



statement of the civil penalty sought as a result, and a notice that a hearing will be scheduled if Respondent requests a hearing.

### **FACTUAL HISTORY**

1. Respondent is a North Carolina resident with a last known address of 608 Wednesbury Boulevard, Charlotte, North Carolina 28262.
2. Respondent has represented himself as a developer of commercial real estate, specifically a shopping plaza or mall in the Charlotte, North Carolina area.
3. On or about February 4, 2005, Respondent solicited a South Carolina resident, BC (the "Resident"), to invest \$100,000 in a promissory note by offering her 40% interest.
4. On or about February 4, 2005, the Resident invested \$100,000 in the promissory note opportunity Watkins offered.
5. On or about February 4, 2005, Respondent, acting as maker, issued to the Resident a promissory note dated February 4, 2005, and titled "THE STATE OF SOUTH CAROLINA PROMISSORY NOTE" (hereafter, the "Promissory Note").
6. The Promissory Note indicated that the interest rate on the Note was 40% and quarterly interest payments would be made to the Resident as "holder."
7. Respondent represented to the Resident that interest would begin to accrue on the Note as of February 4<sup>th</sup>, 2005, and that the Resident could get her money back "any time" she wanted it.
8. According to the Respondent, the only thing the Resident had to do to get a return was to provide the funds.
9. The Resident's purchase of the Promissory Note was made through the Respondent.
10. The Promissory Note is a "security," as that term is defined by the Act and the Prior Act.

11. At the time the Respondent offered and sold the Promissory Note to the Resident, the Respondent was not registered to offer or sell securities in the State of South Carolina.

12. The Promissory Note was not registered for sale in the State of South Carolina.

13. Respondent did not make payments of interest and/or principal on the Promissory Note as promised.

14. The Resident's last communication from the Respondent was on or about October 15, 2007, and Respondent promised to:

a. Begin payments on November 15, 2007.

b. Make payments would total \$300,000.00 including principal, interest and penalties.

15. Despite attempts by the Resident, there has been no further communication between the Resident and the Respondent.

16. Respondent has not made the payments to the Resident as agreed upon in the revised schedule that Respondent established on October 15, 2007.

17. At the time money was taken, Respondent represented to the Resident it was to be used for the development and/or redevelopment of commercial property in the Charlotte, North Carolina area.

18. Information has been received by the Division that:

a. The Respondent used the Resident's and/or other investor funds for personal use;

b. Respondent previously was involved in one or more failed businesses; and

c. At the time of Resident's investment, Respondent had multiple tax liens against one or more businesses he operated.

19. By means of a subpoena dated April 4, 2008, the Division attempted to give Respondent an opportunity to review and comment upon the allegations against him.

20. The subpoena was served in the manner designated by the Act.

21. Personal service of the subpoena also was attempted by the Mecklenburg County Sheriff's Office ("MCSO").

22. After making multiple unsuccessful attempts to personally serve the subpoena, a representative of the MCSO advised Respondent's wife of the subpoena and left his contact information with her.

23. To date, Respondent, who is aware of the subpoena and the Division's inquiry, has not provided the records requested by the subpoena and has not personally appeared at the Division as directed by the subpoena.

#### **APPLICABLE LAW**

24. Pursuant to S.C. Code Ann. § 35-1-701(a) of the Act, the Prior Act governs actions or proceedings that are initiated based on conduct occurring before January 1, 2006.

25. Pursuant to S.C. Code Ann. § 35-1-20(15) of the Prior Act, the Promissory Note constitutes a "security."

26. Pursuant to S.C. Code Ann. § 35-1-810 of the Prior Act, it is unlawful for any person to offer or sell any security in this State unless (a) it is registered under the Prior Act, (b) the security or transaction is exempted under Section 35-1-310 or 35-1-320, or (c) it is a federal covered security.

27. Pursuant to S.C. Code Ann. § 35-1-410 of the Prior Act, it is unlawful for any person to transact business in this State as a broker-dealer or agent unless he is registered under the Prior Act or exempt from licensing under the Prior Act.

28. Pursuant to S.C. Code Ann. § 35-1-340 of the Prior Act, the burden of proving an exemption is upon the person claiming it.

29. Pursuant to S.C. Code Ann. § 35-1-1210 of the Prior Act, it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to:

- a. Employ any device, scheme, or artifice to defraud;
- b. 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
- c. Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

30. Pursuant to S.C. Code Ann. § 35-1-602(a)(1) of the Act, the Securities Commissioner may conduct public or private investigations within or outside of this State which the Securities Commissioner considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate the Act or a rule adopted or an order issued under the Act, or to aid in the enforcement of the Act or in the adoption of rules and forms under the Act.

31. Regarding administrative remedies under the Act and Prior Act:

- a. Pursuant to S.C. Code Ann. § 35-1-604(a)(1) of the Act, if the Securities Commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of the Act or a rule adopted or order issued under the Act or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of the Act or a rule adopted or order issued under the Act, the Securities Commissioner may issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with the Act.
- b. Pursuant to S.C. Code Ann. § 35-1-604(b) of the Act, an order under subsection

(a) is effective on the date of issuance. Upon issuance of the order, the Securities Commissioner shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any civil penalty or costs of investigation the Securities Commissioner will seek, a statement of the reasons for the order, and notice that, within 15 days after receipt of a request in a record from the person, the matter will be scheduled for a hearing.

c. Pursuant to S.C. Code Ann. § 35-1-1475 of the Prior Act, the Securities Commissioner may impose and collect an administrative fine against any person found to have violated any provision of the Prior Act, any rule or order promulgated by the Commissioner, or any written agreement entered into with the Commissioner in an amount not exceeding five thousand dollars (\$5,000.00) for each violation.

#### **DIVISION'S DETERMINATION**

WHEREAS, based on the foregoing, the Division has determined that the Respondent has engaged, is engaging, and/or is about to engage in an act, practice, or course of business constituting a violation of the Act and/or the Prior Act or a rule adopted or order issued under the Act or Prior Act as follows:

- a. On or around February 4, 2005, the Respondent offered and sold a security to a South Carolina resident.
- b. The Respondent violated S.C. Code Ann. § 35-1-810 of the Prior Act when he offered and sold to a resident of this State a security which was not (i) registered under the Prior Act, (ii) exempt under S.C. Code Ann. §§ 35-1-310 or 35-1-320 of the Prior Act, or (iii) a federal covered security.

c. The Respondent violated S.C. Code Ann. § 35-1-410 of the Prior Act when he offered and sold a security to a resident of this State while he was not registered in this State as a broker-dealer or agent or exempt from licensing under the Prior Act.

d. The Respondent has not asserted to the Division any claim of exemption from registration with the Division, either on his behalf or on behalf of the security.

e. The Respondent violated S.C. Code Ann. § 35-1-1210 of the Prior Act and engaged in securities fraud when he offered and sold a security to a resident of this State by use of untrue statements of material facts, including but not limited to the following:

i. Respondent told the Resident she could get her money back any time she wanted it, which was not true; and

ii. Respondent told the Resident her funds would be used for the development of commercial property in the Charlotte, North Carolina area and they were not.

f. The Respondent violated S.C. Code Ann. § 35-1-1210 of the Prior Act and engaged in securities fraud when he offered and sold a security to a resident of this State of by omitting to state one or more material facts necessary to make statements made not misleading, including but not limited to the following statements:

i. That there was significant risk associated with the investment;

ii. That the Resident could lose some or all of her principal;

iii. That there were outstanding tax liens against one or more of Respondent's businesses; and

iv. That the Respondent had previously been involved in one or more failed businesses.

## **CEASE AND DESIST ORDER**

NOW THEREFORE, pursuant to S.C. Code Ann. § 35-1-604(a)(1) of the Act, IT IS HEREBY ORDERED that the Respondent:

- a. Cease and desist from offering and/or selling securities in or from the State of South Carolina, in violation of S.C. Code Ann. §§ 35-1-301, 35-1-401 and 35-1-501 of the Act; and
- b. Pay a civil penalty in the amount of five thousand dollars (\$5,000.00) if this Order becomes effective by operation of law, or, if the Respondent seeks a hearing and a hearing officer or any other legal authority resolves this matter, pay a civil penalty in an amount not to exceed five thousand dollars (\$5,000.00) for each violation of the Prior Act by the Respondent, and the actual cost of the investigation.

It is further **ORDERED** that any exemption to which the Respondent might otherwise be entitled under S.C. Code Ann. § 35-1-401(b)(1)(D) or 35-1-401(b)(1)(F) of the Act is hereby revoked.

### **REQUIREMENT OF ANSWER AND NOTICE OF OPPORTUNITY FOR HEARING**

The Respondent is hereby notified that he has the right to a hearing on the matters contained herein. To schedule such a hearing, the Respondent must file with the Securities Division, Post Office Box 11549, Rembert C. Dennis Building, Columbia, South Carolina, 29211-1549, attention: Thresechia Navarro, within thirty (30) days of the issuance of this Order to Cease and Desist a written Answer specifically requesting a hearing therein.

In the written Answer, the Respondent, in addition to requesting a hearing, shall admit or deny each factual allegation in this Order, shall set forth specific facts on which the Respondent relies, and shall set forth concisely the matters of law and affirmative defenses upon which the Respondent relies. If the Respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation he shall so state.

Failure by the Respondent to file a written request for a hearing in this matter within the thirty-day (30) period stated above shall be deemed a waiver by the Respondent of his right to such a hearing. Failure of the Respondent to file an Answer, including a request for a hearing, shall result in this Order, including the stated civil penalty, becoming final as to the Respondent by operation of law.

CONTINUING TO ENGAGE IN ACTS DETAILED BY THIS ORDER AND/OR SIMILAR ACTS MAY RESULT IN THE DIVISION'S FILING ADDITIONAL ADMINISTRATIVE ACTIONS AND/OR SEEKING FURTHER ADMINISTRATIVE FINES. WILLFUL VIOLATION OF THIS ORDER COULD RESULT IN CRIMINAL PENALTIES UNDER S.C. CODE ANN. § 35-1-508 OF THE ACT. REGARDING MATTERS DESCRIBED HEREIN, THIS ORDER DOES NOT PRECLUDE THE FILING OF PRIVATE CAUSES OF ACTION OR THE FILING OF CRIMINAL CHARGES UNDER S.C. CODE ANN. § 35-1-508 OF THE ACT.

**IT IS SO ORDERED.**

This 12<sup>th</sup> day of August, 2009

  
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