STATE OF NORTH DAKOTA

SECURITIES DEPARTMENT

In the Matter of Bio-Sunn Technologies, Inc., a North Dakota corporation, Lewis Bauer, Equity Fund International (EFI), Inc., a Georgia corporation, and Christopher Williams,	)	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER**
Respondents.	)	**OAH File No. 20220078**

THE SECURITIES COMMISSIONER OF THE STATE OF NORTH DAKOTA TO: BIO-SUNN TECHNOLOGIES, INC., a North Dakota corporation, LEWIS BAUER, EQUITY FUND INTERNATIONAL (EFI), INC., a Georgia corporation, and CHRISTOPHER WILLIAMS, RESPONDENTS.

The evidence of record has been considered and appraised. **IT IS ORDERED** that the Recommended Findings of Fact and Conclusions of Law of the Administrative Law Judge are adopted as the North Dakota Securities Commissioner's Findings of Fact and Conclusions of Law in this matter. **IT IS FURTHER ORDERED** that the Recommended Order of the Administrative Law Judge is adopted and incorporated into the Final Order of the Commissioner as follows:

[1] The Motion to Dismiss of Respondents EFI and Williams is DENIED.

[2] Pursuant to N.D.C.C. § 10-04-16, each of the Respondents shall immediately CEASE AND DESIST:

1. From offering for sale or selling in or from North Dakota the subject securities, or any other securities however denominated, unless and until such securities have been registered with the Department or are exempt from registration under N.D.C.C. Chapter 10-04.

2. From offering for sale or selling securities, or effecting transactions in securities, in or from North Dakota unless and until they have registered with the Securities Department as issuer-dealers, broker-dealers or agents or are exempt from registration under N.D.C.C. Chapter 10-04.

3. From using material misstatements or omissions, or from engaging in any fraudulent or deceptive practices, in connection with the offer and/or sale of securities in or from this state.

[3] The violations cited in this Order are sufficient grounds for the imposition of civil penalties pursuant to N.D.C.C. § 10-04-16(1), in an amount not to exceed $10,000 for each violation. Respondents Bio-Sunn and Bauer are jointly and severally liable for and shall pay a civil penalty of $540,000.00 to the North Dakota Securities Department based on the violations described in the Findings of Fact and Conclusions of Law. Respondents EFI and Williams are jointly and severally liable for and shall pay a civil penalty of $540,000.00 to the North Dakota Securities Department based on the violations described in the Findings of Fact and Conclusions of Law. The Commissioner reserves the authority to direct any penalties paid to the North Dakota Investor Restitution Fund, for the purpose of repaying aggrieved investors, as appropriate.

[4] Respondents, Bio-Sunn, Bauer, EFI and Williams are also jointly and severally liable to the Bio-Sunn investors and shall make rescission of the transactions described in the Findings of Fact for the full amount paid for the securities by each investor, plus interest according to the provisions of N.D.C.C. §§ 10-04-16(1) and 10-04-17.

[5] The Securities Commissioner will retain jurisdiction over the subject matter of this proceeding and over the parties for the purpose of entering such further order or orders as may be deemed proper, in the public interest, and for the protection of investors.

IN TESTIMONY WHEREOF, witness my hand and seal this 9th day of February, 2023.



(SEAL)

Karen J. Tyler, Securities Commissioner
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STATE OF NORTH DAKOTA

SECURITIES DEPARTMENT

In the Matter of Bio-Sunn Technologies, Inc., a North Dakota corporation, Lewis Bauer, Equity Fund International (EFI), Inc., a Georgia corporation, and Christopher Williams Respondents.	)	**RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER** **OAH File No. 20220078**

[1] This matter commenced by a Cease and Desist Order, Order for Civil Penalty, Order for Recission, and Notice of Right to Request a Hearing dated December 1, 2021 (Order) filed by the North Dakota Securities Department (Department). The Order was directed against Bio-Sunn Technologies, Inc. (Bio-Sunn), Lewis Bauer (Bauer), Equity Fund International (EFI), and Christopher Williams (Williams), hereinafter collectively referred to as "Respondents." The cease and desist order prevents the Respondents from: (1) selling securities unless registered with the Department or exempt from registration; (2) offering for sale or selling securities, or effecting transactions in securities until they are registered with the Department as issuer-dealers, broker-dealers, or agents, unless otherwise exempt from registration; and (3) using material misstatements or omissions, or engaging in fraudulent or deceptive practices in connection with the offer or sale of securities in the state. The order and notice of civil penalty assessed a $90,000 penalty, jointly and severally among the Respondents, due and payable immediately. The order for recission makes the Respondents liable, jointly and severally, to the Bio-Sunn investors and orders the Respondents to make rescission of the transactions at issue within 60 days of the order. Lewis Bauer acknowledged service of Order on January 5, 2022 on behalf of Bio-Sunn and himself personally. On January 12, 2022, Bio-Sunn and Bauer filed a Request for

Hearing. On January 6, 2022, EFI and Williams filed a Response to Order and Request for Hearing.

[2] On March 17, 2022, the Office of Administrative Hearings (OAH) received a request from the Department for the appointment of an Administrative Law Judge (ALJ) to preside in this matter. OAH designated ALJ Hope L. Hogan to conduct a hearing and issue recommended findings of fact, conclusions of law, and a recommended order.

[3] The hearing was originally scheduled for September 8, 2022. Motions to continue the hearing were granted on July 21, 2022 and October 18, 2022. An Order Granting Motion for Continuance and Rescheduling Hearing issued on or about October 18, 2022 set the hearing for November 1, 2022. The hearing was held, as scheduled, on November 1, 2022 at the Office of Administrative Hearings in Bismarck, North Dakota. At the hearing, the parties agreed that appropriate notice of the hearing was given.

[4] The Department was represented by Special Assistants Attorney General Michael Daley and Carl Karpinski. Bauer appeared by telephone, and Bio-Sunn and Bauer were represented by attorney Charles R. Isakson. Williams appeared through Zoom video conference, and EFI and Williams were represented by attorneys Tyler Leverington and Jack Emmer.

[5] The hearing was held in accordance with N.D.C.C. ch. 28-32, and N.D.C.C. § 10-04-12. The issue is whether Bio-Sunn Technologies, Inc., Lewis Bauer, Equity Fund International, Inc. and Christopher William violated certain provision of the North Dakota Century Code as described in the Department Order dated December 1, 2021.

[6] Adam Montgomery, Department Investigator and Examiner, and Diana Cannon were called to testify by the Department. Bauer testified on his own behalf and on behalf of Bio-Sunn. Williams testified on his own behalf and on behalf of EFI. The Department pre-filed and

offered exhibits labeled A through N. Bio-Sunn pre-filed and offered exhibits labeled 1 through 10. EFI and Williams did not offer exhibits. There was no objection to the exhibits and the exhibits were admitted into the record.

[7] On October 25, 2022, EFI and Williams filed a Motion to Dismiss, supporting affidavit, and brief. The motion alleges the Department lacks personal jurisdiction over EFI and Williams. The motion was not decided prior to the hearing. The parties agreed that post-hearing briefs would address the merits of the motion.

[8] Following the hearing, the parties submitted post-hearing closing briefs. The Department filed a Post-Hearing Argument and Brief on November 15, 2022. EFI and Williams filed a Post-Hearing Argument and Brief on December 2, 2022. Bio-Sunn and Bauer filed a Response Brief on December 9, 2022. The Department filed a Reply Brief on December 16, 2022. The record was closed on December 16, 2022.

[9] Based on the greater weight of the evidence presented at the hearing, ALJ Hogan makes the following recommended findings of fact and conclusions of law.

RECOMMENDED FINDINGS OF FACT

[10] Bio-Sunn is incorporated in the state of North Dakota with a principal office in Douglas, North Dakota. Bio-Sunn is operated and controlled by Bauer who is the Chief Executive Officer. Bio-Sunn has never been registered as an issuer-dealer or broker-dealer with the Department. Bauer has never been registered with the Department as an agent.

[11] In 2019, Bio-Sunn began developing a multi-million-dollar facility in Kendall, Wisconsin for the extraction and production of CBD oil from hemp. Bauer was introduced to Williams by a third party as someone who could help Bio-Sunn raise capital for the project. Williams is the President and Chief Executive Officer of EFI. EFI is a Georgia corporation and has never been

registered as an issuer-dealer or broker-dealer with the Department. Williams is a resident of the state of Georgia and has never been registered as an agent with the Department.

[12] Bauer negotiated directly with Williams on funding for the project. Bauer initially estimated the cost of the project at $110 million, however through the negotiations and on the advice of Williams, the cost of the project was raised to $250 million. Bio-Sunn vetted EFI and Williams and relied upon a November 7, 2019 letter from Attorney Moshe K. Selikovitz (Selikovitz), attorney for EFI, to Williams which "confirm[ed] and authenticate[d]" US Capital Private Bank as a funding source for the project. Ex. 1. The letter indicates that Selikovitz "thoroughly investigated and successfully vetted" US Capital Private Bank and that EFI had "500 Million Euros unencumbered, verified, cash funds on deposit in the EFI corporate account of US Capital Private Bank." *Id.*

[13] On February 11, 2020, the parties entered into a Joint Venture Client/Partner Agreement (Agreement). Ex. C. Williams drafted the Agreement. The parties to the agreement were Bio-Sunn and EFI. Under the terms of the agreement, EFI was obligated to "use its cash assets to make a structured nonrecourse bank loan" to Bio-Sunn in the amount of $250 million with "zero repayment or equity requirements." *Id.* at p. 004. To secure the funding, Bio-Sunn was required to pay an "advisory, expense and banking fees (banking fee)" of $1.2 million upon execution of the agreement. Paragraph D(1)(f) of the agreement states:

> Within seven (7) days of successful closing of the aforementioned Structured Non-Resource Project Funding, and availability of funds, the [$1.2 Million banking fee] will be 100% refunded to client. If for any reason the closing of the aforementioned project funding transaction is not successful "BIO-SUNN TECHNOLOGIES, INC" receive a 100% refund of [the banking fee] from "EFI" within ninety (90) days of the date of original payment.

Id. at 005. The Agreement had a Governing Law provision that elected the laws of the state of Georgia, and a standard No Third Party Beneficiaries clause. The agreement was signed by Williams and Bauer.

[14] Between February 28, 2020 and March 16, 2020, Bio-Sunn raised the sum of $1,130,000 through the sale of promissory notes to nine individual investors. Ex. D – M. The investors were identified by the economic development staff in Kendall, Wisconsin. Diana Cannon was the largest investor. Bio-Sunn issued identical promissory notes to each investor. Paragraph 4 of the promissory note states, "should the financing transaction fail to proceed to a successful closing, Bio-Sunn will refund the full amount of the Project investment funds, within 90 days after the date of the payment thereof, upon return by EFI." *Id.* This clause was based upon the terms of the Agreement. While not a negotiated term of the investment arrangement, Bauer gave the investors preferred shares of Bio-Sunn stock. Bauer offered the stock to show appreciation for the investment.

[15] The first investor fund transfers were wired directly from the investors' account to EFI controlled accounts. The amount of those transfers was $765,000. EFI provided the wire instructions to Bio-Sunn who then provided the instructions to the investors. The rest of the investments totaling $365,000, were paid to Bio-Sunn and Bio-Sunn wired the funds from its Garrison State Bank account located in Garrison, North Dakota to EFI's account. None of the investment funds were retained by Bio-Sunn or Bauer. Williams and EFI did not solicit investors and EFI did not review or approve the promissory notes. However, Williams and EFI were aware that Bio-Sunn was seeking investors to fund the banking fee and advised Bio-Sunn to get "sophisticated investors."

[16] Diana Cannon (Cannon) was the largest investor. Cannon invested $640,000. Cannon made an initial investment. When Bio-Sunn was short funding for the banking fee, Cannon made a second investment. Cannon was told she would get a return on her investment when she agreed to the second investment. Cannon was also told that Bio-Sunn had vetted EFI and EFI had funding in place for the project. Cannon testified that paragraph 4 of the promissory note was material to her decision to invest with Bio-Sunn. The only contact Williams had with the investors was one Zoom conference which Cannon participated in on or about March 5, 2021. The Zoom conference was after Cannon's first investment but prior to the second investment.

[17] Over the next several months, EFI did not provide the project funding or return the banking fee as required under the Agreement. When the banking fee was not returned, the Bio-Sunn investors became concerned about their ability to recoup their investment. During this time, Tom Chuckle (Chuckle), a financial and business management consultant for Bio-Sunn, had weekly calls with Williams regarding the funding. Chuckle would then report back to Bauer. Chuckle also made a trip to Georgia to meet with EFI in person. Williams made repeated assurances that the funding was coming. Williams also made assurance during his testimony at the hearing.

[18] On June 22, 2020, Attorney Seilikovitz sent a letter addressed to Williams, President of EFI, stating that force majeure situation (COVID-19 pandemic) caused the transaction to exceed the 90 day time frame anticipated by the Agreement. The letter also states:

> I have verified that the principal party contracted by "EFI" to affect and complete the "Hedge" financial transaction to provide the liquidity to affect the refund of the Bio-Sunn Technologies, Inc $1,100,000 in fee monies paid to "EFI", in the event that the primary Bio-Sunn Technologies, Inc. project funding is unsuccessful is legitimate, fully qualified, experienced, and capable to provide the aforementioned service. Further, I have verified with this party that the "Hedge" transaction is in the final stage of completion and scheduled to provide the

> aforementioned $1,100,000 within the next six (6) weeks, barring further Force Majeure (COVID-19, etc.) delays.

Ex. 5. This letter was provided to Bio-Sunn along with confirmation of funds/assets for U.S. Capital Private Bank. Exs. 6, 7.

[19] Cannon hired Attorney John Corrigan (Corrigan) to help her recover her investment. Corrigan spoke with Williams on several occasions and was given assurances. On November 29, 2020, Williams sent Corrigan an email that states in part:

> Attached is a PPM we will be be [sic] marketing, starting immediately, with the intent to have it sold out by 12/15/20. We intend to have a valuation and basic financials added by mid week, but we are not waiting on that to market it. We can send those as updates. The use of proceeds includes the funds to reimburse the BioSunn investors. To justify not unwinding the bigger transaction, by the funds being part of a separate PPM raise and BioSunn already being in a JV Agreement with us we can give them the funds as a working capital injection. EFI is also open to working things out when we deposit $1.1 mm of the $5 mm directly with your firm to insure the funds are indeed used to repay the investors.
>
> For obvious reasons, BioSunn is not participating in our PPM Offering.
> Also, got word that my [US Capital Private Bank] banker had been traveling on business and is just returning to the office Tue or Wed of this week. That helps explain at least in part why the instrument was not done before Thanksgiving. I don't know how long he was on travel but I am told at least all of last week. For security purposes people in positions like my banker sometimes keep their travel plans private.
>
> . . . .
>
> Hopefully, based on the above, you and [Cannon] will give it until 12/15 to get these funds in and to you.

Ex. B, p. 003.

[20] In November 2020, Cannon filed a formal complaint with the Department. The Department then began investigating the transactions. As part of the investigation, Adam Montgomery (Montgomery), Department Investigator and Examiner, spoke with both Bauer and his legal counsel. Montgomery testified that both Bauer and his attorney were cooperative with

his investigation. Montgomery also attempted to speak with Williams but Williams deferred Montgomery to his legal counsel. No information was obtained from Williams or EFI during the investigation. Montgomery also spoke with several of the investors.

[21] On November 17, 2021, Bio-Sunn and EFI signed an Extension Addendum to the Agreement. The addendum extended the original agreement until December 31, 2021.

[22] On December 1, 2021, the Department issued the Order against Bio-Sunn, Bauer, EFI and Williams.

[23] On January 4, 2022, Bio-Sunn issued a letter to Williams demanding repayment of the $1.1 million banking fee. Ex. 10.

[24] As of the date of the hearing, EFI had not provided project funding or returned the banking fee. Williams testified at the hearing the banking fee was paid and received by EFI, and that approximately $700,000 of the banking fee was paid out for banking and transaction fees. Williams also testified that this was a complex transaction and that the funding was still being raised but was in place. Williams further stated that while EFI gave an estimated time frame for the funding, no guarantees were provided. Williams gave no explanation, defense, or reason for failure to return the banking fee other than to say the project funding was complicated.

RECOMMENDED CONCLUSIONS OF LAW

[25] The North Dakota Securities Act (Securities Act) protects the investing public from "fraud, deception, and the disposal of securities where the proposed plan of business appears to be unfair, unjust, or inequitable." *Luallin v. Koehler*, 2002 ND 80, ¶8, 644 N.W.2d 591; *see also* N.D.C.C. ch. 10-04. To protect investors, the Securities Act regulates securities, regulates the people who offer, sell or provide security investment advice, and prohibits fraud when security advice is given or securities are offered for sale, sold, or purchased. *Id.* The Securities Act

grants the Commissioner certain authority to enforce the provisions of the act. N.D.C.C. § 10-04-16. The Commissioner may issue orders to cease and desist unlawful activity and orders for recission when deemed appropriate. N.D.C.C. § 10-04-16(1). The Commissioner is also authorized to issue and collect civil penalties against persons found to have violated the Securities Act or Department rules. *Id.* The Commissioner may issue a penalty up to $10,000 per violation.

[26] Under the Securities Act, a broker-dealer is defined as:

> A person engaged in the business of effecting transactions in securities issued by another person or by such person for the account of others or for the person's own account. The term does not include:
>
> > a. An agent;
> > b. A bank or savings institution if its activities as a broker-dealer are limited to those specified in subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B) and 3(a)(5)(C) of the Securities Exchange Act of 1934 or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Exchange Act of 1934; or
> > c. An issuer, including an officer, director, employee, or trustee of, or member or manager of, or partner in, or a general partner of, an issuer, that sells, offers for sale, or does any act in furtherance of the sale of a security that represents an economic interest in that issuer, provided no commission, fee, or other similar remuneration is paid to or received by the issuer for the sale.

N.D.C.C. § 10-04-02(3). "It is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under [the Securities Act] as a broker-dealer or is exempt" from registration as defined by the Securities Act. N.D.C.C. § 10-04-10(1).

[27] An issuer is defined as:

> Every person who issues or proposes to issue any security, except that:
>
> > a. With respect to certificates of deposit, voting-trust certificates, collateral trust certificates, or shares in an unincorporated investment trust, issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued.

> b. With respect to equipment trust certificates or like securities serving the same purpose, issuer means the person by whom the equipment or property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.
> c. With respect to fractional interests in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty, issuer means the owner of any such right or any interest in such lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.
> d. With respect to a fractional or pooled interest in a viatical settlement contract, issuer means the person who creates, for the purpose of sale, the fractional or pooled interest. The issuer of a viatical settlement contract that is not fractionalized or pooled means the person effecting the transactions with the investors in such contracts.

N.D.C.C. § 10-04-02(12). There is no dispute that Bio-Sunn and EFI have never been registered as broker-dealers or issuer-dealers with the Department.

[28] An agent is defined as:

> An individual, other than a broker-dealer, who represents a broker-dealer or an issuer or is self-employed in effecting or attempting to effect purchases or sales of securities. However, a partner, officer, or director of a broker-dealer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term.

N.D.C.C. § 10-04-02(1). It is undisputed that Bauer and Williams have never been registered as agents with the Department.

[29] Among other things, securities are defined as, "any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement." N.D.C.C. § 10-04-02(19). There is no dispute that the promissory notes issued by Bio-Sunn to raise the funds for the bank fee are securities as defined under North Dakota law.

[30] Unless exempt under N.D.C.C. § 10-04-05 or considered a federal covered security, all securities offered for sale or sold in North Dakota must be registered with the Department.

N.D.C.C. § 10-04-04. The promissory notes issued by Bio-Sunn were not registered with the Department, are not exempt under N.D.C.C. § 10-04-05, and are not federally covered securities.

[31] The nine promissory notes issued by Bio-Sunn were issued when Bio-Sunn was not registered as a broker-dealer or issuer-dealer in violation of the Act and constitute nine separate violations of N.D.C.C. § 10-04-10(1). Likewise, the nine promissory notes were issued when Bauer was not registered as an agent with the Department in violation of the Act and constitute nine separate violations of N.D.C.C. § 10-04-10(2).

[32] The Act also makes unlawful for:

> For any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to:
> a. Employ any device, scheme, or artifice to defraud;
> b. Make any 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 are made, not misleading; or
> c. Engage in any act, practice, or course of business which operates or would operate as a fraud or deception upon purchasers or the public.

N.D.C.C. § 10-04-15(2). The following misstatements were made to the investors regarding project funding: (1) that the project finding was preapproved rather than contingent on decisions and actions of entities and persons other than Bio-Sunn, Bauer, EFI, and Williams; and (2) that the investment was neither registered with the Department, or exempt from registration. Information regarding the assets and liabilities of Bio-Sunn and EFI, and information describing how Bio-Sunn, Bauer, EFI, and Williams would provide a refund of the banking fee were omitted from disclosure. The failure to disclose this information were material misstatements or omissions and constituted a fraudulent act in violation of N.D.C.C. § 10-04-15(2) for each of the nine investors.

Bio-Sunn and Bauer:

[33] In their Response Brief, Bio-Sunn and Bauer acknowledge their violations of the Security Act. Bio-Sunn and Bauer argue the violations were unintentional and inadvertent, that they have fully cooperated with the Department, and that they are making efforts to find funds to repay the investors. Bio-Sunn and Bauer request an order finding that their actions do not warrant the imposition of any civil penalties.

[34] In its reply brief, the Department argues that willful intent may be relevant for criminal sanctions but is not a requirement to impose civil sanctions. *See* N.D.C.C. § 10-04-18 (stating criminal sanctions apply for "any person who *willfully* violates any provision" of the Security Act) [emphasis added]. The Department's reply reiterates its role to protect the investing public and requests an order finding that Bio-Sunn and Bauer violated N.D.C.C. §§ 10-04-04, 10-04-10(1), 10-04-10(2), and 10-04-15(2). The Department also requests an order finding Bio-Sunn and Bauer violated the Act as alleged in the complaint and recommending civil penalties be assessed in an amount determined appropriate by the Commissioner in her discretion.

[35] The greater weight of the evidence establishes that Bio-Sunn and Bauer violated N.D.C.C. §§ 10-04-04, 10-04-10(1), 10-04-10(2) and 10-04-15(2) as alleged in the Order. Intent is not a required element for the specified violations and Bio-Sunn and Bauer are subject to civil penalties, up to $10,000 per violation, in an amount determined appropriate by the Commissioner in her discretion.

Motion to Dismiss – Jurisdiction over EFI and Williams:

[36] Prior to the hearing, EFI and Williams filed a Motion to Dismiss arguing that the Department lacked personal jurisdiction over EFI and Williams. EFI and Williams cite caselaw and the North Dakota Rules of Civil Procedure as authority for their argument that EFI and

Williams lack the requisite contacts with the state of North Dakota and have never directed business towards the state to confer personal jurisdiction over them for this action.

[37] The Department contests the motion and argues first that EFI and Williams failed to timely raise their objection to jurisdiction. Secondly, the Department argues that EFI and Williams had sufficient contact with the state of North Dakota because they entered into a joint venture agreement with a North Dakota corporation; Bauer, a North Dakota resident, had consistent and ongoing communications with Williams regarding the joint venture agreement and then later the return of the banking fee; EFI accepted wire transfers from a bank located in North Dakota; and EFI sought North Dakota legal counsel to represent it. The Department asserts that the record is full of minimum contacts with the state of North Dakota.

[38] Neither party states the correct standard for jurisdiction in this case. Both cases cite caselaw and the North Dakota Rules of Civil Procedure that establish jurisdiction for civil actions in North Dakota district court. This is an administrative action by a North Dakota administrative agency and not a civil action in district court. The North Dakota Supreme Court has stated that:

> . . . . the jurisdiction of an administrative agency is dependent upon the terms of the statute and must meet at least the basic mandatory provisions of the statute before jurisdiction is established. [Citations omitted]. As a general rule, proceedings before an administrative agency are not restricted by the technical and formal rules practiced before a court, but the fundamental principals of judicial inquiry should be observed [citation omitted].

Robinson v. N. Dakota Workforce Safety & Ins., 2019 ND 201, ¶ 8, 931 N.W.2d 692. Administrative agency jurisdiction has three components:

> (1) personal jurisdiction, referring to the agency's authority over the parties and intervenors involved in the proceedings; (2) subject matter jurisdiction, referring to the agency's power to hear and determine the causes of a general class of cases to which a particular case belongs; and (3) the agency's scope of authority under statute.

Env't L. & Pol'y Ctr. v. N. Dakota Pub. Serv. Comm'n, 2020 ND 192, ¶ 11, 948 N.W.2d 838.

[39] EFI and Williams are challenging personal jurisdiction over them and make no argument regarding subject matter jurisdiction. The correct analysis of personal jurisdiction is not whether EFI and Williams have had minimum contacts with the state of North Dakota but whether the Department, as a regulatory agency, has jurisdiction over EFI and Williams. Personal jurisdiction is defined by the Securities Act. In this case, the Department issued a cease and desist order, order for civil penalty, and order for rescission pursuant to its authority under N.D.C.C. § 10-04-16 which states in part:

> If it appears to the commissioner, either upon complaint or otherwise, that *any person has engaged in, or is engaging in, or is about to engage in any act or practice or transaction that is prohibited by this chapter or by any order of the commissioner issued under this chapter or which is declared to be illegal in this chapter*, the commissioner may:
>
> > 1. Issue any order, including cease and desist, rescission, stop, and suspension orders, which the commissioner deems necessary or appropriate in the public interest or for the protection of investors. The commissioner may, in addition to any other remedy authorized by this chapter, impose by order and collect a civil penalty against any person found in an administrative action to have violated any provision of this chapter, or any rule or order adopted or issued under this chapter, in an amount not to exceed ten thousand dollars for each violation.

[emphasis added]. Personal jurisdiction over EFI and Williams is tied to the larger issue in this case, whether William's and EFI's actions violated the Securities Act. If they violated the Act, then the Department has personal jurisdiction over EFI and Williams.

EFI and Williams:

[40] The Order finds that EFI and Williams also violated N.D.C.C. § 10-04-15(2) by failing to disclose material information in connection with the offer to sell a security. Specifically, the Order finds EFI and Williams failed to disclose that the project funding was not preapproved but "entirely contingent on the decisions and actions of entities and persons outside of the control of

the Respondent," that there was a failure to disclose information about the assets and liabilities of Respondents or information explaining the means by which the banking fee would be returned, and failed to disclose the investments were neither registered or exempt from registration.

[41] The Securities Act makes it unlawful for "any person" directly or indirectly to make false statements or omit material facts in connection with an offer, sale, or purchase of a security. The Securities Act defines person as, "individual, corporation, limited liability company, partnership, association, joint venture, trust, government, governmental subdivision, agency, or instrumentality or any other legal or commercial entity." N.D.C.C. § 10-04-02(14). Both EFI and Williams are persons as defined by the act.

[42] The greater weight of the evidence supports the findings of the Order. EFI and Williams failed to disclose material facts about the project funding. While EFI and Williams did not solicit, offer, or draft the promissory notes, they were aware that the promissory notes were being offered by Bio-Sunn to raise funds for the banking fee. The preapproval of the project funding and refundability of the banking fee where material information. Paragraph 1 of the promissory notes, refundability of the investment, was based on the Agreement which was drafted by Williams and EFI and was an obligation agreed to by Williams and EFI. Following the payment of the banking fee, Williams and EFI provided documentation that the project funding was in place, that the funding was verified, and fundings were secured with US Capital Private Bank. Since neither project funding or a refund of the banking fee have been provided by EFI, the statements made by EFI and Williams were either false or omitted details that were misleading and the statements lead to the issuance of the promissory notes.

[43] EFI and Williams also argue there is insufficient evidence that they are liable under N.D.C.C. § 10-04-17(1). This section provides civil lability for any person making a sale or

contract for sale in violation of the Securities Act. Liability also extends to any agent of the seller who "participated or aided in any way in making such sale." "What constitutes participation or aid in any way in making a sale or securities is determined upon the facts of each case and not by a fixed rule of law." *Luallin*, at ¶ 19. As stated above, the refundability of the banking fee clause was drafted by EFI and Williams and an obligation of EFI, it was integral to the promissory notes issued by Bio-Sunn and Bauer. EFI was aware that investments were being sought to raise the funds for the banking fee. EFI received the banking fee directly from some of the investors, had communications with Cannon after the posting of her investment, and made assurances about the project fundings and refundability of her investment, and has failed to return the banking fee. The greater weight of the evidence establishes that EFI and Williams aided in the sale of the promissory notes and are subject to the civil liability provided for in N.D.C.C. § 10-04-17.

RECOMMENDED ORDER

[44] EFI and Williams Motion to Dismiss should be DENIED.

[45] The violations cities in the Order are sufficient grounds for the imposition of civil penalties pursuant to N.D.C.C. § 10-04-16(1), in an amount not to exceed $10,000 for each violation. Respondents Bio-Sunn and Bauer are jointly and severally liable for and shall pay a civil penalty in an amount determined appropriate by the Securities Commissioner based on the violations discussed above. Respondents EFI and Williams are jointly and severally liable for and shall pay a civil penalty an amount determined appropriate by the Securities Commissioner based on the violations discussed above.

[45] Respondents, Bio-Sunn, Bauer, EFI and Williams are also jointly and severally liable to the Bio-Sunn investors and shall make rescission of the transactions described above for the full amount paid for the securities by each investor, plus interest according to the provisions of N.D.C.C. §§ 10-04-16(1) and 10-04-17.

Dated at Bismarck, North Dakota on the 11 day of January 2023.

State of North Dakota
Securities Department

Hope L. Hogan
Administrative Law Judge
Office of Administrative Hearings
2911 North 14th Street – Suite 303
Bismarck, North Dakota 58503

CERTIFICATE OF SERVICE

Pursuant to Rule 5(f) of the North Dakota Rules of Civil Procedure, I, Carl M. Karpinski, hereby certify that on the 9th day of February, 2023, I served the attached FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER by emailing a copy to the attorneys for the Respondents, Charles R. Isakson and Tyler J. Leverington, at the following addresses:

charles.isakson@yahoo.com tleverington@ohnstadlaw.com

and e-filed the same by emailing a copy to the assigned Administrative Law Judge, the Honorable Hope L. Hogan, at the following address:

hlhogan@nd.gov

Dated this 9th day of February, 2023.

By: Carl M. Karpinski

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