

ADMINISTRATIVE PROCEEDING

BEFORE THE

SECURITIES COMMISSIONER OF SOUTH CAROLINA

IN THE MATTER OF:)	
)	ORDER TO CEASE AND DESIST
Tub Plug, LLC (d/b/a TCE, Inc. and)	
For My Home, LLC) and Tower B.)	
Carney, III,)	File No. 14106
)	
<hr/> Respondents.)	

WHEREAS, the Securities Division of the Office of the Attorney General of the State of South Carolina (the “Division”) has been authorized and directed by the Securities Commissioner of South Carolina (the “Securities Commissioner”) to administer the provisions of S.C. Code Ann. § 35-1-101, *et seq.*, the South Carolina Uniform Securities Act of 2005 (the “Act”); and

WHEREAS, the Division received information regarding alleged securities-related activities of Tub Plug, LLC (d/b/a TCE, Inc. and For My Home, LLC) (“Tub Plug”) and Tower B. Carney, III (“Carney”) (collectively referred to as the “Respondents”); and

WHEREAS, based on the information received, the Division decided it was necessary and appropriate to open an investigation pursuant to S.C. Code Ann. § 35-1-602 to determine whether the Respondents had violated, were violating, or were about to violate the Act; and

WHEREAS, in connection with the investigation, the Division has determined that evidence exists to support the following findings of fact and conclusions of law:

I. JURISDICTION

1. The Securities Commissioner has jurisdiction over this matter pursuant to S.C. Code Ann. § 35-1-601(a).

II. RESPONDENTS

2. Respondent Tub Plug was a South Carolina corporation with a last known address of 701 Eighty Oak Avenue, Mount Pleasant, South Carolina 29464.
3. Respondent Tub Plug was founded by Carney on or about October 20, 2010. At all times material herein, Respondent Carney was the owner and chief control person of Tub Plug.
4. Respondent Carney is a South Carolina resident with a last known address of 701 Eighty Oak Avenue, Mount Pleasant, South Carolina 29464.

III. FINDINGS OF FACT

Investor A

5. In or around November 2012, the Respondents approached a South Carolina resident (“Investor A”) about an opportunity to invest with Tub Plug.
6. In connection with the offer of the investment opportunity at issue, the Respondents stated that Investor A would receive:
 - a. A thirty percent (30%) rate of return on the investment, to a maximum of \$15,000; and
 - b. A two-percent (2%) ownership interest in Tub Plug in the form of stock.
7. To further promote the investment opportunity, the Respondents personally guaranteed repayment of Investor A’s investment by June 9, 2013.
8. Further, the Respondents represented to Investor A that they had secured valuable contracts for the sale of company products that would more than offset Investor A’s investment.
9. The Respondents told Investor A that his investment would be used solely to support the business activities of the Respondents.

10. Based on the representations made by the Respondents, Investor A drew a check in the amount of \$50,000 and payable to Respondent Tub Plug on or about December 11, 2012.
11. On or about December 11, 2012, the Respondents deposited the \$50,000 check from Investor A into a bank account controlled solely by the Respondents.
12. Contrary to the representations made by the Respondents, a substantial portion of Investor A's investment was used to repay principal and interest promised by the Respondents to a prior investor.
13. Contrary to the representations made by the Respondents, a substantial portion of Investor A's investment was used for the personal expenses of the Respondents.
14. Contrary to the representations made by the Respondents, the Respondents did not repay Investor A by June 9, 2013.
15. On or about January 24, 2013, the Respondents solicited Investor A for an additional investment of \$50,000.
16. The Respondents represented that Investor A's additional investment would be used to cover legal fees for patenting company products.
17. In connection with the additional investment opportunity, the Respondents stated that Investor A would receive:
 - a. An additional eight-percent (8%) ownership interest in Tub Plug; and
 - b. A twenty-five percent (25%) ownership interest in the "Phone APP" project, another of Respondent Carney's business ventures.
18. The Respondents personally guaranteed repayment of Investor A's additional investment by June 9, 2013.
19. Based on the representations made by the Respondents, Investor A drew two checks,

each in the amount of \$25,000 and payable to Respondent Tub Plug, on or about January 24, 2013.

20. On or about January 24, 2013, the Respondents deposited the two \$25,000 checks from Investor A into a bank account controlled solely by the Respondents.
21. Contrary to the representations made by the Respondents, a substantial portion of Investor A's additional investment was used for the personal expenses of the Respondents.
22. Contrary to the representations made by the Respondents, upon information and belief, Investor A never received ownership in the "Phone APP" project.
23. Contrary to the representations made by the Respondents, the Respondents did not repay Investor A by June 9, 2013.
24. On or about March 15, 2013, the Respondents solicited Investor A for an additional investment of \$30,000.
25. The Respondents represented to Investor A that his additional investment would be used to cover operating expenses.
26. The Respondents stated that Investor A would receive a return of \$5,000 in addition to repayment of his principal in exchange for his additional investment.
27. Further, the Respondents represented that Investor A would receive an undated check at the signing of the agreement for the amount of the principal and promised returns for all three investments, totaling \$150,000.
28. The Respondents represented that Investor A could deposit the undated check when the Respondents' funds cleared or by June 9, 2013, whichever came first.
29. The Respondents personally guaranteed repayment of the additional investment.

30. Based on the representations made by the Respondents, Investor A drew a check in the amount of \$30,000 and payable to Respondent Tub Plug on or about March 15, 2013.
31. On or about March 15, 2013, the Respondents deposited the \$30,000 check from Investor A into a bank account controlled solely by the Respondents.
32. Contrary to the representations made by the Respondents, a substantial portion of Investor A's additional investment was used for the personal expenses of the Respondents.
33. Contrary to the representations made by the Respondents, the undated check Investor A received from the Respondents was never negotiable.
34. To date, Investor A has received neither his principal nor the promised returns on his investments from the Respondents.
35. In connection with the offer and sale of the securities, the Respondents failed to disclose to Investor A a 2005 civil judgment against Respondent Carney for \$10,500.

Investor B

36. In or around August 2012, the Respondents approached a South Carolina resident ("Investor B") about an opportunity to invest in Tub Plug for the amount of \$4,000.
37. In connection with the offer of the investment opportunity, the Respondents stated that Investor B would receive a \$6,000 return on his investment in addition to his principal.
38. Based on the representations made by the Respondents, on or about May 31, 2013, Investor B transferred \$4,000 to an account controlled solely by the Respondents.
39. To date, Investor B has received neither his principal nor the promised return on his investment from the Respondents.
40. In connection with the offer and sale of the securities, the Respondents failed to disclose

to Investor B a 2005 civil judgment against Respondent Carney for \$10,500.

Respondents and Respondents' Registration Status

41. Respondent Carney represented Respondent Tub Plug in effecting or attempting to effect the transactions referenced above.
42. At no time relevant to the events stated herein was Respondent Carney registered with the Division as an agent, and no exemption from registration has been claimed.
43. At no time relevant to the events stated herein was Respondent Tub Plug registered with the Division as an issuer, and no exemption from registration has been claimed.
44. At no time relevant to the events stated herein were the securities at issue registered with the Division or federal covered securities, and no exemption from registration has been claimed.

IV. CONCLUSIONS OF LAW

45. The South Carolina Uniform Securities Act of 2005, S.C. Code Ann. § 35-1-101, *et seq.*, governs the offer and sale of securities in this State.
46. Pursuant to S.C. Code Ann. § 35-1-102(29), notes, investment contracts, stock, and certificates of interest or participation in profit-sharing agreements, *inter alia*, constitute securities.
47. Pursuant to S.C. Code Ann. § 35-1-301, it is unlawful for a person to offer or sell a security in this State unless that security is a federal covered security, exempt from registration, or registered.
48. Pursuant to S.C. Code Ann. § 35-1-102(17), "issuer" includes a person that issues or proposes to issue a security.
49. Pursuant to S.C. Code Ann. § 35-1-102(2), an "agent" includes an individual, other than

an issuer, who represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities.

50. Pursuant to S.C. Code Ann. § 35-1-402(a), it is unlawful for an individual to transact business in this State as an agent unless that individual is registered or exempt from registration.
51. Pursuant to S.C. Code Ann. § 35-1-402(d), it is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this State, to employ or associate with an agent who transacts business in this State on behalf of broker-dealers or issuers unless the agent is registered or exempt from registration.
52. Pursuant to S.C. Code Ann. § 35-1-501, it is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly (1) to employ a device, scheme, or artifice to defraud; (2) to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (3) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.
53. The Respondents offered and sold securities as defined by the Act.
54. The securities offered and sold by the Respondents were not federal covered securities, exempt from registration, nor registered with the United States Securities and Exchange Commission or the Division and were therefore offered and sold in violation of S.C. Code Ann. § 35-1-301.
55. Respondent Tower Carney, on at least four occasions, transacted business in this State as an unregistered agent.

56. Respondent Tub Plug, on at least four occasions, employed or associated with an unregistered agent who transacted business on behalf of an issuer while that agent was not registered.
57. The Respondents, on at least four occasions and in connection with the offer, sale, or purchase of a security, directly or indirectly (1) employed a device, scheme, or artifice to defraud; (2) made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (3) engaged in an act, practice, or course of business that operated or would operate as a fraud or deceit upon another person, in violation of S.C. Code Ann. § 35-1-501.
58. It is in the public interest, for the protection of investors, and consistent with the purposes of the Act that the Respondents be ordered to cease and desist from engaging in the above-enumerated practices, which constitute violations of the Act and pay an appropriate civil penalty for their wrongdoing.

V. CEASE AND DESIST ORDER

NOW THEREFORE, pursuant to S.C. Code Ann. § 35-1-604(a)(1), it is hereby **ORDERED** that:

- a. Respondent Tub Plug, LLC, and every successor, affiliate, control person, agent, servant, and employee of Tub Plug, LLC and every entity owned, operated, or indirectly or directly controlled by or on behalf of Tub Plug, LLC **CEASE AND DESIST** from transacting business in this State in violation of the Act, and, in particular, §§ 35-1-301, 35-1-401, 35-1-402, and 35-1-501 thereof;
- b. Respondent Tower Carney **CEASE AND DESIST** from transacting business in this State

in violation of the Act, and, in particular, §§ 35-1-301, 35-1-402, and 35-1-501 thereof;

- c. Respondent Tub Plug, LLC pay a civil penalty in the amount of eighty thousand dollars (\$80,000) if this Order becomes effective by operation of law, or, if Tub Plug seeks a hearing and any legal authority resolves this matter, pay a civil penalty in an amount not to exceed \$10,000 for each violation of the Act by Tub Plug and the actual cost of investigation or proceeding; and
- d. Respondent Tower Carney pay a civil penalty in the amount of sixty thousand dollars (\$60,000) if this Order becomes effective by operation of law, or, if Carney seeks a hearing and any legal authority resolves this matter, pay a civil penalty in an amount not to exceed \$10,000 for each violation of the Act by Carney, and the actual cost of investigation or proceeding.

IT IS FURTHER ORDERED that, pursuant to S.C. Code Ann. §§ 35-1-604(a)(2) and (3), any exemption from registration with the Division upon which the Respondents may claim to rely under S.C. Code Ann. §§ 35-1-201(3)(C), (7), or (8); 35-1-202; 35-1-401(b)(1)(D) or (F); or 35-1-403(b)(1)(C), has been and is **PERMANENTLY REVOKED**.

VI. REQUIREMENT OF ANSWER AND NOTICE OF OPPORTUNITY FOR HEARING

Each Respondent is hereby notified that he has the right to a hearing on the matters contained herein. To schedule such a hearing, a 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 after the date of service of this Order to Cease and Desist, a written Answer specifically requesting a hearing. If a Respondent requests a hearing, the Division, within fifteen (15) days after receipt of a request in a record from the Respondent, will schedule the hearing for that Respondent.

In the written Answer, a 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 a 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 that Respondent of the right to such a hearing. Failure of a Respondent to file an Answer, including a request for a hearing, shall result in this Order, including the stated civil penalty and any assessed costs, becoming final as to that Respondent by operation of law.


This Order does not prevent the Division or any other law enforcement agency from seeking additional civil or criminal remedies as are available under the Act, including remedies related to the offers and sales of securities by the Respondents set forth above.

ENTERED, this the 29th day of October, 2015.

ALAN WILSON
SECURITIES COMMISSIONER

By: Tracy Meyers
TRACY A. MEYERS
Deputy Securities Commissioner

ISSUANCE REQUESTED BY:



TAYLOR FAW
Assistant Attorney General
Securities Division
Rembert C. Dennis Building
1000 Assembly Street
Columbia, South Carolina 29201

STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
SECURITIES DIVISION

CERTIFICATE OF SERVICE AND
AFFIDAVIT OF COMPLIANCE
File Number 14106


I hereby certify that I served upon the individual/entity listed below a copy of the document indicated below and dated October 29, 2015, by serving a copy of said document upon the Securities Commissioner of the State of South Carolina and by placing a copy of said document in the United States mail, certified mail, return receipt requested, first class postage prepaid and addressed to:

Tower B. Carney, III
Individually and as Owner of Tub Plug, LLC
c/o Mike Ellis, Esquire
Query Sautter Forsythe, LLC
147 Wappoo Creek Drive
Suite 202
Charleston, SC 29412

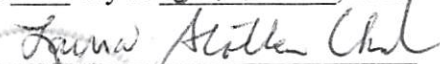
Document(s): Order to Cease and Desist

Mailed October 30, 2015 from Columbia, South Carolina.

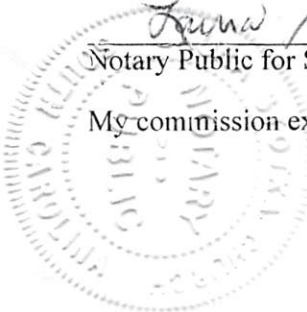
I further hereby certify, swear and affirm that, service of the above-listed entity is in compliance with Section 35-1-611, Code of Laws of South Carolina.

By: 
Thresechia P. Navarro
South Carolina Attorney General's Office
Securities Division
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-4731

Subscribed and sworn to before me on
this 30th day of October, 2015,


Notary Public for South Carolina

My commission expires: 3-10-18



STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

IN SENATE
JANUARY 10, 1907

REPORT OF THE COMMISSIONERS OF THE LAND OFFICE
IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE
ON JANUARY 10, 1907

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STATE OF CALIFORNIA
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STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

