



STATE OF NEW MEXICO
REGULATION AND LICENSING DEPARTMENT
SECURITIES DIVISION

In the Matter of:)
)
VFG, LLC f/k/a VOYAGER FINANCIAL GROUP,) Case No. 13-10-0013
EQUITY ADVISORS, LLC AND SIDNEY EVANS)
)
Respondents.)

ORDER TO CEASE AND DESIST AND
NOTICE OF INTENT TO IMPOSE SANCTIONS
(Corrected)

The Director of the New Mexico Securities Division (“Director”) after investigation has good reason to believe, and therefore alleges the following:

I. FACTS

1. VFG, LLC f/k/a Voyager Financial Group, LLC (“VFG”) is a Delaware limited liability company with its principal place of business located at 801 Technology Drive, Suite F, Little Rock, Arkansas 72223.
2. Equity Advisors LLC (“Equity”) is a registered Investment Adviser in New Mexico with its principal place of business located at 9400 Holly Avenue NE, Building 4, Albuquerque, New Mexico 87122.
3. Sidney Evans (“Evans”) is currently registered in New Mexico as an investment adviser sales representative for Equity. Evans also acted as a selling agent for VFG.
4. VFG structured and promoted investment transactions between buyers (investors) and sellers by identifying potential sellers, usually veterans or others receiving structured government payments, from the United States, and persuading them to sell to investors a portion of their future stream of government payments for a lump sum. The income streams had fixed payment terms, including monthly payment amounts, duration (48, 60, 72, 84 or 120 months) and set rates of return.
5. Buyers did not receive an ownership interest in the underlying asset that provided the income stream, but merely a potential contractual right to receive the income stream from

the pension. Sellers, who lawfully retain the legal rights to receive the government payments, may at any time redirect income streams away from VFG controlled escrow accounts, thereby leaving a buyer solely with a potential legal claim.

6. VFG used selling agents, including Evans, to offer and sell income streams to investors. VFG provided all information and contracts to selling agents for use in the offer and sale of such income streams to buyers.
7. VFG, by and through Evans, deceived investors by describing the sale of income streams as valid and permissible transactions, when in fact, United States government pensions and disability benefits may not be assigned or attached under 37 U.S.C. § 701 (military pension) and / or 38 U.S.C. § 5301 (veterans' disability benefits). *See, In re Price*, 313 B.R. 805, 810-810 (E.D. Ark. 2004) (sale of debtor-service member's future military pensions rights in return for lump sum payment from financial services company was void under 37 U.S.C. § 701(c), even though service member redirected payments to personal account); *Dorfman v. Moorhous*, 108 F.3d 51, 55-56 (4th Cir. 1997) (assignment of future payments is void under public policy); *In re Leon*, 376 B.R. 765 (W.D. OK 2007) (contract assigning military pension payments in exchange for lump sum payment is void and unenforceable pursuant to § 701(c)); *see also*: 38 U.S.C. § 5301(a)(1)-(3)(A): "Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law ... in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive such benefit by payment of such compensation, pension, or dependency and indemnity compensation, as the case may be, except as provided in subparagraph (B), and including deposit into a joint account from which such other person may make withdrawals, or otherwise, such agreement shall be deemed to be an assignment and is prohibited."
8. VFG, by and through Evans, provided a New Mexico investor with a copy of a VFG prepared *Sales Assistance Agreement* ("Agreement") between a disabled veteran / seller and VFG. The *Agreement* appointed VFG as the seller's agent for the purpose of marketing the seller's fixed payments in exchange for a commission. The *Agreement* described the transaction as involving an "annuity" issued by Veteran Affairs (such pensions and benefits, however, derive from Congressional appropriation).

The *Agreement* contained an *Acknowledgment of Risk* that stated in relevant part:

"Both parties intend that the transaction(s) contemplated by the sales assistance agreement shall constitute valid sales of payments and shall not constitute impermissible assignment ... Seller acknowledges and agrees that VFG makes no representations or warranties whatsoever concerning whether a court of law would interpret the transactions contemplated herein as invalid assignments [] or otherwise deem the transaction invalid."

The investor subsequently entered into a VFG prepared *Contract for Sale of Payments* (“*Contract*”) with the seller, purchasing 84 monthly payments of \$731.81 for \$49,582.07. The *Contract* contained an *Acknowledgment of Risk* that stated in relevant part:

“Seller intends to assign every payment described herein to buyer ... both parties intend that the transaction(s) contemplated by this contract for sale shall constitute valid sale(s) ... and shall not constitute impermissible assignment(s) ... VFG makes no representations or warranties whatsoever concerning whether a court of law would interpret the transaction(s) contemplate herein as invalid assignments [] or otherwise deem the transaction invalid.”

The seller also executed a *Security Agreement* that pledged the income stream as collateral. The *Security Agreement* defined the collateral to mean an “account receivable.” Lastly, the seller agreed to execute a VFG prepared *Special Power of Attorney* appointing Security Title Agency to facilitate transactions under the *Contract*.

9. VGF, by and through Evans, failed to adequately disclose to investors the risk of the seller(s) of income streams redirecting those payments away from escrow accounts and consequential loss to investors.
10. VFG, by and through Evans, failed to adequately disclose to investors that the assignments described herein were prohibited by federal law.
11. During the period October 1, 2011, to the present, Evans sold sixteen (16) income streams to eight (8) New Mexico residents for a total of \$651,968, and received \$34,139 in commissions. Each buyer was a client of Equity.
12. On April 22, 2013, a Cease and Desist Order was issued by the State of Arkansas against VFG for facilitating the selling of future monthly payments of pension income streams for a lump sum. The Arkansas preliminary order found that secondary sales of such income streams are considered investment contracts and therefore are securities not properly registered or exempt.

II. CONCLUSIONS OF LAW

13. The contracts for the purchase and sale of income streams at issue constitute a security under § 58-13C-102.DD of the New Mexico Uniform Securities Act (“Act”).
14. VFG never registered or filed any proof of exemption in accordance with the Act, and / or federal law in connection with a covered security for offers and sales of securities in New Mexico, in violation of § 58-13C-301 NMSA 1978.
15. VFG, by and through Evans, deceived investors, as described in Paragraph 8, by representing that the sale of income streams as “annuities” and / or “accounts receivable,” and by representing the transaction as “valid” and **not** a “impermissible assignment,” when in fact, United States government pensions and disability benefits may not be

assigned or attached under 37 U.S.C. § 701 and / or 38 U.S.C. § 5301, in violation of §§ 58-13C-501, 502 NMSA 1978.

16. VFG and Evans omitted the material fact that the assignment of income streams is prohibited under 37 U.S.C. § 701 and / or 38 U.S.C. § 5301, in violation of §§ 58-13C-501, 502 NMSA 1978.
17. VFG and Evans omitted the material fact that the investment was substantially risky since the seller could redirect the income stream back to the seller at any time, in violation of §§ 58-13C-501, 502 NMSA 1978.
18. Purchasers of securities sold by Respondents as described herein are entitled to notification of their right of rescission under the Act. Respondents must offer to repurchase the securities for cash in an amount equal to the consideration paid by the purchaser plus interest at the legal rate of this state from the date of payment until the date of rescission, plus costs and reasonable attorneys' fees, less all amounts actually received by purchasers to date, as provided by § 58-13C-510 NMSA 1978.

III. ORDER

Entry of this Order is in the public interest, appropriate for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act.

IT IS, THEREFORE, ORDERED THAT:

1. Pursuant to § 58-13C-604 of the Act, Respondents must cease and desist soliciting offers to purchase, and offering and selling unregistered securities of any kind in New Mexico without first complying with all requirements of the Act.
2. Within fifteen (15) days of receipt of this Order, Respondents must notify all New Mexico investors of their rights as outlined in Paragraph fifteen (15) of this Order. Prior to notifying the investors, Respondents must submit to the Director for review the written notice that Respondents intend to present to the investors.
3. Within thirty (30) days from the entry of this Order, Respondents must provide the Director with documentation showing that New Mexico investors have been notified of their right to rescission. Such documentation may be in the form of U.S. Postal Service Form 3800, Receipt for Certified Mail. Respondents shall, within thirty (30) days from the entry of this Order, provide the Director with the names and addresses of all investors, the amounts invested by each investor, and the date of each investment.
4. No later than thirty-five (35) days after each investor has acknowledged receipt of the offer of rescission, Respondents must provide the Director with evidence of each investor's decision with respect to the offer. In the absence of a reply from any investor Respondents may submit adequate proof that the investor received the offer and that thirty (30) days have elapsed since receipt of the offer.

FURTHER, THE DIRECTOR CONTEMPLATES TAKING THE FOLLOWING ACTIONS:

1. Pursuant to § 58-13C-604 of the Act, Respondent VFG will be permanently barred from association with any licensed broker-dealer, or investment adviser in this state.
2. Pursuant to § 58-13C-604 of the Act, the Director has discretion to assess a fine up to \$10,000 for each violation of the Act. The contemplated fines assess a \$2,500 for each of the sixteen (16) sales of unregistered security, which reflects the seriousness Respondents' deceptive conduct, and failure to comply with law, therefore:
 - a. Civil penalties of \$40,000 will be imposed on Respondent VFG;
 - b. Civil penalties of \$40,000 will be imposed jointly and severally on Respondents Evans and Equity Advisors, LLC.
3. Pursuant to § 58-13C-601 of the Act, each Respondent (VFG, Equity and Evans) will pay \$1,500 for the cost of this investigation.
4. Further proceedings may be conducted to determine whether Respondents have violated additional provisions of the Act and whether further or alternative sanctions should therefore be imposed.

NOTICE OF ADMINISTRATIVE HEARING RIGHTS

Each respondent is hereby notified of its statutory right to request an administrative hearing on the Cease and Desist and Notice of Intent to Impose Sanctions in the above referenced matter. Administrative hearings are governed by § 58-13C-604(b)(4)-(11) NMSA 1978. Respondents have fifteen (15) days from receipt of this notice to file a written request for a hearing. The request may be sent by U.S. Mail RRR or via email to the Director at victoria.suarez@state.nm.us. The Director will set the matter for hearing no more than sixty days (60) nor less than fifteen (15) days from receipt of the hearing request. The Director will promptly notify the Respondent of the time and place for hearing. The Director or an appointee will conduct the hearing. The Director or his appointee will pass upon the admissibility of evidence and may exclude evidence that is incompetent, irrelevant, immaterial or unduly repetitious.

As discussed more fully in 58-13C-604(b), any Respondent requesting a hearing is entitled to: appear on its own behalf or may be represented by an attorney; present all relevant evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; request and obtain discovery, including the names and addresses of witnesses.

ENTERED AT Santa Fe, New Mexico this 18th day of December, 2013.



A handwritten signature in cursive script, appearing to read "Alan R. Wilson".

Alan R. Wilson, Director
New Mexico Securities Division