BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SECURITIES

| | |
|---|---|
| In the Matter of | SUMMARY ORDER TO CEASE AND DESIST AND FOR RESTITUTION AND INTEREST |
| JOHN A. FRANCO and SOCCERKNOCKER, LLC | |
| Respondents. | DFI Case No. S-239566 (EX) |

**I.**

The Administrator of the State of Wisconsin, Department of Financial Institutions, Division of Securities ("Division"), having legal authority and jurisdiction to administer and enforce the Wisconsin Uniform Securities Law, Wis. Stats. Ch. 551 ("Ch. 551") and rules and orders promulgated thereunder, and having determined that this action is necessary and appropriate in the public interest and for the protection of investors, hereby enters this Order as follows:

**II.**

Division staff have presented evidence sufficient for the Administrator to make the following findings of fact and conclusions of law:

**A. Findings of Fact**

**Respondents**

1. John A. Franco ("Franco") is an adult male resident of Wisconsin with a last known address of N64 W24450 Main Street, Apt. 2, Sussex, Wisconsin 53089. At all times material, Franco was the controlling member of SoccerKnocker, LLC.

2. SoccerKnocker, LLC is a limited liability company organized in Wisconsin on or about October 21, 2014, and administratively dissolved on December 12, 2017. SoccerKnocker has a last known address of W236N6140 Pine Terrace, Sussex, Wisconsin 53089. SoccerKnocker's registered agent at all times material was Franco.

**Conduct**

3. SoccerKnocker operated as an inflatable entertainment rental and party business where individuals could rent inflatable bounce houses, dunk tanks, and "knocker ball"

equipment allowing individuals to put on an inflatable ball outfit and play a game similar to soccer.

***Investor LD***

4. Investor LD is an adult male resident of Goa, India. Investor LD owned and operated a business in Goa which offered knocker ball equipment rentals.

5. On or about October 12, 2015, Franco contacted Investor LD via the Facebook page for Investor LD's business. On or about January 9, 2016, Franco represented to Investor LD that SoccerKnocker had made $95,000 in 2015 and that if Investor LD invested in SoccerKnocker, Investor LD would earn a significant return on his investment.

6. Shortly after Franco solicited Investor LD to invest in SoccerKnocker, Franco emailed Investor LD an investment contract dated January 1, 2016, which stated that Investor LD was to receive a ten percent (10.00%) return of SoccerKnocker's profits on a quarterly basis in exchange for Investor LD's investment $2,405. According to the investment contract, Franco was to use Investor LD's $2,405 to purchase 24 "Knockerballs." Investor LD was also to receive 50% of the profits earned from the rentals of "one human foosball" and "4 zorb balls" sent by Investor LD to Franco. These payments were also to be paid on a quarterly basis.

7. On or about February 8, 2016, Investor LD sent Franco $2,515.00 via Western Union to purchase 24 "Knockerballs." On the same day, he shipped one "human Foosball" with a pump worth $1,463.00 to Franco. Investor LD subsequently sent Franco another "human Foosball" worth $1,237.00 on or about February 29, 2016.

8. On or about February 15, 2016, Investor LD sent Franco $900.00 via PayPal to purchase one "zorb ball." On or about April 30, 2016, Investor LD sent Franco another $900.00 via PayPal to purchase the second "zorb ball."

9. On or about February 20, 2016, Franco emailed Investor LD a second investment contract to replace the January 1, 2016 contract. The second contract offered that in exchange for the $2,405.00 Investor LD sent Franco to purchase "24 Knockerballs," Investor LD would receive thirteen percent (13.00%) return of SoccerKnocker's profits on a quarterly basis. Additionally, the contract stated that in exchange for Investor LD's investment for "2 human foosballs" and "2 zorb balls," Investor LD would receive half of SoccerKnocker's profits on the rentals of the foosballs and zorb balls on a quarterly basis.

10. Upon information and belief, contrary to Franco's representations, Investor LD's funds were not used for the business of SoccerKnocker. Rather, the funds were used for Franco's personal expenses.

11. Contrary to Franco's representations, Investor LD never received any payments from the profits of SoccerKnocker.

***Investor KW***

12. Investor KW is an adult male resident of Wisconsin. Investor KW is not an accredited investor.

13. Investor KW was acquainted with Franco through a recreational soccer league they both participated in.

14. In or about summer 2014, Franco approached Investor KW about investing in SoccerKnocker. Franco represented to Investor KW that the funds would be used for the startup operations of the business.

15. On October 30, 2014, Investor KW invested $2,500 in SoccerKnocker through Franco. In exchange, Investor KW received an investment contract from Franco representing that in exchange for $2,500, Investor KW would receive 10% of SoccerKnocker's profits on a monthly basis. Pursuant to the investment contract, Franco was also to provide Investor KW with a profit and loss statement for SoccerKnocker each quarter.

16. On or about November 7, 2016, Investor KW and Franco amended the investment contract to shift the payments of SoccerKnocker profits from a monthly basis to a quarterly basis.

17. On or about February 2, 2017, Franco solicited Investor KW via email to invest in SoccerKnocker again, offering 10% ownership in the company for an additional investment of $2,500. Investor KW did not invest additional funds with Franco or SoccerKnocker.

18. Franco failed to provide legible profit and loss statements to Investor KW after 2016.

19. Contrary to Franco's representations, Investor KW's funds were not used for the business of SoccerKnocker. Rather, Investor KW's funds were used for Franco's personal expenses, including a $500 cash withdrawal and on Xbox Live gaming.

20. The Division attempted to interview Franco twice, first on September 17, 2019 and subsequently on September 24, 2019. Franco canceled the first interview and failed to appear without providing any notice to Division staff for the second interview. Franco did not respond to subsequent telephone calls and written correspondence by the Division attempting to reschedule the interview for a third time.

## B. Conclusions of Law

**Legal Authority and Jurisdiction**

The Administrator has the legal authority and jurisdiction over the conduct described above, pursuant to Wis. Stats. Ch. 551 and the rules and orders promulgated thereunder.

21. Per Wis. Stat. § 551.102(28)(d)(1), an investment contract security is defined to include an investment in a common enterprise with the expectation of profits to be derived through the essential managerial efforts of someone other than the investor.

22. The investment contracts of Investors LD and KW are securities, pursuant to Wis. Stat. § 551.102(28)(d)(1).

23. SoccerKnocker and Franco are acting as an issuer, pursuant to Wis. Stat. § 551.102(17).

24. Per Wis. Stat. § 551.501(2), it is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly, to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

**Violations**

25. As described above in ¶¶ 1-20, Respondents violated Wis. Stat. § 551.501(2) when they offered and sold securities while making untrue statement of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

## III.

In view of the above findings of fact and conclusions of law, the Administrator deems it necessary and appropriate in the public interest and for the protection of investors, and pursuant to its legal authority and jurisdiction under Ch. 551, to wit Wis. Stat. § 551.604, to issue the following orders and notices:

### A. Summary Orders Issued Pursuant to Wis. Stat. 551.604(2)

(a) IT IS ORDERED that RESPONDENTS, their agents, servants, officers, employees, successors, affiliates, and every entity and person directly or indirectly controlled or organized by or on behalf of RESPONDENTS, shall cease and desist from making or causing to be made to any person or entity in Wisconsin any further offers or sales of securities unless and until such securities qualify as covered securities or are registered under Ch. 551 or successor statute, pursuant to Wis. Stat. §§ 551.604(1)(a) and (2).

(b) IT IS FURTHER ORDERED that all exemptions from registration set forth at Ch. 551 or successor statute that might otherwise apply to any offer or sale of any security of or by RESPONDENTS, their agents, servants, officers, employees, successors, affiliates, and every entity and person directly or indirectly controlled or organized by or on behalf of RESPONDENTS, are hereby revoked, pursuant to Wis. Stats. §§ 551.604(1)(b) and (2).

(c) IT IS FURTHER ORDERED that RESPONDENTS, their successors, affiliates, controlling persons, officers, agents, servants, employees and every entity and person directly or indirectly controlled or hereafter organized by or on behalf of RESPONDENTS, are prohibited from violating Wis. Stat. § 551.501 or successor statute.

(d) IT IS FURTHER ORDERED that RESPONDENTS, their successors, affiliates, controlling persons, officers, agents, servants, employees, an every entity and person directly or indirectly controlled or hereafter organized by or on behalf of RESPONDENTS, are prohibited from offering or selling securities without first disclosing this Order to prospective investors.

**B. Notice of Proposed Orders**

(e) IT IS PROPOSED that an order be issued against JOHN A. FRANCO to pay restitution to (i) Investor LD in the amount of $7,015.00; and (ii) Investor KW in the amount of $2,500.00, with interest on such amounts at the legal rate under Wis. Stat. § 138.04, starting from the date of each violation and through the date of satisfaction, pursuant to Wis. Stat. § 551.604(4m).

(f) IT IS FURTHER PROPOSED that the above proposed order become final by operation of law, pursuant to Wis. Stat. §§ 551.604(2), (4), (4m) and (5), with respect to JOHN A. FRANCO if he does not request a hearing within 30 days after the service of this order and if no hearing is ordered by the Administrator.

**C. Service of Order**

(g) IT IS FURTHER ORDERED that this order shall be sent promptly by certified mail to each party named in the order at his or her last known address or to the party's attorney of record, or shall be personally served upon the party or the party's attorney of record, pursuant to Wis. Admin. Code § DFI-Sec. 8.06.

(h) PLEASE TAKE NOTICE that the date of service of this order if it is sent by certified mail is the date it is placed in the mail, which is also the issue and effective date below. If a respondent is personally served, the date of service is the date personal service is obtained.

**D. Notifications**

(i) PLEASE TAKE NOTICE that you have the right to request a hearing, pursuant to Wis. Stat. § 551.604(2). Every request for a hearing shall be in the form of a written petition filed with the Division, pursuant to Wis. Admin. Code § DFI-Sec. 8.01 and Wis. Stat. § 227.42. A petition for a hearing to review the order shall:

(1) Plainly admit or deny each specific allegation, finding or conclusion in the order and incorporated papers. However, if the petitioner lacks sufficient knowledge or information to permit such an admission or denial, the petition shall so state, and that statement shall have the effect of a denial; and

(2) State all affirmative defenses. Affirmative defenses not raised in the request for hearing may be deemed waived.

(j) PLEASE TAKE FURTHER NOTICE that you may file your written petition:

(1) By mailing the written petition to:

Division of Securities
Wisconsin Department of Financial Institutions
P.O. Box 1768
Madison, WI 53701-1768

(2) By delivering the written petition in person to:

Division of Securities
Wisconsin Department of Financial Institutions
4822 Madison Yards Way, North Tower, 4th Floor
Madison, Wisconsin 53705

(3) By faxing the written petition to 608-264-7979

(k) PLEASE TAKE FURTHER NOTICE that the petition for hearing must be filed with the Division. Pursuant to Wis. Stat. § 551.102(8), "filing" means "receipt." Therefore, a petition is not "filed" with the Division until it is actually "received" by the Division. If the Division does not receive your written petition before midnight on the 30th day after the date of service of this order, your right to a hearing will be waived and the Summary Order shall become final by operation of law.

(l) PLEASE TAKE FURTHER NOTICE that if you do not request a hearing and none is ordered by the Administrator within 30 days after the date of service of this order, the findings of fact, conclusions of law, and summary orders and proposed final orders,

including the imposition of a civil penalty and requirement for payment of restitution and interest sought in a statement in the order, become final by operation of law, pursuant to Wis. Stat. § 551.604(2).

(m) PLEASE TAKE FURTHER NOTICE that, within 15 days after the Division's receipt of a written request for a hearing from you, the matter will be scheduled for a hearing or other public administrative proceedings, pursuant to Wis. Stats. §§ 551.604(2) and (3).

(n) PLEASE TAKE FURTHER NOTICE that any willful violation of an Order by the Division under Ch. 551 is a criminal offense punishable under the provisions of Wis. Stat. § 551.508.

EXECUTED at Madison, Wisconsin this 19th day of September, 2019.

Leslie M. Van Buskirk
Administrator

Division of Securities
State of Wisconsin, Department of Financial Institutions
4822 Madison Yards Way, 4th Floor
Madison, Wisconsin 53705

# State of Wisconsin

*Department of Financial Institutions*

Tony Evers, **Governor** | Kathy Blumenfeld, **Secretary**

**AFFIDAVIT OF SERVICE**
**AND COMPLIANCE WITH WIS. STAT. § 551.611**

STATE OF WISCONSIN )
) ss.
COUNTY OF DANE )

I, KATHERINE CLEMENTI, first being duly sworn, depose and state:

1. I am employed with the State of Wisconsin, Department of Financial Institutions, Division of Securities.

2. On the date of this Affidavit and in the course of regularly conducted activity, I have caused to be served by certified mail upon Respondent John A. Franco at his last known address of N64 W24450 Main Street, Apt. 2, Sussex, Wisconsin 53089:

   i. A copy of the Summary Order to Cease and Desist and for Restitution and Interest, DFI Case No. S-239566 (EX); and

   ii. A copy of this Affidavit of Service.

3. In compliance with Wis. Stat. §§ 227.48, 551.611, and 891.46; and Wis. Admin. Code. §§ DFI-Sec 8.06 and 8.07, I have also caused to be served copies of those same documents upon the Administrator for the Division of Securities.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Katherine Clementi
KATHERINE CLEMENTI

State of Wisconsin
Department of Financial Institutions
Division of Securities

Subscribed and sworn to before me

This 19th day of September, 2019.

Lindsay Zeeller

(Notary Seal)

Notary Public, State of Wisconsin

My commission is permanent.

# State of Wisconsin

*Department of Financial Institutions*

Tony Evers, **Governor** | Kathy Blumenfeld, **Secretary**

**AFFIDAVIT OF SERVICE**
**AND COMPLIANCE WITH WIS. STAT. § 551.611**

STATE OF WISCONSIN )
) ss.
COUNTY OF DANE )

I, KATHERINE CLEMENTI, first being duly sworn, depose and state:

1. I am employed with the State of Wisconsin, Department of Financial Institutions, Division of Securities.

2. On the date of this Affidavit and in the course of regularly conducted activity, I have caused to be served by certified mail upon Respondent SoccerKnocker, LLC at its last known address of W236N6140 Pine Terrace, Sussex, Wisconsin 53089:

   i. A copy of the Summary Order to Cease and Desist and for Restitution and Interest, DFI Case No. S-239566 (EX); and

   ii. A copy of this Affidavit of Service.

3. In compliance with Wis. Stat. §§ 227.48, 551.611, and 891.46; and Wis. Admin. Code. §§ DFI-Sec 8.06 and 8.07, I have also caused to be served copies of those same documents upon the Administrator for the Division of Securities.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Katherine Clementi
KATHERINE CLEMENTI

State of Wisconsin
Department of Financial Institutions
Division of Securities

Subscribed and sworn to before me

This 19th day of September, 2019.

Lindsay Fedler
Notary Public, State of Wisconsin

(Notary Seal)

LINDSAY FEDLER
NOTARY PUBLIC
STATE OF WISCONSIN

My commission is permanent.

*Division of Securities*
Mail: PO Box 1768 Madison, WI 53701-1768
Courier: 4822 Madison Yards Way, Madison, WI 53705
Voice: (608) 261-9555 Fax: (608) 264-7979 Web: www.wdfi.org