

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10974 / September 2, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20518

In the Matter of

GEORGE L. DIVEL, III

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), against George L. Divel, III (“Divel” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that:

Summary

1. This matter concerns Divel, a former registered representative and investment adviser representative, who solicited former clients and customers, and friends, to invest in the development of real estate projects in Baltimore, Maryland. From May 2017 through April 2019, Divel raised at least \$9.2 million from approximately 41 investors through the offer and sale of promissory notes for the construction of three townhome developments, Brewers Green Development, LLC (“Brewers Green”), 1401 S. Hanover Street, LLC (“Hanover Street”), and 12-16 S. Patterson Park Avenue Development, LLC (“Patterson Park”) as well as numerous individual “fix and flip” properties.

2. Over time, the projects became over budget and behind schedule, and Divel faced difficulty in selling the properties. But despite these difficulties, Divel continued to remain optimistic about the projects. Divel engaged in a series of negligent behaviors, including misrepresenting facts to investors, ultimately impacting the outcome of the projects and investors’ prospects for receiving returns.

3. Divel relied on optimistic projections and unreasonable expectations regarding the success of the real estate projects in making representations to investors regarding the expected profits and liquidity of their investments, failing to disclose the budget shortfalls or other problems to potential investors. To alleviate cash shortfalls, Divel, rather than using investor monies for the intended property, commingled investor monies between the real estate projects. Divel also took money from the projects as advances or loans, despite having promised some investors that he would not be paid at all until the investors saw a profit.

Respondent

4. George L. Divel III, age 45, is a resident of Boca Raton, Florida. Divel is the sole member of G.D. III, Inc., which is the managing member of Brewers Green, Hanover Street, and Patterson Park. From February 2008 until October 2016, Divel was employed as a registered representative and investment adviser representative. Since April 2019, Divel has been employed in an unregistered capacity as a Relationship Manager at an investment adviser. Divel held series 7, 31, 63, and 65 licences.

Related Entities and Individual

5. G.D. III, Inc., a Maryland Corporation, is owned and operated by Divel to engage in real estate investment, land development, and property management. Divel is the sole member.

6. Brewers Green Development, LLC, a Maryland limited liability company located in Clarksville, Maryland, was established to develop and construct twelve townhomes in Baltimore, Maryland. G.D. III is the managing member, and a Baltimore builder (“Baltimore builder” or “builder”) with whom Divel partnered on the real estate projects is a member.

7. 1401 S. Hanover Street, LLC, a Maryland limited liability company located in Clarksville, Maryland, was established to develop and construct ten townhomes in Baltimore, Maryland. G.D. III is the managing member, and the Baltimore builder and an investor are members.

8. 12-16 S. Patterson Park Avenue Development, LLC, a Maryland limited liability company located in Clarksville, Maryland, was established to develop and construct nine townhomes in Baltimore, Maryland. G.D. III is the managing member, and the Baltimore builder and an investor are members.

Background

9. In early 2017, Divel partnered with the Baltimore builder to build townhomes and rehab individual properties. The builder was responsible for construction and Divel controlled the financial aspects of the projects, including recruiting investors and dealing with all aspects of the relationships with investors.

10. Prior to soliciting investors in a real estate project, Divel developed projections of the expected profit based on a construction budget provided by the builder.

11. Divel began soliciting his former clients and customers, and others to invest in the real estate projects. Using his projections, Divel solicited investments, telling investors the expected profit that they would receive, which ranged from 10 to 20 percent. Divel and the builder agreed to forego compensation for their work on the real estate projects until the projects were completed.

12. Investors received promissory notes reflecting their participation in the various offerings. The promised return varied depending on the particular project.

The Offerings

13. In spring 2017, Divel began soliciting investment in Brewers Green. Eighteen investors invested a total of \$2.8 million. Investor monies were to be used to fund the purchase of the property and a portion of the construction costs. Divel told investors that they would receive a 20 percent return upon completion of the project based on projections that Divel had made regarding the profitability of the project. In emails to investors, Divel stated that investors would receive their 20 percent profit before he and the builder were paid.

14. Several months later, Divel began soliciting investment in Hanover Street. Some of the same investors in Brewers Green also invested in Hanover Street. In total, 13 investors invested \$2.08 million in the project, which monies were to be used to purchase the property and fund a portion of the construction costs. Divel offered investors a 15 percent return on their investments rather than the 20 percent promised to Brewers Green investors. As with Brewers Green, Divel told investors in emails that they would receive their 15 percent profit before he and the builder were paid.

15. In March 2018, Divel solicited one investor to invest \$1.05 million in Patterson Park, which monies were to be used to purchase the property. Divel provided a promissory note stating that the investor would receive a 15 percent return.

16. During spring 2018, Divel began soliciting investments in promissory notes paying a ten percent return. Divel told investors that these monies were not designated for a particular real estate project but would be used to pay for any of the current projects under construction, including “fix and flips.” In addition, Divel told some investors that the investments were “liquid,” suggesting that investors would be able to have their monies returned at any time. Divel raised a total of \$3.3 million from 18 investors from the sale of these promissory notes.

Poor Recordkeeping and Budget Shortfalls

17. During construction of the various projects, neither Divel nor the builder maintained appropriate records to track expenses and align them with monies coming in, including funds from investors. Divel was lax about papering the real estate investments and failed to maintain appropriate records of investments. Promissory notes sent to investors were not always signed and returned.

18. Neither Divel nor the builder had controls in place to ensure that expenses stayed within budget. As a result, over time, the projects became grossly over budget. In addition, many of the “fix and flips” did not sell as quickly as anticipated, resulting in lower sales prices and minimal or no profits. By late 2018, some of the real estate projects were facing significant deficits, and investors had not received any returns on their investments.

Divel Misled Investors

Statements About Expected Returns and Liquidity

19. As time went on and funding shortfalls occurred, Divel failed to update his projections or tell investors that he would no longer be able to pay their expected profits. While over time, Divel lowered the expected returns that successive real estate projects promised to investors, even these decreased returns were unreasonable in light of the performance of the projects to date. At least as early as 2018, Divel should have realized that his promises of significant returns to investors were based on overly-optimistic projections and therefore were misleading without disclosing the budget shortfalls or that he had failed to pay returns to investors as previously promised. But Divel continued to raise money for Patterson Park and the 10 percent fixed notes based on unreasonable projections.

20. For the 10 percent fixed notes, Divel told some investors that their investments would be “liquid,” despite investing the monies in real estate projects that could not easily be liquidated.

Use of Investor Funds

21. In contrast to Divel's representations to investors, he did not treat the individual real estate projects as standalone investments, but rather, by at least 2018, disregarded corporate form and used monies earmarked for certain properties to help support other struggling properties, including to alleviate cash shortfalls, to cover loan payments, or pay property-related expenses.

22. In 2018, Divel began taking advances, using monies from the properties to pay personal expenses despite telling some investors at the time he solicited their investments that he and the builder would not be paid until investors received their projected returns. Divel treated these payments as loans against future profits that he expected to receive from the properties. Divel kept records reflecting some of these payments. Ultimately, because of difficulties in realizing the profits he expected from the real estate projects, Divel still owes over \$450,000 on these loans.

Violations

23. As a result of the conduct described above, Divel violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit any person in the offer or sale of securities from obtaining money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, and from engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser, respectively.

Disgorgement and Civil Penalties

24. The disgorgement and prejudgment interest ordered in paragraph IV.B is consistent with equitable principles and does not exceed Respondent's net profits from his violations, and will be distributed to harmed investors to the extent feasible. The Commission will hold funds paid pursuant to paragraph IV.B in an account at the United States Treasury pending distribution. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Divel's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondent Divel cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.

B. Respondent Divel shall, within 10 days of the entry of this Order, pay disgorgement of \$454,434, prejudgment interest of \$35,286, and a civil money penalty in the amount of \$100,000 to the Securities and Exchange Commission. If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment of the civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Divel as the Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Scott A. Thompson, Acting Co-Regional Director, Philadelphia Regional Office, Securities and Exchange Commission, 1617 JFK Boulevard, Suite 520, Philadelphia, PA 19103.

C. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, prejudgment interest and penalties referenced in paragraph B above. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on

substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary