

1
2
3
4
5
6

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Securities Act of Washington by:

Order No.: S-20-2952-21-CO01

CONSENT ORDER

SFA COMMERCIAL LLC;

Respondent

7
8

INTRODUCTION

9 Pursuant to the Securities Act of Washington, RCW 21.20, the Securities Division of the Department
10 of Financial Institutions (“Securities Division”) and Respondent SFA Commercial, LLC, do hereby enter into
11 this Consent Order in settlement of the matters alleged herein. Respondent SFA Commercial, LLC, neither
12 admits nor denies the Findings of Fact and Conclusions of Law as stated below.

13

FINDINGS OF FACT

14

Respondent

15 1. SFA Commercial, LLC (“SFAC”) is a limited liability company formed in Oregon on January
16 16, 2013. In June 2017, SFAC converted to a Utah limited liability company. Since the conversion, SFAC
17 has been registered in Washington as a foreign limited liability company. SFAC has operated out of Portland,
18 Oregon through much, if not all, of the period relevant to this Consent Order. SFAC is in the business of
19 financing non-owner occupied residential real estate rehabilitation projects. Since May 2014, SFAC has been
20 registered with Oregon as a mortgage lender (NMLS #1172044).

21

Related Entities and Individuals

22 2. Security First Advisors, Inc. (“SFA”) is a corporation formed in Oregon on February 10, 1992.
23 In December 2015, SFA converted to a Washington corporation. Since the conversion to the present, SFA’s

CONSENT ORDER

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

1 principal place of business has been in Vancouver, Washington. SFA is a registered investment adviser (CRD
2 #117502) and was registered in Washington until around February 2020, when it registered with the Securities
3 and Exchange Commission (“SEC”). In addition to its advisory business, SFA is the manager of SFAC and
4 owns 51% of the company. SFA is primarily responsible for the financial and administrative aspects of
5 SFAC’s business, including offering, selling, and administering the investments that are the subject of this
6 Consent Order.

7 3. Russell Wilkinson Rerick, Inc. (“RWR”) is a corporation formed in Oregon on January 10,
8 1980. In December 2015, RWR converted to a Washington corporation. Since the conversion to the present,
9 RWR’s principal place of business has been in Vancouver, Washington. RWR is purportedly a holding
10 company that wholly owns SFA.

11 4. Evan Russell (“Russell”) (CRD #1056834) is an investment adviser representative with SFA.
12 Russell is also part-owner and president of SFA, and is part-owner and secretary of RWR.

13 5. Major Commercial LLC (“MC”) is a limited liability company formed in Oregon on February
14 15, 2013. In June 2017, MC converted to a Utah limited liability company. Since the conversion, MC’s
15 principal place of business has been in Bountiful, Utah. MC owned the remaining 49% of SFAC until
16 approximately March 2020.¹ While it owned SFAC, MC was primarily responsible for loan origination and
17 project oversight for SFAC.

18 6. Sherrie and David Nelson (the “Nelsons”) are a married couple and are owners, managers
19 and/or officers of MC.

20 //

21 //

22

23 ¹ At that time, MC sold its entire interest in SFAC to an entity owned by Russell and his wife.

1 **Nature of the Conduct**

2 Overview

3 7. From approximately February 2013 to at least January 2022, SFAC sold over \$38 million of
4 debt instruments, called investment certificates, to at least 292 investors located in multiple states. Of that
5 amount, at least \$2.4 million was invested by approximately 20 Washington investors. SFAC originally sought
6 to raise \$15 million when it began offering the investment certificates in 2013, but increased the total
7 aggregate offering amount to \$50 million in 2017. SFAC used the investment funds to finance the commercial
8 loans it issued to contractors who remodeled and sold non-owner occupied residential properties primarily in
9 the Portland, Oregon metropolitan area.

10 8. SFAC offered the investment certificates pursuant to an exemption from registration under
11 Rule 506(b) of Regulation D.

12 9. In offering these investments, SFAC failed to disclose to potential investors certain agreements
13 and transactions that SFAC entered into with RWR, the Nelsons, or their entities.

14 The Offering

15 10. SFAC is in the business of lending money to contractors who remodel residential real estate
16 and in turn sell the properties to homebuyers. SFAC issued these commercial loans on a short-term basis,
17 typically six months, and charged interest of 12-18% per annum. Generally, SFAC took a first-position lien
18 on the property as collateral for the loan.

19 11. SFAC used investor funds raised from the sale of the investment certificates to fund the
20 commercial loans. The investment certificates were unsecured loans made by investors to SFAC. SFAC gave
21 investors the option of investing for terms of three, five, seven, and ten years, with interest rates of 6%, 7%,
22 7.5%, and 8.5% per annum, respectively. SFAC also gave investors the option of receiving interest payments
23 quarterly, or reinvesting the interest into the principal. SFAC did not allow investors to redeem their

1 investments prior to maturity, but investors were able to renew their investment certificates for an additional
2 term of their choice. Historically, around 80% of investors have chosen to renew their investments.

3 12. SFA joined with MC to form SFAC in 2013 as an alternative investment vehicle for SFA's
4 advisory clients. As such, the SFAC investment certificates were primarily offered and sold to SFA advisory
5 clients by Russell and several other investment adviser representatives associated with SFA.

6 13. As of January 2022, SFAC has sold at least \$38 million in investment certificates with at least
7 \$37 million still outstanding, due largely to most investors choosing to renew their investments for an
8 additional term instead of requesting full repayment. To the Division's knowledge, the offering is still
9 ongoing, and no complaints have been filed by any investors in the offering as of the date of this Consent
10 Order.

11 Material Omissions Regarding Related-Party Transactions

12 14. In offering and selling the investments, SFAC provided potential investors with a private
13 placement memorandum (PPM). The PPM contained important information regarding SFAC, its business,
14 the investment, and related parties. However, SFAC did not disclose to potential investors prior to their
15 investments, in the PPM or otherwise, certain additional material information related to SFAC's financials
16 and related-party transactions.

17 15. Most significantly, SFAC failed to provide to potential investors any financial statements prior
18 to their initial investments. SFAC did subsequently provide audited financial statements for fiscal years 2013
19 and beyond to investors after they invested. Had SFAC provided financial statements to the unaccredited
20 investors prior to their initial investments, they would have learned that SFAC borrowed large sums of money
21 from the Nelsons, and paid significant amounts to entities owned by Russell and the Nelsons in owner
22 distributions and management fees, as more fully described below.

1 16. From 2013 to 2016, SFAC borrowed nearly \$2 million from the Nelsons at an interest rate of
2 18% per annum.² The loans were typically for terms of three years, though the parties often extended the
3 loans. According to Russell, SFAC borrowed money from the Nelsons to more quickly ramp up its
4 commercial lending business and to meet its cash needs. SFAC fully repaid the Nelsons in 2018.

5 17. From at least 2013-2018, SFAC paid MC, SFA, and RWR at least \$8.5 million in owner
6 distributions and/or management fees. While SFAC provided a copy of the management agreement between
7 SFAC and SFA to potential investors, it did not disclose the existence of the management agreements that it
8 executed with RWR in 2016, and with MC in 2017. In these agreements, SFAC agreed to pay MC and RWR
9 purported management fees of 49% and 51% of SFAC's net distributable profits per month, which coincided
10 with MC and SFA's percentage ownership of SFAC.³ SFAC paid owner distributions and management fees
11 to these related-party entities during much of the same time that it was borrowing money from the Nelsons.

12 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

13 **CONCLUSIONS OF LAW**

14 1. The offer and/or sale of the investment certificates described above constitute the offer and/or
15 sale of a security as defined in RCW 21.20.005(14) and (17).

16 2. Respondent SFA Commercial LLC has violated RCW 21.20.010, because, as set forth in the
17 Tentative Findings of Fact, Respondent made untrue statements of material fact or omitted to state material
18 facts necessary to make the statements made, in light of the circumstances in which they were made, not
19 misleading.

20
21 ² At least \$349,000 of this amount was in interest that the Nelsons reinvested back into the loans.

22 ³ Once SFAC entered into the management agreements with MC and RWR, SFAC largely ceased distributing net profits to MC
23 and SFA. It appears that these owner distributions were instead reclassified as management fees to MC and RWR, with RWR
receiving SFA's share of the distributed profits as full owner of SFA. In 2018, SFAC and RWR amended their management
agreement to pay RWR a monthly management fee of \$76,500. According to Russell, SFAC did not pay management fees to MC
and RWR several times because there was no net profits to distribute.

1 Based upon the foregoing and finding it in the public interest:

2 **CONSENT ORDER**

3 IT IS AGREED AND ORDERED that Respondent SFA Commercial LLC, and its agents and
4 employees each shall cease and desist from violating RCW 21.20.010, the anti-fraud section of the Securities
5 Act of Washington.

6 IT IS FURTHER AGREED AND ORDERED that SFA Commercial LLC shall be liable for and shall
7 pay a fine of \$15,000 on or before the entry of this Consent Order.

8 IT IS FURTHER AGREED AND ORDERED that SFA Commercial LLC shall be liable for and shall
9 pay investigative costs of \$5,000 on or before entry of this Consent Order.

10 IT IS FURTHER AGREED that, pursuant to Rule 506(d)(2)(iii), 17 C.F.R. §230.506(d)(2)(iii), as
11 promulgated under the Securities Act of 1933, 15 U.S.C. §77a et seq., disqualification under paragraph (d)(1)
12 of Rule 506, 17 C.F.R. §230.506(d)(1), should not arise as a consequence of the entry of this Consent Order.

13 IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this Consent Order.

14 IT IS FURTHER AGREED that Respondent SFA Commercial LLC entered into this Consent Order
15 freely and voluntarily and with a full understanding of its terms and significance.

16 IT IS FURTHER AGREED that in consideration of the foregoing, Respondent SFA Commercial LLC
17 waives its right to a hearing and to judicial review of this matter pursuant to RCW 21.20.440 and Chapter
18 34.05 RCW.

19 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

20 //

21 //

22 //

23 //

1 Signed this 17th day of November, 2022.

2 Signed by:

3 SFA COMMERCIAL LLC

4 By: Security First Advisors, Inc., Managing Member

5 /s/
6 EVAN RUSSELL, President

7
8 Approved as to form by:

9
10 /s/
11 JOHN T. CARR, WSBA #33681
12 Attorney for SFA Commercial LLC

13
14 SIGNED and ENTERED this 5th day of December, 2022.



15
16
17
18
19
20
21 /s/
22 WILLIAM M. BEATTY
23 Securities Administrator

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Approved by:

/s/ _____

BRIAN GUERARD
Chief of Enforcement

Presented by:

/s/ _____

HUONG LAM
Financial Legal Examiner Supervisor

CONSENT ORDER

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760