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IN THE MATTER OF THE INVESTMENT   §  
ADVISER REGISTRATION OF MARWIEH   §  
ADVISORY SERVICES, LLC AND THE   §  
INVESTMENT ADVISER REPRESENTATIVE   §  
REGISTRATION OF GEORGE AUGUSTUS   §  
MARWIEH   §

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**Order No. IC19-REV-05**

TO: George Augustus Marwieg, President  
Marwieg Advisory Services, LLC (CRD No. 148732)  
2802 Flintlock Trace, Suite 270  
Austin, TX 78738

George Augustus Marwieg (CRD No. 5643313)  
Marwieg Advisory Services, LLC  
2802 Flintlock Trace, Suite 270  
Austin, TX 78738

### **DISCIPLINARY ORDER**

Be it remembered that Marwieg Advisory Services, LLC ("Respondent Marwieg Advisory") and George Augustus Marwieg ("Respondent Marwieg") (collectively, "Respondents") appeared before the Securities Commissioner of the State of Texas ("Securities Commissioner") and consented to the entry of this order ("Order") and the Findings of Fact and the Conclusions of Law contained herein.

### **OVERVIEW**

The Securities Commissioner enters this order against Respondents in connection with Respondents' sales of stream-of-income investments (the "Pension Streams")

issued by Future Income Payments, LLC ("FIP")<sup>1</sup> and promissory notes issued by third-party real estate developers (the "Development Notes").

Respondents' investment recommendations during the relevant period consisted almost exclusively of the Pension Streams and the Development Notes. For this investment advice, Respondents assessed an annual asset management fee ranging from one to two percent (1% to 2%) of a clients' assets, which included the values of the Pension Streams and the Development Notes. However, Respondents provided no on-going management of these securities.

Additionally, Respondent Marwies received commissions totaling three-hundred forty-three thousand, four-hundred thirty-one dollars and twenty-nine cents (\$343,431.29) for the sales of these securities. Respondent Marwies was not registered as a dealer or as an agent of a registered dealer during the relevant period when Respondent Marwies received the commissions for the sales of securities. Furthermore, this financial incentive for Respondents to recommend the Pension Streams and Development Notes to their clients raised a conflict of interest for Respondents, which Respondents failed to disclose to their clients. In fact, Respondents misrepresented in the Form ADV Part 2 that Respondents would not receive external compensation for the sale of securities or recommend to clients securities in which Respondents had a material financial interest.

Finally, Respondent Marwies controlled a bank account used by Respondent Marwies to facilitate the transfers of funds for investments in the Development Notes. Respondent Marwies used investor funds deposited into the bank account by investors in connection with their investment in a Development Note for purposes that were not disclosed to or authorized by investors.

To resolve this matter, Respondents have agreed to findings that Respondents' engaged in fraud or fraudulent business practices and the revocations of Respondents' licenses as an investment adviser and investment adviser representative with the Securities Commissioner. Respondents are also ordered to cease and desist from acting as a dealer, agent, investment advisor or investment advisor representative in Texas as those terms are defined by Section 4 of the Texas Securities Act. Lastly, Respondents are ordered to cease and desist from engaging in fraudulent conduct.

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<sup>1</sup> FIP was formerly known as Pensions, Annuities, and Settlements, LLC ("PAS"). PAS was formed on April 13, 2011 and changed its name to FIP in 2014.

## FINDINGS OF FACT

1. Respondents have waived (a) Respondents' rights to notice and hearing in this matter; (b) Respondents' rights to appear and present evidence in this matter; (c) Respondents' rights to appeal this Order; and (d) all other procedural rights granted to the Respondents by The Securities Act, Tex. Rev. Civ. Stat. Ann. arts. 581-1 to 581-45 (West, Westlaw through 2019 R. Sess.) ("Texas Securities Act"), and the Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.001 to 2001.902 (West, Westlaw through 2019 R. Sess.).
2. On July 1, 2013, Respondent Marwieh Advisory registered with the Securities Commissioner as an investment adviser. This registration is currently effective.
3. On July 1, 2013, Respondent Marwieh registered with the Securities Commissioner as an investment adviser representative of Respondent Marwieh Advisory. This registration is currently effective.
4. Respondent Marwieh Advisory is not and has never been registered as a dealer with the Securities Commissioner.
5. Respondent Marwieh is not and has never been registered as a dealer with the Securities Commissioner or as an agent of a registered dealer.
6. Respondent Marwieh is the managing member, chief compliance officer and the only registered investment adviser representative of Respondent Marwieh Advisory.
7. On May 7, 2018, the Staff conducted an inspection of Respondent Marwieh Advisory (the "Inspection").
8. During the course of the inspection, the Staff found that from July 2013 through December 2017 (the "Relevant Period"), in connection with rendering services as an investment adviser and investment adviser representative, Respondents' investment recommendations consisted almost exclusively of the FIP Pension Streams and the Development Notes.
9. Respondent Marwieh sold FIP Pensions Streams to twenty-one (21) clients for a total amount of one-million, eight-hundred fifty-one thousand, four-hundred ninety-nine dollars (\$1,851,499) during the Relevant Period. Respondent Marwieh also sold FIP Pension Streams to two (2) individuals for a total amount of four-hundred fifty-five thousand dollars (\$455,000) prior to registration from December 2011 to May 2012.
10. Respondent Marwieh received a commission of five (5) to eight (8) percent of the amount invested in the Pension Streams, for a total of one-hundred fifteen thousand, three-hundred twenty-two dollars (\$115,322.00).

11. Respondent Marwies sold the Development Notes to nine (9) clients for a total amount of two-million, two-hundred twenty-four thousand, seven-hundred fifty-eight dollars and fifty-six cents (\$2,224,758.56).
12. Respondent Marwies also received a commission of five (5) to ten (10) percent of the amount invested in Development Notes, for a total of two-hundred twenty-eight thousand, one-hundred nine dollars and twenty-nine cents (\$228,109.29).

#### Unreasonable Asset Management Fees

13. In addition to the aforementioned commissions received by Respondent Marwies in connection with his sales of securities, Respondents assessed to clients an annual asset management fee ranging from one to two percent (1% to 2%) of investment assets.
14. Respondents included the values of FIP Pension Streams and the Development Notes when calculating the asset management fee. However, Respondents provided no on-going management services with respect to these investments.
15. Respondents also charged clients a flat fee to create a financial plan as well as a flat fee to setup a self-directed IRA account.
16. For example, Client A paid Respondents nine-hundred and twenty-three dollars (\$923) to create a financial plan for Client A and one-thousand nine-hundred ninety-five dollars (\$1,995) to set up a self-directed IRA for Client A.
17. The financial plan included recommendations that Client A invest in both an FIP Pension Stream and a Development Note. The financial plan did not include any recommendations to invest in traditional securities, such as individual equities, mutual funds or exchange-traded funds.
18. Client A subsequently purchased an FIP Pension Stream for forty thousand dollars (\$40,000) and four (4) Development Notes totaling one-hundred fifty-six thousand, four-hundred twenty dollars and seventy-five cents (\$156,420.75).
19. Respondent Marwies received commissions of nine thousand, eight-hundred twenty-one dollars and four cents (\$9,821.04) in connection with his sales of the FIP Pension Stream and Development Notes to Client A.
20. Respondents then assessed an annual management fee of two percent (2%) on Client A's investment advisory assets, which included only the FIP Pension Stream, the Development Notes, cash, and an insurance policy. This amount was one-thousand, eight-hundred thirty-one dollars and seventy-seven cents (\$1831.77) for the year 2017.

## Misrepresentations and Failures to Disclose Conflicts of Interest

21. Respondents informed clients and potential clients about their advisory business by delivering to the clients the Form ADV Part 2, a required form that is the primary disclosure statement of the investment adviser and its business activities.
22. Investment advisers are fiduciaries and thus have an affirmative duty of full and fair disclosure of all material facts as well as an affirmative obligation to employ reasonable care to avoid misleading clients.<sup>2</sup>
23. Respondents did not disclose to their clients, in either the Form ADV Part 2 or elsewhere that Respondent Marwiesh would receive a commission in connection with clients' investments in the FIP Pension Streams and Development Notes.
24. The payment of the commissions presents a conflict of interest because there is a financial incentive for the Respondents to recommend these investments to their clients.
25. Respondent Marwiesh Advisory's Form ADV Part 2 specifically disclaimed outside compensation and conflicts of interest:

“[The firm] does not receive any external compensation for the sale of securities to clients, nor do any of the investment advisor representatives of [the firm].”

and

“[The firm] and its employees do not recommend to clients securities in which we have a material financial interest.”

## Misuse of Investor Funds

26. The Development Notes that Respondents recommended to their clients were issued by two unrelated third-party real estate developers (the “Third-Party Borrowers”) for the purpose of funding the construction of residential properties.
27. The Development Notes were to mature in twelve (12) or eighteen (18) months and pay an investor an eighteen percent (18%) annual interest rate, payable monthly or accrued and paid at maturity.
28. Respondent Marwiesh, by and through his company, M Finance & Development, LLC (“M Finance”), acted as a servicing agent with respect to the Development Notes.

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<sup>2</sup> SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180 (1963), available at <https://www.sec.gov/divisions/investment/capitalgains1963.pdf>

29. As servicing agent, Respondent Marwieh was required to keep accounting records of payments and other sums received with respect to each Development Note, including the amounts collected as principal, interest, late charges, insurance, and taxes, and provide investors with monthly statements of the loan collections.
30. Notably, Respondent Marwieh was also responsible for transferring funds from investors to the Third-Party Borrowers and transferring funds from the Third-Party Borrowers to investors (i.e., as interest payments or payments of principal and accrued interest at maturity).
31. Respondent Marwieh opened a bank account to facilitate these payments. He referred to this bank account as the "Escrow Account."
32. At all times, the Escrow Account was a privately held bank account controlled solely by Respondent Marwieh.
33. Respondent Marwieh did not engage an independent public accountant to examine the activity in the Escrow Account or maintain accounting records relating to his activities as a servicing agent for investments in the Development Notes. Nor did Respondent Marwieh provide monthly statements to investors.
34. Most importantly, Respondent Marwieh did not use the investor funds held in the Escrow Account for the purposes described in the loan servicing agreement provided to the investors.
35. From June 14, 2017 through June 20, 2017, three client investors ("Investor A, Investor B, and Investor C") deposited one-hundred eighty-nine thousand, eight-hundred eighty-one dollars and thirty-one cents (\$189,881.31) into the Escrow Account in connection with their investments in Development Notes.
36. Respondent Marwieh did not transfer the funds deposited by Investors A, B, and C to the Third-Party Borrowers.
37. Rather, on June 20, 2017, Respondent used these funds to make a payment to another client ("Investor D") of one-hundred ninety-four thousand, nine-hundred eighteen dollars and six cents (\$194,918.06) to satisfy Investor D's Development Note that had reached maturity.
38. Prior to the deposits of the funds of Investors A, B, and C, the Escrow Account did not contain sufficient funds to make the payment to Investor D. Accordingly, Respondent Marwieh could have not made the payment to Investor D from the Escrow Account without the funds of Investors A, B, and C.
39. Respondent Marwieh did not inform Investors A, B, and C that their funds deposited in the Escrow Account would go to Investor D and not the Third-Party Borrower listed in the Development Notes.

40. Separately, on May 8, 2018, a Third-Party Borrower deposited one-hundred ninety-five thousand, thirty-four dollars and seventeen cents (\$195,034.17) into the Escrow Account as payment of principal on a Development Note for Investor E.
41. Two weeks later, on May 21, 2018, Respondent Marwies used one-hundred forty-eight thousand, two-hundred fifty-eight dollars (\$148,258.00) of the funds deposited by the Third-Party Borrower intended for Investor E to make a payment to satisfy another investor's Development Note rather than using the funds to make the payment to Investor E.
42. Respondent Marwies also routinely transferred investor funds out of the Escrow Account into other personal and business accounts belonging to and controlled by Respondent Marwies.
43. Respondent Marwies used the aforementioned funds transferred out of the Escrow Account to pay personal expenses such as payments on credit cards, rent, auto loans and insurance.
44. Respondent Marwies did not inform the investors that the investors' funds could be used for personal expenses instead of remitted to the Third-Party Borrower listed in the Development Note.

#### CONCLUSIONS OF LAW

1. The Pension Streams constitute "securities" as the term is defined by Section 4.A of the Texas Securities Act.
2. The Development Notes also constitute "securities" as the term is defined by Section 4.A of the Texas Securities Act.
3. Respondent Marwies's sales of the Pension Streams and the Development Notes at a time when Respondent Marwies was not registered with the Securities Commissioner as a dealer or as an agent of a registered dealer is a violation of Section 12.A of the Texas Securities Act.
4. Respondents' inclusion of the FIP Pension Streams and Development Notes in the calculation of its annual asset management fee without providing any investment management services with respect to the investments was not reasonable. Respondents' assessment of an unreasonable asset management fee to their clients was a breach of a fiduciary duty that Respondents' owed to their clients.
5. Respondents' failure to provide Respondents' clients with full and fair disclosure regarding Respondents' receipt of commissions and the financial incentives to

recommend clients purchase the FIP Pension Streams and Development Notes was a breach of a fiduciary duty Respondents owe to Respondents' clients

6. The aforementioned breaches of the fiduciary duties that Respondents owed to their clients constitute fraud or a fraudulent business practice in connection with rendering services as an investment adviser and an investment adviser representative.
7. Respondent Marwiesh Advisory's statement on the Form ADV Part 2 that neither the firm nor any investment adviser representative would receive external compensation for the sales of securities was a misrepresentation of a relevant fact.
8. Respondent Marwiesh Advisory's statement on the Form ADV Part 2 that neither the firm nor any investment adviser representative would recommend any security in which they had a material financial interest was a misrepresentation of a relevant fact.
9. Respondent Marwiesh Advisory's aforementioned misrepresentations of relevant facts constitute fraud or fraudulent business practices in connection with rendering services as an investment adviser.
10. Respondent Marwiesh's failures to disclose to investors that their funds deposited in the Escrow Account in connection with their investment in a Development Note could be used by Respondent Marwiesh to make payments to other investors in other Development Notes or for personal expenses of Respondent Marwiesh instead of being transferred to a Third-Party Borrower were intentional failures to disclose material facts and constitute fraud or fraudulent business practices in connection with the sales of securities.
11. Respondent Marwiesh's uses of investor funds to pay off other investors constitute fraudulent business practices.
12. Respondent Marwiesh's uses of investor funds for personal expenses constitutes fraudulent business practices.
13. Respondent Marwiesh's control over client investor funds in the Escrow Account constitutes "custody" of client funds and securities by Respondent Marwiesh Advisory as the term is defined by §116.17(a)(3) of the Rules and Regulations of the Texas State Securities Board ("Board Rules").
14. Respondent Marwiesh Advisory violated §116.17(b) of the Board Rules because Respondent Marwiesh Advisory maintained custody of client funds and securities but failed to implement the safeguards required by §§116.17(b)(3) and (4).
15. Pursuant to Section 14.A(6) of the Texas Securities Act, the aforementioned violations of Section 12.A of the Texas Securities Act constitute a basis for the



revocation of Respondent Marwies registration as an investment adviser representative with the Securities Commissioner.

16. Pursuant to Section 14.A(6) of the Texas Securities Act, the aforementioned violation of a Board Rule constitutes a basis for the revocation of Respondent Marwies Advisory's registration as an investment adviser with the Securities Commissioner.
17. Pursuant to Section 14.A(3) of the Texas Securities Act, the aforementioned fraudulent business practices constitute bases for the revocation of Respondents' registrations as an investment adviser and an investment adviser representative with the Securities Commissioner.
18. Pursuant to Section 23, Respondent Marwies violations of Section 12.A of the Texas Securities Act are bases for ordering Respondent Marwies to cease and desist from violating the dealer registration requirements of the Texas Securities Act.
19. Pursuant to Section 23, the aforementioned fraud or fraudulent practices in connection with the sales of securities and with respect to rendering services as an investment adviser and investment adviser representative are bases for ordering Respondents to cease and desist from the fraudulent conduct.

#### ORDER

1. It is therefore ORDERED that the registration of Marwies Advisory Services, LLC as an investment adviser with the Securities Commission is hereby REVOKED.
2. It is further ORDERED that the registration of George Augustus Marwies as an investment adviser representative of Marwies Advisory Services, LLC with the Securities Commissioner is hereby REVOKED.
3. It is further ORDERED that Marwies Advisory Services, LLC CEASE AND DESIST from engaging in fraudulent conduct.
4. It is further ORDERED that George Augustus Marwies CEASE AND DESIST from engaging in fraudulent conduct.
5. It is further ORDERED that George Augustus Marwies CEASE AND DESIST from acting as a dealer, agent, investment adviser or investment adviser representative in Texas as those terms are defined in Section 4 of the Texas Securities Act.

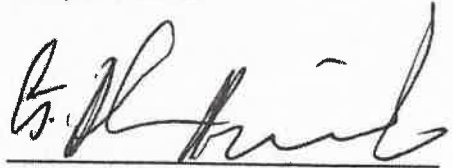
SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this \_\_\_\_\_

SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this 11<sup>th</sup>  
day of October, 2019.



TRAVIS J. ILES  
Securities Commissioner

Respondents:




Marwies Advisory Services, LLC  
By: George Augustus Marwies,  
President



George Augustus Marwies,  
Individually

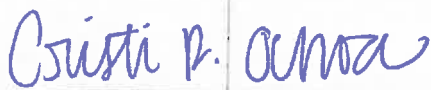
Approved as to Form:



Clinton Edgar  
Deputy Commissioner



Jeremy Wagers  
Wagers & Associates  
Attorney for Respondents



Cristi Ramón Ochoa  
Attorney  
Inspections and Compliance Division