

E. NEAL GUNNARSON, Bar No. 1273  
Assistant Attorney General  
MARK L. SHURTLEFF, Bar No. 4666  
Utah Attorney General  
5272 South College Drive, #200  
Murray, UT 84123  
Telephone: (801) 281-1221  
Facsimile: (801) 281-1224

**FILED**  
AUG 18 2008  
4TH DISTRICT  
STATE OF UTAH  
UTAH COUNTY

---

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR  
UTAH COUNTY, STATE OF UTAH

---

THE STATE OF UTAH, : Bail \$ 25,000 cash or bond  
 :  
Plaintiff, :  
 : **CRIMINAL INFORMATION**  
vs. :  
 :  
MARK ALAN KEMP, : Case No: 081402424  
DOB: July 2, 1959 :  
 : Judge [Signature] Div 4  
Defendant. :

---

The undersigned, SUSAN JONES, upon oath, states on information and belief  
that the defendant has committed the following crimes:

**SECURITIES FRAUD**  
**a second degree felony (2 counts)**

**COUNT 1**  
**SECURITIES FRAUD**  
**a second degree felony**

Commencing on or about January 2006, in the State of Utah, Salt Lake County, the  
defendant, in connection with the offer or sale of a security, directly or indirectly, to **LANCE M.**  
**McDERMOTT**, made untrue statements of material facts or omitted to state material facts

necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit, in violation of Utah Code Ann. §§61-1-1 and 61-1-21. This violation is a second degree felony under Utah Law.

**COUNT 2  
SECURITIES FRAUD  
a second degree felony**

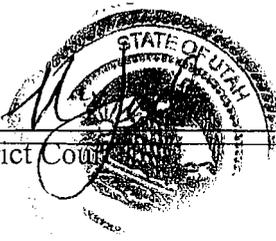
Commencing on or about March 2006, in the State of Utah, Salt Lake County, the defendant, in connection with the offer or sale of a security, directly or indirectly, to **LANCE M. McDERMOTT**, made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit, in violation of Utah Code Ann. §§61-1-1 and 61-1-21. This violation is a second degree felony under Utah Law.

DATED this 18<sup>th</sup> day of August, 2008.

Susan M Jones  
SUSAN M. JONES, Affiant

SUBSCRIBED AND SWORN to before me on this  
18 day of August, 2008.

Harold F. [Signature]  
JUDGE, Fourth Judicial District Court



This CRIMINAL INFORMATION is based upon evidence from the following witnesses:

1. Lance McDermott
2. Mark Kemp
3. Angela DiGiovanni
4. And Others.

AUTHORIZED for presentment and filing this 18<sup>th</sup> day of August,  
2008.

MARK L. SHURTLEFF  
Utah Attorney General

By: For: [Signature] [Signature]  
E. NEAL GUNNARSON  
Assistant Attorney General

E. NEAL GUNNARSON, Bar No. 1273  
Assistant Attorney General  
MARK L. SHURTLEFF, Bar No. 4666  
Utah Attorney General  
5272 South College Drive, #200  
Murray, UT 84123  
Telephone: (801) 281-1221  
Facsimile: (801) 281-1224

---

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR  
UTAH COUNTY, STATE OF UTAH

---

THE STATE OF UTAH, :  
 :  
 Plaintiff, : **AFFIDAVIT OF PROBABLE CAUSE**  
 :  
 vs. :  
 :  
 **MARK ALAN KEMP** : Case No. 081402424  
 DOB: July 2, 1959 :  
 : Judge Scott Div 4  
 Defendant. :

---

STATE OF UTAH )  
 :ss  
 COUNTY OF UTAH )

I, SUSAN JONES, being first duly sworn upon oath, depose and state as follows:

1. I am a certified law enforcement officer of 31 years and am currently employed as a Securities Compliance Investigator for the Utah Department of Commerce, Division of Securities. ~~Prior to my employment with the Division of Securities, I was employed by the Criminal Investigations Bureau of the Department of Public Safety.~~ I am currently investigating possible

violations of securities fraud statutes and related criminal code violations by MARK ALAN KEMP.

2. The facts set forth in this affidavit are based upon the results of an investigation during which I have collected and reviewed business and personal records from witnesses and other sources. I have received information from the following individuals: Lance McDermott, Mark Kemp, and Angela DiGiovanni.

### **PARTIES**

3. MARK ALAN KEMP, at all pertinent times, resided in Utah County, Utah.

4. Non-Performing Notes, LLC. is a Nevada limited liability company registered with the Nevada Secretary of State on September 13, 2004. It was revoked November 1, 2007 for failure to renew. Angela D. Kuhn<sup>1</sup> was its manager. No other individuals are listed with the Nevada Secretary of State as managers or members. However, the Operating Agreement dated September 20, 2004, lists members as Angela Kuhn and Mark Kemp.

### **BACKGROUND**

5. Non-Performing Notes, LLC was in the business of buying and selling discounted real estate and buying and selling discounted mortgage notes. The business strategy was to purchase the notes or the property, then sell quickly and at a profit.

6. Mark Kemp also taught seminars on investing in real estate with an emphasis on foreclosures and short sales.

---

<sup>1</sup> Angela D. Kuhn's marriage to Matt Kuhn was nullified on March 11, 2005 and her former name, Angela Marie DiGiovanni, was restored.

7. Both DiGiovanni and Kemp state that Non-Performing Notes, LLC was a company they both used to conduct business, but they were not partners. They worked independently of each other on their own deals.

### **SECURITIES FRAUD**

8. My investigation has revealed that MARK ALAN KEMP offered or sold Promissory Notes to at least one investor. Promissory Notes are securities as defined by Utah Code Annotated 1953 as amended §61-1-13.

9. MARK ALAN KEMP made certain misrepresentations of material facts to one or more investors in connection with the offer or sale of a security, to-wit:

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

10. MARK ALAN KEMP also made certain omissions of material facts to one or more investors in connection with the offer or sale of a security, to-wit:

- That Mark Kemp had at least five judgments filed against him totaling over \$300,000.
- That Mark Kemp filed for Chapter 13 bankruptcy protection in 1999.

- That Mark Kemp was convicted of embezzlement and theft in Contra Costa County, California in 1992.
- McDermott's suitability for these investments.
- Any conflicts of interest the issuer, the principals, or the agents may have with regard to the investment.
- Whether the investment is a registered security or exempt from registration.
- Whether the person selling the investment was licensed.

**COUNT 1**  
**SECURITIES FRAUD, a second degree felony**  
**Lance M. McDermott**

11. Lance McDermott met Mark Kemp when he attended a real estate investing seminar, Real Estate Wealth Unlimited, conducted by Kemp in Arizona in the summer of 2005. McDermott attended a follow-up seminar conducted by Kemp in Utah in January 2006.

12. McDermott contacted Kemp about investing in foreclosures in January 2006. Communications took place between Kemp who was in Utah County, Utah and McDermott who was in Arizona by both telephone and emails.

13. Kemp told McDermott that McDermott could earn an 18-20% profit in a short time by buying properties in foreclosure then quickly selling them for a profit. Kemp said turn-around on these homes could happen in nine months, so the profit could be realized in a short period of time. Kemp told McDermott in exchange for an investment to purchase foreclosures, Non-Performing Notes would issue a Promissory Note secured by a Trust Deed on the property purchased, so no risk

was involved.

14. Kemp did not provide McDermott with any of the information typically provided in an offering circular or prospectus regarding Non-Performing Notes. More specifically, Kemp failed to disclose the business and operating history of Non-Performing Notes; identities of the principals along with their experience in the relevant business areas; financial statements for Non-Performing Notes; the nature of the competition for the product; Non-Performing Notes current capitalization; the track record of Non-Performing Notes to other investors; risk factors for the investors; the number of other investors; the liquidity of the investment; discussion of pertinent suitability factors for the investment; any conflicts of interest the issuer, the principals or the agents may have with regard to the investment; agent commissions or compensation for selling the investment; whether the investment is a registered security or exempt from registration; and whether the individual selling the investment is licensed.

15. Kemp also failed to disclose to McDermott that five judgments had been filed against him totaling \$ 338,610, that he filed for bankruptcy in 1999, and that he was convicted of embezzlement and theft in 1992.

16. On January 19, 2006, McDermott wired \$20,000 to the Non-Performing Notes account at Wells Fargo Bank. For this investment, McDermott received a *Promissory Note Secured by Deed of Trust* dated January 19, 2006, but signed by Mark Kemp for Non-Performing Notes, LLC on February 1, 2006. At McDermott's request, the note was issued to his wife, Rachel McDermott.

---

The note promises to pay principal and interest of 20% APR in one balloon payment on or before

October 19, 2006. The note further states that it is secured by a Trust Deed on the real property at 1201 Valencia Drive NE, Albuquerque, NM 87110. McDermott believed his investment was being used to purchase the property. He did not authorize its use for any other purpose.

17. Records of the Bernalillo County, New Mexico Clerk's Office were searched on-line for the address 1201 Valencia Drive NE, Albuquerque, NM 87110. Recorded documents show that this property was purchased in January 2003 by John Williams Adams III and Amy M. Adams. The Adamses sold the property in March 2006 to Craig & Maggie Klappauf. During the period the property was owned by the Adamses, one mortgage was filed. There is no recording giving Non-Performing Notes any right, title or interest in the property. There is no recording giving McDermott any right, title or interest in the property.

**COUNT 2**  
**SECURITIES FRAUD, a second degree felony**  
**Lance M. McDermott**

18. Kemp and McDermott remained in contact with each other, both by telephone and email. In an email dated March 2, 2006, McDermott asked Kemp to send him information on April training and additional investment opportunities. Kemp responded the same day with a training flyer and information on two properties, one in California and one in Maine. McDermott immediately responds, "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 Rachel E McDermott." In the final email on March 2, 2006, Kemp states, "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.”

19. On March 4, 2006, McDermott 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 and 20% interest in one balloon payment nine months after issuance. Although he has asked for it many times, McDermott has not received the Promissory Note for this investment. McDermott has also asked repeatedly for copies of the Trust Deeds supposedly securing his notes, but has not received them either. McDermott believed his investment was being used to purchase the property. He did not authorize its use for any other purpose.

20. Records of the Cumberland County, Maine Register of Deeds were searched on-line for the address 38 Larrabee's Landing Road, Yarmouth, ME 04096. Recorded documents reveal the property is owned by Donald and Donna Bialek. 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.

21. 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. The document was signed on behalf of Non-Performing Notes by Angela DiGiovanni, its Owner. Mark Kemp signed as witness. This document was recorded on April 28, 2006. There is no recording giving McDermott any right, title or interest in the property.

22. When Kemp failed to pay the \$20,000 Promissory Note on October 19, 2006, McDermott made email 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". He asked for wiring instructions so he could at least make interest payments, money which came from "another deal." Kemp listed the breakdown of the payment as \$3,133.30 on the \$20,000 and \$5,416.67 on the \$65,000, for a total of \$8,549.97. On November 2, 2006, McDermott received a wire transfer from the Non-Performing Notes account at Wells Fargo for \$8,549.97

**SUMMARY**

69. Based on my review of the evidence there is probable cause to believe that MARK ALAN KEMP has committed the crimes of:

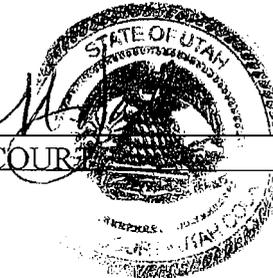
**SECURITIES FRAUD**  
**a second degree felony, 2 counts**

DATED this 18<sup>th</sup> day of August, 2008.

Susan M Jones  
SUSAN M. JONES, Affiant

SUBSCRIBED AND SWORN to before me on this 18  
day of August, 2008.

Harold S. ...  
JUDGE, FOURTH DISTRICT COURT



E. NEAL GUNNARSON, Bar No. 1273  
Assistant Attorney General  
MARK L. SHURTLEFF, Bar No. 4666  
Utah Attorney General  
5272 South College Drive, #200  
Murray, Utah 84123  
Telephone: (801) 281-1221  
Facsimile: (801) 281-1224

---

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR  
UTAH COUNTY, STATE OF UTAH

---

THE STATE OF UTAH, : Bail \$ 25,000 cash or bond  
 :  
Plaintiff, :  
 : **WARRANT OF ARREST**  
vs. :  
 :  
MARK ALAN KEMP, : Case No: 001402424  
DOB: July 2, 1959 :  
 : Judge: [Signature], Div 4  
Defendant. :

---

THE STATE OF UTAH TO ANY PEACE OFFICER IN THE STATE OF UTAH,

GREETINGS:

An Information, upon oath, having been this day made before me by Investigator Susan Jones, and it appearing from the Information, or affidavit filed with the Information, that there is probable cause to believe that the public offense(s) of: **Securities Fraud, a second degree felony, 2 counts**, has been committed, and that the defendant, MARK ALAN KEMP, has committed these offenses,

**YOU ARE THEREFORE COMMANDED** to arrest the above named defendant forthwith and bring the defendant before this court, or before the nearest or most accessible magistrate for setting bail. If the defendant has fled justice, you shall pursue the defendant into any other county of this state and there arrest the defendant. The offenses listed above are felonies.

Bail is set in the amount of \$ 25,000 cash or bond

DATED this 18 day of August, 2008.

Harold L. [Signature]  
HONORABLE,  
JUDGE, FOURTH DISTRICT

The seal of the State of Utah is circular, featuring a central figure of a Native American holding a bow and arrow. The text "STATE OF UTAH" is arched across the top, and "JUDICIAL DEPARTMENT" is arched across the bottom. The year "1896" is visible at the bottom.

Defendant's Last Known Address:

711 East 550 South  
Orem, UT 84097