

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

COPY

CONSENT ORDER
IN THE MATTER OF:

Antonio Silva

C-2021000001

- I. For purposes of settling the above-referenced matter and in lieu of further administrative proceedings, Antonio Silva (“Silva”) has submitted an offer of settlement, which the State of New Hampshire, Department of State, Bureau of Securities Regulation (the “Bureau”) has determined to accept. Accordingly, without admitting or denying the allegations contained herein, Silva does hereby consent to the entry of this Consent Order and the following undertakings and sanctions:

STATEMENTS OF FACTS

1. Silva is a resident of Merrimack, New Hampshire. Since 2020, Silva has been on probation for the misdemeanor offense of writing a bad check. Previously, in approximately 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.
2. On October 1, 2017, Silva entered into a partnership agreement to form Gino’s Pizza and Subs LLC (“Gino’s”) with two other individuals. According to the partnership agreement, Silva and the two other individuals were equal, one-third owners of Gino’s. Gino’s was to operate at 625 Lafayette Road in Hampton, N.H. This information was corroborated by Silva during two On-the-Record Statements conducted by the Bureau on June 30, 2021 and July 8, 2021.
3. 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 40% interest in Gino’s for \$30,000. Records and evidence show that, at the time of the purported sale to Investor #1, Silva did not own 40% of Gino’s. At the time of the purported sale to Investor #1, Silva was only a one-third 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.
4. Before the purported sale on or about March 16, 2018, Silva did not disclose any prior criminal history to Investor #1.

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. Silva is a person under N.H. RSA 421-B:1-102(39).
2. The "Silent Partnership Agreement" sold by Silva to Investor #1 is a security under N.H. RSA 421-B:1-102(53)(A).

The sale of the "Silent Partnership Agreement" constitutes a "sale" under N.H. RSA 421-B:1-102(49).

3. 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 failing to disclose his criminal record prior to the sale to Investor #1; for misrepresenting to Investor #1 that he was the sole owner of Gino's when, in fact, he was not; and for engaging in a scheme to defraud Investor #1 by purportedly selling interests in Gino's to Investor #1 that Silva did not own.
4. Pursuant to N.H. RSA 421-B:6-604(a), if the secretary of state determines that a person has engaged, is engaging, or is about to engage, in an act, practice, or course of business constituting a violation of this chapter, he shall have the power to issue and cause to be served an order directing the person to cease and desist from engaging in the act, practice, or course of business. Silva is subject to this provision.
5. Pursuant to N.H. RSA 421-B:6-604(d), the secretary of state may impose a civil penalty up to a maximum of \$2,500 for a single violation. Each of the acts shall constitute a separate violation. Silva is subject to this provision.
6. Pursuant to N.H. RSA 421-B:6-604(e), the secretary of state may recover restitution of losses incurred. Silva is subject to this provision.
7. Pursuant to N.H. RSA 421-B:6-604(g), the secretary of state may recover investigative costs. Silva is subject to this provision.

UNDERTAKINGS

III. In view of the foregoing, Silva agrees to the following undertakings and sanctions:

1. Silva agrees that he has 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. Silva agrees to waive his right to an administrative hearing and any appeal thereof under N.H. RSA 421-B.
3. Pursuant to N.H. RSA 421-B:6-604, Silva agrees to permanently cease and desist from issuing or selling securities to any person in New Hampshire. Silva acknowledges that a willful violation of this cease and desist order constitutes a class B felony under N.H. RSA 421-B:5-508.
4. Silva agrees to pay restitution to Investor #1 in the amount of thirty thousand dollars (\$30,000), a fine to the Bureau totaling five thousand dollars (\$5,000), and costs of investigation totaling five thousand dollars (\$5,000). Silva represents, and corroborated with a sworn financial affidavit, that he has little current ability to pay his restitution, fine or costs, but Silva has agreed to the following payment schedule:
 - a. Silva shall pay one thousand dollars (\$1,000) to the Bureau upon execution of this Consent Order to be applied as payment of restitution. The Bureau will distribute that one thousand dollars to Investor #1 upon receipt.
 - b. Silva shall pay two thousand dollars (\$2,000) to the Bureau by March 31, 2023 to be applied as payment of restitution. The Bureau will distribute the funds to Investor #1 upon receipt.
 - c. Starting April 1, 2023, every month thereafter Silva shall pay the Bureau three hundred dollars (\$300) monthly to be applied as payment of restitution until the entire balance of thirty thousand dollars (\$30,000) is paid in full. The Bureau will distribute the funds to Investor #1.
 - d. When restitution to Investor #1 has been satisfied, Silva shall pay the Bureau three hundred dollars (\$300) monthly for the outstanding fines and costs until the entire balance of ten thousand dollars (\$10,000) is paid in full.

All restitution payments made to the Bureau shall be made by United States postal money order, certified check, or bank check, be made payable to the State of New Hampshire, and hand-delivered or mailed to the Bureau of Securities Regulation, Department of State, State House Room 204, Concord, New Hampshire, 03301. All restitution checks must be received by the Bureau by the 1st of each month and the Bureau will then distribute the funds to Investor #1. Payments of fines and costs discussed above must be received by the Bureau by the first of the month and shall be made by 1) United States postal money order, certified check, bank cashier's check, or bank money order; 2) made payable to the State of New Hampshire; and 3) hand-delivered or mailed to the Bureau of Securities Regulation, Department of State, State House, Room 204, Concord, New Hampshire, 03301.

5. Silva shall submit tax returns to the Bureau on a yearly basis within thirty (30) days of filing said returns until all outstanding fines and restitution payments as outlined in this Order are complete.
6. Silva shall, until his complete satisfaction of the undertakings and sanctions contained herein, further notify the bureau of any financial windfalls of any kind in excess of two-thousand five hundred dollars (\$2,500) within 30 days of receipt. If the Bureau determines, at any time, that Silva can reasonably afford to pay more toward outstanding restitution and fines owed pursuant to this Consent Order due to a material change in his finances, the Bureau reserves the right to negotiate a higher monthly payment plan with Silva. If Silva and the Bureau cannot agree to a higher payment plan, the Bureau and Silva may petition the Director of the Bureau for a determination on the amount and timing of the payments.
7. Silva acknowledges that the fine and restitution payments as outlined herein, stem from violations of New Hampshire's securities laws and, therefore, are non-dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(19)(i) and (B)(i). Silva agrees to not seek discharge of the restitution or fine payments outlined herein in any pending bankruptcy matter or any future bankruptcy proceeding. The Bureau reserves the right to reopen this matter if payment in full is not received by the Bureau or Investor #3 according to the terms of this Consent Order. Silva agrees that the entry of this Order is a judgment, order, consent order, settlement agreement, within the meaning of 11 U.S.C. § 523(a)(19)(B), and that the Bureau has all necessary power and jurisdiction to enter this Order, including a determination of non-dischargeability of all obligations pursuant hereto.
8. Silva acknowledges that the restitution payments owed pursuant to this Order survive the death of Investor #1 and, upon the death of Investor #1, Silva shall continue to pay Investor #1's heirs and successors. Furthermore, Silva acknowledges that the monies owed to Investor #1 and the Bureau survive the death of Silva, and in the event of Silva's death, the complainant has the right to make a claim against Silva's estate for any unpaid balance of restitution owed under this Consent Order.
9. Silva agrees 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 any proceeding relative to conduct by Silva which the Bureau has no knowledge of at the time of the date of the final entry of this Consent Order.
10. Silva may not take any action, or make, or permit to be made any public statement, (a) denying, directly or indirectly, any allegation in this Consent Order or (b) create the impression that this Consent Order is without factual basis. Nothing in this provision affects Silva's right to take any legal positions in any other legal or administrative proceeding wherein the Bureau is not a party.

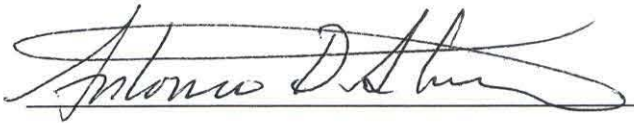
11. Silva acknowledges that failing to meet the terms of this Consent Order or any willful violation of this Consent Order may result in civil, criminal, or administrative action.

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. Silva permanently cease and desist from issuing or selling securities to any person in New Hampshire.
2. Restitution to Investor #1 totaling thirty thousand dollars (\$30,000);
3. Fines totaling five thousand dollars (\$5,000); and
4. Costs of investigation totaling five thousand dollars (\$5,000).

SO ORDERED.

Executed this 1 day of March, 2023



Antonio Silva

Executed this 1st day of March, 2023



Eric Forcier, Deputy Secretary