

BEFORE THE
DEPARTMENT OF CORPORATIONS
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
STATE OF CALIFORNIA

In the Matter of the Desist and Refrain Order
Against:

ROBERT T. REESE
IFA HOLDING, INC.
CYPRESS FINANCIAL NW, INC.,

Respondents.

OAH No. 2004090023

PROPOSED DECISION AFTER REMAND

On March 11, 1009, the Department remanded this matter to the Office of Administrative Hearings pursuant to Government Code section 11517, subdivision (c)(2)(D) and California Code of Regulations title 1, section 1050. Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter originally in Oakland, California, on June 10 and 11, 2008. The remand hearing was held on July 29, 2009, in Oakland California.

Lindsay B. Herrick, Corporations Counsel, represented complainant at the hearing on June 10 and 11, 2008 and by telephone at the remand hearing on July 29, 2009. Also present at the remand hearing was Salony Mehrok, Agency Counsel, appearing by telephone.

Respondent Robert T. Reese appeared by telephone at the remand hearing and was unrepresented.

Richard A. Ruben, Attorney at Law, represented respondents at the original hearing.

Submission of the original matter was deferred for receipt of an amended Desist and Refrain order, which was received on August 19, 2008. A "clean copy" will be submitted by fax and served on respondent. Submission of the matter was further deferred for receipt of final arguments, which were received and considered. The matter was submitted on November 3, 2008. The remand was submitted on July 29, 2009.

FACTUAL FINDINGS

1. The Amended Desist and Refrain order was signed on behalf of Preston DuFauchard, California Corporations Commissioner and Alan S. Weinger, Acting Deputy Commissioner Enforcement Division, by Lindsay B. Herrick, Corporations Counsel.
2. At all relevant times, Robert T. Reese, also known as Bob Reese, was President of IFA Holding, Inc., an active Washington State Corporation.
3. Beginning in November 2001, Robert T. Reese (Reese), IFA Holding, Inc. (IFA), and Cypress Financial NW, Inc. (Cypress), offered or sold securities in the State of California in the form of investment contracts representing interest in a “Secured Capital Enhancement Program.” Reese, IFA (later known as Cypress Financial NW, Inc.) then pooled the investors’ monies and invested them with a company known as Dobb White & Co., a United Kingdom accounting firm, under the management of Shinder Singh Gangar (Gangar) and Alan White (White). Reese, IFA and Cypress promised investors returns based on bond trading through Dobb White, and investors were told that interest payments in the program would be 1.66 percent per month. The purported purpose of the offering was to raise funds to engage in bond trading, with guaranteed security of principal. The bond trading program was described to at least one investor in a document written by Gary L. McDuff (McDuff) of Overseas Development Bank and Trust.
4. Reese, IFA, and Cypress, offered and sold investment contracts representing interests in the “Secured Capital Enhancement Program” in the amount of \$25,000 to one investor, and in the amount of \$20,000, to another investor.
5. Reese, IFA, and Cypress also offered and sold securities in the form of investment contracts in an investment called “The People’s Avenger Fund Business Trust,” which purportedly was a domestic investment wherein the monies would be used by a bank to also engage in syndicated bond trading and which would also be insured.
6. These securities were offered and sold in the State of California in issuer transactions. The Department of Corporations has not issued a permit or other form of qualification authorizing any person to offer and sell these securities in this state.
7. Reese, IFA, and Cypress did not have a valid broker-dealer certificate issued by the Department of Corporations or the United States Securities and Exchange Commission (SEC) at any time authorizing any of them to engage in broker-dealer activities.
8. Beginning in November 2001, Reese, IFA, and Cypress, provided discretionary investment advice to investors in connection with the “Secured Capital Enhancement Program”.
9. Reese, IFA, and Cypress, received compensation for the investment advisory services they provided to investors.

10. Reese, IFA, and Cypress do not have a valid investment adviser certificate issued by the Department of Corporations or the United States Securities and Exchange Commission (SEC) at any time authorizing any of them to engage in investment adviser activities.

11. In connection with the offers and sales, Reese, IFA and Cypress, represented, misrepresented and/or failed to represent (disclose material facts) to investors when required to do so, that:

a. Reese represented that he was an “Independent Financial Advisor,” when he held no such license authorizing him to act as an investment advisor;

b. Reese represented that the “Secured Capital Enhancement Program” investment was extremely conservative, and involved bond trading with the security of the principal guaranteed by Lloyds of London when the insurance policy contained exclusions, including, but not limited to, exclusions to coverage for any business activities performed which have not been authorized by law;

c. Reese represented that he knew McDuff personally and that McDuff was an experienced banker who was trustworthy, when Reese knew there were issues with McDuff and Overseas Development Bank and Trust that reflected negatively on his trustworthiness;

d. Reese knew and did not disclose that the Financial Services Authority (FSA) in the United Kingdom was taking court action against Dobb White & Co. (Dobb White) for allegedly taking deposits of at least \$15.7 million without authorization and in contravention of the Banking Act of 1997 and obtained an asset freeze in 1999, and that the FSA (in November 1998) obtained an order freezing the assets of Dobb White, and the personal assets of Gangar and White;¹

e. Reese and Cypress failed to disclose that they had invested other investors’ monies in a prior investment program with Anthony Marino, who was the principal of a company known as Mousa Enterprises, Inc., which also deposited funds with Dobb White, which was also sued in relation to that investment by investors for a return of their money;²

f. Reese misrepresented that the principal in the Secured Capital Enhancement Program could be withdrawn at any time with a 30-day written notice, when, in fact, at least one investor requested, in writing the return of his investment, but Reese, IFA, and Cypress failed to return the funds;

¹ Respondents’ failed to inform investors about material facts that they should have revealed.

² Respondents’ failed to inform investors about material facts that they should have revealed.

g. Representations of Reese, IFA and Cypress made to investors regarding the legitimacy and safety of the investment in the Secured Capital Enhancement Program were based on representations that came from Gangar, and White, and Reese, IFA and Cypress failed to do any independent due diligence concerning these representations.

12. In connection with these offers and sales, Reese, IFA, and Cypress misrepresented to investors that investments in the Secured Capital Enhancement Program were safe given that in 2001 and 2002, Gangar and White had received investor funds in connection with a fictitious investment program operated by Terry L. Dowdell through Vavasseur Corporation, a Bahamian company controlled by Dowdell. Dowdell was the subject of an SEC fraud action and admitted to fraud in June 2002. Dowdell admitted there were no trades or investments, but rather the investors were paid “profits” in a typical Ponzi³ scheme from new investor funds, Dowdell plead guilty to 20 felony charges in December 2002 involving securities fraud and money laundering.

Dowdell further admitted that Overseas Development Bank and Trust, for which McDuff was a senior trust officer, was used in furtherance of fraud; and that by the time Reese made the purported demand to Dobb White on December 16, 2002, for the return of investor funds, Gangar and White had been arrested in the United Kingdom in October 2002 on suspicion of involvement in Dowdell’s fraudulent investment program, and the FSA had obtained a worldwide asset freeze against Gangar and White and Dobb White.

13. Respondent argues that he did not act as an unlicensed “investment advisor” because the investor had other advisors. Respondent meets the definition of an investment advisor under Corporations Code section 25009 to include “any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities . . .” Respondents advised investors as to the value of, and the advisability of investing in and purchasing, the securities of Secured Capital Enhancement Program and profited from that advice.

14. Respondent argues that he did not act in a fraudulent manner as the “subject program.” Respondent’s due diligence was clearly inadequate. Respondent further claims that he believed that there was an insurance policy in effect which covered this program. Respondent’s reliance on this claimed insurance policy was unfounded. He knew or should have known that the claims made on this policy were not covered. Respondent made untrue statements of material facts and omitted material facts that resulted in investors making investments in securities. Respondent knew of issues with McDuff and Overseas Development Bank and Trust that he should have revealed to investors so that they could make an informed decision whether or not to invest.

³ A Ponzi scheme is a fraudulent investment operation that involves promising or paying abnormally high returns to investors out of the money paid in by subsequent investors, rather than from net revenues generated by any real business or investment.

15. This Desist and Refrain order is necessary, in the public interest, for the protection of investors and consistent with the purposes, policies and provision of the California Corporate Securities Law of 1968.

LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 3 through 12, respondent violated Corporations Code section 25110 (securities subject to qualification offered without being qualified). By reason of Finding 15 and pursuant to Corporations Code section 25532, respondents Reese, IFA Holding, and Cypress Financial are subject to a desist and refrain order from further offer or sale in California of securities, including investment contracts, unless and until qualification has been made under the law.

2. By reason of the matters set forth in Findings 3 through 12, respondents Reese, IFA Holding, and Cypress Financial have effected transactions in securities as broker-dealers without having first applied for and secured a certificate authorizing each to act in that capacity in violation of Corporations Code section 25210. By reason of Finding 15, and pursuant to Corporations Code section 25532, respondents Reese, IFA Holding, and Cypress Financial are subject to a desist and refrain order from effecting any transaction in, or inducing or attempting to induce the purchase or sale of, and security in California, unless and until each have applied for and secured a certificate, authorizing each to act as a broker-dealer.

3. By reason of the matters set forth in Findings 3 through 13, respondents Reese, IFA Holding, and Cypress Financial have conducted business as investment advisers in California without first applying for and securing from the commissioner a certificate authorizing them to do so, in violation of Corporations Code section 25230. By reason of Finding 15, and pursuant to Corporations Code section 25532, respondents Reese, IFA Holding, and Cypress Financial are subject to a desist and refrain order from acting as investment advisers in California unless and until they have first applied for and secured a certificate authorizing each to act as investment advisers.

4. By reason of the matters set forth in Findings 3 through 12, and 14, securities representing interests in a "Secured Capital Enhancement Program" through Dobb White & Co. were offered and sold in California by means of written and oral communications which included an untrue statement of a material fact and omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in violation of Corporations Code section 25401. By reason of Finding 15, and pursuant to Corporations Code section 25532, respondents Reese, IFA Holding, and Cypress Financial are subject to a desist and refrain order from offering or selling or buying or offering to buy any security in California, including but not limited to investment contracts, by means of any written or oral communication which an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of circumstances under which they were made, not misleading.

ORDER

The Amended Desist and Refrain Order issued by the Department of Corporations on August 19, 2008 against Robert T. Reese, IFA Holding, Inc., and Cypress Financial NW, Inc. for violations of Corporations Code sections 25110, 25210, 25230, and 25401 is hereby affirmed.

DATED: _____

RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings