

**ADMINISTRATIVE PROCEEDING  
BEFORE THE  
SECURITIES COMMISSIONER OF MARYLAND**

**IN THE MATTER OF:**

\*

Case No. 2015-0120

ADAM DUSO, *et al.*

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Respondents.

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**CONSENT ORDER ONLY AS TO  
RESPONDENTS ADAM DUSO AND  
KAIROS CAPITAL LLC**

WHEREAS, the Maryland Securities Division (the “Securities Division”), pursuant to the authority granted in section 11-701 of the Maryland Securities Act, Md. Ann. Code, Corps. & Ass’ns, §§11-101, *et seq.* (2014 Repl. Vol.) (the “Securities Act”), initiated an investigation into the activities of Respondents Adam Duso (“Duso”) and his company Kairos Capital LLC (“Kairos Capital”), and others (collectively “Respondents”); and

WHEREAS, on the basis of that investigation, the Maryland Securities Commissioner (the “Securities Commissioner”) concluded that Respondents violated the Securities Act by engaging in violations of sections 11-301, 11-401, 11-402 and 11-501 of the Securities Act; and

WHEREAS, pursuant to section 11-701 of the Securities Act, on March 18, 2015, the Securities Commissioner issued a Summary Order To Cease And Desist/Order To Show Cause (the “Summary Order”) against Respondents, requiring each Respondent to show cause why a final order should not be issued against that person, ordering each Respondent to cease and desist from engaging in the offer and sale of securities in violation of the Securities Act, assessing each Respondent the

statutory penalty of \$5,000 per violation of the Securities Act, permanently barring each Respondent from the securities and investment advisory business in Maryland and ordering any other sanction or combination of sanctions against Respondents as permitted under section 11-701.1 of the Securities Act; and

WHEREAS, without holding a hearing and without trial or adjudication of any issue of fact or law, the Securities Commissioner and Respondents Duso and Kairos Capital have reached an agreement to resolve this matter; and

WHEREAS, this agreement pertains only to Respondents Duso and Kairos Capital, and does not resolve this matter in connection with any of the other Respondents named in the Summary Order; and

WHEREAS, Respondents Duso and Kairos Capital, without admitting or denying any of the Securities Commissioner's findings of fact or conclusions of law, except that Respondents expressly consent to the Securities Commissioner's jurisdiction in this proceeding pursuant to section 11-701.1 of the Securities Act and to the terms of this Order; and

WHEREAS, the Securities Commissioner has determined that it is in the public interest to issue this Consent Order.

NOW, THEREFORE, THE SECURITIES COMMISSIONER FINDS, ONLY AS TO RESPONDENTS DUSO AND KAIROS CAPITAL, LLC:

### **I. JURISDICTION**

1. The Securities Commissioner has jurisdiction in this proceeding pursuant to Section 11-701 of the Securities Act.

## **II. RESPONDENTS**

2. Matthew A. Krimm and his companies, Krimm Financial Services, LLC (“Krimm Financial”) and MBA Mortgage Services, Inc. (“MBA Mortgage”), a Delaware limited liability company and corporation, respectively, are presently located in Abingdon, Maryland. At times relevant to the facts contained in this Order, Krimm and Krimm Financial were located in Delaware.

3. Adam Duso is the managing partner for Kairos Capital, LLC (“Kairos Capital”), a Delaware limited liability company, and Second Wind Consultants, Inc. Those entities are purportedly located in Northampton, Massachusetts. Kairos Capital’s website claims that it is in the business of “turnaround management”, “venture capital”, and “strategic consulting”.

4. David C. Connelly resides in Frederick, Maryland and is a mortgage broker and loan officer for MBA Mortgage.

5. None of the Respondents have ever been registered in Maryland as a broker-dealer or broker-dealer agent, or investment adviser or investment adviser representative. Records available to the Securities Division also show that Respondents have never been registered with FINRA or the SEC in any capacity.

## **III. FINDINGS OF FACT**

6. In the Fall of 2012, CES of Hagerstown, Maryland, a retired senior citizen, was approached by Mr. Connelly to invest in a promissory note that he claimed offered an above-market rate of return. CES was familiar with Mr. Connelly because the latter had arranged for a refinance of CES’s home through MBA Mortgage.

7. Mr. Connelly suggested that CES use money from his refinance to invest in the note, however, CES had other plans for the use of those proceeds. Mr. Connelly convinced CES that the promissory note investment was worthwhile, and CES agreed to use funds from his credit union account to make the investment.

8. Mr. Connelly provided CES with written wiring instructions, and an undated note stating, "Got you a better deal! 15K - you get back \$17,500". On or about October 1, 2012, Mr. Connelly provided CES with a letter asking him to provide a check payable to "Matthew A. Krimm" to make the investment, and a signed promissory note, for him to pick up from CES's home.

9. CES decided to wire his investment monies to Mr. Krimm rather than to write a check. On or about October 4, 2012, Mr. Connelly accompanied CES to his credit union to assist him in arranging for the wire of funds from his credit union account to a bank account in the name of "Matthew Allen Krimm" of Krimm Financial.

10. In memorialization of his investment, CES received a "Secured Promissory Note" signed by Mr. Krimm on September 27, 2012. The note promised to pay CES "[t]he sum of \$15,000 with interest from September 6th, 2012, on the unpaid principal at the fixed rate of \$1,500 (\$17,500 total)" on or before October 18, 2012.

11. The promissory note claimed that the note was secured by two vehicles, a Ford Escape and a Chrysler Pacifica, and VIN numbers were listed. No information was provided, however, showing who owned the vehicles or that any legally valid securitization had been effected in favor of CES with respect to those vehicles.

12. The note also stated that "Borrower agrees for lender to garnish wages from MBA Mortgage . . . in event of default" and that "the borrower will also name lender as beneficiary of a

life insurance policy with Baltimore Life to cover the amount of the note in the event of borrower's death."

13. No information was provided in the promissory note or otherwise to show whose wages would be garnished or the means through which that would be accomplished, nor was any information provided to show that Mr. Krimm had a valid Baltimore Life insurance policy naming CES as a beneficiary.

14. Before the end of the year, Mr. Connelly wrote to CES, stating that he was enclosing a \$2,500 check "for interest on the loan." He asked CES to provide him with a copy of the note signed in September 2012, to give to Mr. Krimm. He stated that Mr. Krimm planned to have another \$1,500 paid back to him by January 2013.

15. Mr. Connelly stated that "[t]here are other options which could extend in to [sic] the year 2013 which can be proposed to you if you have interest in continuing to invest with Matt . . . ." He added that "[t]here are a great deal of people who would love to earn that type of return on their investment both in the short and long term!" He described the return as "simply amazing!"

16. In 2013, Mr. Connelly solicited CES to invest additional monies with Mr. Krimm and Krimm Financial, and to roll over the \$15,000 in principal due from the September 2012 note into another note for \$45,000. At Mr. Connelly's behest, to make the additional investment CES withdrew \$30,000 from an annuity that he purchased through an agent referred by Mr. Connelly.

17. In deciding to invest his annuity proceeds, CES relied upon assurances from Mr. Connelly that Mr. Krimm and Krimm Financial would pay his expenses, which included taxes and surrender charges arising from the annuity withdrawal totaling approximately \$17,000. CES never received any reimbursement for those costs, as promised.

18. To memorialize his second investment, CES received a “Promissory Note” signed by Mr. Krimm of Krimm Financial on March 5, 2013. The note promised to pay CES a return of principal upon demand but not before December 31, 2013. No rate of return was specified but the note required payments of \$1,534.37 to CES on or before the 25<sup>th</sup> of each month.

19. The note did not specify the number of months that the monthly payments of \$1,534.37 were due and owing. The note, however, memorialized Mr. Connelly’s assertion that Mr. Krimm and Krimm Financial would reimburse CES for approximately \$17,000 in expenses associated with the surrender of his annuity.

20. CES received six payments of \$1,534.37 pursuant to the terms of the first two notes. Some of those payments were made in cash or by money order. At least one of the check payments bounced and Mr. Connelly delivered cash to replace the bad check. In December 2013, Mr. Krimm delivered what would be the last payment CES received. It was the first time CES met Mr. Krimm.

21. Mr. Krimm advised CES that the December 2013 payment would be the last he would receive from him and Krimm Financial. He stated that he had sold Krimm Financial to Adam Duso of Kairos Capital. He further stated that all future payments on the \$40,000 Krimm Financial note would be made through Kairos Capital.

22. In January 2014, CES received a letter from Adam Duso of Kairos Capital, advising that Krimm Financial did not have the ability to repay the investments it offered and sold, and that Kairos Capital was stepping in to make good on the investments. Mr. Duso said his firm was “trying to work with [Krimm Financial] to repay [Krimm Financial’s] obligation . . . .”

23. Mr. Duso claimed that Krimm Financial’s revenue failed to be transferred to Kairos Capital as required by the terms of its investment in Krimm Financial. Without further explanation,

Mr. Duso stated that there was “\$0 financial benefit” for Kairos Capital to invest in Krimm Financial. He asked investors to allow time for a solution to its financial dilemma.

24. Mr. Duso stated, “Once we know exactly when payments will be made . . . a final round of documents will be sent to you all to be signed, with the updated payment start dates and maturity dates.” He further stated that “Kairos is in the same boat with you all, out of pocket with expenses and doing everything possible to do the honorable thing and make sure everyone is repaid.”

25. Eventually Mr. Duso sent documents to CES, including a new promissory note promising to pay \$40,000 in principal and a 20% rate of return within approximately two years, in monthly payments of \$1,527.62 with a lump sum payment of approximately \$16,000 due at the end of the term.

26. Also included was a “Transfer Agreement” that transferred Krimm Financial’s obligations under the \$40,000 Krimm Financial note in favor of CES to Kairos Capital. The Transfer Agreement is at odds with the fact that a \$40,000 note was executed by Kairos Capital in favor of CES, stating different terms and conditions.

27. Kairos Capital also provided CES with an executed “Security Agreement” suggesting that the property securing CES’s original investment was securing the Kairos Capital note. In reality, however, neither the securitization agreement executed by Krimm Financial nor the one signed by Kairos Capital was effective in securing the indebtedness to CES.

28. When CES sent his signed documents – the Kairos Capital \$40,000 note, the Transfer Agreement and the Security Agreement – back to Kairos Capital, he reminded Mr. Duso of Krimm Financial’s agreement to pay the surrender penalty and taxes arising from the withdrawal of funds from his annuity.

29. To date, CES is owed approximately \$46,000 in principal on the notes executed in his favor, as well as the expenses he incurred by making a partial surrender of his annuity. On information and belief, CES is not the only investor who made securities investments through Respondents.

30. The records of the Division reflect that there is no record of any securities registration, or claim of exemption or status as federal-covered securities issued under the name “Krimm Financial” or “Kairos Capital” in connection with the offer and sale of notes or any other securities offerings.

31. Respondents did not disclose to CES that they were not registered as required to offer and sell securities, or that the securities in the form of notes were not registered, exempt from registration or qualified as federal-covered securities. Nor did Respondents provide CES with a prospectus or other disclosure document in connection with the note investments.

#### **IV. CONCLUSIONS OF LAW**

THE SECURITIES COMMISSIONER, THEREFORE, CONCLUDES AS A MATTER OF LAW:

32. The promissory note investments offered and sold by Respondents Duso and Kairos Capital are investment contracts, and therefore, securities as defined by section 11-101(r) of the Securities Act.

33. Respondents Duso and Kairos Capital violated section 11-501 of the Securities Act by offering and selling securities that were neither registered nor exempt from registration in Maryland and that were not federal covered securities.



34. Respondents Duso and Kairos Capital violated section 11-301(1), (2) and (3) of the Securities Act in connection with the offer and sale of securities, as described herein.

35. Respondents Duso and Kairos Capital violated section 11-401 of the Securities Act by acting as an unregistered broker-dealer and/or unregistered issuer agent.

36. Respondent Kairos Capital violated section 11-402 of the Securities Act by employing an unregistered agent in the offer and sale of securities.

#### **V. CONSENT TO CEASE AND DESIST AND OTHER RELIEF**

37. NOW, THEREFORE, IT IS HEREBY **ORDERED**, and Respondents Duso and Kairos Capital expressly consent and agree that:

a. Respondents Duso and Kairos Capital are assessed a \$100,000 fine, which fine shall be waived except as to \$10,000 based upon information contained in the financial statements provided by Respondents. Those monies shall be paid pursuant to the following schedule:

- \$3,000 contemporaneous with execution of this Consent Order.
- \$3,000 payable on or before September 1, 2015.
- \$3,000 payable on or before December 1, 2015.
- \$1,000 payable on or before March 1, 2016.

The amounts due as listed above shall be made by check payable to “Office of the Attorney General.” Respondents agree that fine payments may be used by the Securities Commissioner to pay investors restitution on a *pro rata* basis. Any restitution payments shall be made fully at the Securities Division’s discretion, including as to time, manner and direction.

b. Respondents Duso and Kairos Capital shall cease and desist from engaging in activities in violation of the Securities Act.

c. Respondents Duso and Kairos Capital are permanently barred from the securities and investment advisory business in Maryland.

- d. Respondents shall in all future activities in Maryland comply with the Securities Act.

## **VI. OTHER PROVISION**

38. Respondents Duso and Kairos Capital agree not to take any action, make or permit to be made any statement denying, directly or indirectly, any allegation in the Order To Show Cause or the activities upon which this Order is based, as referred to herein. Respondents Duso and Kairos Capital further agree not to take any action or make any statement which creates or tends to create the impression that this Consent Order is without factual basis. While Respondents Duso and Kairos Capital are not required to admit any allegation in the Summary Order or other activities upon which this Order is based, nothing in this provision affects those respondents' testimonial obligations. Nor does this provision affect those respondents' right to take positions in litigation to which neither the Division nor the Securities Commissioner is a party.

## **VII. JURISDICTION RETAINED**

39. Jurisdiction shall be retained by the Securities Commissioner for such further orders and directions as may be necessary or appropriate for the construction or enforcement of the Consent Order.

40. If Respondents Duso and Kairos Capital fail to comply with any term of this Consent Order, the Securities Commissioner may institute administrative or judicial proceedings against those respondents to seek to enforce this Consent Order, to sanction those respondents for violating an Order of the Securities Commissioner or for making a misrepresentation of material fact upon which this Order was based, and may take any other action authorized under the Securities Act or

under any other applicable law, including the issuance of fines or penalties as provided by the Securities Act. In any such proceeding in which, after an opportunity for a hearing, the Securities Commissioner or the court finds that Respondents Duso and Kairos Capital have violated this Consent Order or made any material misrepresentations in their dealings with the Division, including with respect to Respondents' financial statements as referenced above, the Division may also seek other sanctions for the violations that initiated this matter. For the purpose of determining those sanctions, the Statement of Facts and violations of the Securities Act set forth in this Consent Order shall be deemed admitted, and may be introduced into evidence against Respondents Duso and Kairos Capital.

41. In the event that judicial intervention in this matter is sought by the Securities Commissioner or Respondents, subject matter jurisdiction will lie in the Circuit Court for Baltimore City pursuant to section 11-702 of the Securities Act. Respondents agree that that Court will have personal jurisdiction over Respondents Duso and Kairos Capital, and that venue will be properly in that Court.

42. The terms of this Consent Order may only be vacated or modified by a subsequent order issued by the Securities Commissioner.

**DATE OF THIS ORDER:**

June 3, 2015

**SO ORDERED:**

Commissioner's Signature on File  
w/Original Document

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Melanie Senter Lubin  
Securities Commissioner

**CONSENTED TO:**

\_\_\_\_\_, 2015

\_\_\_\_\_  
Adam Duso, individually and on behalf of:  
Kairos Capital, LLC

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, personally appeared Adam Duso, signer of the foregoing Consent Order, who did duly acknowledge his signature to be his free act and deed, and that he was duly authorized to sign on behalf of Kairos Capital, LLC.

Notary Public: \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Seal: