

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

IN THE MATTER OF: *

Brian Chance * Securities Docket No. 2018-0576

and *

Chance Development, LLC *

Respondents *

* * * * *

FINAL ORDER

WHEREAS, the Securities Division of the Office of the Maryland Attorney General (the “Division”), pursuant to the authority granted in section 11-701 of the Maryland Securities Act, Corporations and Associations Article, Title 11, Annotated Code of Maryland (2014 Repl. Vol. and Supp. 2021) (the “Act”), undertook an investigation into the securities activities of Brian Chance (“Chance” or “Respondent Chance”) and Chance Development, LLC (“Chance Dev’l” or “Respondent Chance Dev’l”) (collectively, the “Respondents”), George L. Divel and various entities owned and/or controlled by George Divel, Brewers Green Development, LLC, 1401 S. Hanover Street, LLC, and 12-16 S. Patterson Park Avenue, LLC (“Patterson LLC”); and

WHEREAS, on the basis of that investigation the Maryland Securities Commissioner (the “Commissioner”) has found grounds to conclude that Respondents have engaged in acts or practices constituting violations of the anti-fraud and registration provisions of the Act; and

WHEREAS, on March 3, 2022, the Commissioner issued an Order to Show Cause (the “Order”), which is incorporated by reference, ordering each Respondent to show cause why that Respondent should not be barred permanently from engaging in the securities and investment

advisory business in Maryland and to show cause why a statutory penalty of up to \$5,000 per violation should not be entered against that Respondent; and

WHEREAS, the Order provided that the failure to file an answer, including a request for a hearing, within fifteen (15) days of service of the Order would result in the entry of a Final Order barring the Respondents from engaging in the securities or investment advisory business in Maryland and imposing on the Respondents a monetary penalty of up to \$5,000 per violation of the Act; and

WHEREAS, the Order was served on each Respondent on March 5, 2022, but each Respondent failed to file an answer or a request for a hearing within fifteen (15) days of service of the Order; and

WHEREAS, the Commissioner has determined that it is in the public interest and appropriate for the protection of investors to issue this Final Order;

NOW THEREFORE, pursuant to sections 11-301(2) and (3), 11-401, 11-402, 11-501, and 11-801 of the Act, the Commissioner finds and orders:

I. JURISDICTION

1. The Commissioner has jurisdiction in this proceeding pursuant to section 11-801 of the Act.

II. RESPONDENTS

2. At all times relevant to this matter, Brian Chance has maintained a place of residence and business in Maryland. Chance has been engaged primarily in the business of building and/or developing real property. Chance has never been registered as a broker-dealer, agent, investment adviser, or investment adviser representative in the State of Maryland.

3. Chance Development, LLC is a Maryland limited liability company with a place of business in Baltimore, Maryland. Chance Dev'l was formed to renovate and develop residential real property. Chance is the owner and principal of Chance Dev'l. Chance Dev'l has never been registered as a broker-dealer or investment adviser in the State of Maryland.

III. FINDINGS OF FACT

Real Estate Investment Opportunities

3. In or about late 2016 or early 2017, Chance, a local real estate developer, was introduced to George Divel ("Divel") through a mutual friend.

4. Divel, who was previously registered as an agent and investment adviser representative with the State of Maryland, had recently sold his securities and advisory book of business to another securities professional.

5. Chance and Divel discussed going into business together. Divel believed that Chance had a "decent reputation" for "projects that he had completed" and wanted to know if Chance would be willing to "team up to do more projects as partnerships."

6. Chance was interested, but lacked the funding to do so. The two discussed ways to raise funds, with Divel taking on the responsibility of finding investors and/or loans. Chance's primary responsibility would be finding and developing the real estate projects.

7. Chance and Divel started out buying individual houses, rehabbing those houses, and reselling them. If funds were needed, Divel approached his friends or other investors about investing funds in the project and promised them a return of 10%.

8. In an April 2017 email to a potential investor, Divel set out their 5-stage plan for developing real estate and the investment opportunities associated with the plan.

9. The opportunities were described as a “completely passive investment” for the investor. Divel’s team would manage “all aspects of the property (placing the tenant, collecting rents, maintenance, etc.)” and the investor would “not [be] responsible for any of the management.”

10. Stage 3 of the plan, labeled “Fix and Flips”, involved Divel’s team identifying properties that they could “purchase at a discount, rehab, and sell at a profit in a short amount of time.” Under this stage, Divel’s team would “handle all aspects of the build including listing and selling the property” and profits would be split “per each projects [sic] parameters.”

11. The email described Stage 4 as identical to Stage 3 but on a larger scale. Under Stage 4, Divel’s team would “purchase entire blocks in the city and/or plot of land to develop a new neighborhood.” Again, Divel’s team would “handle all aspects of finding the land, building the development, [and] listing and selling” the property. All profits would be “split per each projects [sic] parameters.”

12. In line with the five stage plan, Divel began soliciting investors to invest in the real estate investment opportunities. On Divel’s advice and recommendation, investors made passive investments in rental properties or fix and flips through IRA accounts or limited liability companies set up specifically for the real estate investments.

13. Around the same time that Divel began soliciting investors for Stages 1 and 3 of his plan, he and Chance also began putting Stage 4 of their plan, the development of multi-housing development projects, into action. To fund their expanded multi-housing development operations, Divel expanded both the pool of investors and the amount of investment funds sought.

Development Project Investments

14. Emails sent by Divel to potential investors provided potential investors with details of two development projects for which he and Chance were raising funds and developing. He referred to the two development projects as the “Canton development (Brewers Green) and the Federal Hill development[s].”

15. Divel told investors that the Brewers Green project would involve the building of 12 luxury townhouses in the Canton area. The houses would be built for a cost of about \$230,000 and would sell for approximately \$575,000 with an upside potential of \$600,000 to \$650,000. Divel also told investors that profits from the investment would be “split evenly three ways (investor, general contractor and myself), but the **investor is being paid 20% profit before the general contractor and I are paid a penny.**” *Emphasis added.* Any profits above 60% would be split three ways.

16. According to Divel, the Federal Hill development, located at 1401 S. Hanover Street, would involve “buying and demolishing the American Rescue Workers building” and building 10 luxury townhomes in two phases of five houses each.

17. Divel provided investors with a breakdown of how the Hanover Street profits would be allocated, stating that “profits will be split three ways but the investors will receive a 15% profit before Brian and I receive our 15% each (30% total). What that means is that the investors are

paid before we are paid. Any profit above a 45% total return will be split three ways.” Divel also told investors that “we should clear over \$600K per house.”

Brewers Green Development Project

18. Brewers Green Development, LLC (“BGD LLC”) was formed as a Maryland limited liability company in or about April 2017.

19. An Operating Agreement was prepared on behalf of BGD LLC.

20. The Operating Agreement, dated April 7, 2017, disclosed that BGD LLC was seeking to raise up to \$1,850,000 from investors.

21. The Operating Agreement listed “George Divel, III, President of G.D. III, Inc” as the “sole and irrevocable Managing Member” of BGD, LLC, and Chance Dev’l, a Maryland limited liability company owned by Chance, as the Builder Manager.

22. Soon after forming BGD LLC, Divel began soliciting potential investors to invest in BGD LLC.

23. According to the Operating Agreement, which was provided to and signed by some of the investors, any distributions would first be paid to Investor Members in proportion to their capital accounts until the balances of their capital accounts have been paid in full, and then each Investor Member would be entitled to receive a proportionate distribution up to 20% of total capital contributions. Only after the aforementioned distributions would the Managing Member and Builder Member be entitled to receive a distribution equal to 40% of the total capital contributions of all members.

24. Investors invested in BGD LLC in one of two ways, either through Individual Retirement Accounts (“IRA accounts”) or through separately created limited liability companies

(“Div LLCs”). The IRA accounts and Div LLCs were listed as the Investor Members of BGD LLC in Exhibit A to the Operating Agreement.

IRA Accounts

25. Divel instructed and helped investors set up IRA accounts at a third party IRA custodian, to facilitate their investment in the real estate development projects offered by him and Chance.

26. At first, Divel instructed investors to set up IRA accounts at Equity Trust, a third party custodian. Divel helped investors establish their IRA accounts by processing paperwork and communicating with Equity Trust about the IRA accounts. When Equity Trust discovered Divel’s involvement, it expressed concerns regarding his background, including his disciplinary history in the securities industry and refused to send funds to settlement on the Brewers Green development real estate transactions. Divel had to have the investors set up IRA accounts at a new third party custodian, New Direction IRA.

27. Divel handled all communications with New Direction IRA on behalf of BGD LLC, and even set up an email account specifically for communicating with New Direction IRA, chancedevelopmentbaltimore@gmail.com. Instead of identifying himself as the author of the emails, however, Divel used Brian Chance’s signature line as though the emails were coming from Chance. Although prepared and sent by Divel, Divel never identified himself as the actual author of the emails.

28. Chance was aware of, and acquiesced to, Divel using the chancedevelopmentbaltimore@gmail.com email and his signature line in communications with

third parties, but neither New Direction nor investors who were often cc'ed on the emails were aware that Divel was behind the emails.

29. Investors investing through IRA accounts were required to enter into promissory notes to evidence their investment.

30. Although Divel solicited funds from investors, Chance Dev'l was listed as the borrower on the notes, and Chance signed the promissory notes on behalf of Chance Dev'l.

1401 S. Hanover Street LLC Project

31. 1401 S. Hanover Street LLC ("Hanover LLC") was formed as a Maryland limited liability company in or about June 2017.

32. An Operating Agreement was prepared on behalf of Hanover LLC.

33. The Operating Agreement, dated October 30, 2017, listed George Divel, III as the managing member and in that role, Divel had "full, complete and exclusive discretion and authority to manage" Hanover LLC. Chance was listed as a member of Hanover LLC. Each owned a 50% interest in Hanover LLC.

34. As with the BGD LLC investment, Divel recommended and directed that investors invest in the Hanover LLC project by either setting up IRA accounts with New Direction IRA or by creating Div LLCs.

35. Investors investing through IRA accounts were required to enter into promissory notes with Chance Dev'l. Chance again signed the promissory notes on behalf of Chance Dev'l.

Promissory Notes

36. Chance Dev'l entered into, and Chance signed on behalf of Chance Dev'l, more than 30 promissory notes with investors in connection with the real estate investment projects. Funds raised from investors under the notes totaled more than \$4,000,000.

37. Under the promissory notes, New Direction IRA was listed as the lender for the benefit of the investor. Each investor signed that they read and approved the terms of their note.

38. In exchange for lending monies to Chance Dev'l, Chance Dev'l agreed to pay the note holder/investor a yearly interest rate ranging from 4% to up to 10% but most, if not all, of the investors did not receive annual interest payments. The notes set forth the total payment of principal and interest due under the note at time of maturity.

39. The terms of the notes ranged from two years to up to ten years. The maturity dates for some of the notes have passed, without the notes being honored.

40. The promissory notes themselves did not identify to which project(s) investors' funds would be allocated. However, Divel and/or Chance internally determined that some promissory notes would be designated to a specific project (Hanover or Brewers Green), while others would not.

41. Chance knew that some investor funds were designated to a specific project, because some investors visited the construction site of the development project they invested in to check on the status of the project, and Chance was present during the visits.

42. There is no record of a registration filing, a claim of exemption from registration, or a notice filing, with the State of Maryland, on behalf of the promissory notes offered and sold by Chance Dev'l, Chance, and Divel.

43. Neither the promissory notes nor the Respondents disclosed to investors that the notes should have been registered with the Division, or that a claim of exemption or preemption should have been filed with the Division.

44. Neither the promissory notes nor the Respondents disclosed to investors that the Respondents should have been registered to offer and sell the notes.

45. Neither the promissory notes nor the Respondents disclosed to investors the risks associated with investing in the notes including, but not limited to, the risks that investors may not be repaid or, as discussed below, the risks that investors' funds may be used for Divel's and Chance's personal benefit.

Use of Investors' Funds

46. Investors that invested through IRA accounts set up at New Direction IRA forwarded their funds to New Direction IRA for deposit into their IRA accounts.

47. Because Chance Dev'l was listed as the borrower on the promissory notes, Chance Dev'l and Chance were authorized to direct where New Direction IRA sent the funds.

48. Divel provided New Direction IRA with wiring instructions to wire investors' funds to a bank account held in the name of Chance Dev'l. As the authorized signatory on Chance Dev'l's bank account, Chance, with the acquiescence of Divel, then determined where investors' funds were sent or how they were used.

49. Divel and Chance made all decisions relating to the real estate investment projects including, but not limited to, property acquisition, construction costs, rental arrangements, and property sales, and determined how investors' funds and the proceeds from property sales would be allocated to fund the projects and eventually repay investors.

50. While investors' funds were used to construct the twelve houses for the BGD project, and to partially complete the ten homes for the Hanover LLC project, Divel and Chance often were forced to borrow funds from hard money lenders to complete some of the construction. This was due at least in part to the fact that some of the investors' funds were diverted to other unrelated projects or to Divel and Chance personally.

51. There came a time when Divel and Chance had a conversation relating to funds designated for the projects being advanced to them for their personal benefit.

52. According to Divel, he told Chance that he was comfortable with taking a small percentage of anticipated future profits, but nothing more than that.

53. However, both Divel and Chance took far more than a small percentage of anticipated future profits; profits that had not yet even materialized and were not guaranteed to materialize.

54. Divel made several transfers totaling more than \$450,000 from the Hanover LLC and BGD LLC bank accounts that he labeled as loans or advances and used those funds for his personal benefit.

55. Chance also received a significant amount of funds for his personal benefit including \$300,000 from BGD LLC's bank account that was described as the "First payment (\$300K) of Brian's \$950K Profit Buy Out" and a \$100,000 from ARR Div LLC.

56. According to Chance, he repaid the \$100,000 to ARR Div LLC. However, the \$300,000 advance profit payment has not been repaid.

57. The advances or loans taken by Chance and Divel were never documented in writing beyond the spreadsheets. There were no formal loan agreements or other formal documents ordinarily maintained by businesses.

58. The advances or loans made to Chance and Divel were inconsistent with statements in the Operating Agreement for BGD LLC, as well as statements made by Divel to potential investors, both of which represented that profits would first go to investors before any profits were paid to Divel or Chance.

59. Additionally, investor funds initially directed to one development project were routinely loaned or directed to other development projects, including the two discussed above and a third project known as Patterson LLC, or to Divel's and Chance's fix and flips that were separate and apart from the development projects for which investors' funds were intended.

60. The loans made to Divel and Chance or between the various development projects also violated BGD LLC's Operating Agreement as well as the Operating Agreements for the Div LLCs, which prohibited loans greater than \$1,000 unless approved by the appropriate members.

61. Neither the promissory notes nor the Respondents disclosed to investors that their investment funds would be used to make advance profit payments to Chance or Divel.

62. Neither the promissory notes nor the Respondents disclosed to investors that their investment funds would be used to make loans to Chance or Divel for projects that were unrelated to the purposes for which they invested their funds.

63. As discussed above, more than \$4,000,000 was raised from 30 or more investors under the promissory notes signed by Chance on behalf of Chance Dev'l.

64. However, in a best case scenario where the remaining properties are sold at or slightly above fair market value and Divel and Chance repay their loans and advances to the projects, investors are expected to only receive back approximately 70% of their principal investment. The profits that Divel and Chance anticipated, and upon which their advances were based, will not in fact materialize.

IV. CONCLUSIONS OF LAW

The Commissioner concludes that:

65. Respondents violated section 11-501 of the Act by offering and selling unregistered securities in the form of notes.

66. Respondents, in connection with the offer, sale or purchase of notes, made untrue statements of material fact or omitted to state material facts and engaged in a course of business that operated or would operate as a fraud or deceit on a person in violation of section 11-301(2) and (3) of the Act by, among other things, (1) allowing Divel to use a Chance Dev'l email address and Chance's signature line to misrepresent himself to New Direction and investors; (2) failing to disclose to investors that the promissory notes offered and sold to them should have been registered with the Division, or subject to a claim of exemption or a preemption filing, but were not; (3) failing to disclose to investors that they were not registered to offer and sell the promissory notes; (4) failing to disclose to investors the risks associated with investing in the notes including, but not limited to, the risks that investors may not be repaid or the risks that investors' funds may be used for Divel's and Chance's personal benefit; (5) failing to disclose to investors that their investment funds would be used to make loans to Chance or Divel for projects that were unrelated to the purposes for which they invested their funds; (6) failing to disclose to investors that their

investment funds would be used to make advance profit payments to Chance or Divil; and (7) falsely representing that annual interest payments would be made to investors.

67. Respondents transacted business as an unregistered broker-dealer or agent, in violation of section 11-401(a) of the Act.

68. Respondent Chance Dev'l employed Chance as an unregistered agent in this State, in violation of section 11-402(a) of the Act

V. SANCTIONS

69. NOW, THEREFORE, IT IS HEREBY ORDERED that:

a. Respondents shall permanently cease and desist from violating sections 11-301(2) and (3), 11-401(a), 11-402(a), and 11-501 of the Act.

b. Respondents are permanently barred from engaging in the securities or investment advisory business in Maryland for or on behalf of any others, or from acting as principal or consultant in any entity so engaged.

c. Respondents are assessed a civil monetary penalty pursuant to section 11-702 of the Act in the amount of \$1,000,000 for the violations set forth in this Final Order. Payment of the civil monetary penalty shall be by certified check payable to the Office of the Attorney General. However, this penalty shall be reduced dollar for dollar by the amount of restitution made by Respondents to the investors that invested in or through the investment program(s) offered or operated by them if, within sixty (60) days of the date of this Final Order, Respondents enter into an agreement with the Commissioner to make restitution to investors. Any payment of restitution under such a plan shall be by certified check payable to the Office of the Attorney General and then distributed by the Office of the Attorney General in a manner within its discretion. If no

agreement for restitution is reached within sixty (60) days of the date of this Final Order, the civil monetary penalty imposed under this Final Order shall be immediately due and payable. If the Division has to forward this matter to Central Collections of Maryland, the 17% collection fee assessed by Central Collections shall be in addition to, and not offset, the balance of the civil monetary penalty owed to the Division.

VI. JURISDICTION RETAINED

70. Jurisdiction shall be retained by the Commissioner for such further orders and directions as may be necessary or appropriate for the construction or enforcement of this Final Order.

VII. APPEAL RIGHTS

71. Each Respondent may appeal this Final Order to the appropriate Circuit Court of the State of Maryland within 30 days from the date this Final Order is mailed by the Securities Division.

SO ORDERED:

**Commissioner's Signature on File
w/Original Order**

April 5, 2022

Melanie Senter Lubin
Maryland Securities Commissioner