

**In the Matter of:
Upper Valley Commercial Corporation
David E. Patten
Alvin S. Fadden**

Docket No. 13-BD-001

CONSENT ORDER

For purposes of resolving the above-referenced matter and in lieu of further proceedings, Upper Valley Commercial Corporation (herein after "UVCC"), David E. Patten (herein after "Patten"), and Alvin S. Fadden (herein after "Fadden") have submitted and offer of settlement, which the State of New Hampshire, Banking Department (hereinafter "Department") has determined to accept. Accordingly, UVCC, Patten and Fadden, without admitting or denying the allegations, do hereby consent to the following findings and undertakings:

RESPONDENTS

1. UVCC is a New Hampshire corporation with a principal office at 2769 Dartmouth College Highway, North Haverhill, New Hampshire 03774. Its registered agent is Respondent Fadden, who has an address at 2769 Dartmouth College Highway, North Haverhill, New Hampshire 03774.
2. The Respondent Patten is the President and a director of UVCC, and has a usual place of business located at 2769 Dartmouth College Highway, North Haverhill, New Hampshire 03774.
3. The Respondent Fadden is the Vice President and a director of UVCC and has a usual place of business located at 2769 Dartmouth College Highway, North Haverhill, New Hampshire 03774.

STATEMENT OF FACTS

4. UVCC filed formation documents with the Secretary of State in 1964 and has been in continuous operation since that time. In its annual report filings with the Secretary of State, UVCC identifies itself as a “finance company.” Beginning in 1965, UVCC was licensed to sell securities by the Insurance Department, but has been unlicensed since at least 1971.
5. UVCC received money deposits from numerous individuals and made promises to repay the money plus interest upon demand or at a later date. UVCC provided each depositor a passbook on which entries were made to record deposit and withdrawal transactions.
6. At the time that the Department commenced its investigation in the fall of 2013, UVCC owed money to some 115 persons as a result of the transactions. The outstanding obligations owed by UVCC as a result of these transactions totaled over ten million dollars. Of this total amount, UVCC owed approximately \$4,550,000 to Patten and other insiders.
7. In some transactions, UVCC issued an instrument styled as a “Corporate Note” to evidence a term deposit. UVCC did not maintain copies of the Corporate Notes that it issued. UVCC provided a disclosure to the individuals who accepted Corporate Notes that described the transaction as a deposit and/or a time deposit that was subject to a penalty if withdrawn before the maturity date. On the disclosure, UVCC identified itself as a “Financial Institution.”
8. UVCC recorded information about each “Corporate Note” it issued on an index card bearing the creditor’s name, the amount of the deposit, and the terms, which card UVCC maintains in its principal office.
9. In demand deposit transactions, which UVCC characterized the transactions as the making of demand notes, UVCC promised to repay the principal to the creditor on demand, with no set term, and with a set interest rate that varies from one transaction to the next. No actual document in the form of a note was in fact issued by UVCC.

10. UVCC recorded information about each demand deposit transaction on an index card bearing the creditor's name, the amount of the deposit, and the terms, which card UVCC maintains in its principal office.
11. On February 6, 2014, during the Bankruptcy Court Meeting of the Creditors for UVCC, Respondent Fadden, appeared with counsel, under oath and as an authorized representative and officer of UVCC, and confirmed that UVCC's demand note transactions were "demand deposit savings accounts" and repeatedly described the transactions as "savings accounts."
12. At the same meeting, Respondent Fadden confirmed that UVCC's corporate note transactions were similar to Certificates of Deposit in that the money could not be withdrawn from UVCC without paying a penalty.
13. At the same meeting, Respondent Fadden described how customers withdrew money from UVCC. Specifically, in response to questions regarding why UVCC issued a check to a particular individual, Respondent Fadden explained that it was the "same as if you went into a bank," and, through UVCC's counsel, stated that when a customer wants to withdraw money from a savings account, it is "like your bank."
14. UVCC regularly created and promoted a rate sheet that advertised the rates it paid on both types of transactions. The rate sheet compared UVCC rates to "Average Bank Rates." On the rate sheet, UVCC identified itself as a Financial Institution and also identified that UVCC's repayment obligations under the transactions were not backed or guaranteed by the U.S. Government, nor were they insured by the FDIC.
15. UVCC deposited the money received on the Corporate Note and demand deposit transactions into UVCC's account at Woodsville Guarantee Savings Bank. The money received was commingled in UVCC's account and used for a variety of UVCC purposes, including UVCC daily operating expenses and to make loans and lines of credit to third parties.

16. UVCC made personal and business loans to 39 borrowers totaling over \$12.3 million.
17. UVCC does not hold any charter either from the State of New Hampshire or the United States of America authorizing it to receive deposits and transact business in the way or manner of a bank.
18. On December 27, 2013, the Respondents entered into a consent order to cease and desist from any and all activities that violate RSA 384:24 and from receiving deposits, from transacting business in the way or manner that leads the public to believe that the business is that of a bank.
19. On December 31, 2013 UVCC filed for a voluntary Chapter 11 bankruptcy in the United States Bankruptcy Court, District of New Hampshire (Case number: 13-13110 JMD). UVCC claimed in their bankruptcy petition to have assets, mainly in the form of accounts receivable, totaling \$12,407,877.81. UVCC also claimed in the bankruptcy petition to have liabilities totaling \$11,584,372.63.
20. The United States Bankruptcy Court, District of New Hampshire confirmed UVCC's Plan of Reorganization Dated April 14, 2014, on May 30, 2014 (the "Chapter 11 Plan"), and UVCC has been collecting on accounts receivable owed and paying back investors according to the plan. UVCC plans to pay its creditors on a quarterly basis and expects to pay all promissory notes and demand deposit notes with interest in full within three years.
21. Under the confirmed Chapter 11 Plan, UVCC has agreed to pay certain non-insider creditors and note holders in full, following which, UVCC will pay claims proved by the State for civil penalties and forfeitures.

STATEMENTS OF LAW

22. The Respondents' business practice described above as a whole, and specifically taking deposits and making loans, is that of a prohibited private bank as defined by RSA 384:24.

23. The Respondents received deposits in violation of RSA 384:24 when it accepted the deposit of money from customers in the demand note deposit transactions and the Corporate Note term deposit transactions.
24. The Respondents have transacted business in the way or manner of a bank by accepting deposits, utilizing the funds for operating expenses, and making loans to third parties.
25. The Respondents have transacted business in such way or manner to lead the public to believe the business is that of a bank as evidenced by issuing passbooks to customers for tracking their deposits, managing the customer accounts as savings accounts, advertising on a rate sheet that compares its rates to average bank rates, and identifying itself as a financial institution.
26. The Respondents operated a private bank in violation of RSA 384:24.
27. Pursuant to RSA 384:24, the State may seek civil forfeiture by the Respondents to the State in the amount of \$100 a day for every day or part thereof during which such violation continues.

RESPONDENTS' CONSENT AND ACKNOWLEDGMENTS

28. Respondents have voluntarily entered into this Consent Order without reliance upon any discussions between the Department and Respondents, without promise of a benefit of any kind (other than concessions contained in this Consent Order), and without threats, force, intimidation, or coercion of any kind.
29. Respondents agree to waive their right to a hearing and appeal.
30. Respondents agree that this Consent Order is entered into for the purpose of resolving only the matter as described herein. This Consent Order shall have no collateral estoppel, res judicata or evidentiary effect in any other lawsuit, proceeding, or action, not described herein. Likewise, this Consent Order shall not be construed to restrict the Department's

right to initiate an administrative investigation or proceeding relative to conduct by UVCC, Patten, and Fadden which the Department has no knowledge of at the time of the date of the final entry of this Consent Order.

31. Respondents may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation contained in this Consent Order or create the impression that the Consent Order is without factual basis. Nothing in this provision affects Respondents' testimonial obligations or right to take legal or factual positions in litigation in which the State of New Hampshire is not a party.
32. Respondents agree to permanently cease and desist from further violations of RSA 384:24.
33. UVCC agrees to pay a fine of two hundred and fifty thousand dollars (\$250,000) to the Department in accordance with UVCC's Chapter 11 Plan. A check or mail order funds shall be made out to "State of New Hampshire, Treasurer." As detailed in UVCC's Chapter 11 Plan, the Department's claim is categorized as a Class 3 claim and will only be paid after full payment is received by Allowed Class 1 Claims and Allowed Class 5 Claims. The Department and UVCC each reserve the right to take such actions and assert such defenses available to them pursuant to applicable state and Federal law in the event of a breach of UVCC's Chapter 11 Plan obligations or the dismissal of the bankruptcy case. UVCC agrees that its failure to pay Class 1, Class 3, and Class 5 claims in full would constitute a material breach of its Chapter 11 Plan obligations.
34. UVCC agrees that it will not seek any material changes to the terms and conditions of the Chapter 11 Plan or the May 30, 2014 order confirming it without the prior written consent of the Department.
35. Should UVCC meet all the terms of this Consent Order and perform all material obligations under the Chapter 11 Plan, the Department will not bring further actions against the Respondents. This provision shall not be construed to restrict the Department's right to

initiate an investigation or regulatory action relative to conduct by the Respondents which the Department has no knowledge of at the time of the date of the final entry of this Consent Order.

36. If the Respondents do not meet the conditions set forth in this Consent Order or fail to perform all material obligations under the Chapter 11 Plan, this Order shall be voidable by the Department and the Department may proceed with its enforcement action.
37. The Respondents represent and warrant that they have all the necessary rights, powers, and abilities to carry out the terms of this Consent Order that are applicable to them.
38. The Respondents acknowledge that the Department is relying upon the Respondents' representations and warranties stated herein in making its determination in this matter.

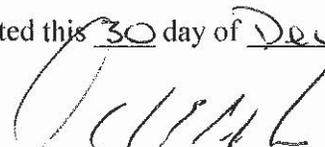
ORDER

In view of the foregoing, the Department deems it appropriate and in the public interest to accept and enter into this Consent Order. **THEREFORE IT IS HEREBY ORDERED THAT:**

1. Respondents permanently cease and desist from further violations under this chapter;
2. UVCC pay a fine to the Department in the amount of two hundred and fifty thousand dollars (\$250,000); and
3. Respondents comply with all other Undertakings outlined above.

SO ORDERED.

Executed this 30 day of December, 2014



David Patten

Executed this 30 day of December, 2014

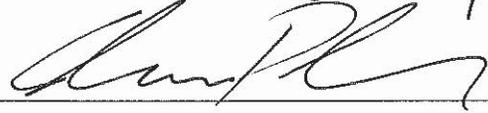


Alvin Fadden

Executed this 30 day of December, 2014

Upper Valley Commercial Corp.
Upper Valley Commercial Corp.; By:  President
/DAVID E. PATTEN

Executed this 5th day of January, 2014⁵



Glenn Perlow, Bank Commissioner