

STATE OF HAWAII

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

In the Matter of:) Case No. SEU-2013-028
)
NATHAN MCCOTTER,) PRELIMINARY ORDER TO CEASE
) AND DESIST AGAINST
) RESPONDENT NATHAN MCCOTTER
Respondent.) AND NOTICE OF RIGHT TO
) REQUEST A HEARING
_____)

PRELIMINARY ORDER TO CEASE AND DESIST AGAINST RESPONDENT
NATHAN MCCOTTER AND NOTICE OF RIGHT TO REQUEST A HEARING

I. STATEMENT OF APPLICABLE STATUTORY LAW

Pursuant to the authority granted by the Uniform Securities Act, Hawaii Revised Statutes (“HRS”) Chapter 485A, the rules and orders adopted thereunder, and other applicable authority, the Commissioner of Securities of the State of Hawaii (“Commissioner”), by and through the Securities Enforcement Branch, Department of Commerce and Consumer Affairs, State of Hawaii (“SEB”), conducted an investigation into the activities of Respondent Nathan McCotter (“McCotter”) to determine if he has engaged in, or is about to engage in, any act or practice constituting a violation of HRS Chapter 485A, or any rule or order adopted thereunder.

Based upon the information revealed during the investigation, the Commissioner has reasonable cause to believe that McCotter has violated HRS Chapter 485A as follows:

II. STATEMENT OF JURISDICTION

The Commissioner has jurisdiction over this matter because it involves securities as defined in HRS § 485A-102.

III. PRELIMINARY FINDINGS OF FACT

1. McCotter is an individual and was, at all relevant times herein, a resident of the state of Hawaii.

2. In late 2010, McCotter met J.H., a Hawaii resident, at a men's Christian conference on the island of Hawaii. J.H. shared with McCotter that he had aspirations to build a home on the Big Island.

3. McCotter represented to J.H. that he was a wealthy businessman and, at that time, he was using his experience to help other people make sound investments.

4. In early 2011, McCotter invited J.H. to stay with him in Honolulu while J.H. attended a Christian conference. During this stay J.H. was impressed by McCotter's expensive lifestyle and luxurious condominium.

5. During this time, McCotter told J.H. that he knew about a good investment opportunity with LG Hawaii Development Corporation ("LGHDC"), a domestic corporation registered in the state of Hawaii on May 13, 2011. McCotter represented that this investment would earn J.H. the money to build his dream home.

6. McCotter set up a telephone conference call for May 24, 2011, with himself, J.H., and the president of LGHDC, Emily Lopez-Goyne ("Lopez-Goyne"), to discuss the investment opportunity with LGHDC.

7. On May 24, 2011, McCotter and Lopez-Goyne explained to J.H. that the investment with LGHDC was for the development of the Hawaiian Colony Hotel, and that the investment was a short-term capital infusion, wherein J.H. would receive a quick return on his investment.

8. McCotter and Lopez-Goyne told J.H. that if he invested \$50,000.00 with LGHDC, he would receive his principal back within 30 to 45 days plus 9.4% interest.

9. McCotter told J.H. that the investment was “the easiest money you will ever make.” McCotter also guaranteed J.H. that if anything went wrong with the investment, McCotter would cut a personal check in the amount of \$50,000.00 payable to J.H.

10. J.H. trusted McCotter and was induced to invest with LGHDC based upon the representations made by both McCotter and Lopez-Goyne.

11. The following day, J.H. received a “Debenture Agreement” (“Debenture”) dated May 25, 2011, from LGHDC, promising to repay J.H. \$50,000.00 in 30 to 45 days from the date of the agreement, with 9.4% interest and six shares of LGHDC stock.

12. On May 26, 2011, J.H. wrote a check for \$50,000.00 that was deposited into a Bank of Hawaii account held by LG Hawaii Properties, LLC, another company owned by Lopez-Goyne. Subsequently, J.H.’s investment money was transferred to an LGHDC account at Bank of Hawaii.

13. On May 27, 2011, LGHDC issued a check from its Bank of Hawaii account in the amount of \$5,000.00, payable to McCotter as a commission for selling the Debenture to J.H.

14. McCotter did not inform J.H. that he would be receiving a \$5,000.00 commission for selling the Debenture.

15. At no time from May 25, 2011 to the present, has the Debenture been registered as a security in the state of Hawaii.

16. McCotter was not registered as an agent to sell securities in the state of Hawaii when he solicited and sold the Debenture to J.H.

17. J.H. did not receive his principal and interest payments from LGHDC as promised.

18. After the Debenture became due and J.H. did not receive his principal and interest payments, McCotter did not provide a personal check to J.H. for his \$50,000.00 investment as promised nor did he compensate J.H. in any other manner for his loss.

19. In order to induce J.H. to invest his money, McCotter made the following statements and omissions in connection with the offer and sale of the Debenture to J.H.:

- a. McCotter stated that the investment was sound and that he would personally guarantee it by writing J.H. a check for \$50,000.00 if the investment failed;
- b. McCotter failed to disclose to J.H. that he would be receiving \$5,000.00, 10% of the investment amount, as a commission for the sale of the Debenture;
- c. McCotter failed to disclose to J.H. that he did indeed receive a \$5,000.00 commission for sale of the Debenture;
- d. McCotter failed to inform J.H. that the Debenture was not registered as a security in the state of Hawaii; and
- e. McCotter failed to inform J.H. that he was not registered as an agent to sell securities in the state of Hawaii.

20. On January 3, 2017, the Commissioner entered into Consent Order with LGHDC and Lopez-Goyne to settle their violations of HRS Chapter 485A in this same matter, Case No. SEU-2013-028.

IV. PRELIMINARY CONCLUSIONS OF LAW

1. The Debenture described hereinabove constitutes a “security” within the meaning of HRS § 485A-102 and other applicable authority, and was not exempt from registration pursuant to HRS Chapter 485A or other applicable law or rule.

2. In connection with the offer and sale of the Debenture on behalf of LGHDC, McCotter acted as an agent as defined by HRS § 485A-102 in effecting and attempting to effect the sale of a security to J.H.

3. McCotter violated HRS § 485A-301 by offering and selling a security that was neither registered nor exempt from registration.

4. McCotter violated HRS § 485A-402 by transacting business in the state of Hawaii as an unregistered agent in relation to the sale of the Debenture.

5. In connection with the offer and sale of the Debenture to J.H., McCotter made untrue statements of material fact and failed to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading in violation of HRS § 485A-501(a)(2).

V. PRELIMINARY ORDER TO CEASE AND DESIST

NOW THEREFORE, pursuant to HRS § 485A-604, because of the foregoing findings and conclusions and/or because it appears that McCotter may engage in further acts or practices in violation of HRS Chapter 485A and because it is found that this action is necessary and in the public interest for the protection of investors, **IT IS HEREBY ORDERED** that:

1. McCotter shall **CEASE AND DESIST** from making any offer to sell, solicitation to purchase, or sale of any security within, to, or from the state of Hawaii;

2. McCotter shall, within thirty (30) days of entry of the Final Order, pay DISGORGEMENT in the amount of FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) for the commission he received for selling the Debenture. The disgorgement payment shall be made by cashier's check, bank draft, money order, or certified check; made payable to the investor referenced herein as J.H., and delivered to the Securities Enforcement Branch, Department of Commerce and Consumer Affairs, State of Hawaii, 335 Merchant Street, Suite 205, Honolulu, Hawaii, 96813. Disgorgement payments by McCotter to J.H. pursuant to the Final Order shall correspondingly reduce the amount of restitution owed to J.H. by LGHDC and Lopez-Goyne pursuant to their Consent Order in this same matter, Case No. SEU-2013-028, dated January 3, 2017;

3. McCotter shall be liable to pay the State of Hawaii, Department of Commerce and Consumer Affairs, Business Registration Division, an ADMINISTRATIVE PENALTY in the sum of TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00). Payment of this penalty shall be made by cashier's check, bank draft, money order, or certified check; made payable to the "Department of Commerce and Consumer Affairs Compliance Resolution Fund" and delivered to the Securities Enforcement Branch at 335 Merchant Street, Suite 205, Honolulu, Hawaii, 96813, within thirty (30) days of the date of the Final Order;

4. McCotter is PERMANENTLY BARRED from acting as a broker-dealer, agent, investment adviser, and/or investment adviser representative as defined in HRS Chapter 485A or the equivalent under any successor statute from the date of the Final Order, and from applying for registration in the state of Hawaii as a broker-dealer, agent, investment adviser, and/or

investment adviser representative from the date of the Final Order under HRS Chapter 485A or the equivalent under any successor statute;

5. McCotter shall be subject to a penalty of not more than FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) for each and every violation of this preliminary order (“Preliminary Order”) or any order of the Commissioner, pursuant to HRS § 485A-604, and any future violation of HRS Chapter 485A; and

6. The imposition of this Preliminary Order shall not preclude or prevent in any way the imposition of further sanctions or other actions against McCotter or any other party for past or future violations of HRS Chapter 485, HRS Chapter 485A, or any successor statute.

NOTICE OF RIGHT TO REQUEST A HEARING

YOU ARE HEREBY NOTIFIED that pursuant to HRS § 485A-604, you may request a hearing on this matter within thirty (30) days after the date of service of this Preliminary Order. Your request must be in writing and addressed to the following: Office of Administrative Hearings (“OAH”), Department of Commerce and Consumer Affairs, 335 Merchant Street, Suite 100, Honolulu, Hawaii, 96813.

A copy of your request must be served upon the Securities Enforcement Branch, Department of Commerce and Consumer Affairs, State of Hawaii, P.O. Box 40, Honolulu, Hawaii, 96810. If a hearing is requested, it shall be scheduled within fifteen (15) business days after your written request has been received by OAH unless extended by the Commissioner for good cause.

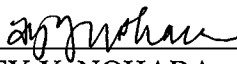
If OAH does not receive a written request for hearing within thirty (30) days after the date of service of this Preliminary Order and none is ordered by the Commissioner, this Preliminary Order shall become the Final Order of the Commissioner by operation of law pursuant to HRS § 485A-604(b).

You are hereby further notified that pursuant to Hawaii Administrative Rules § 16-201-23, you may move the Commissioner to reconsider the Final Order within ten (10) days after receiving the Final Order. Your motion shall be filed with the Commissioner and shall state specifically what points of law or facts the Commissioner has overlooked or misunderstood together with brief arguments on the points raised.

Additionally, pursuant to HRS § 485A-609, you may file an appeal with the Circuit Court of the First Circuit of the State of Hawaii in the manner provided in HRS Chapter 91.

You have the right to retain legal counsel, at your own expense, for all stages of these proceedings.

DATED: Honolulu, Hawaii, September 20, 2017.



TY Y. NOHARA
Commissioner of Securities
Department of Commerce and Consumer Affairs
STATE OF HAWAII