

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

IN THE MATTER OF:

Kevin J. Dumont

Respondent

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**FINDINGS, RULINGS AND ORDER
COM2016-0001**

Procedural History

On August 15, 2017, the Bureau of Securities Regulation (hereinafter referred to as “the Bureau”) filed a Staff Petition for Relief against Kevin J. Dumont (hereinafter “the Respondent”) alleging violations of New Hampshire RSA 421-B¹ and requesting relief. A *Cease and Desist Order* was issued on August 16, 2017, commencing the adjudicative proceeding in this matter. The *Order* and Staff Petition were then sent to the Respondent. On September 6, 2017, the Respondent requested a hearing. A *Hearing Order* was issued on September 12, 2017 and set for September 21, 2017. On September 14, 2017, the Respondent submitted a request via email for a preliminary hearing in order to give him time to arrange legal counsel. The request, in effect, waived the fifteen-day requirement for holding a hearing on a cease and desist order. It should be noted that the Respondent never arranged legal counsel during the entirety of the hearing process, including the final hearing on the merits, and acted *pro se* at all times. The preliminary hearing was held on October 11, 2017. At this informal prehearing conference, the Bureau moved, without objection from the Respondent, that the *Order to Cease and Desist* remain in effect during the pendency of this matter. On October 22, 2017, a further *Hearing Order* was issued accepting the Bureau’s motion and ordering the parties to confer on a schedule for the hearing process. Pursuant to a *Proposed Scheduling Order* submitted by the parties on October 23, 2018, a *Scheduling Order* was issued on October 24, 2017. The Respondent missed two deadlines set by the *Scheduling Order* and, on November 17, 2017, requested a 60-day delay in the dates set by the *Scheduling Order* due to ongoing health issues. The Bureau noted that a doctor’s note is required for continuances due to medical reason and requested a status conference, which was held on December 7, 2017. At said status conference, a further structuring conference was set for January 4, 2018 and the parties agreed to engage in negotiations to resolve this

¹ Please note – references to N.H. RSA 421-B in this document, unless otherwise indicated, are to the statute as in effect at the time that the Respondent’s violations occurred.

matter. After the breakdown of negotiations, further orders issued setting out new deadlines and allowing the Bureau to amend its Staff Petition, the amendment of which was filed on April 20, 2018. Finally, on July 19, 2018, an *Amended Scheduling Order* was issued setting a prehearing conference for September 17, 2018 and the final hearing on the merits to commence on September 18, 2018 at 10:00 a.m. and continuing thereafter as required.

Synopsis

This matter was heard on September 18 and 19, 2018 in Room 5 of the State House Annex in Concord, New Hampshire. Representing the Bureau was Jeff Spill, Deputy Director for Enforcement, and Eric Forcier, Staff Attorney. The Respondent did not have legal counsel and acted *pro se*.

In this case, the Bureau has alleged that the Respondent, through Liquid Planet Holdings, LLC (hereinafter "LPH"), sole owner of Liquid Planet Water Park, LLC (hereinafter "LPWP"), raised money through the sale of securities to various investors in violation of the requirements of NH RSA 421-B beginning in 2007. In addition, the Bureau alleges that the Respondent failed to disclose material information to investors.

According to the Bureau, after the Respondent brought in the initial investors, he directed them to solicit new investors and incentivized this recruitment by giving free shares to existing investors who brought in new investors. Additionally, new investors could buy more shares at a reduced rate of \$750 dollars per share. In addition, the Respondent got the word out that LPH shares were available for purchase through the use of general solicitation and advertisement. The Respondent also put on investor presentations (tours) at LPWP open to anybody interested in investing and offered an Investor Incentive Program which offered free LPWP passes and reduced prices to new investors. LPH/LPWP also put up a billboard advertisement on the side of LPWP's building and the road leading to LPWP soliciting investors and ran an ad on the LPWP website seeking investors as well as publishing a monthly newsletter soliciting investment in LPH/LPWP. Single page fliers were also distributed by the Respondent and LPWP seeking additional investors. The Bureau alleges that many of these general solicitations and advertisements continued from 2010 to 2015 and that some of the investment in LPH during this time frame was a direct result of the Respondent and LPH/LPWP's use of general solicitation and advertising.

The Bureau further alleges that near the end of 2011 and the beginning of 2012, the Respondent stopped paying for liability and property insurance and stopped making payments on credit card debt. The Respondent also began a campaign to solicit creditors for a debt repayment plan reached with various creditors, including the Small Business Administration (hereinafter "SBA"). The Bureau also alleges that during the periods the Respondent was soliciting new investors in 2011 and 2012, LPWP was in default on a more than \$1,000,000 loan from the SBA but failed to disclose this material information to investors. The Respondent and LPW/LPWP were in default of the SBA loan and continued to be in default from October of 2009 to May of 2012. According to the terms of the SBA loan and related documents, at any moment during the period of default the SBA had the right to demand immediate payment of the amount still owed, to file suit, and to take possession and sell the waterpark. According to the Bureau, this information was not disclosed to many investors who

were solicited during this timeframe. After two compromises, the note continued in default until the waterpark was foreclosed on.

In the period from the end of 2011 to the close of the business in 2015, additional investors in LPH were brought in by the Respondent. The Bureau alleges that the Respondent consistently failed to disclose additional material information to these investors, including that LPWP did not have liability and property insurance.

Lastly, the Bureau alleges that for the entire period LLC membership interests were being issued, the Respondent, LPH, and LPWP did not have an issuer-dealer or issuer-dealer agent license. Additionally, the LLC membership units were not registered or exempt from registration or a federal covered security as defined by RSA 421-B.

The gravamen of the Respondent's defense is that he did not know that the shares were required to be registered or subject to some exemption. He also argues that he did not know the company or he was required to be registered. Lastly, he asserts that he was not the only one in the company who solicited sales of shares and that others, including complainants, participated in the sale of shares. He believes the Bureau should have included these individuals in its enforcement action. However, he does acknowledge that he was in control of the operations of Liquid Planet, that he was "captain of the ship", even though he considered other investors owners of the business. He was adamant, however, that he was not a con man, stating he never got paid and he never intentionally tried to mislead anyone. All money, including his and his parents, went into the park and was never returned. However, he did admit to not letting investors know about the situation with the SBA loan and admitted that he was responsible for many of the claims that were being made, though he did not consider it fair regarding the amount of money the Bureau requested in fines, penalties, and restitution in its Staff Petition.

It should be noted that the Respondent stipulated to all of the investors named by the Bureau. In addition, he stipulated that he signed all of the subscription agreements.

Hearing

The Bureau was called to present its case. The Bureau offered 11 witnesses and introduced a total of 31 exhibits. Subsequently, the Respondent was called to present the Respondent's case. He did not offer any witnesses and did not introduce any exhibits on behalf of the Respondent.

Testimony of the Witnesses

Witness #1 – Ronald Severino

Mr. Severino is the owner of Severino Company, an abutter company to LPWP, in business since 1975. Severino Company conducted construction site work at the park. Mr. Severino agreed with the Respondent to become an investor and agreed to receive shares in exchange for \$200,000 off of Severino Company's first invoice to the water park. The LPH/LPWP did not make any profit, in essence because the first two seasons were rainy. Thereafter, there was

not enough business to return a profit. In addition to his investment, Mr. Severino also made a \$300,000 loan to LPH. All investors, with the exception of Bob McKean, did not learn of this loan until approximately 2013, when the board was meeting to consider the potential purchase of land adjacent to the water park as proposed by the Respondent.

According to Mr. Severino, there were six or seven initial investors, including Judy Williams, John Tracy, Tyra Gould, and Bob McKean. After each of the first two years, there was an end-of-year meeting with investors. In 2011, a board of directors was formed. The Respondent's roles were President and CEO of LPH/LPWP and, according to the witness, the Respondent made most of the decisions with regard to the company. After the second year of operations, the Respondent made the decision to seek more investors, which Mr. Severino was uncomfortable with. As a result, he was not actively involved with LPH/LPWP for the next couple of years. At that point, Mr. Severino did not believe the company would survive. He did not attend most board meetings during the first year. Mr. Severino stated that, even after the board was put in place, the Respondent made most of the decisions and the board was never advised of the sale of shares to new investors until after the fact.

Mr. Severino testified that the Respondent initially was in charge of seeking investors for LPH/LPWP. He thought Bob McKean was involved, but wasn't sure of Mr. McKean's exact role. Audited financial statements were never produced and information that was provided to investors was presented on spreadsheets created by the Respondent.

The witness testified that there were posters at the water park soliciting investors beginning in approximately 2011. Mr. Severino said he did not feel comfortable with soliciting new investors. He also stated that he advised anyone who contacted him not to invest. Eventually, additional shares were authorized in the company. At several board meetings in 2013, Mr. Severino and others told the Respondent he should stop soliciting new investors as it was likely LPH/LPWP was facing foreclosure. He testified that Maria Prisco purchased shares in 2014, after Mr. Severino had called on the Respondent to stop selling shares in the company. Mr. Severino spoke to Ms. Prisco near to the time when LPH/LPWP went into foreclosure. She expressed to him that she did not know that the financial situation was as bad as it was.

Mr. Severino stated that in 2013 new investors were getting riled up because there were continuing requests by the Respondent for additional money. At the end of 2013, Mr. Severino took over bookkeeping responsibilities for LPH/LPWP.

In 2015, LPH/LPWP entered into negotiations with Whale's Tale, a waterpark in Portsmouth, New Hampshire, for the purchase of the company. The witness testified that just before a deal was about to be acted upon by Whale's Tale and LPH/LPWP, the Respondent made several demands that caused Whale's Tale to retract its offer. Shortly thereafter, Enterprise Bank foreclosed on its loan to LPH/LPWP. Whale's Tale then purchased the water park in foreclosure and offered a 20% stake to current investors in LPH/LPWP, for which the investors had to provide more money. At foreclosure, the shares of LPH were worthless, according to Mr. Severino. It was during the negotiations with Whale's Tale that Mr. Severino became aware that the Respondent had let the liability insurance on the water park lapse. This had been the situation for at least three years prior.

Just prior to the foreclosure, according to the witness, he had contact with Joseph Arsenault, who had become aware of the potential foreclosure and wanted to know what was going on

with the water park. Arsenault told Mr. Severino that he had been an investor since 2007, having invested \$25,000. However, LPH/LPWP had no record of Mr. Arsenault as an investor.

Mr. Severino testified that the pro forma business plan given to earlier investors appeared a bit aggressive to him. Still, he made his investment based on the business plan.

Witness #2 – Kim MacLauchlan

The witness testified that she and her husband, Michael MacLauchlan, initially invested \$30,000 in LPH/LPWP in 2010. In total, she testified that they invested \$35,000 between 2010 to 2011. She first found out about the investment opportunity at a party at Tyra Gould's house in 2010. After speaking with Ms. Gould, she and her husband met with the Respondent at his home. He spoke to them about future plans that required raising money and gave the couple a tour of the water park. According to Ms. MacLauchlan, she doesn't believe that he disclosed that LPH/LPWP was in default on an SBA loan and did not know that not a single payment had been made on the loan. She stated that if she had known this, she would not have invested.

Ms. MacLauchlan also testified that her sister and brother-in-law, Gina Grudinskas and David Russo, also invested in the LPH/LPWP, conducted by the Respondent. The witness stated that the Respondent's promotion of the investment focused almost exclusively on the positive. Eventually, Mr. Grudinskas noticed that the Respondent was reporting money invested as revenue on spreadsheets created by the Respondent. According to Ms. MacLauchlan, it was the Respondent who was always in charge of the water park.

Under questioning from the Respondent, Ms. MacLauchlan stated that she believed the Respondent did not tell any blatant lies until it was discovered that the water park was not insured. The Respondent told investors that the water park was self-insured. The witness testified that she was never a member of LPH's board.

Witness #3 – Joseph Arsenault

Mr. Arsenault testified that he learned of the Respondent and the water park from the Respondent's father, who was a friend. They visited the water park together in 2007. The witness had a discussion with the Respondent and then reviewed blue prints for the water park. Based on his own construction background, Mr. Arsenault thought the plan looked good and decided to invest. He went home and wired \$25,000 to the Respondent's bank account. However, he never received any share certificates nor was he included on investor lists for LPH. When Mr. Arsenault found out that the park was about to go under, he contacted the accountant for LPH/LPWP who then placed him in touch with Ronald Severino. According to the witness, after this he contacted the Respondent to try to get him to buy back the shares, but Mr. Arsenault was told this was not an option.

Witness #4 – Tyra Gould

Ms. Gould stated that she first met the Respondent at a Raymond, New Hampshire Chamber of Commerce meeting in 2007. According to the witness, the Respondent sent out a flyer to all Chamber members soliciting investors in the proposed water park prior to the meeting. Shortly after, Ms. Gould and her husband invested \$35,000 in LPH/LPWP. Later, another couple from the Raymond area, Ms. Gould's parents Judy and Herb Williams, were solicited by Ms. Gould to invest and did invest in LPH/LPWP. In addition, Jody Grant and Kimberly MacLauchlan and her sister from the Raymond area also invested.

The witness testified that it was the Respondent who sold her the shares in LPH/LPWP. She stated that before investing, she went to the Respondent's house and looked at graphs and diagrams. He also gave her a term sheet. Ms. Gould stated that after purchasing her investment, she took on various responsibilities voluntarily at the park. A couple of years later, Ms. Gould started working in the office, inputting spending data into the computer. It was at this point she became aware that the park was not insured. She testified that the Respondent made the decisions about how the park was run. Ultimately, she gave up the basic bookkeeping she was doing and someone with experience in bookkeeping took over. By the end of the second year, Ms. Gould said she realized that things were not going well financially for LPH/LPWP.

According to Ms. Gould, at some point the Respondent split the stock, which halved the value of the current owners' stock. Current stock owners were troubled by this. The Respondent was seeking more investors and urged share owners to talk to friends and family. Interested individuals would then meet with the Respondent. Others gave tours of the park, but investing was not discussed on these tours. In 2009 and 2010, the witness said she invested \$1,000 and \$7,500.

Ms. Gould testified that posters, "tee-pee" signs and notices in "go" bags given to park customers solicited new investors in LPH/LPWP. The go bag notices were given to customers in approximately 2012 to 2013. In addition, in approximately 2010 to 2012, investors were solicited on the water park's web site by the Respondent. Investors were also solicited by email. Also, the Respondent solicited investors to provide the names of others to invite to an annual barbecue to solicit as investors. She testified that throughout the history of the park, the Respondent solicited investors to bring in other investors. Anyone who was interested in investing was directed to the Respondent, who made the ultimate decisions on selling to new investors. Lastly, Ms. Gould stated that the board was formed pursuant to bylaws that were adopted.

Witness #5 – Judy Williams

Ms. Williams stated she first became aware of the Respondent through the Raymond Chamber of Commerce meeting referenced in Ms. Gould's testimony. However, she said she really only got to know him when she subsequently purchased stock from him in 2007 for \$25,000. The total amount invested was \$30,000. She testified that she later became Secretary when a board of directors was set up and sat on the Finance Committee under the board. The witness stated that an informal board had been established prior to the adoption of

bylaws. She also stated, under questioning from the Respondent, that Bob McKean was involved at some point in getting investors for the company.

(NOTE: Due to a malfunction in the recording apparatus, there was an approximately 10 minute gap in the recording of Ms. Williams' testimony. However, given the overall witness testimony and evidence, the presiding officer has determined that this represents harmless error.)

Ms. Williams further testified that a revenue and expense spread sheet from 2014, which the Respondent characterized as budgeted projected revenues and expense, reported general liability insurance for \$22,500. She also testified that she received an email in 2010, which was also sent to other investors, in which the Respondent stated he had brought in four new investors who invested \$100,000 in LPH/LPWP, with additional commitment of forthcoming investments of \$75,000. The email also stated the investments were not enough to fund the park and that each investor should attempt to bring in at least one new investor each. The email also said that the Respondent and Tyra (Gould) were the only investors to have brought new investors on. Another email to investors solicited investors to purchase three additional shares and to seek out new investors. More emails sent out in 2011 continued to seek more investments through new investors. The Respondent requested that the contact information for potential new investors be directed to him.

The witness testified, under questioning from the Respondent, that the Respondent seemed to be obsessed with saving "his park".

Witness #6 – John Tracy

The witness characterized himself as initially being a consultant to the Respondent regarding the establishment of the water park. In lieu of payment for some of his work, the witness was promised shares. However, some of these shares were given to Bob McKean. Later, the Respondent asked for a \$30,000 investment from Mr. Tracy and Mr. Tracy invested in LPH/LPWP. Mr. Tracy testified to seeing signs at the park as well as flyers soliciting investors. He stated that the Respondent directed each investor to try to bring three friends in.

Witness #7 – Richard Lessard

Mr. Lessard testified that he had first become aware of an investing opportunity in LPH/LPWP through an article dated September 26, 2010 in the *Union Leader* newspaper. He contacted the Respondent by email and got a quick response. The Respondent offered to have Mr. Lessard come out and tour the park, which he did with his wife. Mr. Lessard received a packet that included a spreadsheet showed a budgeted year for the upcoming season, as well as the previous year's actual results and perhaps the year before that. From this, Mr. Lessard saw that the first year of operations at the park had been a financial disaster but the next year the financial situation, though still in the red, had improved. He thought this was a trend that was heading in the right direction. The witness also testified that he was told by the Respondent that, if it were not for paying down debt, the company would have made about \$400,000. On October 9, 2010, the witness invested \$50,000 at \$1000 per share. On January 1, 2011, he

invested another \$75,000. After his investments, he made loans of approximately \$40,000 and \$25,000 to LPH/LPWP.

Mr. Lessard he had no idea when investing that LPH/LPWP had never paid anything on its SBA loan. He said if he had known of this he would never have invested.

Witness #8 – Richard Comeau

The witness first learned of the water park in 2008, when it was being constructed. In 2012, the witness decided to invest. He dealt directly with the Respondent. He purchased 50 shares for \$37,500. He purchased another 50 shares in 2013 for \$37,500. In 2014, the witness purchased another 20 shares for \$15,000. During the period in which he invested, Mr. Comeau stated the he did not know the water park did not have general liability insurance. The Respondent never told him this, and he would not have invested had he known. In addition, he was not aware of how much debt LPH/LPWP owed.

Witness #9 – Maria Prisco

Ms. Prisco stated that she learned of Liquid Planet in 2011 when a niece suggested visiting the water park with her children. In 2012, she visited again. She spoke with the Respondent, then, about investing. According to Ms. Prisco, the Respondent told her that the park was doing well. She held off on investing to verify whether the company would survive. She visited the park with family again in 2013 and in 2014. In 2014, she asked a niece, Teresa, who had more financial knowledge, to ask questions of the Respondent regarding the water park's finances. The niece had a conversation with the Respondent about profitability and other issues and communicated to the witness that the information she was given indicated the park was profitable. After this she purchased 59 shares for \$50,500. She was not aware of issues with LPH/LPWP's SBA loan or that the company did not have liability insurance on the water park. She stated that she absolutely would not have invested had she known.

Witness #10 – Jason Michael McKinney

The witness stated he became an investor in July 2010. He found out about Liquid Planet from a sign he passed on the road. He subsequently visited the company's web site and attempted to open a tab for investors. There was nothing there, so he sent a message through the web site's contact page, to which the Respondent responded. The Respondent offered to give the witness and his family a tour of the park. After touring the park, Mr. McKinney asked about the financial condition of the park. The Respondent told him that profitability is often driven by the weather, but the park was profitable. He found out later that the park being "profitable" only applied to the three months the park was opened.

Mr. McKinney stated that within the park he saw "A-frame" signs soliciting investors. Eventually, the witness learned about the extent of debt owed and stated that he would not have invested had he known. In July 2010, the witness made his first investment of \$35,500, paying by check to the Respondent and signing a term sheet with the Respondent. Later, Mr. McKinney's wife moved over \$50,000 of her IRA money into Liquid Planet. While Bob

McKean suggested a mechanism by which this could be done, his suggestion did not provide the basis for the decision to invest the money in LPH/LPWP. Mr. McKinney eventually brought on his parents, John McKinney and Elizabeth McKinney, as investors. He referred his parents to the Respondent. After discussions with the witness, in which the witness recommended his parents invest, and further discussions with the Respondent, the witness's parents decided to invest. Between the investments of Mr. McKinney, his wife and his parents, they had over \$100,000 invested in LPH/LPWP.

The witness testified that the Respondent was chairman of the board. Board meetings were held at the Respondent's house. The Respondent would tell the board how things were going and discuss possibilities for making money beyond the summer months. Mr. McKinney stated that he had not heard of the lapsing of the general liability insurance until the Bureau contacted him after commencing its investigation.

Witness #11 – Kevin Dumont

Under questioning from the Bureau, the Respondent acknowledged that he had sold LPH/LPWP shares to Joseph Boucher in approximately 2007, Cathy Vanasse in approximately 2007, a Mr. Schoff in 2007, Joseph Falbo, John Lange in around 2010,

In addition, Mr. Dumont stated that he signed the paperwork for selling shares to Jodi Grant, Rod Thompson and his wife (in a meeting set up by Bob McKean), Ernest Dupras (brought to Mr. Dumont by Bob McKean), Doug Schlosser in approximately 2010, and James Renfreau in approximately 2013 to 2014. He also stated that he received all checks for investment.

The witness testified that LPH/LPWP had legal counsel through the McLean law firm. He and John Tracy met with Chris Dube at the law firm. Lawyers at the firm dealt with Mr. Dumont, and, at the beginning, may have communicated with John Tracy. After Chris Dube left McLean, Mr. Dumont dealt with Mike Toole. Initially, the witness was told by Chris Dube that they had to limit investors to ten or less to avoid securities registration. Later, he was told by Mike Toole that the limit on investors was up to 25. In addition, he was told by both attorneys that LPH/LPWP could not advertise for investors. The witness stated that he thought any advertising within the water park was exempt since it was being done on private property. Mr. Dumont said the web site was generally run by Bob McKean. He admitted that he knew the web site was available to the public and that he approved this. He never really considered whether this constituted general advertising or solicitation.

Mr. Dumont admitted that information on the loan defaults with the SBA was not mentioned to investors. He justified this by explaining that Liquid Planet was working toward a good deal with the SBA for new terms on the loan. He said the same applied to the Enterprise Bank loan. He said he felt bad that he was not up front with people regarding the SBA loan and that he took responsibility for that, but that it was a strategic decision that was made at the upper levels of management, including Ron Severino, Bob McKean, and Tyra Gould. The witness stated that he and other initial investors relied on a feasibility study in going forward with the development of the park. He said the study did not account for many expenses, which amounted to about \$1 million.

Findings of Fact

1. Liquid Planet Holdings, LLC (hereinafter "LPH"), was a business entity created in 2007 with a principal office located at 446 Raymond Road, Candia, New Hampshire. LPH was the holding company for Liquid Planet Water Park, LLC, an operating company created in 2007 for a small sized water amusement park, and 446 Raymond Road, LLC (hereinafter "446") which owned the real estate upon which the water park was operated.
2. LPH was authorized to issue membership interests and LPH issued approximately 3000 shares to about 23 investors, including the owner/operator, Kevin J. Dumont, from 2007 until a foreclosure sale in the fall of 2015.
3. From their inception in 2007 until about 2013, LPH and LPWP were solely operated by the Respondent. In addition, during this period the Respondent was the majority owner of LPH. Starting in about 2013, when a board of directors was installed, the Respondent became chairman of the board of directors until his ouster in 2015.
4. In about 2007, the Respondent established an advisory board to assist him in the operation of LPH until the creation of the Board of Directors in about 2013. This advisory board was made up of a core group of the initial LPH/LPWP investors.
5. For most of its operating life, LPH/LPWP experienced financial difficulties and struggled to stay afloat. Weighing LPH/LPWP down financially was a \$1.9 million loan from Enterprise Bank, a \$1.1 million loan from the SBA, and a \$200,000 loan from the Rockingham Economic Development Corporation.
6. In addition to these sizeable loans, the Respondent also obtained a \$100,000 loan from his parents and contributed \$350,000 of his own cash in exchange for 800 founder shares in LPH.
7. In order to raise additional capital, the Respondent also raised approximately \$60,000 dollars from Investor #1, a local businessman from Raymond, New Hampshire and approximately \$25,000 dollars from Investor #2, a businessman from Rye, New Hampshire.
8. In this time frame, in July of 2007, the Respondent took in \$28,500 from Investor #3, a resident of East Hartford, Connecticut. Despite Investor #3 's investment and a Summary Term Sheet being executed by the Respondent that purportedly granted Investor #3 shares of LPH, Investor #3 does not appear as an investor of LPH/LPWP in the corporate records.
9. Investor #4, the owner of the construction company that built the water park run by the Respondent, became a stakeholder in exchange for the alleviation of \$200,000 in construction costs that LPH/LPWP was unable to pay.
10. Between 2007 and 2008, in an effort to bring in more investor funds to cover start-up costs, the Respondent and Investor #1 held an investor presentation at a local restaurant. As a result of this presentation, the Respondent raised \$50,000 from Investor #5, a married couple from Raymond, New Hampshire, and \$30,000 from Investor #6, a resident of Raymond, New Hampshire.
11. Also between 2007 and 2008, the Respondent raised \$75,500 from Investor #7, a resident of Somersworth, New Hampshire, \$25,000 from Investor #8, a resident of Raymond, New Hampshire, and \$25,000 from Investor #9, also a resident of Raymond, New Hampshire. These initial investments brought LPH's total initial infusion of cash to approximately \$4,000,000.

12. After the above described funds were raised, LPWP opened for business in June of 2008. After the first summer of operation in 2008, LPWP could not sustain itself without the infusion of additional cash. It was a rainy summer and business and revenues were low.
13. To help keep the business going into 2009, Investor #2 agreed to take out a home equity loan in the amount of \$150,000 which would be additional periodic debt service for LPH/LPWP.
14. Again, due to poor weather and business in 2009, LPWP could not be sustained financially without raising additional cash for the 2010 season. In about 2010, it was determined by the Respondent and the existing investors that the number of available shares would be increased and the Respondent lead an effort to generally advertise and solicit for new investors.
15. As part of this effort, the Respondent directed existing investors to solicit new investors and incentivized this recruitment by giving free shares to existing investors who brought in new investors. Additionally, new investors could buy more shares at a reduced rate of \$750 dollars per share.
16. At the Respondent's direction, LPH investors and the Respondent got the word out that LPH shares were available for purchase through the use of general solicitation and advertisement.
17. The Respondent also put on investor presentations through tours at LPWP. These were open to anybody interested in investing. He also offered an Investor Incentive Program which offered free LPWP passes and reduced prices to new investors. In addition, LPH/LPWP put up a billboard advertisement on the side of LPWP's building and the road leading to LPH/LPWP soliciting investors.
18. LPH/LPWP also ran an advertisement on the LPWP website seeking investors in LPH/LPWP as well as publishing a monthly newsletter soliciting investment in LPH/LPWP.
19. Single page fliers were also distributed at LPWP by the Respondent and LPH seeking additional investors.
20. Many of these general solicitations and advertisements continued from 2010 to 2015. Some of the investment in LPH/LPWP during this time frame was a direct result of the Respondent's and LPH/LPWP's use of general solicitation and advertising, although some came in by word of mouth from existing investors.
21. As a result of the Respondent's and LPH/LPWP's general solicitation and advertising and other efforts incentivizing recruitment of investors, the following additional investments in LPH were made between 2010 and the end of 2011:
 - a. Investor # 10, a husband and wife from Manchester, New Hampshire, made two separate investments of \$35,500 and \$50,250 in 2010.
 - b. Investor #11, a husband and wife from Concord, New Hampshire, invested \$25,500 in 2011.
 - c. Investor #12, a husband and wife from Windham, New Hampshire, invested \$30,000 in 2010.
 - d. Investor #13, a resident of Derry, New Hampshire, invested \$25,000 in 2010.
 - e. Investor # 14, a resident of Raymond, New Hampshire, invested \$125,000 from 2010 to 2011.
 - f. Investor #15, a resident of Weare, New Hampshire, invested \$25,000 in 2010 and \$50,000 in 2012.
 - g. Investor #16, a resident of Pelham, New Hampshire, invested \$50,000 in 2011.

- h. Investor #17, a resident of Hudson, New Hampshire, invested \$25,000 in 2011.
 - i. Investor #18, a resident of Waco, Texas, invested \$25,000.
22. Also from 2010 to the end of 2011, Investor #5 made three additional investments of \$40,000, \$20,000, and \$32,000.
 23. Despite the infusion of this additional investor money, LPH and LPWP still suffered from a lack of available cash and the Respondent stopped paying certain bills in an effort to survive.
 24. Near the end of 2011 and the beginning of 2012, the Respondent stopped paying for liability and property insurance and stopped making payments on credit card debt. The Respondent also began a campaign to solicit creditors for a debt repayment plan reached with various creditors including the credit card companies as well as the SBA.
 25. The Respondent and LPH/LPWP obtained an SBA loan in September 2008 for over one million dollars that called for monthly payments. No payments were made for over four years until March 28, 2013. During the periods the Respondent was soliciting new investors in 2011 and 2012, LPH/LPWP was in default on its over \$1,000,000 loan from the SBA but failed to disclose this information to investors.
 26. After receiving the SBA funds in September 2008 and failing to pay the first payment due in October 2008, the Respondent and LPH/LPWP requested and received several deferments for a period of approximately one year.
 27. LPH/LPWP received a one year deferment from September 2008 to September 2009. In October of 2009, the Respondent and LPH/LPWP were in default of the SBA loan and continued to be in default until May of 2012. This information was not disclosed to many investors who were solicited during this timeframe.
 28. According to the terms of the SBA loan and related documents, at any moment during this period of default the SBA had the right to demand immediate payment of the amount still owed, to file suit, and to take possession and sell the waterpark. This information was not disclosed to many investors solicited during this timeframe.
 29. A compromise on this debt was ultimately reached in May of 2012. This compromise called for a payment by August 2012. The Respondent and LPH/LPWP failed to make the payment, again placing them in default. This default lasted from August 21, 2012 until another compromise was reached on December 22, 2012. After failing to meet the terms of this second compromise, the note was again in default from November 2014 to April 20, 2015 and again in November 2015 until the waterpark was foreclosed on.
 30. In the time period from the end of 2011 to the close of the business in 2015, additional investors in LPH were brought in by the Respondent. The Respondent consistently failed to disclose certain additional information to these investors. This information included the fact that LPWP did not have liability and property insurance. The following additional investors were sold membership interests in LPH during this time period:
 - a. Investor #19, a married couple from Bedford, New Hampshire, invested \$86,000 in 2012.
 - b. Investor #20, a single woman from Saugus, Massachusetts, invested \$50,500 in 2014.
 - c. Investor #21, a resident of Candia, New Hampshire, invested \$28,750 in 2013.

- d. Investor #22, a resident of Newton, New Hampshire, invested \$90,000 between 2012 and 2013.
31. Based on records obtained during the course of the Bureau's investigation, for the entire period LLC membership interests were being issued, the Respondent, LPH, and LPWP did not have an issuer-dealer or issuer-dealer agent license. Additionally, the LLC membership units were not registered, exempt from registration, or a federal covered security as defined by RSA 421-B.

Rulings of Law

The presiding officer makes the following conclusions of law relative to the Bureau's factual allegations:

1. The Respondent is a "person" within the meaning of RSA 421-B:2, XVI.
2. The LPH LLC membership units (or "shares", as used by the witnesses) discussed above are "securities" within the meaning of RSA 421-B:2,XX(a).
3. The distribution of the securities listed above constituted "offers" and "sales" within the meaning of RSA 421- B:2, XIX.
4. LPH and LPWP, were "issuer-dealers" within the meaning of RSA 421-B:2, XIII-a. The Respondent was an issuer-dealer agent within the meaning of RSA 421-B:2, II.
5. Pursuant to formerly RSA 421-B:3, it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly: to employ any device, scheme, or artifice to defraud; to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or to engage in any act, practice, or course of business which operates as a fraud or deceit upon any person. The Respondent is in violation of this provision for offering and selling LPH LLC membership interests and not disclosing material information to investors prior to investment, as described above. The Respondent is also in violation of this provision by failing to account for Investor #3's investment.
6. Pursuant to RSA 421-B:4-412(d)(2) (formerly RSA 421-B: 10, I(a) and (b)(2)), the secretary of state may by order bar any person from licensure if he or she finds that the order is in the public interest and that the applicant or licensee or, in the case of a broker-dealer, issuer-dealer, or investment adviser, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer, issuer-dealer, or investment adviser has willfully violated or failed to comply with any provision of this title or a predecessor law. The Respondent is subject to this provision and should be barred for violating formerly RSA 421-B:3, RSA 421-B:6, and RSA formerly 421-B:11.
7. Pursuant to RSA 421-B:11, I, it is unlawful for any person to offer or sell any security in this state unless it is registered under RSA 421-B, exempt under RSA 421-B: 17, or a federal covered security for which the fee has been paid and notice has been filed as required by formerly RSA 421-B:111, I-a. The Respondent is in violation of this section for offering and selling securities in New Hampshire that were not registered, exempt from registration, or federal covered securities.
8. Pursuant to RSA 421-B:6,I, it is unlawful for any person to transact business in this state as an issuer-dealer or issuer-dealer agent unless such person is licensed

under RSA 421-B or exempt from licensing. The Respondent is in violation of this section for transacting business in securities in New Hampshire as an unlicensed issuer-dealer agent.

9. Pursuant to RSA 421-B:5-503 (formerly RSA 421-B:17, V, and RSA 421-B:11, I-b(c)), the burden of proving an exemption, preemption, or an exception from a definition outlined in RSA 421-B is upon the person claiming it.
10. Pursuant to RSA 421-B:6-604(g) (formerly RSA 421-B:22), the Bureau is entitled to recover the costs of this proceeding against the Respondent including reasonable attorney's fees.
11. Pursuant to RSA 421-B:6-604(a)(I) (formerly RSA 421-B:23), 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 this 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. The Respondent is subject to this section for violations of RSA 421-B:3, RSA 421-B:6, and RSA 421-B:11.
12. Pursuant to RSA 421-B:6-604(d) (formerly RSA 421-B:26, III), any person who, either knowingly or negligently, violates any provisions of this chapter may, 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 an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation. The Respondent is subject to a suspension, revocation, or denial, and a fine for violations of RSA 421-B:3), RSA 421-B:6, and RSA 421-B:11).
13. Pursuant to RSA 421-B:26,III-a, every person who directly or indirectly controls a person liable under paragraph III, every partner, principal executive officer, or director of such person, every person occupying a similar status or performing a similar function every employee of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the acts or transactions constituting the violation, either knowingly or negligently, may, upon hearing, and in addition to any other penalty provided by law, be subject to such suspension, revocation, or denial of any registration or license, or administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties imposed pursuant to RSA 421-B:24 or civil liabilities imposed pursuant to RSA 421-B:25. The Respondent is subject to this section as he participated in, oversaw, directed and controlled the LPH and LPWP efforts to generally solicit and advertise for investors in LPH, and is responsible for the conduct comprising the violations of RSA 421-B:11, I and RSA 421-B:3- 301(a).
14. Pursuant to RSA 421-B:6-604(e) (formerly RSA 421-B:26,V), after notice and hearing, the Secretary of State may enter an order of rescission, restitution, or disgorgement directed to a person who has violated RSA 421-B. The Respondent is subject to this section for violations of RSA 421-B.

Discussion

This is a relatively straightforward case. Despite any lack of bad intent the Respondent may have had, it is clear that he offered and sold shares of LPH/LPWP pursuant to public

solicitations. While at various times the Respondent might have been able to claim an exemption pursuant to RSA 421-B:17, II(a)(2), which during the time period addressed by the Bureau's Staff Petition allowed an issuer to sell to up to 10 purchasers during any 12 consecutive months and 25 during the issuer's existence, the Respondent offered the securities to the public by general solicitation or general advertisement. According to RSA 421-B:17, II(a)(2)(B), this took away the exemption. As a result, the Respondent would have had to register the securities or find another exemption. The securities were never registered and no other exemption was asserted.

In addition, it should be noted that the Respondent sought and received information about the exemption under RSA 421-B:17, II(a)(2) from duly qualified lawyers. However, he relied on his own interpretation of what the definitions of general solicitation and advertising, when a simple call to counsel for LPH/LPWP could have clarified the matter. This acted to his detriment because, as a result, the Respondent and LPH/LPWP came within the definition of "issuer-dealer" and the Respondent came within the definition of "agent" under RSA 421-B. As a result, in the absence of any applicable exemptions, LPH/LPWP and the Respondent were required to be registered as an issuer-dealer and an issuer-dealer agent.

The Respondent admits that he did not disclose information about issues with the repayment of loans and the lapse of general liability insurance to the many investors who otherwise likely would not have invested in LPH/LPWP. This was supported by the testimony of multiple witnesses. There is no doubt that these facts must be considered material facts, the omission of which materially affected the decisions of investors regarding whether to invest. Thus, the Respondent was clearly in violation of RSA 421-B:3.

The Respondent asserts, as a major part of his response to the Bureau's allegations, that while he does indeed bear responsibility for the violations alleged by the Bureau, other investors for whom the Bureau is seeking restitution in this matter also solicited investors and should bear some liability. It is true that many investors followed the Respondent's direction to bring in new investors, and some did so. However, it is also clear from the testimony and the evidence that at least from 2007 to 2013, the Respondent was the sole decision-maker with regard to the solicitation of new investors. His central role in the operation of LPH/LPWP played the most significant role in bringing on new investors, even after the formation of a Board of Directors in 2013. This is especially true since it was the Respondent who dealt with the attorneys in determining what LPH/LPWP must do to secure an exemption under RSA 421-B:17, II(a)(2).

In addition, it must be noted that the Bureau has discretion to determine, to the best of its ability, who to pursue in an enforcement action. It is assumed that the Bureau, in reviewing the facts presented to it, weighed various factors, including the relative roles of the individuals involved, in deciding to bring an action against the Respondent. As a result, the Respondent's insistence that others should also be held responsible is without merit.

Order

WHEREAS, finding it necessary and appropriate and in the public interest and for the protection of investors and consistent with the intent and purpose of the New Hampshire Securities Act, RSA 421-B, both before and after its amendment effective January 1, 2016, it is hereby **ORDERED**, that:

1. Pursuant to RSA 421-B:23, the Respondent shall cease and desist from violations under the New Hampshire Securities Act.
2. The Respondent shall pay the Bureau's costs in the amount of \$50,000.
3. The Respondent shall pay administrative fines and penalties in the amount of \$75,000.
4. The Respondent is permanently barred from licensure or registration pursuant to RSA 421-B:4-412(d)(2) (formerly RSA 421-B:10, l(a) and (b)(2)).
5. The Respondent shall pay restitution to investors in the amount of \$1,332,500.

SIGNED,
William M. Gardner
Secretary of State
By His Designee:

Date: 10/29/2018



Kevin B. Moquin
Presiding Officer
N.H. Bureau of Securities Regulation