of Mortgage" which assigned the mortgage to Allyson Ray, who has an address in Cumberland, Maine.

35. The assignment was signed on behalf of Non-Performing Notes by Angela DiGiovanni. Mark Kemp signed as witness. The assignment was recorded on April 28, 2006.

36. There is no recording giving LM any right, title or interest in the Maine property.

Bank Records

37. Both of LM's investments were deposited to a checking account for Non-Performing Notes, LLC at Wells Fargo Bank. Angela DiGiovanni is the only person with signature authority on this account.

38. LM's $20,000 investment was deposited to the Non-Performing Notes account on January 20, 2006. That same day, two transfers totaling $5,000 were made to two unknown accounts.

39. On January 23, 2006 payment was made to John Adams with notation "NM property" in the amount of $8,000. Other expenditures from the account are personal, such as Latter-Day Creations, Golden Corral, Burger King and Chili's Grill.

40. Other expenditures could be personal or could be business related, such as Dee R. Taylor, LLC with notation "rent," Office Max, FedEx Shop and Comcast Cable. The entire $20,000 was expended by February 1, 2006.

41. LM's $65,000 investment check was deposited to the Non-Performing Notes account at Wells Fargo Bank on March 8, 2006. The entire amount was transferred to another

unknown account that same day with a notation, "Hold for Deals."

III. CONCLUSIONS OF LAW

42. The Division has jurisdiction over the subject matter of this action.

43. Service of the Order to Show Cause and Notice initiating these proceedings is valid upon Non-Performing Notes, LLC and Mark Alan Kemp.

44. Non-Performing Notes, LLC and Mark Alan Kemp are in default for failure to file a written response or otherwise appear and defend.

45. The promissory notes offered and sold by Non-Performing Notes, LLC and Mark Alan Kemp are securities under § 61-1-13 of the Act.

46. In connection with the offer and sale of a security, Non-Performing Notes and Kemp, directly or indirectly, made false statements, including, but not limited to, the following:

    a. That the investment of $20,000 would be secured by a trust deed on a specific property in Albuquerque, New Mexico, when neither Kemp nor Non-Performing Notes had a legal interest in that property;

    b. That the investment of $65,000 would be secured by a trust deed on a specific property in Yarmouth, Maine, when Non-Performing Notes' interest in that property was an Assignment of Mortgage, therefore no trust deed could be executed; and

    c. That there was no risk to the investments when in fact all investments involve some risk.

47. In connection with the offer and sale of a security, Non-Performing Notes and Kemp, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make representations made in light of the circumstances under which they were made, not misleading:

a. That Mark Kemp had at least five unpaid civil judgments filed against him totaling over $300,000;

b. That Mark Kemp filed for Chapter 13 bankruptcy protection in 1999;

c. That Mark Kemp was convicted of embezzlement and theft in Contra Costa County, California in 1992;

d. That invested funds would be used for personal and general business expenditures and not for purchase of the specific properties discussed;

e. LM's suitability for these investments;

f. Any conflicts of interest the issuer, the principals, or the agents may have with regard to the investment; and

g. Whether the investment was a registered security or exempt from registration.

48. Based upon the foregoing, Non-Performing Notes, LLC and Mark Alan Kemp violated § 61-1-1 of the Act.

IV. ORDER

Based on the above, the Director hereby:

1. Declares Non-Performing Notes, LLC and Mark Alan Kemp in default for failing to file a

written response to the August 13, 2008 OSC and for failing to appear at the October 14, 2008 initial hearing.

2. Enters, as its own findings, the Finding of Fact described in Section II above.

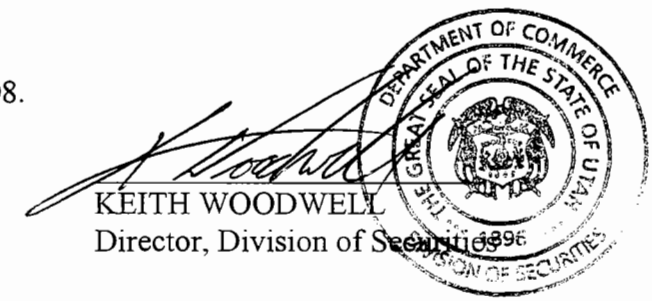
3. Enters, as its own conclusions, the Conclusions of Law described in Section III above.

4. Finds that Respondents violated the Utah Uniform Securities Act by misrepresenting material facts in connection with the offer of a security in or from Utah in violation of § 61-1-1(2).

5. Orders Respondents to permanently CEASE and DESIST from any violations of the Act.

6. Orders Non-Performing Notes, LLC and Mark Alan Kemp to pay a fine of one hundred thousand dollars ($100,000) each to the Division within 30 days of the entry of this Order.

DATED this 12th day of November 2008.



KEITH WOODWELL
Director, Division of Securities

Pursuant to § 63G-4-209, Respondent may seek to set aside the Default Order entered in this proceeding by filing such a request with the Division consistent with the procedures outlined in the Utah Rules of Civil Procedure.

CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of December 2008, I mailed, by certified mail, a true and correct copy of the forgoing **Affidavit of Service and Non-Response and Notice of Entry of Default and Order** to:

Non-Performing Notes LLC
51 West Center Street
Orem UT 84057-4605

Certified Mail: 7004 1160 0003 0196 3571

Mark Kemp
711 East 550 South
Orem UT 84097-4416

Certified Mail: 7004 1160 0003 0196 3588

Pam Radzinski
Executive Secretary