

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**

**UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,**

Plaintiff,

v.

**JOHN ABIO, also known as TRE
BRANDENBERG, and ABIO FINANCIAL
GROUP, INC.**

Defendants.

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: **Civil Action No.**
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: **JURY TRIAL DEMANDED**
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COMPLAINT

Plaintiff United States Securities and Exchange Commission (“SEC”) alleges as follows:

NATURE OF ACTION

1. The SEC brings this action against John Abio (also known as Tre Brandenburg; he is referred to in this complaint as “Abio”) and Abio Financial Group, Inc. (“Abio Financial”) for acting as unregistered brokers and for selling unregistered securities issued by Providence Financial Investments, Inc. (“Providence Financial”) and Providence Fixed Income Fund, LLC (“Providence Fund”). Beginning at least as early as 2011, Providence Financial and Providence Fund raised more than \$64 million from over 400 investors throughout the United States through the sale of unregistered promissory notes.

2. For their parts, between 2012 and 2015, Abio and Abio Financial earned at least \$3.18 million in commissions on sales of notes to more than 100 investors in several states, including dozens who reside within the Northern District of Texas. Abio was far and away Providence Financial and Providence Fund's highest paid salesperson. He led Providence Financial and Providence Fund's sales efforts for Texas and parts of Florida. He also recruited other salespersons to focus their sales efforts in this District.

3. In June 2016, the SEC filed suit against Providence Financial, Providence Fund, and other defendants in the District of Minnesota (*SEC v. Providence Financial Investments, Inc., et al.*, Case No. 16-cv-1877-SRN-FLN (D. Minn.) ("Providence SEC Case")).

4. In the Providence SEC Case, the SEC alleges that Providence Financial and Providence Fund offered and sold – through their nationwide network of unregistered brokers – notes that purported to pay annual returns generally ranging from 12% to 13%. Investors were told their investment proceeds would be used to fund the “factoring” of accounts receivable in Brazil. That was a lie. Providence Financial and Providence Fund spent no more than 68% of their investors' money – perhaps even less – to finance Brazil factoring transactions; both companies have been unable to account for how the remaining investor proceeds were spent.

5. To lure investors, Providence Financial and Providence Fund collaborated with unregistered brokers throughout the United States. Providence Financial and Providence Fund paid these unregistered brokers, including defendants, commissions for each successful note sale. Providence Financial and Providence Fund structured their

commissions so that they were not simple one-time payments. Instead, brokers were paid an *annual* commission, spread over 12 monthly payments, typically in the amount of 6% (but sometimes more) of the face value of each note for as long as the investor held the note. In other words, the sale of a \$100,000 note that an investor held for 2 years would pay a \$6,000 commission (spread over 12 monthly payments) in the first year and a \$6,000 commission in the second year. This provided a continuing incentive for brokers to encourage note purchasers not to redeem their notes.

6. Shortly after the SEC filed the Providence SEC Case, Providence Financial and Providence Fund filed Chapter 7 bankruptcy petitions in the United States Bankruptcy Court for the Southern District of Florida (together, “Providence Bankruptcies”). Confirming that much of the proceeds of the note offerings were not spent on lucrative factoring operations, filings in the Providence Bankruptcies reflect that Providence Financial has zero assets, and had liabilities of \$32.9 million; Providence Fund has zero assets, with liabilities of \$33.9 million.

7. The SEC brings this action against Abio and Abio Financial for their roles as unregistered brokers in the fraudulent scheme.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77v(a)], Section 27(a) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78aa(a)], and 28 U.S.C. § 1331.

9. Venue is proper in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], Section 27(a) of the Exchange Act [15 U.S.C. § 78aa(a)], and 28 U.S.C. § 1391.

10. Acts, practices, and courses of business constituting violations alleged in this complaint have occurred within the jurisdiction of the United States District Court for the Northern District of Texas. Abio maintains a residence in Dallas and Abio Financial purports to be headquartered in Dallas. Both defendants have offered and sold securities to investors in the Northern District of Texas.

11. Defendants, directly and indirectly, made use of the means and instrumentalities of interstate commerce and of the mails in connection with the acts, practices, and courses of business alleged in this complaint. Defendants will, unless enjoined, continue to engage in the acts, practices, and courses of business set forth in this complaint, and acts, practices, and courses of business of similar purport and object.

DEFENDANTS

12. **John Abio**, age 54, maintains residences in Dallas, Texas and Panama City, Florida. Abio received at least \$3.18 million in commissions between 2012 and 2015 for sales of notes issued by Providence Financial and Providence Fund. Abio is the President, CEO, and sole control person of Abio Financial Group, Inc. He publicly touts having over three decades of experience in the insurance and annuity industry. In lieu of appearing at a deposition and producing documents pursuant to subpoenas issued in the Providence SEC Case, Abio submitted a declaration asserting his Fifth Amendment

privilege against self-incrimination. Abio is not registered with the SEC as, nor is he associated with, a registered broker-dealer.

13. **Abio Financial Group, Inc.** is a Texas corporation headquartered in Dallas, Texas. Abio is the President and CEO of Abio Financial. The corporation is controlled by Abio. On its website, Abio Financial states as its mission to “offer the latest products and ideas to protect and enhance the assets of individuals nationwide” and that its “primary focus is achieving our clients [sic] financial goals, of safety, security and never outliving their assets.” Abio Financial is not registered with the SEC as, nor is it associated with, a registered broker-dealer.

FACTS

14. Beginning in 2011, if not earlier, Providence Financial and Providence Fund issued fixed rate promissory notes to investors in the United States and elsewhere.

15. Generally, the notes were marketed as offering annual interest rates of 12% to 13%.

16. Investors were told that the investment proceeds would be used to invest in receivables transactions – a practice that was referred to as “factoring” – made through certain affiliated companies in Brazil.

17. At least 400 U.S. investors currently hold at least \$64 million in notes issued by Providence Financial and Providence Fund.

18. The notes issued by Providence Financial and Providence Fund were securities, as that term is defined in the federal securities laws.

19. No registration statement has been filed with the SEC concerning the notes sold by Providence Financial or Providence Fund to investors in the United States.

20. Providence Financial and Providence Fund offered and sold the unregistered notes through a network of brokers, including Defendants Abio and Abio Financial, who were not registered with the SEC.

21. Abio, Abio Financial, and others offered and sold Providence Financial and Providence Fund notes pursuant to agreements with an affiliate company of Providence Financial and Providence Fund. The agreements provided for payment of an annual commission to the brokers in the amount of at least 6% of the face value of each note sold. Under this commission structure, the brokers were paid, on a monthly basis, 6% per annum of the face value of each note they sold for as long as the investor held a note issued by Providence Financial or Providence Fund.

22. Abio and Abio Financial began selling the promissory notes in early 2011, if not earlier. Between 2012 and 2015, Providence Financial and Providence Fund paid Abio and Abio Financial at least \$3.18 million in commissions, reflecting defendants' sales of more than \$25,000,000 worth of promissory notes to over 100 investors nationwide.

23. In the course of selling the Providence promissory notes, Abio met with and answered questions from investors and potential investors; accepted application materials; forwarded signed applications and promissory notes to Providence Financial and Providence Fund; and transferred investor funds to and from Providence Financial and Providence Fund.

24. When their notes matured, many investors did not take repayment of their principal and payment of accrued interest in cash. Instead, often at defendants' urging, the investors "renewed" their notes by transferring the principal and any accrued interest on their mature notes into new notes. Abio walked his clients through the note renewal process, collecting client signatures on new notes and other documents and forwarding those documents to Providence Financial and Providence Fund.

25. Despite the fact that they were marketed to investors as safe and lucrative investments, the notes are now largely worthless. Defendants profited handsomely. Their clients ultimately lost millions – some their entire life savings.

COUNT I

Violations of Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. § 77e(a) and (c)]

(Against All Defendants)

26. Paragraphs 1 through 25 are alleged and incorporated by reference as though fully set forth herein.

27. By engaging in the conduct described above, Defendants Abio and Abio Financial, directly or indirectly: (i) made use of means or instruments of transportation or

communication in interstate commerce or of the mails to sell, through the use or medium of a prospectus or otherwise, securities as to which no registration statement was in effect; (ii) for the purpose of sale or delivery after sale, carried or caused to be carried through the mails or in interstate commerce, by any means or instruments of transportation, securities as to which no registration statement was in effect; and (iii) made use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy, through the use or medium of a prospectus or otherwise, securities as to which no registration statement had been filed.

28. By engaging in the conduct described above, Defendants Abio and Abio Financial have violated Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

COUNT II

Violations of Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)]

(Against All Defendants)

29. Paragraphs 1 through 25 are alleged and incorporated by reference as though fully set forth herein.

30. Section 15(a)(1) of the Exchange Act prohibits a broker or dealer from using the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security unless the broker or dealer is registered with the Commission. Section 3(a)(4) of the Exchange Act

defines a “broker” as any person who is engaged in the business of effecting transactions in securities for the account of others.

31. The defendants have, by engaging in the conduct set forth above, while acting as a broker or dealer, effected transactions in, and induced and attempted to induce the purchase or sale of, securities when they were not registered with the Commission as a broker or dealer or associated with an entity registered with the Commission as a broker or dealer.

32. By reason of the foregoing, the defendants have violated, and unless restrained and enjoined will continue to violate, Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

RELIEF REQUESTED

WHEREFORE, the SEC respectfully requests that this Court:

I.

Find that Defendants committed the violations charged in this complaint.

II.

Enter orders of permanent injunction as to Defendants, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, enjoining Defendants, and their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the order, by personal service or otherwise, and each of them from, directly or indirectly, engaging in the transactions, acts, practices, or courses of business described above, or in conduct of similar purport

and object, that violate, or aid and abet violations of, the provisions of law and rules alleged in this complaint.

III.

Enter an order requiring Defendants to disgorge any and all ill-gotten gains, plus prejudgment interest, that they obtained as a result of the violations of law charged in this complaint.

IV.

Enter an order imposing upon Defendants appropriate civil penalties.

V.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that are entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VI.

Grant such other and further relief as this Court deems appropriate and necessary.

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JURY DEMAND

The SEC demands a trial by jury.

Dated: February 13, 2017

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION**

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