

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION**

IN THE MATTER OF:

Antonio Silva

Respondent

)
)
) ORDER TO CEASE AND DESIST
)
) COM-2021-000001
)

NOTICE OF ORDER

This Order commences an adjudicative proceeding under the provisions of
RSA 421-B:6-613.

LEGAL AUTHORITY AND JURISDICTION

Pursuant to RSA 421-B:6-604(a)(1), whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of the chapter or any rule under this chapter, he shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter.

Pursuant to RSA 421-B:5-508, any person who willfully violates a cease and desist order issued pursuant to RSA 421-B:6-603 or RSA 421-B:6-604, or who violates RSA 421-B:5-505 knowing that the statement was false or misleading in any material respect, shall be guilty of a class B felony.

Pursuant to RSA 421-B:6-604(d), the Secretary of State has the authority to impose administrative penalties of up to \$2,500 for a single violation.

Pursuant to RSA 421-B:6-604(g), the Secretary of State may charge the actual cost of an investigation or proceeding for a violation of this chapter or an order issued under this chapter.

NOTICE OF RIGHT TO REQUEST A HEARING

Under the provisions of RSA 421-B:6-604, the above named respondent has the right to request a hearing on this order to cease and desist.

Any such request for a hearing shall be in writing, shall be signed by the respondent, or by the duly authorized agent of the above named respondent, and shall be delivered either by hand or certified mail, return receipt requested, to the Bureau of Securities Regulation, Department of State, 25 Capitol Street, Concord, New Hampshire 03301.

Under the provisions of RSA 421-B: 6-604(b), within 15 days after receipt of a request in a record from the respondent, the matter will be scheduled for a hearing. If the respondent subject to the order do not request a hearing and none is ordered by the secretary of state within 30 days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the secretary of state, after notice of and opportunity for hearing to the respondent subject to the order, may modify or vacate the order or extend it until final determination. If the respondent to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, such respondent shall be deemed in default, and the

proceeding may be determined against him or her upon consideration of the cease and desist order, the allegations of which may be deemed to be true.

STATEMENT OF ALLEGATIONS

The allegations contained in the Staff Petition for Relief dated October 11, 2022, (a copy of which is attached hereto) are incorporated by reference hereto.

ORDER

WHEREAS, finding it necessary and appropriate and in the public interest, and for the protection of investors and consistent with the intent and purposes of the New Hampshire securities laws, and

WHEREAS, finding that the allegations contained in the Staff Petition, if proved true and correct, form the legal basis of the relief requested, therefore:

It is hereby **ORDERED**, that:

1. Respondent is hereby ordered to immediately cease and desist from the above indicated acts and from in any other way violating RSA 421-B.
2. Respondent shall pay restitution in the amount of \$30,000 to Investor #1.
3. Respondent shall pay an administrative fine of \$7,500.
4. Respondent shall pay the Bureau's costs of \$5,000.
5. Respondent is barred from any securities business, licensure and securities registration in the State of New Hampshire.

Failure to request a hearing within 30 days of the date of receipt of this Order shall result in a default judgment being rendered and administrative penalties and other relief described herein being imposed upon the defaulting respondent.

SIGNED,
DAVID M. SCANLAN
SECRETARY OF STATE
BY HIS DESIGNEE:

Dated: October 11, 2022


BARRY J. GLENNON, DIRECTOR,
BUREAU OF SECURITIES REGULATION

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION
25 CAPITOL STREET
CONCORD, NH 03301

STAFF PETITION FOR RELIEF
IN THE MATTER OF:

Antonio Silva

No. COM-2021-000001

- I. The State of New Hampshire, Department of State, Bureau of Securities Regulation (hereinafter referred to as the "Bureau"), hereby petitions the Director, and makes the following statement of facts:

STATEMENT OF FACTS

1. Antonio Silva (hereinafter "Silva") is fifty-seven (57) years old and resides in Hampton, New Hampshire. On October 1, 2017, Silva entered into a partnership agreement to form Gino's Pizza and Subs LLC ("Gino's") with two (2) other individuals. According to the partnership agreement, Silva and the two other individuals were equal, one-third (1/3) owners of Gino's. Gino's was to operate at 625 Lafayette Road in Hampton, New Hampshire. This information was corroborated by Silva during two (2) On-the-Record Statements conducted by the Bureau on June 30, 2021 and July 8, 2021.
2. Investor #1 is from Manchester, New Hampshire. On or about March 16, 2018, Silva entered into a "Silent Partnership Agreement" with Investor #1, purportedly selling Investor #1 a forty percent (40%) interest in Gino's for thirty thousand dollars (\$30,000). Records and evidence show that, at the time of the purported sale to Investor #1, Silva did not own forty percent (40%) of Gino's. At the time of the purported sale to Investor #1, Silva was only a one-third (1/3) owner of Gino's. Furthermore, the "Silent Partnership Agreement" provided to Investor #1 indicated that Silva was the sole owner of Gino's, which was not true.
3. Since 2020, Silva has been on probation for the misdemeanor offense of writing a bad check. Previously, in 2012, Silva was charged with felony securities fraud arising from securities dealings and activity associated with a scooter rental

business in Las Vegas, Nevada, which was ultimately plead down to a misdemeanor conviction. Before the purported sale on or about March 16, 2018, Silva did not disclose any prior criminal history to Investor #1.

ALLEGATIONS AND STATEMENTS OF LAW

II. The staff of the Bureau hereby petitions the Director and makes the following statements of law under N.H. RSA 421-B, and regulations thereunder:

1. Silva is a “person” within the meaning of N.H. RSA 421-B:1-102(39).
2. The forty percent (40%) interest in Gino’s as detailed in the “Silent Partnership Agreement” sold by Silva to Investor #1 is a security under N.H. RSA 421-B:1-102(53)(A).
3. Silva’s solicitation and offer of a forty percent (40%) interest and Investor #1’s acceptance constitutes a “sale” under N.H. RSA 421-B:1-102(49).
4. Pursuant to N.H. RSA 421-B:5-501(a), “[i]t is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to: (1) employ a device, scheme, artifice to defraud; (2) make any 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 under which they were made, not misleading; or (3) engage in an act practice or course of business that operates or would operate as a fraud or deceit upon any person.” Silva is in violation of this provision for misrepresenting to Investor #1 that he was the sole owner of Gino’s when, in fact, he was not; for engaging in a scheme to defraud Investor #1 by purportedly selling interests in Gino’s to Investor #1 that Silva did not own; and for failing to disclose his criminal record prior to the sale of Investor #1.
5. Pursuant to N.H. RSA 421-B:6-604(a), “[i]f the secretary of state determines that a person has engaged, is engaged, or is about to engage, in an act, practice, or course of business constituting a violation of this chapter or an order issued under this chapter,” he shall have the power to “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 this chapter.” Silva is subject to this provision and should be ordered to cease and desist from further violations of N.H. RSA 421-B. Specifically, Silva should be ordered to cease and desist from making material misrepresentations or omitting material information in connection with offering securities in New Hampshire.

6. Pursuant to N.H. RSA 421-B:6-604(d), in a final order, the secretary of state may impose a civil penalty up to a maximum of two thousand, five hundred dollars (\$2,500) for a single violation. In addition, every such person who is subject to civil penalty, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation, or denial of any registration or license, or be barred from registration or licensure, including the forfeiture of any application fee. Each of the acts shall constitute a separate violation. Silva is subject to this provision and should be fined seven thousand five hundred dollars (\$7,500) for three (3) violations of this chapter: misrepresenting to Investor #1 that he was the sole owner of Gino's when, in fact, he was not; for engaging in a scheme to defraud Investor #1 by purportedly selling interests in Gino's to Investor #1 that Silva did not own; and for failing to disclose his criminal record prior to the sale of Investor #1.
7. Pursuant to N.H. RSA 421-B:6-604(e), after notice and hearing, the secretary of state may enter an order of rescission, restitution, or disgorgement directed to a person who has violated certain provisions of N.H. RSA 421-B. Silva is subject to this provision and should be ordered to pay restitution to Investor #1 in the amount of thirty thousand dollars (\$30,000).
8. Pursuant to N.H. RSA 421-B:6-604(g), in any investigation to determine whether any person has violated or is about to violate this title or any rule or order under this title, upon the secretary of state's prevailing at hearing, or the person charged with the violation being found in default, or pursuant to a consent order issued by the secretary of state, the secretary of state shall be entitled to recover the costs of the investigation, and any related proceedings, including reasonable attorney's fees, in addition to any other penalty provided for under this chapter. Silva is subject to this provision and should be ordered to pay costs in the amount of five thousand dollars (\$5,000).

RELIEF REQUESTED

III. The Bureau makes the following requests for relief in the above-referenced matter as permitted under N.H. RSA 421-B:

1. Find as fact the statements contained in Section I, Statement of Facts.
2. Make conclusions of law relative to the statements contained in Section II, Allegations and Statements of Law.
3. Pursuant to N.H. RSA 421-B:6-604(a) order Silva to immediately cease and desist from further violations of N.H. RSA 421-B and cease and desist from making


material misrepresentations or omitting material information in connection with offering securities in New Hampshire.

4. Pursuant to N.H. RSA 421-B:6-604(d), bar Silva permanently from any securities licensure in New Hampshire.
5. Pursuant to N.H. RSA 421-B:6-604(d), fine Silva seven thousand five hundred dollars (\$7,500) for the three (3) violations of N.H. RSA 421-B:5-501 discussed above.
6. Pursuant to N.H. RSA 421-B:6-604(e), order Silva to pay restitution totaling thirty thousand dollars (\$30,000) to Investor #1.
7. Pursuant to N.H. RSA 421-B:6-604(g), order Silva to pay the Bureau's costs of investigation and enforcement in the amount of five thousand dollars (\$5,000).

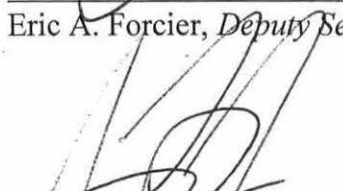
RIGHT TO AMEND

The Bureau staff reserves the right to amend this Staff Petition for Relief and requests the Director of the Bureau take additional administrative action. Nothing herein shall preclude the Staff from bringing additional enforcement actions under N.H. RSA 421-B or the regulations thereunder.

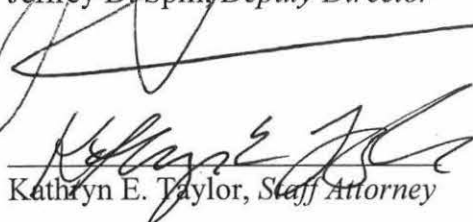
Respectfully submitted by:


Eric A. Forcier, *Deputy Secretary*

10/11/22
Date


Jeffrey D. Spill, *Deputy Director*

10/11/22
Date


Kathryn E. Taylor, *Staff Attorney*

10/11/22
Date