

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF SOUTH CAROLINA

IN THE MATTER OF:

**Trenton S. Sommerville and
First Capital Partners, Inc.,

Respondents.**

ORDER TO CEASE AND DESIST

File Number 09007

WHEREAS, the Securities Division of the Office of the Attorney General of the State of South Carolina (the "Division"), pursuant to authority granted in the South Carolina Uniform Securities Act of 2005 (the "Act"), S.C. Code Ann. §§ 35-1-101 to 35-1-703 (Supp. 2008), on or around January 15, 2009, received information regarding alleged activities involving Trenton S. Sommerville and First Capital Partners, Inc. (collectively, the "Respondents") which would constitute violations of the Act;

WHEREAS, the Act became effective on January 1, 2006;

WHEREAS, the information led the Division to open and conduct an investigation into the activities of the Respondents pursuant to S.C. Code Ann. § 35-1-602 and this investigation is ongoing;

NOW THEREFORE, in connection with the investigation, the Division determined that the Respondents have engaged and may be about to engage in acts or practices constituting violations of the Act and hereby includes in this Order to Cease and Desist ("Order") a statement of the reasons for the Order, a statement of the civil penalty

sought as a result, and a notice that a hearing will be scheduled if either Respondent requests a hearing.

FACTUAL HISTORY

1. Respondent Trenton S. Sommerville (“Sommerville”) is a Florida resident with a last known address of 4372 Stonebridge Road, Destin, Florida 32541.
2. Respondent First Capital Partners, Inc. (“First Capital”) is an entity which advertises it provides investors with investment opportunities in startup, early stage and seasoned companies.
3. During the time period covered by the facts set forth herein, the primary business address for First Capital was 225 Main Street, Suite 7L, Destin, Florida 32541.
4. Neither Respondent Sommerville nor Respondent First Capital is currently registered with the Division as a broker-dealer, broker-dealer agent, investment advisor, investment advisor representative, or issuer of securities and neither Respondent was registered with the Division in any capacity at any time during the period August 1, 2008, to February 6, 2009.
5. On or about January 15, 2009, Respondent Sommerville, acting on behalf of himself and Respondent First Capital, solicited a South Carolina resident (the “Resident”) to invest money in Heartland, Inc. (“Heartland”).
6. In the solicitation Respondent Sommerville represented himself to be CEO and Chairman of First Capital.
7. In the solicitation Respondent Sommerville represented to the Resident that Heartland stock is currently trading around \$0.25 but that “[b]ased on our analysis

and the company's fundamentals, we are forecasting a target price range of \$1.75 to \$2.25 in twelve months."

8. At the time Respondent Sommerville solicited the Resident, the Heartland shares were not registered in the State of South Carolina, the Heartland issued security was not a federal covered security, and the security was not exempt from registration.
9. Respondent Sommerville failed to disclose one or more material facts to the Resident he solicited, including the fact(s):
 - a. Neither he nor Respondent First Capital was registered to offer or sell securities or otherwise transact securities business in the State of South Carolina;
 - b. Respondent Sommerville, at the time of the solicitation, was CEO of Heartland;
 - c. Respondent Sommerville was not a disinterested party to the transaction;
 - d. The representation Respondent Sommerville made to the Resident concerning the long-term value of Heartland shares was not based on publicly available information;
 - e. Heartland shares were deleted from the over the counter bulletin board on or around May 23, 2003, and currently are tracked in the pink sheets,
 - f. The company's approximately 37,321,084 shares, as of the April to August 2008 time frame were held by only 774 shareholders;

- g. An investment in Heartland entails a high degree of risk; and
- h. An investor in Heartland could lose all or most of his investment.

APPLICABLE LAW

1. Pursuant to S.C. Code Ann. § 35-1-703 (Supp. 2008), the Act took effect on January 1, 2006.
2. Pursuant to S.C. Code Ann. § 35-1-102 (29) (Supp. 2008), the Heartland shares offered by Respondents to a South Carolina resident constitute securities.
3. Pursuant to S.C. Code Ann. § 35-1-401(a) (Supp. 2008), it is unlawful for a person to transact business in this State as a broker-dealer unless the individual is registered under the Act as a broker-dealer or is exempt from registration as a broker-dealer under the Act.
4. Pursuant to S.C. Code Ann. § 35-1-402(a) (Supp. 2008), it is unlawful for a person to transact business in this State as an agent unless the individual is registered under the Act as an agent or is exempt from registration as an agent under the Act.
5. Pursuant to S.C. Code Ann. § 35-1-301 (Supp. 2008), it is unlawful for a person to offer or sell a security in this State unless (1) the security is a federal covered security; (2) the security, transaction, or offer is exempted from registration under Sections 35-1-201 through 35-1-203; or (3) the security is registered under the Act.
6. Pursuant to S.C. Code Ann. § 35-1-503(a) (Supp. 2008), in a civil action or administrative proceeding under the Act, a person claiming an exemption,

exception, preemption, or exclusion has the burden to prove the applicability of the claim.

7. Pursuant to S.C. Code Ann. § 35-1-501 (Supp. 2008), 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.
8. Pursuant to S.C. Code Ann. § 35-1-602(a)(1) (Supp. 2008), the Securities Commissioner may conduct public or private investigations within or outside the State of South Carolina 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 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.
9. Regarding administrative remedies under the Act:
 - a. Pursuant to S.C. Code Ann. § 35-1-604(a)(1) (Supp. 2008), 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, 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) (Supp. 2008), a cease and desist order issued under S.C. Code Ann. § 35-1-604(a)(1) 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 about a hearing.
- c. Pursuant to S.C. Code Ann. § 35-1-604(d) (Supp. 2008), in a final order, the Securities Commissioner may impose a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) for each violation.
- d. Pursuant to S.C. Code Ann. § 35-1-604(e) (Supp. 2008), in a final order, the Securities Commissioner may charge the actual cost of an investigation or proceeding for a violation of the Act or a rule adopted or order issued under the Act.

DIVISION'S DETERMINATION

WHEREAS, based on the application of the law to the facts, the Division has determined that Respondents have engaged, are engaging, or are about to engage in an act, practice, or course of business constituting a violation of the Act and have engaged, are engaging, or about to engage in an act, practice, or course of dealing constituting a violation of the Act or a rule adopted or order issued under the Act as follows:

- a. On or about January 15, 2009, Respondents offered shares of Heartland stock to a South Carolina resident in the State of South Carolina.
- b. The shares of Heartland stock constitute "securities" pursuant to the Act.

- c. The securities were not registered for sale in or from the State of South Carolina.
- d. Respondents are not now and during the time of the offer described in (a) above were not licensed to sell securities in the State of South Carolina.
- e. No exemption from securities or agent registration has been filed or claimed by Respondents or anyone acting on Respondents' behalf.
- f. Respondents violated the anti-fraud provisions of the Act by making the following omissions of material fact:
 - i. Failing to disclose Respondent Sommerville was not using information available to the public when he made the representation "we are forecasting a target price range of \$1.75 to \$2.25 [for Heartland stock] in twelve months";
 - ii. Failing to inform the Resident that neither Respondent Sommerville nor Respondent First Capital was registered to offer or sell securities or otherwise transact securities business in the State of South Carolina at the time of the offer;
 - iii. Failing to inform the Resident that Respondent Sommerville was the CEO of Heartland;
 - iv. Failing to inform the Resident that Respondent Sommerville was not a disinterested party using public information to make any valuation of Heartland stock made by him;
 - v. Failing to inform the Resident that Heartland shares were not listed on an exchange and were traded in the pink sheets;

- vi. Failing to inform the Resident that Heartland shares were thinly traded and concentrated in the hands of a relatively small number of shareholders; and
- vii. Failing to disclose the significant amount of risk an investment in Heartland entailed.

CEASE AND DESIST ORDER

NOW THEREFORE, pursuant to S.C. Code Ann. § 35-1-604(a)(1) (Supp. 2008), it is **HEREBY ORDERED** that each Respondent:

- a. Cease and desist from offering and/or selling securities, in violation of S.C. Code Ann. §§ 35-1-301, 35-1-401 & 35-1-501 (Supp. 2008); and
- b. Pay a civil penalty in the amount of thirty thousand dollars (\$30,000.00) if this Order becomes effective by operation of law, or, if a 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 ten thousand dollars (\$10,000.00) for each violation of the Act committed by that Respondent.

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

Respondents are hereby notified that they each have 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 of notification of the issuance of this Order to Cease and Desist a written Answer specifically requesting a hearing therein.

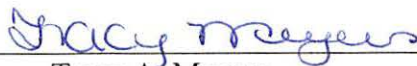
In the written Answer, the Respondent, in addition to requesting a hearing, shall admit or deny each factual allegation in this Order, shall set forth specific facts on which the Respondent relies, and shall set forth concisely the matters of law and affirmative defenses upon which the Respondent relies. A Respondent without knowledge or information sufficient to form a belief as to the truth of an allegation 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 his 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, becoming final as to that 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. REGARDING MATTERS DESCRIBED HEREIN, THIS ORDER DOES NOT PRECLUDE THE FILING OF PRIVATE CAUSES OF ACTION OR THE FILING OF CRIMINAL CHARGES.

IT IS SO ORDERED.

This 15th day of April, 2009



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