BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Request of: V.I.S.T.A. ENTERPRISES LTD., V.I.S.T.A. INVESTMENTS, ROBERT ESPINOSA, a.k.a. ROB ESPINOSA, JUDITH HAVENS, a.k.a. JUDY HAVENS, et al., Respondents, For a Hearing Pursuant to California Corporations Code Section 25532.	OAH No. N2004040566 File No. 23-38300

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated August 19, 2005, is hereby adopted by the California Corporations Commissioner as his Decision in the above-entitled matter with the following technical and clarifying changes pursuant to Section 11517(c)(2)(C) of the Government Code:

On page 1, paragraph 4, line 10 of the Proposed Decision, "Exhibit 24" was replaced with "Exhibit 25".

On page 1, paragraph 4, line 11, "Exhibit 25" was replaced with "Exhibit 24".

In item number 3, on page 2, "May 29, 2004" was replaced with "March 29, 2004".

In the last sentence of item number 6, on page 3, "Bennett" was replaced with "Espinosa".

In item number 34, on page 12, line 6, "that neither she not Fspinosa" was replaced with "that neither she nor Espinosa".

In the last sentence of item number 41, on page 14, "Corporations Code section 2540" was replaced with "Corporations Code section 25401".

Item number 3, on page 16, was to changed to "Cause exists for a finding that respondents acted as investment advisers while not licensed as investment advisers in the State of California pursuant to Corporations Code section 25230. (Findings 7-28, 44.)"

Item number 4, on page 17, was changed to "Cause exists for a finding that respondents acted as broker-dealers, and were subject to licensing as broker-dealers pursuant to Corporations Code section 25210, and were not licensed as broker-dealers in the State of California. (Findings 7-28, 45.)"

The seventh sentence in item number 5, on page 17, was changed from "After considering all of the evidence, it is determined that the DESIST AND REFRAIN ORDER is essential to protect the public interest and should be affirmed." to "After considering all of the evidence, it is determined that the DESIST AND REFRAIN ORDER is essential to protect the public interest and should be affirmed as to the causes stated in that ORDER."

The last sentence in item number 5, on page 17, was changed from "entitlement to attorney fees in the amount" to "entitlement to attorney fees and investigative expenses in the amount".

This Order shall become effective on 11/4/05.

IT IS SO ORDERED 11/3/05

WAYNE STRUMPFER
Acting California Corporations Commissioner

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Request of: V.I.S.T.A. ENTERPRISES LTD., V.I.S.T.A. INVESTMENTS, ROBERT ESPINOSA, a.k.a. ROB ESPINOSA, JUDITH HAVENS, a.k.a. JUDY HAVENS, et al. Respondents, For a Hearing Pursuant to California Corporations Code Section 25532.	OAH No. N2004040566 Case No. 23-38300

PROPOSED DECISION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings heard this matter on June 17 and 18, 2004, in Oakland, California.

Joan E. Kerst, Senior Corporations Counsel, represented the complainant William P. Wood, California Corporations Commissioner, Department of Corporations.

Charles Cummins, Attorney at Law, 224 East Jackson Street, Suite B, San Jose, California 95112, represented the respondents V.I.S.T.A. Enterpises Ltd., V.I.S.T.A. Investments, Robert Espinosa, a.k.a. Rob Espinosa, and Judith Havens, a.k.a. Judy Havens.

The record was held open to permit complainant to submit additional information regarding costs. By letter dated July 16, 2004, which has been marked as Exhibit 22 for identification, complainant submitted a request for additional time to file its cost certification, which was granted. On December 13, 2004, the Administrative Law Judge sent a letter to counsel for complainant inquiring regarding the status of complainant's submission. The letter has been marked as Exhibit 23 for identification. Respondents submitted a letter objecting to any submission of costs by complainant as stale and untimely. The letter was received on December 21, 2004, and marked as Exhibit JJ for identification. On April 15, 2005, a certification of costs and a closing brief were received from complainant. The cost certification was marked as Exhibit 24 in evidence. The closing brief was marked as Exhibit 25 for identification. On May 3, 2005, a letter was received from respondents objecting to complainant's brief as unauthorized and renewing their objection to complainant's cost certification as stale and untimely. The letter was marked as Exhibit KK for identification. Whereupon the matter was deemed submitted on May 3, 2005.

FACTUAL FINDINGS

1. The Department is the agency responsible for enforcement of the Corporate Securities Law, California Corporations Code section 25000 et seq.

2. On May 7, 2003, Demetrios A. Boutris, California Corporations Commissioner (complainant), issued a Desist and Refrain Order against respondents Judith Helen Havens, also known as Judy Havens, Robert Espinosa, also known as Rob Espinosa and Bob Espinosa, V.I.S.T.A.[1] Enterprises, Ltd. and V.I.S.T.A. Investments. The Order demanded that respondents desist and refrain from further offer or sale in the State of California of securities in the form of investment contracts, membership interests and participation interests because, in the opinion of the Commissioner, such activity constituted the offer or sale of unqualified securities. (Corp. Code, § 25532.)[2] The Order further demanded that respondents desist and refrain from offering or selling or buying or offering to buy any security in the State of California by means of any written or oral communication which included an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statement not misleading. (Corp. Code, § 25401.)

3. By letter dated May 29, 2004, respondent Havens made a timely request for a hearing on the Desist and Refrain Order.

By letter dated April 7, 2004, respondent Espinosa made a timely request for hearing on the Desist and Refrain Order.

4. At all times relevant to this proceeding, Havens and Espinosa, individually and jointly, did business under the fictitious business names of V.I.S.T.A. Enterprises, Ltd. and V.I.S.T.A. Investments (collectively V.I.S.T.A.). Havens and Espinosa advised others regarding the value of investing in bank debentures, and offered or sold investment contracts, membership interests and participation interests in a "Bank Debenture Forfaiting [sic] Program" through V.I.S.T.A..

According to Havens,[3] she would share information on foreign debentures with anyone who expressed an interest. If an individual decided to participate in the debenture program, Havens would have the individual transfer money to V.I.S.T.A., and then V.I.S.T.A. would place the money into trade. V.I.S.T.A., which Havens described as an offshore trust, was used by Havens to place funds for other individuals. V.I.S.T.A. would

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[1] V.I.S.T.A. is an acronym for Viable Income Secured Trust Alternative.

[2] Corporations Code section 25532 provides: "(a) If, in the opinion of the commissioner, the sale of any security is subject to qualification under this law and it is being offered or sold without first being qualified, the commissioner may order the issuer or offeror of such security to desist and refrain from further offer or sale of such security unless and until qualification has been made under this law."

[3] This information is taken from the April 12, 2002, deposition testimony of Havens taken in connection with a civil suit filed by investor Charles Bennett.

place participant money in various offshore trading programs, including MONEX (also know as the Texas program). Havens was paid a commission by MONEX for placing funds with MONEX. Havens would receive 25 percent of the placement amount, which was paid after the money was placed in a trading program, usually six to eight weeks after placement of funds.

INVESTOR BENNETT

5. Charles Bennett retired from Pacific Bell in June 1997 after 27 years of employment. At the time of his retirement, he was a supervisor with Pacific Bell and had accumulated approximately $443,000 in retirement savings. Upon retiring Bennett took his retirement savings in a lump sum and invested them in an Individual Retirement Account (IRA). Bennett and his family were able to live off the proceeds from the IRA, which Bennett managed himself. Income from the IRA was approximately $65,000 annually.

6. In January 2000 Bennett ran an advertisement for a rental unit that adjoins his residence. Bennett sought to rent the unit to supplement his retirement income. At the time Havens and Espinosa were living together in a rented house across the street from Bennett. Espinosa responded to the advertisement. Bennett and Espinosa discussed the rental, including Espinosa's ability to afford the rent. (Bennett ultimately rented the unit to Espinosa.) The conversation soon turned to financial matters and Bennett disclosed that he had a self-directed IRA that was invested in publicly traded stocks. Espinosa began telling Bennett about V.I.S.T.A. Espinosa claimed that he had $130,000 of his own money invested in V.I.S.T.A., which he described as "Judith's program." He also represented that he was an optician but would soon retire because his returns from V.I.S.T.A. were so good. Bennett additionally represented that his father was invested in the V.I.S.T.A. program.

Espinosa told Bennett that he had made his investment through Havens, who was a major partner in V.I.S.T.A. Espinosa discussed a rate of return of up to 100 percent a year. Bennett was receiving seven to ten percent return on his stock investments annually. Bennett expressed interest in the V.I.S.T.A. program. Espinosa told Bennett that he could not disclose specific information about V.I.S.T.A. until Bennett signed a nondisclosure and confidentiality agreement, and that after he signed the agreement Bennett could only discuss V.I.S.T.A. with his wife.

7. That same day Espinosa provided Bennett with a nondisclosure and confidentiality agreement. The agreement stated in pertinent part:

> V.I.S.T.A is a membership program with outstanding benefits. These benefits are designed to enhance your wealth and thus your life. You will be given ideas, information and best of all methods enabling you to become involved in world trade and international economy. Because we follow all legal guidelines and statutes, we are able to continue guiding our members to greater financial rewards. We request that you read, sign and

return this letter to your coordinator by fax or mail. A packet of information will be promptly sent.

The bottom of the agreement indicated that it should be returned to Havens.

Bennett signed the nondisclosure and confidentiality agreement. A blank copy of the agreement was provided to Bennett. He never received a copy of the agreement that he signed. Bennett gave the signed agreement to Espinosa because Espinosa represented that he was Havens' partner. Espinosa told Bennett that Havens would bring the "prospectus"[4] to Bennett's home the next day and discuss the V.I.S.T.A. program in more detail.

8. The following day Havens provided Bennett with the prospectus and orally reviewed the V.I.S.T.A. program with him. The prospectus purported to contain "basic information on the different trust structures" offered through V.I.S.T.A. to facilitate offshore investing in foreign bank debentures. It also claimed that V.I.S.T.A. worked closely with SAFE Management & Consulting, LLC, the company that would be used by V.I.S.T.A. to establish a trust structure and offshore entity on behalf of any investor. The prospectus stated that "V.I.S.T.A.'s expertise lies in its extensive knowledge of bank debentures," and that V.I.S.T.A.'s "primary concern is the safety of your funds. Funds are placed in a 'nondepleating' [sic] bank account. You will be part of a trade that holds a contract which guarantees your principal."

The prospectus further indicated that V.I.S.T.A. worked with an authorized IRA administrator to place funds from self-directed IRAs, and that V.I.S.T.A. dealt only with top European Banks that were "financially backed by their country of origin and have proven themselves over the last hundred years to be much more stable than U.S. banks." However, paragraph two of page two of the prospectus also states: "Please keep in mind that this package is for informational purposes only and is not intended to be a solicitation for funds."

9. After Havens supplied Bennett with the prospectus, they had several discussions about V.I.S.T.A.. Bennett initially expressed concern about the potential loss of his capital. Havens reiterated the information contained in the prospectus, including the assertion that investor funds were placed in a non-depleting bank account and that investor funds were never at risk. Bennett was told the "worse case scenario" was that he would earn zero return on his investment. Havens explained that V.I.S.T.A. was in the business of purchasing bank notes (debentures) from foreign banks. These debentures would be sold numerous times; however, V.I.S.T.A. would always maintain a lien on the debentures. Each time a debenture was sold to a different bank V.I.S.T.A. would make a profit. Havens further stated that the investor's capital was always safe because the principal of the notes was always owed to V.I.S.T.A.

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[4] The prospectus was a document entitled V.I.S.T.A. ENTERPRISES LTD. (Viable Income Secured Trust Alternative), Nevis, West Indies. The cover indicated it had been prepared especially for Bennett and that it contained "Strategies for Asset Protection, Privacy and Wealth, Courtesy of Judith Havens." Havens admits she maintained and printed the prospectus from her computer.

During the course of the discussions, Havens also told Bennett that she had been involved with the V.I.S.T.A. program six years, she received a percentage of all money placed with V.I.S.T.A. as compensation, and that V.I.S.T.A. was her primary source of income. Havens claimed to have placed money in the program for 30 or more individuals in amounts ranging from $10,000 to $50,000. She explained that she was amassing and pooling the funds of investors because it took a million dollars or more to participate at the preferred rates. Havens told Bennett that she had $1.2 million dollars in investor funds under her control. She also told Bennett that the investor funds were kept in a bank account under the control of V.I.S.T.A. and herself.

Havens explained to Bennett that there were two V.I.S.T.A. investor programs, the Belgium program and the Texas program. Havens stated that she was invested in the Belgium program, but the rate of return on that program had fallen 30 to 40 percent from its initial return rate of 100 percent. She recommended that Bennett invest in the Texas program, which she described as a new program that had only been available a few months. She stated the Texas program worked with a different set of banks than the Belgium program and had been making timely payouts. Havens told Bennett the rate of return on the Texas program would be 80 to 100 percent annually. Havens explained to Bennett that there were two ways to invest. He could invest a fixed amount and received that amount plus 100 percent at the end of 12 months, or he could invest a fixed amount and get paid interest at the end of each of eight or nine trades per year, plus receive the return of his principal at the end of 12 months. Havens described in detail how the trades would work and represented that she and Espinosa oversaw all trades. Based on these conversations, it was Bennett's understanding that V.I.S.T.A. was the investment he was being offered and that V.I.S.T.A. had the ability to place investor funds in either the Belgium or Texas programs.

10. Although Bennett wanted confirmation of the success of the V.I.S.T.A. program from other V.I.S.T.A. clients, he was enjoined from contacting Havens' clients by the confidentiality agreement he had signed. That same agreement barred Bennett from discussing the program with anyone except his wife. Therefore, Bennett was never able to corroborate the information received from respondents before investing. However, Havens arranged a telephone call from Bennett's home to attorney Hirum Martin. Martin told Bennett that he represented V.I.S.T.A. and SAFE Management & Consulting, LLC, the company the prospectus indicated would be used by V.I.S.T.A. to establish a trust structure and offshore entity on behalf of any investor. Martin claimed to have been associated with Havens and V.I.S.T.A. for three years, and to have placed other clients for Havens. Martin also explained how a transfer could be made from Bennett's IRA to the V.I.S.T.A. program. Bennett was told that his funds would be rolled over to a legitimate IRA administrator, then transferred through a series of legal entities (a limited liability corporation (LLC), foreign corporation and a foreign charitable trust) created for him by Martin. The final entity, the foreign charitable trust, would invest in V.I.S.T.A. After talking with Martin, Bennett was convinced the V.I.S.T.A. program was legitimate.

11. Bennett testified that the conversation with Martin and the representations made by Espinosa, Havens and the V.I.S.T.A. prospectus, especially the oral and written

representations that V.I.S.T.A. had extensive expertise in bank investing and the guarantee that he would not lose his principal, influenced his decision to invest in V.I.S.T.A. He was also impressed by the fact that Havens was driving a new BMW convertible. In February 2000 he signed numerous documents provided by Havens to create the legal entities Martin indicated were necessary in order to invest in V.I.S.T.A. Havens did not provide him with copies of what he signed.

12. Bennett invested a total of $268,000 in the V.I.S.T.A. program. He placed $125,000 in a capital accrual program. His capital was to be held for 12 months, at the end of which his capital plus 100 percent was to be returned. Bennett placed $143,000 in the Texas accrual program. Under the Texas program, Bennett was to receive 10 interest payments, each equal to one-tenth of his investment, over a 12 month period, and the return of all his capital at the end of 12 months. In addition, Bennett paid V.I.S.T.A. $7,250 in "required fees."

At the time Bennett invested with respondents, trading in public stocks was the extent of his securities investment experience. He had no understanding of bank debentures and had never purchased bonds or over-the-counter stocks.

13. In February 2000, on Havens and Martin's instructions, Bennett liquidated his E-Trade IRA account and completed paperwork to conduct a self-directed rollover of funds from the account to Westamerica Bank. In late February Havens had Bennett sign a stack of papers which she claimed were necessary in order to establish the legal entities described by Martin. Bennett selected the fictitious names of the entities contained in this first set of documents. Pursuant to Havens' instructions, on March 9, 2000, Bennett completed a form authorizing Westamerica Bank to wire transfer $277,500 from his account to the account of Kabala Enterprises L.P., an account that had allegedly been set up by Martin on his behalf. Judith Havens was listed as Bennett's Broker/Representative on the transfer authorization form. Bennett believed Havens was his broker in that she was to receive his funds and administer his investment. He therefore designated her as such on the transfer form although Havens never specifically authorized him to do so.

Bennett's funds were transferred several times to various bank accounts. Havens had Bennett sign several sets of documents in connection with these transfers. The documents contained a number of last minute changes to the names of the various entities that were to be created for Bennett both before and after his investment. For example, on March 22, 2000, Havens had Bennett sign a second set of documents. Bennett noticed that the documents included additional fictitious names and that some of the names for his LLC, foreign corporation and foreign charitable trust were different from the ones he had selected. On March 23, 2000, Havens had Bennett sign documents to transfer $268,000 to an entity named Watermusic. Havens told Bennett that Watermusic was an account owned by Espinosa, who would handle transfer of Bennett's money to V.I.S.T.A.. Bennett never received copies of anything he signed, although he did retain the originals of documents he signed and then faxed to Havens.

14. Among the documents signed by Bennett was a Private Account Opening Application/Statement of Exempt Status and Non-Solicitation. Paragraph seven of that document states in pertinent part: "I hereby affirm . . . that you have not solicited me in any way. Any information provided is in direct response to my request and is not considered to be a solicitation of funds or any sort of offering." Paragraph eight provides: "I understand that I must seek the advice of my own attorney for questions regarding the legality of any transaction and I must consult with my own CPA or qualified accountant as to the tax status of any transaction."

Bennett also signed a Disclosure and Confidentiality Agreement after he made his investment. Paragraph four of the document states: "This is not a solicitation nor an offer to buy or sell securities. It is understood that V.I.S.T.A. receives referrals from many companies and is not affiliated with any companies that offer registered or unregistered securities of any type. No part of the payments for services is for investment advice."

One of the documents provided by Havens, entitled "Basic Strategy Descriptions and Pricing," contains a disclaimer at the bottom of page six. It provides:

> Disclaimer: We are not investment advisors and do not give investment advice. We do recommend to clients that they diversify their investments and do not put all of their eggs in one basket. This is not a solicitation or offer for an investment. Although there is potential for earnings off shore, all investment involves risk.

Another document provided by Havens to Bennett, which purports to have been prepared by Safe Management & Consulting LLC, also disclaims any liability for information contained in the document and advises readers to consult their own legal, tax or other professionals on specific questions. Respondents contend these disclaimers clearly indicate that they were not offering investment advice or offering or soliciting the sale of any product.

15. Bennett was never given specific dates for the trades or periodic payouts that were to occur under the Texas program. In April 2000 Bennett received a statement from Havens indicating that the first trade on his investment had been successfully completed and that he was due $14,300. Bennett also received subsequent statements that reflected his money was accruing. However, in meetings in June and July 2000, Havens and Espinosa told Bennett that there were "administrative problems," and therefore they could not make payouts as promised. They promised to pay all monies due in August. No payment was made in August.

16. In September 2000, while Bennett was away on a trip, Espinosa vacated the unit he had been renting from Bennett. Upon his return Bennett found two letters in his mailbox. Both were signed by Havens. One letter, which was directed to investors generally, stated that the head of the Texas trading program was missing, that investor funds

were not where they were purported to be and that there was no non-depleting bank account. The letter disclaimed any legal responsibility by Havens or Espinosa for losses, but indicated Havens and Espinosa would try to repay principal to the best of their ability. The second letter was addressed to Bennett and his wife. It indicated that all of Bennett's funds had disappeared and that Espinosa had left to avoid becoming the brunt of Bennett's anger for the losses. The letter also cautioned Bennett and his wife not to contact the FBI because any FBI involvement would stop all current efforts to recover funds. Prior to receipt of this letter, Bennett had no indication that all of his funds had been lost. In an effort to recover his funds, Bennett paid an additional $6,000 to a private investigation company, Beanstalk, to recover his funds. The private company was unsuccessful in its attempts to recover Bennett's funds.

17. After Espinosa left, Bennett went through Espinosa's trash in an effort to obtain information. Bennett located the names of several other investors, whom he contacted. They told him of similar representations by Havens and similar financial losses. Bennett sent a letter to respondents demanding the return of his funds, and also filed a civil suit. In the course of the civil suit, Bennett learned that Watermusic was the personal account of both Havens and Espinosa, and that some funds from Watermusic were used to cover their personal expenses. For example, $6,500 was used to pay a debit card of Havens; $18,200 was paid to MBNA America; $50,799 was paid to Old Republic Title for a house that was purchased by Havens shortly after Bennett made his investment; the sums of $5,000 and $17,240 were paid to BMW Financial Services for a BMW; [5] $18,100 was paid to Citibank; and $2,425, $3,700, $1,890 and $2,900 in checks were made payable to Espinosa. To date, Bennett has not received return of his funds and has been named as a creditor in separate bankruptcy actions filed by Havens and Espinosa.

18. As a result of the loss of his investment, Bennett has been forced to return to work. Bennett's wife, who had announced her retirement at work prior to loss of the funds, was forced to continue working. The loss of funds has also caused marital conflict and affected Bennett's plans for his son's college education. In addition, Bennett has incurred attorney fees and costs totaling $54,449.76 ($45,629 paid as attorney fees/costs plus $8,820.76 advanced as costs) as of the date of the hearing, with more attorney fees and costs likely.

INVESTOR MAURO

19. Marcus Mauro is a software engineer in Santa Cruz, California. He met Havens through his mother, Rachel Devereaux. Devereaux and Havens were good friends. Havens often attended functions that Mauro also attended. Havens frequently discussed

[5] Prior to Bennett's investment in V.I.S.T.A., Espinosa drove a small sporty Accura or Toyota. After Bennett's investment, Espinosa began driving a convertible BMW similar to the one owned by Havens.

investment opportunities at the functions. Mauro's mother invested early with Havens. After approximately two years, she told him the program was working for her and urged him to invest, as did Havens. Mauro considered Havens a friend of the family and trusted her. He decided to invest with Havens.

20. In January 2000 Mauro went to Havens' home, where Havens made a presentation regarding the Texas program. Havens told Mauro that the Texas program was a program that previously had only been available to very wealthy investors, but was now being made available to ordinary investors. She told him these investors pooled their money, which was placed in offshore trusts and used to trade off shore. Havens assured Mauro that his principal was guaranteed and would be held in a non-depleting account. It was also Mauro's understanding that he could retrieve his money whenever he wanted through Havens.

21. Mauro believed he was being offered an investment through V.I.S.T.A. based on his conversations with Havens and the documents she provided to him. For example, the cover sheet of several of the documents bore the following language:

> Copyright 1996 V.I.S.T.A. Ent. Ltd.
> PRIVATE AND CONFIDENTIAL
> No copies of this material may be made or distributed without
> the express written consent of V.I.S.T.A. Ent. Ltd.

22. Havens provided Mauro with a lot of documentation, including the same "Basic Strategy Descriptions and Pricing" document provided to Bennett. The document contains a disclaimer which provides in relevant part:

> We are not investment advisors and do not give investment advice. . . This is not a solicitation or offer for an investment. . . all investment involves risk.

Mauro does not recall if Havens ever pointed out or gave him this disclaimer, and he noted that he received some of the documents from Havens after investing. Mauro also testified that he did not understand most of the documentation. Mauro explained that since he trusted Havens, he relied on her to act in his best interest, manage his investment and return his money to him when he requested it. He also relied on her oral assurances that his money was guaranteed. When Havens provided him with documents to sign, including a joint venture agreement, Mauro signed them. At the time of his investment with Havens, Mauro had no prior investment experience.

23. Havens provided Mauro with instructions on how to wire transfer funds from his credit union account to Lloyds Bank. Mauro followed Havens' instructions and transferred a total of $33,725. Mauro initially received statements that indicated he was earning money on his investment. He then began receiving letters indicating his "money was in trouble," and, ultimately, he received a letter from Havens stating that all of the money

was lost. A string of letters followed which offered some hope of recovery of investor funds, but nothing materialized. Neither Mauro nor his mother has recovered their original investment.

24. Mauro testified his mother, who is now 68 years old, invested approximately $30,000, which was a significant portion of her retirement savings. His mother told him that Havens assured her, as she had Mauro, that her original investment was guaranteed. Mauro feels the loss of her investment has affected his mother's health and caused her financial hardship. The loss of his investment has also been a financial hardship for Mauro.

OTHER INVESTORS

24. Testimony, as well as investor declarations and other evidence presented at hearing, establishes that in order to obtain access to investors' funds it was Haven's and Espinosa's standard practice to promise investors inflated returns on their investments and to guarantee investors that their money was never at risk because it was kept in a non-depleting account. Investors were typically required to sign numerous documents, including confidentiality agreements, which precluded them from consulting with other investors regarding the programs, joint-venture agreements and/or various forms which were purportedly necessary to establish offshore corporations and trusts for investors. Although the documents signed by investors often included disclaimers, Havens provided repeated oral assurances to investors regarding the safety of the investments that she was offering.

25. In her sworn complaint to the Department, Rachel Devereaux indicated she relied on the investment advice of Havens in investing in the Texas and Belgium programs. According to Devereaux's complaint, she met Havens in 1991 and they became friends. In 1997, Devereaux received a onetime lump sum payment of funds, which was to be her retirement money. Havens began pressuring her to invest the money with her, promising returns of 12 to 15 percent instead of the one to three percent Devereaux was then receiving on her funds. In October 1997 Havens had Devereaux wire $25,000 to Chase Manhattan Bank pursuant to an agreement with F.A.S.T. Ltd., also known as the Belgium program. Havens later had Devereaux invest $5,000 in the V.I.S.T.A. Texas program. According to her complaint, in approximately 2000, Devereaux requested the return of her funds from the Belgium program, with no success. Devereaux claims Havens admitted to her that both programs were fraudulent at a December 26, 2001, meeting. Devereaux had no investment experience prior to investing with Havens and has a net worth of $10,000 to $50,000, excluding her home.

26. In her sworn complaint to the Department, JoAnna Medina states that she was referred to Havens by her friend Devereaux. Medina had sold her home and wanted to invest some of the proceeds. Havens promised Medina a "fantastic" return on her money and assured her that her principal investment was absolutely guaranteed. Havens had Medina wire money to accounts established by Havens. Medina invested a total of $41,350 with Havens in various programs, including the Belgium and V.I.S.T.A. Texas programs. She has

never received any of her principal investment back. Medina had no investment experience prior to investing with Havens and has a net worth of $10,000 to $50,000, excluding her home.

27. In her complaint to the Department, Jan Broughton states that she invested $158,000 with Havens in January 2000, and that Havens personally accompanied her to the bank to do wire transfers. Broughton states Havens gave her the impression it was a safe investment.

28. In her complaint to the Department, Joann Russell, a retiree, states that she was referred by Broughton to Havens. Havens told Russell that she was offering "a great and safe investment that had been going on for many years successfully." Havens recommended the Belgium and Texas programs. Russell invested $12,000 in the Belgium program and $12,000 in the Texas program. She has never received any of her principal investment back. Russell has a net worth of $10,000 to $50,000, excluding her home.

HAVENS' TESTIMONY

29. Havens testified that she has been earning her living as a seamstress for 32 years, often working multiple jobs. In 1997 she was introduced to off-shore trading by a man she met at a multi-level marketing meeting. She attended various seminars on the subject, where she was instructed that the United States did not have any regulatory jurisdiction offshore, and that if set up properly, trust income earned offshore did not have to be reported to the IRS. Havens states that she invested a small amount in the Belgium program, which performed successfully for three years. In 1999 the returns from the Belgium program started dropping, but it was still paying considerably more than a certificate of deposit.

According to Havens, in August or September 1999 she was introduced to Terri Kirven, the trader for the Texas program (also known as MONEX). She met with and received information from Kirven regarding the program. Kirven purportedly told her that only a few United States traders were engaged in the program because of the large sums of money involved, and that there was no way for small investors, who pooled their money in order to participate in the program, to verify anything about the program. Kirven also told Havens the money went into a non-depleting bank account, but Havens had no means of verifying this information.

30. Havens admits she met with Bennett in 2000 and that she told him she felt the Texas program was safe. She states she shared the information obtained from Kirven during the course of several discussions with Bennett, but admits she never mention Kirven to Bennett. Havens admits arranging a telephone call between Martin and Bennett, but denies she ever told Bennett that Martin was the attorney for her or her corporations. Havens also claims that she told Bennett she had been a seamstress for many years and did not have extensive experience with debentures, but that her investments in the Belgium program had been successful. Havens denies she told Bennett she managed anyone's money, had any

control over offshore accounts, or that he would have any control over his funds once invested. According to Havens, she told Bennett the offshore trustee would have control of the account and what action was taken or not taken.

31. Havens also testified that she tried to dissuade Bennett from investing such a large sum, but that he told her he did not need investment advice from a seamstress. This testimony was not particularly credible, especially given the fact Havens was the one presenting the investment opportunity to Bennett.

32. Havens denies using any of Bennett's or any other investor's funds for her or Espinosa's personal benefit. She claims that all of the $123,669.94 in income listed in a tax lien dated March 5, 2004, which covers the years of 1997 through 2001, was income from offshore activity.

33. Havens maintains all of the investors invested in V.I.S.T.A. or other debenture programs. She denies that anyone invested money with her, that she was responsible for anything, or that she ever had any funds under her control.

34. On cross-examination, Havens admitted that many investors showed a profit on paper, but were never actually paid the indicated profit. However, she maintains that some investors, such as Devereaux and Russell, did receive payouts. She also admitted to working with additional investors, including Dennis Mansker, Devereaux's ex-husband, who invested $30,000, and Joann Voltz, who invested $180,000. She admitted she had only glanced through the investment documents, that neither she not Espinosa had the extensive experience in debentures referred to in the documents provided to investors, and that V.I.S.T.A.'s "expertise" was passing out informational packets.

35. Havens claims she ceased operation over a year and a half before complainant issued its Desist and Refrain Order in May 2003.

36. Respondent Espinosa did not testify.

ALLEGED VIOLATIONS

Unqualified Offer and Sale of Securities

38. Corporations Code section 25110 makes it unlawful for any person to offer or sell any security unless such sale has been qualified or unless such security or transaction is exempt or not subject to qualification. The term security has been broadly defined to include a variety of investments whereby an investor gives money to another with the expectation that the other will return the money with a profit. (*SEC v. W.J. Howey Co.* (1946) 328 U.S. 293.) It includes investment contracts, notes, evidences of indebtedness and stock pledge agreements in the form of certificates of interest. (Corp. Code, § 25019.) A broad definition of the term security is consistent with the purpose of the securities law, which is to protect the

public against spurious schemes to attack risk capital; it is the substance of the transaction, rather than its form, which governs whether an investment is a security. (*Moreland v. Dept. of Corporations* (1987) 194 Cal.App.3d 506, 512; *Silver Hills County Club v. Sobieski* (1961) 55 Cal.2d 811, 814; *People v. Simon* (1995) 9 Cal.4th 493.)

39. Complainant alleges the investment contracts, evidence of indebtedness, membership interests and/or participation interests in the V.I.S.T.A. "Bank Debenture Forfaiting [sic] Program" were securities subject to qualification, and that such securities were being offered and sold without first being qualified.

Respondents contend the documents provided to investors were informational and did not offer or describe a specific program in which investors could invest. Respondents' contention is not persuasive. It is undisputed that Havens, with Espinosa acting as her business associate, passed out "informational packets" to investors, explained the investment program to investors, and facilitated the transfer of investment funds by investors based on information contained in the "informational packets." As a result of respondents' actions, the investors provided the funds to Havens, V.I.S.T.A. and/or affiliated entities with the expectation that Havens or V.I.S.T.A. would manage their investment, and that they would receive the return of their money plus a profit.[6] Moreover, such expectation of profit was evidenced by various documents signed by and/or provided to investors. Such conduct by respondents constitutes the offering and selling of securities. Respondents offered no evidence that the securities offered to investors had been qualified, or that a notice of exemption was ever filed. It is therefore found that respondents offered and/or sold securities that were subject to qualification, and that such securities were being offered and sold without first being qualified in violation of Corporations Code section 25110.

Misrepresentation or Omission of Material Fact in the Offer or Sale of Securities

40. Corporations Code section 25401 makes it unlawful for any person to offer or sell a security by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statement not misleading. Complainant alleges respondents made numerous oral misrepresentations and omissions to investors in connection with the offer or sale of securities. Complainant maintains respondents' misrepresentations and omissions were material in that they would likely have been considered significant by a reasonable investor in making a decision regarding the investments offered by respondents.

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[6] The investors' funds were also substantially at risk because the investors were powerless to effect the success of the underlying business venture (purchase and trade of foreign debentures) since they had no voice in decisions regarding or management of the venture or their funds. (See *Silver Hills County Club v. Sobieski* (1961) 55 Cal.2d 811, 814; *People v. Simon* (1995) 9 Cal.4th 493.)

41. The evidence established that respondents falsely represented to investors that the investors' money was never at risk as it was kept in a non-depleting account; investors would receive an extremely high rate of interest on their investment; investors would be repaid at the end of the period specified in the contracts; Havens had $1.2 million of investors' funds under her control; and investors' funds were invested offshore. Havens and Espinosa omitted to tell investors that their funds would be placed in a personal bank checking account they controlled, or that the funds would be used for their personal expenses. Such misrepresentations and omissions were clearly material. It is clear from a review of all the evidence that respondents misrepresented and omitted material facts in connection with the offer or sale of securities to investors in violation of Corporations Code section 2540.

Unlicensed Investment Adviser

42. Corporations Code section 25230 makes it unlawful to conduct business as an investment adviser without first obtaining a certificate authorizing the adviser to act in that capacity or unless the investment adviser is exempt. An investment adviser is defined as "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." (Corp. Code, § 25009.)

43. Complainant alleges respondents acted as unlicensed investment advisors when they gave advice to investors about the value of V.I.S.T.A. as a Viable Income Secured Trust Alternative, with outstanding benefits designed to enhance wealth, and the value of offshore investing.

Respondents maintain they were not giving financial advice but were simply providing informational packets. They point to the many disclaimers contained in the information provided to investors, which clearly state they are not investment advisors.

44. Respondents' contention lacks merit. Although respondents may not have called themselves financial advisers, by Havens own admission they were compensated a percentage of funds placed through them by investors. They also had access to, and were subsequently able to spend, investor funds by providing the services normally provided by a financial adviser. They advised individuals on investing in, purchasing and selling securities and promised them a better return on their investment as an inducement to permit them to manage their funds. Respondents offered no evidence at hearing that they were exempt from Corporations Code section 25230. Accordingly, it is found that respondents acted as unlicensed investment advisers in violation of Corporations Code section 25230 in providing advice about the value of V.I.S.T.A. as a Viable Income Secured Trust Alternative, and the value of offshore investing.

Unlicensed Broker Dealer

45. Corporations Code section 25210 prohibits a broker-dealer from effecting any transaction in, or inducing or attempting to induce the purchase or sale of any security unless the broker-dealer has a certificate authorizing that person to act in that capacity, or unless exempt. Corporations Code section 25004 defines a broker-dealer as any person engaged in the business of effecting transactions in securities in California for the account of others.

Respondents' activities in trading bank debentures for the account of investors and for their own account constituted unlicensed activity in violation of Corporations Code section 25210.

RESTITUTION AND DAMAGES

46. Corporations Code section 25254 provides for restitution and other relief to individuals harmed by an act or practice which is the subject of an administrative proceeding initiated by the Commissioner. Complainant requests that respondents, individually and collectively, be ordered to make restitution to investors, and that they be awarded interest and other ancillary relief for damages.

The evidence established that as the date of the hearing, Bennett had experienced losses totaling $335,699.76 as a result of respondents' wrongful actions. Those losses consist of the following:

Bank wire transfers	$ 268,000.00
Required fees	7,250.00
Private Investigator	6,000.00
Attorney Fees/Costs	54,449.76
Total	$335,699.76

The evidence also established that Mauro experienced losses totaling $33,725 as a result of respondents' wrongful actions. Although there was other evidence of investor harm, such evidence constituted hearsay and is insufficient to support of finding for damages.

ADMINISTRATIVE PENALTIES AND COSTS

47. The Department requests that the respondents, collectively and individually, be ordered to pay administrative penalties pursuant to Corporations Code section 25252. That section authorizes penalties of one thousand dollars ($1,000) for the first violation and not more than two thousand five hundred dollars ($2,500) for each subsequent violation against any person, other than a broker-dealer or investment adviser, who willfully violates a rule or order. (Corp. Code, § 25252, subd. (a).) If a broker-dealer or investment adviser willfully violates a rule or order the penalties increase to five thousand dollars ($5,000) for the first violation, not

more than ten thousand dollars ($10,000) for the second violation and not more that fifteen thousand dollars ($15,000) for each subsequent violation. (Corp. Code, § 25252. subd. (b).)

48. The Department also requests costs, which may include reasonable attorney's fees and investigative expenses. (Corp. Code, § 25254, subd. (b).) The Department certifies that the following costs were incurred in connection with the investigation and prosecution of this matter:

Investigator	62.5 hours @ $93.67 per hour	$ 5,854
Counsel	120 hours @ $111.51 per hour	13,381
	TOTAL COSTS INCURRED:	$19,235

49. Respondents oppose the award of costs, arguing submission of the cost certification was stale and untimely. However, respondents were advised at hearing that the Department would be making such a submission. They were also advised that they would be provided an opportunity to respond, which they were. Respondents' contention is therefore rejected.

OTHER MATTERS

50. The closing brief filed by the Department was not considered in reaching a decision in this matter. Unlike the issue of later submission of a cost certification, which was raised at hearing, no request was made to file a closing brief at hearing or at any time prior to its submission. Nor was any provision made for respondents to file a response. It would be prejudicial to respondents to consider the Department's closing brief under such circumstances.

LEGAL CONCLUSIONS

1. Cause for issuance of the Department's DESIST AND REFRAIN ORDER was established pursuant to Corporations Code sections 25532 and 25110 in that respondents offered and/or sold a security subject to qualification pursuant to the Code without the security first being qualified. (Findings 4-28, 39.)

2. Cause for issuance of the Department's DESIST AND REFRAIN ORDER was established pursuant to Corporations Code sections 25532 and 25401 in that respondents offered and sold a security by means of written or oral communications which included an untrue statement of material fact and/or omitted a material fact. (Findings 7-17, 20 and 41.)

3. Cause for issuance of the Department's DESIST AND REFRAIN ORDER was established pursuant to Corporations Code sections 25532 and 25230 in that respondents acted as investment advisers while not licensed as investment advisers in the State of California. (Findings 7-28, 44).

4. Cause for issuance of the Department's DESIST AND REFRAIN ORDER was established pursuant to Corporations Code sections 25532 and 25210 in that respondents acted as broker-dealers, and were subject to licensing as broker-dealers pursuant to Corporations Code section 25210, and were not licensed as broker-dealers in the State of California. (Findings 7-28, 45.)

5. The evidence established that respondents violated numerous statutory provisions. They used deceptive and fraudulent practices to obtain access to investors' funds, acted as unlicensed investment advisers and unlicensed broker dealers, offered and/or issued unqualified securities, and misrepresented or omitted material facts in the offer/sale of those securities. The evidence also established respondents had a pattern and practice of obtaining access to investors' funds by representing to the investors that they could obtain a better return on their investment and that they were guaranteed return of their principal. The principal was seldom repaid. In addition, Havens testimony at hearing was not credible. It was disjointed, confusing and often contradicted by other independent evidence. After considering all of the evidence, it is determined that the DESIST AND REFRAIN ORDER is essential to protect the public interest and should be affirmed. Consideration of all of the evidence also dictates that respondents, jointly and collectively, be required to reimburse Bennett $335,699.76 for his losses and Mauro $33,725 for his losses. Payment of penalties to the Department of Corporations to further deter willful and fraudulent conduct by respondents is also deemed appropriate. The Department has alleged and established four violations of applicable law. A penalty of $1,000 each is imposed for violation of Corporations Code sections 25110, 25401, 25230 and 25210, for a total penalty of $4,000. The Department has also established entitlement to attorney fees in the amount of $19,235.

ORDER

1. The appeal of respondents Judith Helen Havens, also known as Judy Havens, Robert Espinosa, also known as Rob Espinosa and Bob Espinosa, V.I.S.T.A. Enterprises, Ltd. and V.I.S.T.A. Investments is denied

2. The Desist and Refrain Order issued by the California Corporations Commissioner against respondents Judith Helen Havens, also known as Judy Havens, Robert Espinosa, also known as Rob Espinosa and Bob Espinosa, V.I.S.T.A. Enterprises, Ltd. and V.I.S.T.A. Investments is affirmed.

3. Respondents Judith Helen Havens, also known as Judy Havens, Robert Espinosa, also known as Rob Espinosa and Bob Espinosa, V.I.S.T.A. Enterprises, Ltd. and V.I.S.T.A. Investments are ordered to reimburse Bennett the sum of $335,699.76, and Mauro the sum of $33,725.

4. Respondents Judith Helen Havens, also known as Judy Havens, Robert Espinosa, also known as Rob Espinosa and Bob Espinosa, V.I.S.T.A. Enterprises, Ltd. and V.I.S.T.A. Investments shall pay the Department of Corporations penalties in the amount of $4,000.

5. Respondents Judith Helen Havens, also known as Judy Havens, Robert Espinosa, also known as Rob Espinosa and Bob Espinosa, V.I.S.T.A. Enterprises, Ltd. and V.I.S.T.A. Investments shall pay the Department of Corporations reasonable attorney's fees and investigative expenses in the amount of $19,235.

DATED: August 19, 2005

CHERYL TOMPKIN
Administrative Law Judge
Office of Administrative Hearings