

**COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108**

IN THE MATTER OF:)	
)	
KIACELL LLC and)	
RICARDO BERNARD,)	
)	
RESPONDENTS.)	Docket No. E-2017-0066
)	

ADMINISTRATIVE COMPLAINT

I. PRELIMINARY STATEMENT

The Enforcement Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (the "Enforcement Section" and the "Division," respectively) files this Administrative Complaint (the "Complaint") to commence an adjudicatory proceeding against Kiacell LLC and Ricardo Bernard (collectively, "Respondents") for violations of MASS. GEN. LAWS ch. 110A, the Massachusetts Uniform Securities Act (the "Act"), and the regulations promulgated thereunder at 950 MASS. CODE REGS. 10.00 – 14.413 (the "Regulations"). The Enforcement Section alleges that Respondents engaged in acts and practices in violation of Sections 101 and 301 of the Act and corresponding Regulations.

The Enforcement Section seeks an order: 1) finding as fact the allegations set forth below; 2) finding that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors; 3) requiring Respondents to permanently cease and desist from further conduct in violation of the Act; 4) censuring Respondents; 5) barring Respondents from associating with or acting as a registered

investment adviser, an investment adviser required to be registered, an investment adviser exempted from registration, a person relying on an exclusion from the definition of investment adviser in any capacity, a broker-dealer, a broker-dealer agent, an issuer, an issuer-agent, or any entity or individual exempt, excluded, or required to be registered as such; 6) requiring Respondents to provide an accounting of all proceeds which were received as a result of the alleged wrongdoing; 7) requiring Respondents to pay restitution to fairly compensate investors for all losses attributable to the alleged wrongdoing; 8) requiring Respondents to make rescission offers to all investors who purchased securities sold in violation of the Act; 9) requiring Respondents to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing; 10) imposing an administrative fine on Respondents in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and 11) taking any such further action which may be necessary or appropriate in the public interest for the protection of Massachusetts investors.

II. SUMMARY

Ricardo Bernard, also known as Rick Bernard, holds himself out to the public and members of the local Haitian community as a residential real estate investor and developer. In fact, over the past two and a half years, Bernard has been engaged in a scheme to defraud multiple residential property owners and prospective real estate investors through the fraudulent issuance of promissory notes and the perpetration of a variant on classic equity skimming schemes.

Through the use of his alter-ego limited liability company, Kiacell LLC, Bernard has taken title to at least six residential properties in the Greater Boston Area in exchange

for recorded consideration of \$1. Bernard has induced former titleholders to transfer their property to him in exchange for oral or written promises to pay additional money at a later date. In most instances, Bernard represents that he plans to repair and “flip” the property and to pay the former owner using the proceeds of the eventual sale. In most cases, in fact, Bernard instead installs residential tenants and uses the property as a source of rental income while failing to make payments on the property’s mortgages, eventually allowing the property to be foreclosed on. Bernard typically targets the owners of properties facing imminent foreclosure, in order to take advantage of their vulnerable financial condition. In certain cases, Bernard has worked with legitimate mortgage lenders but convinced property owners to accept significantly less than the stated purchase price at closing, instead executing a so-called “seller’s second” mortgage on the property which purports to guarantee payment of the remaining balance at a later date. The illusory security provided by these second mortgages is typically eliminated when Bernard defaults on the first mortgage and allows the property to lapse into foreclosure.

As a landlord, Bernard has been sued by at least one municipality for illegal unsanitary conditions at his property. In at least one case, Bernard has received Section 8 housing rental subsidies for a tenant purportedly living at a property to which Bernard did not hold actual title.

In at least two cases, Bernard has induced friends and acquaintances to give him a total of at least \$40,000 in exchange for promissory notes. These notes purportedly guarantee the holder to the return of their principal, along with significant interest. Bernard represents that the funds are needed to finance the acquisition or rehabilitation of new residential properties in anticipation of a successful “flip.” In fact, and contrary to

written guarantees contained in the notes themselves, Bernard has used these funds to finance his personal lifestyle, eventually defaulting on the original notes.

III. JURISDICTION AND AUTHORITY

1. As provided for by the Act, the Division has jurisdiction over matters relating to securities pursuant to chapter 110A of Massachusetts General Laws.

2. The Enforcement Section brings this action pursuant to the authority conferred upon the Division by Sections 407A and 414 of the Act, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act.

3. This proceeding is brought in accordance with Sections 101 and 301 of the Act.

4. The Enforcement Section reserves the right to amend this Complaint and/or bring additional administrative complaints to reflect information developed during the current and ongoing investigation.

IV. RELEVANT TIME PERIOD

5. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of April 1, 2015 to the present (the “Relevant Time Period”).

V. RESPONDENTS

6. Ricardo Bernard (hereinafter “Bernard”) is a natural person with a last known address in Milton, Massachusetts. During the Relevant Time Period, Bernard served as the sole member and manager of Kiacell LLC. During the Relevant Time Period, Bernard was not registered in any capacity in the securities industry in Massachusetts.

7. Kiacell LLC (hereinafter “Kiacell”) is a Massachusetts limited liability company with a principal place of business located at 6 Beacon Street #200, Boston, Massachusetts

02108. Bernard filed a Certificate of Organization with the Corporations Division of the Office of the Secretary of the Commonwealth on April 29, 2015.

VI. STATEMENT OF FACTS

8. Bernard formed Kiacell on April 29, 2015.
9. Since its inception, Bernard has acted as the sole manager, officer, agent, or employee of Kiacell.
10. Throughout the Relevant Time Period, Bernard has used Kiacell as an alter ego.
11. Bernard provided testimony under oath before the Enforcement Section on October 24, 2017.
12. Bernard testified that the business purposes of Kiacell were to manage residential rental property and the “acquisition of real estate.”
13. Since 2015, Bernard has identified and acquired multiple residential properties facing imminent foreclosure.
14. In at least five instances, Bernard has acquired quitclaim deeds in exchange for nominal recorded consideration of \$1.
15. In certain cases, Bernard has induced homeowners to transfer title by verbally assuring them that he will pay additional money at a later date, after improving and “flipping” the property for more than the outstanding balance on the mortgage.
16. After taking title to the property for \$1, Bernard installs residential tenants and collects rental income while failing to make payments on the mortgage.
17. For example, in or around May 2015, the holder of a first mortgage on a residential property in Taunton (the “Taunton Property”) began foreclosure proceedings against the then-owner of the Taunton Property.

18. On July 2, 2016, Kiacell took title to the Taunton Property by quitclaim deed for nominal consideration of \$1.

19. Bernard began to rent out the Taunton Property to residential tenants, but did not make payments on the still-extant first mortgage.

20. In or around November 2016, the holder of the first mortgage on the Taunton Property began foreclosure proceedings against Kiacell.

21. On December 22, 2016, Bernard recorded a quitclaim deed transferring title to the Taunton Property from Kiacell to himself, in exchange for nominal consideration of \$1.

22. On information and belief, Bernard transferred title to the Taunton Property from Kiacell to himself in order to force the first mortgage holder to restart foreclosure proceedings.

23. Also in December 2016, the Taunton Board of Health brought civil suit against Bernard based on unsanitary conditions at the Taunton Property.

24. In or around July 2017, the holder of the first mortgage on the Taunton Property again began foreclosure proceedings against Bernard.

25. Bernard has acquired title by quitclaim deed to at least three additional properties in Brockton, another in Randolph, and another in Stoughton all in exchange for nominal recorded consideration of \$1. Many of these properties have either been foreclosed upon or are in the process of foreclosure.

a. The Milton Property

26. On May 1, 2017, Bernard agreed to purchase for \$445,000 a residential property in Milton, Massachusetts (the "Milton Property") on behalf of Kiacell.

27. Bernard failed to find traditional mortgage financing for the full amount of the agreed-upon purchase price.

28. In order to finance the purchase of the Milton Property, Kiacell executed a promissory note to a local mortgage lender (the "Mortgage Lender") in the original principal amount of \$364,000, secured by a first mortgage on the Milton Property.

29. In addition to this mortgage note, Kiacell separately executed another recorded agreement with the Mortgage Lender, assigning to the Mortgage Lender the right to collect any rental income derived from the Milton Property.

30. To finance the remaining balance of the purchase price for the Milton Property, Bernard executed two additional promissory notes to the seller of the Milton Property, both secured by mortgages on the Milton Property.

31. Specifically, on May 6, 2015, Bernard executed a promissory note to the seller of the Milton Property in the principal amount of \$108,412.19. The promissory note stipulated an annual 12% interest rate, with payment of principal and interest due on May 5, 2016. This note was secured by a second mortgage on the Milton Property.

32. Also on May 6, 2015, Bernard executed a second promissory note to the seller of the Milton Property, in the principal amount of \$11,587.81. The promissory note stipulated an annual 12% interest rate, with payment of principal and interest due on May 5, 2016. This note was secured by a third mortgage on the Milton Property.

33. Around this time, Bernard had become acquainted with two people ("Victim One" and "Victim Two") who were interested in investing in the Greater Boston real estate market.

34. Victim One and Victim Two are sister and brother, respectively.

35. Bernard approached Victim One and Victim Two and told them that he planned to rehab the Milton Property and either turn it into a source of rental income, or else “flip” the home at a profit by selling the Milton Property for more than he had paid to acquire it. Bernard solicited Victim One and Victim Two to invest in this project.

36. Bernard initially told Victim One and Victim Two that he intended to locate tenants and begin deriving rental income from the property by July 2015, which he would use to make scheduled payments of interest and principal on Victim One and Victim Two’s investment. In fact, as noted above, Bernard had assigned the right to rental income from the Milton Property to the Mortgage Lender.

37. Bernard solicited Victim One and Victim Two to invest capital with an expectation of profit, to be derived from his efforts to “rehab” and “flip” the Milton Property.

38. In his testimony before the Enforcement Section, Bernard described how he solicited the investment from Victim One and Victim Two:

A: It was in the nature that I had an opportunity. I thought they could potentially make money with me. I called them, said that I look at what the market for the property is going to be, and I looked at what rehab was necessary to be able to get it to that point. They were one of the people that I thought about. I said, “I think I might have an opportunity here if you come in and provide some of the funds to be able to finish the rehab.” Then the agreement was they were loaning the money to Kiacell, LLC, and then, in return, they were going to get a return for loaning the money.

39. On May 14, 2015, Bernard executed a promissory note to a limited liability company formed and managed by Victim One (the “First Promissory Note”). The First Promissory Note was secured by a fourth mortgage on the Milton Property.

40. As a result of the four mortgages granted by Bernard on the Milton Property, the property became heavily encumbered or over-encumbered, leaving Victim One and Two with little or no actual security for their investment.

41. In total, as of the date that the fourth mortgage purportedly securing the First Promissory Note was recorded, Bernard had encumbered the Milton Property with \$499,000 of debt.

42. The First Promissory Note was for the principal amount of \$15,000, with an annual interest rate of 15%. The note called for quarterly interest payments of \$562.50, with the remaining unpaid balance of principal and interest due to Victim One's limited liability company on May 30, 2016.

43. The First Promissory Note contains a provision stating that Victim One and Victim Two's principal investment would be used exclusively for the costs associated with the Milton Property project. Specifically, the note states:

“[Kiacell] hereby attests, certifies, represents, warrants and covenants to holder that the proceeds of this Note are solely to be used for commercial and business purposes and not for personal, family, household or consumer purposes, and [Kiacell] acknowledges that this attestation, certification, representation, warranty, and covenant has been relied upon by the holder in accepting this Note.”

44. Notwithstanding this material representation, Bernard promptly began to use Victim One and Victim Two's principal investment for personal expenses.

i. Bernard Misappropriated Victim One and Victim Two's Principal Investment

45. On May 14, 2015, Victim One and Victim Two paid \$15,000 to Kiacell in the form of two treasurer's checks. Specifically, Victim One and Victim Two gave Kiacell one treasurer's check in the amount of \$5,000, and another in the amount of \$10,000.

46. On May 14, 2015, Bernard opened a new checking account in the name of Kiacell LLC (the "Kiacell Bank Account"). Bernard was the only authorized signatory on the Kiacell Bank Account.

47. Bernard funded the Kiacell Bank Account with the \$5,000 treasurer's check given to him earlier that day by Victim One and Victim Two. Bernard requested \$100 cash back from the initial deposit, leaving the Kiacell Bank Account with an initial balance of \$4,900.

48. On May 18, 2015, Bernard deposited the second, \$10,000 treasurer's check into the Kiacell Bank Account.

49. Bernard made no other deposits into this Kiacell Bank Account in May 2015.

50. Between May 14 and May 31, 2015, Bernard made \$4,418.31 in debit card purchases. Bernard's purchases included groceries, utility bills, and dinner at Abe & Louie's, a Boston Back Bay steakhouse.

51. Between May 14 and May 31, 2015, Bernard made an additional \$5,200 of cash withdrawals from the Kiacell Bank Account.

52. In June 2015, the Kiacell Bank Account was credited with a total \$202.94 for two debit card purchase reversals. Bernard made no other deposits into the Kiacell Bank Account in June 2015.

53. Between June 1, 2015 and June 30, 2015, Bernard made an additional \$4,453.43 in debit card purchases, ultimately overdrawing the Kiacell Bank Account. Bernard's purchases included utility payments, restaurant bills, and a payment to the Intercontinental Boston.

54. In his testimony before the Division, Bernard acknowledged that he may have made personal purchases using funds from the Kiacell Bank Account, and attributed these expenses to “sloppiness.”

55. Between May 2015 and September 2015, Bernard began to have trouble making scheduled interest payments on the First Promissory Note, citing cost overruns on the Milton Property project.

56. Victim One and Victim Two initially agreed to grant Bernard extensions on the scheduled payments.

57. On September 3, 2015, Bernard gave to Victim One two checks for overdue payments on the First Promissory Note. Bernard post-dated the checks to October 1, 2015.

58. On September 29, 2015, Bernard e-mailed Victim Two to ask for an additional \$5,000, and to restructure the existing debt created by the First Promissory Note.

59. Victim Two refused to agree to Bernard’s request.

60. On October 5, 2015, Victim One and Victim Two attempted to deposit the post-dated checks that Bernard had provided on September 3, 2015. Both checks failed to clear due to insufficient funds in the source account.

61. After continuing to default on the First Promissory Note, Bernard represented to Victim One and Victim Two that he had been unable to repay them as promised due to their lack of cooperation with his request for additional funds and a restructuring of the debt owed on the First Promissory Note.

62. On November 1, 2015, Bernard failed to make a required mortgage payment to the Mortgage Lender. The Mortgage Lender began foreclosure proceedings in March 2016.

63. On December 14, 2016 the Milton Property was sold at foreclosure auction for \$470,000. As a result of the deficiency between the foreclosure sale price and the amount of debt secured by the Milton Property, the mortgage purportedly securing the First Promissory Note was extinguished.

The West Roxbury Property

64. Around July 2015, Bernard introduced himself to a previously unknown individual (“Victim Three”) and expressed interest in purchasing a West Roxbury property held in trust by Victim Three (the “West Roxbury Property”).

65. Victim Three agreed to sell the West Roxbury property to Bernard for \$530,000.

66. As with the Milton Property, Bernard was unable to secure traditional mortgage financing for the full amount of the purchase price.

67. In order to finance his purchase of the West Roxbury Property, Bernard executed a promissory note to another mortgage lender (the “West Roxbury Mortgage Lender”) in the original principal amount of \$400,000, secured by a first mortgage on the West Roxbury Property.

68. Bernard separately executed another promissory note to Victim Three, in the original principal amount of \$165,000, secured by a second mortgage on the property.

69. Around this same time, Bernard represented to Victim Three that he needed additional cash in order to help finance the acquisition of a different purported investment property in Roxbury.

70. On or around 2, 2015, Bernard executed an additional, unsecured promissory note to Victim Three (the “Second Promissory Note”) in the original principal amount of \$25,000, with an annual interest rate of 10%.

71. As with the First Promissory Note, the Second Promissory Note contained a representation that the original principal amount due on the note would be used exclusively for business purposes. Specifically, the note states:

“[Kiacell] hereby attests, certifies, represents, warrants and covenants to holder that the proceeds of this Note are solely to be used for commercial and business purposes and not for personal, family, household or consumer purposes, and [Kiacell] acknowledges that this attestation, certification, representation, warranty, and covenant has been relied upon by the holder in accepting this Note.”

72. Notwithstanding this material representation, Bernard did not use the original principal amount due on the Second Promissory Note exclusively for business purposes.

73. Bernard did not use the proceeds from the Second Promissory Note to acquire the property in Roxbury, and ultimately defaulted on the Second Promissory Note.

74. Over the following several months, Bernard likewise defaulted on the first mortgage held by the West Roxbury Mortgage Lender, who began foreclosure proceedings against the West Roxbury Property.

75. On December 3, 2015, the West Roxbury Property was sold at foreclosure auction for \$455,000.

76. As noted above, Victim Three held a second mortgage in the original principal amount of \$165,000 on the West Roxbury Property, reflecting the shortfall between the agreed-upon purchase price and the amount of traditional mortgage financing Bernard was able to secure from the West Roxbury Mortgage Lender.

77. After foreclosure costs and payments due to the West Roxbury Mortgage Lender, an excess balance of only \$4,053.13 was paid to Victim three as the holder of the second mortgage on the West Roxbury Property.

VII. VIOLATIONS OF LAW

Count I – Violation of MASS. GEN. Laws Ch. 110A, 101

78. Section 101 of the Act provides:

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly

- (1) to employ any device, scheme, or artifice to defraud,
- (2) to 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 the light of the circumstances under which they are made, not misleading, or
- (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

MASS. GEN. LAWS ch. 110A, § 101.

79. The Enforcement Section herein re-alleges and re-states the allegations of fact set forth in Section VI above.

80. The conduct of Respondents Kiacell and Bernard, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 101.

Count II – Violation of MASS. GEN. LAWS ch. 110A, § 301

81. Section 301 of the Act provides:

It is unlawful for any person to offer or sell any security in the commonwealth unless:–

- (1) the security is registered under this chapter;
- (2) the security or transaction is exempted under section 402; or
- (3) the security is a federal covered security.

MASS. GEN. LAWS ch. 110A, § 301.

82. The Enforcement Section herein re-alleges and re-states the allegations of fact set forth in Section VI above.

83. The conduct of Respondents Kiacell and Bernard, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 301.

VIII. STATUTORY BASIS FOR RELIEF

Section 407A of the Act provides, in pertinent part:

(a) If the secretary determines, after notice and opportunity for hearing, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take such affirmative action, including the imposition of an administrative fine, the issuance of an order for an accounting, disgorgement or rescission or any other such relief as in his judgment may be necessary to carry out the purposes of [the Act].

MASS. GEN. LAWS ch. 110A, § 407A.

IX. PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors for the Director to enter an order finding that such “action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter [MASS. GEN. LAWS ch. 110A].”

X. RELIEF REQUESTED

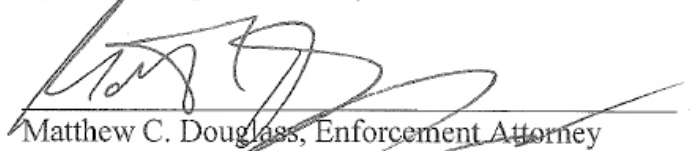
The Enforcement Section of the Division requests that an order be entered:

- A. Finding as fact all allegations set forth in Section VI of the Complaint;
- B. Finding that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors;
- C. Requiring Respondents to permanently cease and desist from further conduct in violation of the Act;
- D. Censuring Respondents;
- E. Barring Respondents from associating with or acting as a registered investment adviser, an investment adviser required to be registered, an investment adviser exempted from registration, a person relying on an exclusion from the definition of investment in any capacity, a broker-dealer, a broker-dealer agent, an issuer, an issuer-agent, or any entity or individual exempt, excluded, or required to be registered as such;
- F. Requiring Respondents to provide an accounting of all proceeds which were received as a result of the alleged wrongdoing;
- G. Requiring Respondents to provide restitution to all investors to fairly compensate investors for all losses attributable to the alleged wrongdoing;
- H. Requiring Respondents to make rescission offers to all investors who purchased securities sold in violation of the Act;
- I. Requiring Respondents to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing;
- J. Imposing an administrative fine on Respondents in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and

K. Taking any such further action which may be necessary or appropriate in the public interest for the protection of Massachusetts investors.

**MASSACHUSETTS SECURITIES DIVISION
ENFORCEMENT SECTION**

By and through its attorneys,

A handwritten signature in black ink, appearing to read 'Matthew C. Douglass', is written over a horizontal line.

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Dated: December 12, 2017