

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

CONSENT ORDER

Upper Valley Commercial Corporation

David Patten

Alvin Fadden

I-2013-00031

- I. For purposes of settling the above-referenced matter and in lieu of further administrative proceedings, Upper Valley Commercial Corporation, David Patten, and Alvin Fadden have submitted an offer of settlement, which the State of New Hampshire, Department of State, Bureau of Securities Regulation (hereinafter the "Bureau") has determined to accept. Accordingly, Upper Valley Commercial Corporation, David Patten, and Alvin Fadden, without admitting or denying the allegations, do hereby consent to the following findings and undertakings:

STATEMENT OF FACTS

1. David Patten (hereinafter "Patten") is an officer and principal of Upper Valley Commercial Corp. (hereinafter "UVCC") located at 2769 Dartmouth College Highway, North Haverhill, New Hampshire 03774. Alvin Fadden (hereinafter "Fadden") is an officer and principal of UVCC.
2. UVCC filed formation documents with the New Hampshire Secretary of State on December 22, 1964 and has been in continuous operation since that time. In its annual report filings with the Secretary of State, UVCC identifies itself as a finance company. It is primarily a business engaged in soliciting funds from the public to be re-paid with

interest. UVCC uses these funds to make various loans to individuals and businesses mainly in the North Haverhill area. Many of the individuals who invested with UVCC heard about the company through word of mouth in the North Haverhill area from others who were satisfied with their investments with UVCC. There is also some evidence of public advertising by UVCC in the early 1980's.

3. Beginning in 1965, UVCC was licensed to sell securities by the New Hampshire Insurance Department, which regulated UVCC at the time. By 1971, UVCC's license to sell securities lapsed. Since that time regulation of UVCC's business has moved to the Bureau and UVCC has not had a license to sell its own securities and has not registered its own securities for sale.
4. Since at least 1981, UVCC has received money deposits from numerous individuals and made promises to repay the money plus interest at a later date. In some transactions, UVCC issued an instrument styled as a "corporate note" to evidence a term deposit. In other transactions styled as "demand deposit note transactions," where in exchange for money deposited, UVCC characterized the transactions as the making of demand notes. However, no actual document in the form of a note was in fact issued by UVCC on the demand deposit note transactions.
5. UVCC provided each depositor a passbook on which entries were made to record deposit and withdrawal transactions.
6. UVCC regularly created and promoted a rate sheet that advertised the rates it paid on both types of transactions: corporate notes and demand deposit notes. The rate sheet compared UVCC rates to "Average Bank Rates." On the rate sheet, UVCC identified itself as a Financial Institution and also identified that UVCC's repayment obligations under the transactions were not backed or guaranteed by the U.S. Government, nor were they insured by the FDIC.
7. At the time that the Bureau commenced its investigation in the fall of 2013, UVCC owed

money to some 115 persons as a result of the transactions. The outstanding obligations owed by UVCC as a result of these transactions totaled over ten million dollars. Of this total amount, UVCC owed approximately \$4,550,000 to Patten and other insiders.

8. Approximately 63 of the creditors owed money by UVCC as of the fall of 2013 had deposited their money with UVCC in exchange for a demand deposit note. In these demand note deposit transactions, UVCC promised to repay the principal to the creditor on demand, with no set term, and with a set interest rate that varies from one transaction to the next. As of the fall of 2013, UVCC owed a total of approximately \$6.4 million dollars to the 63 individuals, including Patten and other insiders, who held demand deposit notes.
9. As of the fall of 2013, UVCC had issued 119 corporate notes still outstanding to 52 persons, including some insiders, for a total of approximately \$4.4 million dollars. The corporate notes were issued by UVCC to evidence a term deposit and with the promise to repay upon a fixed term with a fixed rate of interest.
10. From 2003 through 2013, UVCC repaid at least 151 of the corporate notes and/or the demand deposits, in an amount totaling \$2,804,528.70.
11. Since December 2013, UVCC has repaid additional corporate notes and demand deposits in an amount totaling \$2,189,085.
12. UVCC did not maintain copies of the Corporate Notes that it issued. UVCC recorded information about each corporate note it issued on an index card bearing the creditor's name, the amount of the deposit, and the terms, which card UVCC maintains in its principal office.
13. Upon information and belief, UVCC provided a disclosure to the individuals who accepted corporate notes that described the transaction as a deposit and/or a time deposit that was subject to a penalty if withdrawn before the maturity date. On the disclosure,

UVCC identified itself as a "Financial Institution." The disclosure fails to address the risk of the corporate notes, the lack of registration of the securities, or the lack of securities licensure by UVCC.

14. Most of the outstanding corporate notes have interest rates of between 2% and 4%, and are for terms of between six months to five years. Many of these corporate notes have been rolled over annually.
15. UVCC deposits the money received on the corporate note and demand deposit transactions into UVCC's account at Woodsville Guarantee Savings Bank. The money received is commingled in UVCC's account and used for a variety of UVCC purposes, including UVCC daily operating expenses, and to make loans and lines of credit to third parties, including entities owned and controlled by insiders and family members.
16. UVCC made personal and business loans to 39 borrowers totaling over \$12.3 million.
17. Patten and Fadden benefited directly from UVCC making loans with investor monies as they, either individually or through companies they own, were recipients of some of the loans.
18. UVCC is not licensed to transact business in New Hampshire as a broker-dealer, issuer-dealer, investment advisor, or agent in accordance with N.H. RSA 421-B:6. The securities sold by UVCC were not registered in accordance with N.H. RSA 421-B:11.
19. UVCC, Patten, or Fadden did not file with the Secretary of State or provide to their customers any appropriate prospectus or disclosure statement as part of the sales process.
20. UVCC, Patten, and Fadden failed to disclose to the various investors in UVCC that they were not licensed to sell securities nor were the securities registered or exempt from registration.

21. On December 27, 2013, UVCC, Patten, and Fadden entered into an interim Consent Order with the Bureau whereby they agreed to cease and desist from committing violations under N.H. RSA 421-B and from issuing any loans, promissory notes, or demand deposits.
22. On December 31, 2013 UVCC filed for a voluntary Chapter 11 bankruptcy in the United States Bankruptcy Court, District of New Hampshire (Case number: 13-13110 JMD). UVCC claimed in their bankruptcy petition to have assets, mainly in the form of accounts receivable, totaling \$12,407,877.81. UVCC also claimed in the bankruptcy petition to have liabilities totaling \$11,584,372.63.
23. The United States Bankruptcy Court, District of New Hampshire confirmed UVCC's Plan of Reorganization Dated April 14, 2014, on May 30, 2014 (the "Chapter 11 Plan"), and UVCC has been collecting on accounts receivable owed and paying back investors according to the plan. UVCC plans to pay its creditors on a quarterly basis and expects to pay all promissory notes and demand deposit notes with interest in full within three years.
24. Under the confirmed Chapter 11 Plan, UVCC has agreed to pay certain non-insider creditors and note holders in full, following which, UVCC will pay claims proved by the State for civil penalties and forfeitures.
25. In total, UVCC made at least 333 unlicensed and unregistered sales of securities. This figure includes the 63 individuals provided funds in exchange for demand deposit notes discussed in paragraph 8 above, the 119 corporate notes discussed in paragraph 9 above, and the 151 paid off corporate notes and/or demand deposit notes discussed in paragraph 10 above.

STATEMENTS OF LAW

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

1. Patten, Fadden, and UVCC are persons under N.H. RSA 421-B:2, XVI.
2. UVCC is an "issuer-dealer" under N.H. RSA 421-B:2, XIII-a.
3. Patten and Fadden are issuer-dealer "agents" under N.H. RSA 421-B:2, II.
4. The unsecured corporate notes and demand deposit notes issued by UVCC, Patten, and Fadden are securities under N.H. RSA 421-B: XX(a).
5. Pursuant to N.H. 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 this chapter or exempt from licensing. Patten, Fadden, and UVCC are in violation of this provision for issuing securities without being properly licensed.
6. Pursuant to N.H. RSA 421-B:11, it is unlawful for any person to offer or sell any security in this state unless it is registered under this chapter, the security or transaction is exempted under RSA 421-B:17, or it is a federal covered security for which the fee has been paid and documents have been filed as required by paragraph I-a of this section. Patten, Fadden, and UVCC are in violation of this provision for selling unregistered securities in at least 333 separate instances, as described in Statement of Facts number 11 above.
7. Pursuant to N.H. RSA 421-B:11, I-b(c), in any judicial or administrative proceeding under this chapter, the burden of proving an exemption, preemption or an exception from a definition is upon the person claiming it. Patten, Fadden, and UVCC are subject to this provision.
8. Pursuant to N.H. RSA 421-B:22, IV, in any investigation to determine whether any person has violated or is about to violate this title or any rule 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 under this chapter. Patten, Fadden, and UVCC are subject to this provision.

9. Pursuant to N.H. RSA 421-B:23, I, 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. Patten, Fadden, and UVCC are subject to this provision.
10. Pursuant to N.H. 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. Patten, Fadden, and UVCC are subject to this provision and should be fined \$2,500 for each unlicensed sale and each sale of an unregistered security.
11. Pursuant to N.H. RSA 421-B:26, III-a, every person who directly or indirectly controls a person liable under paragraph I, II, or 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 for by law, be subject to such suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or an 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.
12. Under the terms of the confirmed Chapter 11 Plan, once it has paid creditors in classes 1 and 5 in full, UVCC will pay all of its cash to the Bureau and the Department of banking, pro rata, until these claims are paid in full. No money shall be paid to junior classes until the state's claims are paid in full.

UNDERTAKINGS

III. In view of the foregoing, UVCC, Patten, and Fadden agree to the following:

1. UVCC, Patten, and Fadden agree that they voluntarily consented to the entry of this Consent Order and represent and aver that no employee or representative of the Bureau has made any promise, representation, or threat to induce their execution.
2. UVCC, Patten, and Fadden agree to waive their right to an administrative hearing and any appeal therein under this chapter.
3. UVCC, Patten, and Fadden agree that this Consent Order is entered into for the purpose of resolving only the matter as described herein. This Consent Order shall have no collateral estoppel, res judicata or evidentiary effect in any other lawsuit, proceeding, or action, not described herein. Likewise, this Consent Order shall not be construed to restrict the Bureau's right to initiate an administrative investigation or proceeding relative to conduct by UVCC, Patten, and Fadden which the Bureau has no knowledge of at the time of the date of the final entry of this Consent Order.
4. UVCC, Patten, and Fadden may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation contained in this Consent Order or create the impression that the Consent Order is without factual basis. Nothing in this provision affects UVCC, Patten, or Fadden's testimonial obligations or right to take legal or factual positions in litigation in which the State of New Hampshire is not a party.
5. UVCC, Patten, and Fadden agree to permanently cease and desist from further violations under this chapter, pursuant to N.H. RSA 421-B:23.
6. UVCC, Patten, and Fadden agree to a lifetime bar from any securities licensure in any capacity in the State of New Hampshire as presently codified in N.H. RSA 421-B.
7. UVCC agrees to pay a fine of two hundred and fifty thousand dollars (\$250,000) to the Bureau in accordance with UVCC's Chapter 11 Plan . A check or mail order funds shall be

made out to the State of New Hampshire. As detailed in UVCC's Chapter 11 Plan, the Bureau's claim is categorized as a Class 3 claim and will only be paid after full payment is received by Allowed Class 1 Claims and Allowed Class 5 Claims. The Bureau and UVCC each reserve the right to take such actions and assert such defenses available to them pursuant to applicable state and Federal law in the event of a breach of UVCC's Chapter 11 Plan obligations or the dismissal of the bankruptcy case. UVCC agrees that its failure to pay Class 1, Class 3, and Class 5 claims in full would constitute a material breach of its Chapter 11 Plan obligations.

8. UVCC agrees that it will not seek any material changes to the terms and conditions of the Chapter 11 Plan or the May 30, 2014 order confirming it without the prior written consent of the Bureau.
9. Should UVCC meet all the terms of this Consent Order and perform all material obligations under the Chapter 11 Plan, the Bureau will not bring further actions against UVCC, Patten, or Fadden. This provision shall not be construed to restrict the Bureau's right to initiate an investigation or regulatory action relative to conduct by UVCC, Patten, and Fadden which the Bureau has no knowledge of at the time of the date of the final entry of this Consent Order.
10. If UVCC, Patten, or Fadden do not meet the conditions set forth in this Consent Order or fail to perform all material obligations under the Chapter 11 Plan, this Order shall be voidable by the Bureau and the Bureau may proceed with its enforcement action.

IV. In view of the foregoing, the Bureau deems it appropriate and in the public interest to accept and enter into this Consent Order. **THEREFOR IT IS HEREBY ORDERED THAT:**

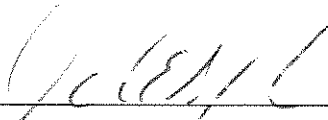
1. UVCC, Patten, and Fadden permanently cease and desist from further violations under this chapter, pursuant to N.H. RSA 421-B:23; and
2. UVCC, Patten, and Fadden are permanently barred from any securities licensure in any capacity in the State of New Hampshire as presently codified in N.H. RSA 421-B.
3. UVCC pay a fine to the Bureau in the amount of two hundred and fifty thousand dollars

(\$250,000).

4. UVCC, Patten, and Fadden comply with all other Undertakings outlined above.

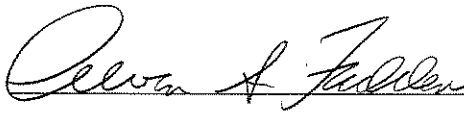
SO ORDERED.

Executed this 30 day of December, 2014



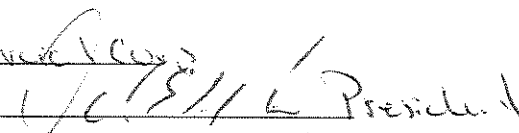
David Patten

Executed this 30 day of December, 2014



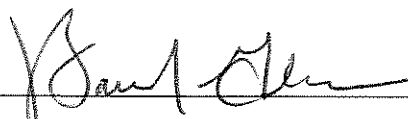
Alvin Fadden

Executed this 30 day of December, 2014

Upper Valley Commercial Corp.
Upper Valley Commercial Corp.; By: 

DAVID E. PATTEN

Executed this 6th day of January, 2015



Barry Glennon, Director