

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

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AMENDED STAFF PETITION FOR RELIEF IN THE MATTER OF:)	
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Kevin J. Dumont)	COM2016-0001
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Respondent)	
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STATEMENT OF FACTS

I. The Bureau of Securities Regulation, Department of State, State of New Hampshire (hereinafter referred to as “the Bureau”), hereby petitions the Director, and makes the following statements 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, NH. LPH was the holding company for two entities, Liquid Planet Water Park, LLC (hereinafter “LPWP”) an operating company 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. Both were also located at 446 Raymond Road.
2. Both LPWP and 446 were created in 2007 as well. LPH was authorized to issue membership interests and LPH issued approximately 3000 shares to about 23 investors, including the owner/operator Kevin J. Dumont (hereinafter “KJD”), during its existence 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 owned and operated by KJD. Starting in about 2013, when a board of directors was installed, KJD became chairman of the board of directors until his ouster in 2015.
4. In about 2007, KJD 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 investors.

5. For most of its operating life, LPWP experienced difficulty financially and struggled to stay afloat. Weighing LPWP down financially was a \$1.9 million loan from Enterprise Bank, a \$1.1 million loan from the Small Business Administration (“SBA”), and a \$200,000 loan from the Rockingham Economic Development Corporation.
6. In addition to these sizeable loans, KJD 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, KJD also raised approximately \$60,000 dollars from Investor #1, a local businessman from Raymond, NH and approximately \$25,000 dollars from Investor #2, a businessman from Rye, NH.
8. In this time frame, in July of 2007, KJD took in \$28,500 from Investor #3, a resident of East Hartford, CT. Interestingly, despite Investor #3’s investment and a Summary Term Sheet being executed by KJD that purportedly granted Investor #3 shares of LPH, Investor #3 does not appear as an investor of LPWP in the corporate records. KJD maintains that these funds were a personal loan but the Bureau’s evidence suggests otherwise.
9. Investor #4, the owner of the construction company that built the water park run by KJD, became a stakeholder in exchange for the alleviation of \$200,000 in construction costs that LPH was unable to pay.
10. Between 2007 and 2008, in an effort to bring in more investor funds to cover start-up costs, KJD and Investor #1 held an investor presentation at a local restaurant. As a result of this presentation KJD raised \$50,000 from Investor #5, a married couple from Raymond, NH, and \$30,000 from Investor #6, a resident of Raymond, NH.
11. Also between 2007 and 2008, KJD raised \$75,500 from Investor #7, a resident of Somersworth, NH, \$25,000 from Investor #8, a resident of Raymond, NH, and \$25,000 from Investor #9, also a resident of Raymond, NH. 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 LPWP.
14. Again, due to poor weather and business in 2009, LPWP could not sustain itself without raising additional cash for the 2010 season. In about 2010, it was determined by KJD and the existing investors that the number of available shares would be increased and KJD lead an effort to generally advertise and solicit for new investors.
15. As part of this effort, KJD 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 KJD's direction, LPWP investors and KJD got the word out that LPH shares were available for purchase through the use of general solicitation and advertisement including an ad in the local Raymond Newspaper, the Raymond Area News.
17. KJD also put on investor presentations (tours) at LPWP open to anybody interested in investing, offered an Investor Incentive Program which offered free LPWP passes and reduced prices to new investors, and LPWP put up a billboard ad on the side of LPWP's building and the road leading to LPWP soliciting investors.
18. LPWP also ran an ad on the LPWP website seeking investors as well as publishing a monthly newsletter soliciting investment in LPH.
19. Single page fliers were also distributed by KJD and LPWP seeking additional investors.
20. Many of these general solicitations and advertisements continued from 2010 to 2015. Some of the investment in LPH during this time frame was a direct result of KJD and LPWP's use of general solicitation and advertising although some came in by word of mouth from existing investors.
21. As a result of KJD and 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, NH, made two separate investments of \$35,500 and \$50,250 in 2010.
 - b. Investor #11, a husband and wife from Concord, NH, invested \$25,500 in 2011.

- c. Investor #12, a husband and wife from Windham, NH, invested \$30,000 in 2010.
 - d. Investor #13, a resident of Derry, NH, invested \$25,000 in 2010.
 - e. Investor #14, a resident of Raymond, NH, invested \$50,000 in 2010, and two investments of \$50,000 and \$75,000 in 2011.
 - f. Investor #15, a resident of Weare, NH, invested \$25,000 in 2010 and \$50,000 in 2012.
 - g. Investor #16, a resident of Pelham, NH, invested \$50,000 in 2011.
 - h. Investor #17, a resident of Hudson, NH, 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 KJD stopped paying certain bills in an effort to survive.
24. Near the end of 2011 and the beginning of 2012, KJD stopped paying for liability and property insurance and stopped making payments on credit card debt. KJD 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. With regard to the SBA loan, during the periods KJD was soliciting new investors in 2011 and 2012, LPWP was in default on its over \$1,000,000 loan from the SBA but failed to disclose this material information to investors.
26. More specifically, KJD and LPWP obtained a loan for over one million dollars that was funded in September of 2008 and called for monthly payments, however, not a single payment was made for over four years until March 28, 2013.
27. After receiving the funds in September 2008 and failing to pay the first payment due in October 2008, KJD and LPWP requested and received several deferments for a period of approximately one year.

28. After receiving this one year deferment from September 2008 to September 2009, in October of 2009, KJD and LPWP were in default of the SBA loan and continued to be in default until May of 2012. Despite this fact, this material information was not disclosed to many investors who were solicited during this timeframe.
29. It is also important to note that according to the terms of the SBA loan and related documents, at any moment during this substantial 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. Despite this fact, this material information was not disclosed to many investors solicited during this timeframe.
30. A compromise on this debt was ultimately reached in May of 2012. This compromise called for a payment by August 2012 that KJD and LPWP failed to make, 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.
31. In this third time period from the end of 2011 to the close of the business in 2015, additional investors in LPH were brought in by KJD, however, KJD consistently failed to disclose certain additional material information to these investors. This information included the fact LPWP did not have liability and property insurance and that the related line item expense noted in the company's financial statements was false. The following additional investors were sold membership interests in LPH during this time period:
 - a. Investor #19, a married couple from Bedford, NH, invested \$86,000 in 2012.
 - b. Investor #20, a single woman from Saugus, MA, invested \$50,500 in 2014.
 - c. Investor #21, a resident of Candia, NH, invested \$28,750 in 2013.
 - d. Investor #22, a resident of Newton, NH, invested \$37,500 in 2012 and another \$37,500 in 2013.
32. Based on records obtained during the course of the Bureau's investigation, for the entire period LLC membership interests were being issued, KJD, 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. Each of these acts constitutes a separate violation of New Hampshire securities law.

STATEMENTS OF LAW

II. The Bureau hereby petitions the Director and makes the following statements of law under the New Hampshire Revised Statutes Annotated, RSA 421-B, and regulations thereunder (hereinafter referred to as the Act):

1. KJD is a “Person” within the meaning of RSA 421-B:1-102(39) (formerly RSA 421-B:2, XVI).
2. The LPH LLC membership units discussed above are “securities” within the meaning of RSA 421-B:1-102(53)(A) (formerly RSA 421-B:2, XX(a)).
3. The distribution of the securities listed above constitute “offers” and “sales” within the meaning of RSA 421-B:1-102(49) (formerly RSA 421-B:2, XIX).
4. LPH and LPWP, were “issuer-dealers” within the meaning of RSA 421-B:2, XIII-a. KJD was an issuer-dealer agent within the meaning of RSA 421-B:2, II.
5. Pursuant to RSA 421-B:5-501 (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. KJD 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. KJD 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 find 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. KJD is subject to this provision and should

be barred for violating RSA 421-B:5-501 (formerly RSA 421-B:3), RSA 421-B:6, and RSA 421-B:3-301(a) (formerly 421-B:11).

7. Pursuant to RSA 421-B:3-301(a) (formerly 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:2-201 through 2-203 (formerly RSA 421-B:17), or a federal covered security for which the fee has been paid and notice has been filed as required by RSA 421-B:3-302 (formerly RSA 421-B:11,I-a). KJD 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. KJD 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)(1) (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. KJD is subject to this section for violations of RSA 421-B:5-501 (formerly RSA 421-B:3), RSA 421-B:6, and RSA 421-B:3-301 (formerly 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. KJD is subject to a suspension, revocation, or denial, and a fine for violations of RSA 421-B:5-501 (formerly RSA 421-B:3), RSA 421-B:6, and RSA 421-B:3-301 (formerly 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. KJD 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. KJD is subject to this section for violations of RSA 421-B.

RELIEF REQUESTED

III. The Bureau makes the following requests for relief in the above-referenced matter as permitted under the Act.

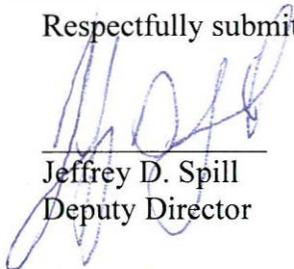
1. Find as fact the statements contained in section I of the Statements of Fact.
2. Make conclusions of law relative to the statements contained in section II of the Statements of Law.
3. Pursuant to RSA 421-B:23, issue an order to cease and desist against KJD, for violations under the Act.
4. Order KJD to pay the Bureau's costs in the amount of \$50,000.
5. Order KJD to pay administrative fines and penalties of up to \$2,500 per violation for the above-referenced violations in an amount not less than \$75,000.
6. Order KJD be permanently barred from any licensure or registration pursuant to RSA 421-B:4-412(d)(2) (formerly RSA 421-B:10, I(a) and (b)(2)).

7. Order KJD pay restitution to investors in the amount of \$1,367,500.
8. Take any other just and equitable relief as permitted under the Act including but limited to rescission, restitution, or disgorgement.

RIGHT TO AMEND

The Bureau's staff reserves the right to amend this Amended Petition for Relief and requests that the Director of Securities Regulation take further enforcement action.

Respectfully submitted by:



Jeffrey D. Spill
Deputy Director

4/20/18
Date



Eric Forcier
Staff Attorney

4/20/18
Date