OPEN MEETING ITEM

ORIGINAL

2/19/09

COMMISSIONERS
KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

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ARIZONA CORPORATION COMMISSION

MEMORANDUM

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Arizona Corporation Commission
DOCKETED
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TO: Kristin K. Mayes, Chairman
Gary Pierce
Paul Newman
Sandra D. Kennedy
Bob Stump

FROM: Matthew J. Neubert
Director of Securities

DATE: February 2, 2009

RE: Mark A. Westerfield, *et al.* (Docket No. S-20635A-08-0523); Order to Cease and Desist, of Restitution, and for Administrative Penalties

CC: Michael P. Kearns, Interim Executive Director

Attached is a proposed Order to Cease and Desist, of Restitution, and for Administrative Penalties (the "Order") and Consent to Same by: Mark A. Westerfield ("WESTERFIELD") and Victoria H. Westerfield. The Order finds that WESTERFIELD violated A.R.S. §§ 44-1841, 44-1842, and 44-1991 by offering and selling unregistered securities while being unregistered and by violating the anti-fraud provisions of the Securities Act. The Order requires WESTERFIELD to cease and desist his activity, pay $10,000 in restitution, and pay an administrative penalty in the amount of $5,000.

In connection with his sale of an investment contract to an investor, WESTERFIELD misrepresented himself to be a financial planner associated with World Group Securities, Inc. ("WGS"), an Arizona registered securities dealer, when in fact he was terminated from WGS. WESTERFIELD represented the investment as the "public offering" of a building materials company and he guaranteed a 7% annual return, payable two years after the investment. After the expiration of the 2-year term of the investment, the investor requested payment of the investment principal and return. To date, the investor has not received any money.

The Division believes that the Order is appropriate to protect the public welfare.

Originator: Aaron S. Ludwig

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

In the matter of: MARK A. WESTERFIELD (CRD#4234248) and VICTORIA H. WESTERFIELD, husband and wife, formerly doing business as Builder's Secret, an expired Arizona registered trade name, Respondents.	DOCKET NO. S-20635A-08-0523 DECISION NO. _____ **ORDER TO CEASE AND DESIST, OF RESTITUTION, AND FOR ADMINISTRATIVE PENALTIES AND CONSENT TO SAME BY:** **MARK A. WESTERFIELD and VICTORIA H. WESTERFIELD**

MARK A. WESTERFIELD and VICTORIA H. WESTERFIELD elect to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease And Desist, of Restitution, and for Administrative Penalties ("Order"). MARK A. WESTERFIELD and VICTORIA H. WESTERFIELD admit the jurisdiction of the Arizona Corporation Commission ("Commission"); neither admit nor deny the Findings of Fact and Conclusions of Law contained in this Order; and consent to the entry of this Order by the Commission.

I.

FINDINGS OF FACT

1. MARK A. WESTERFIELD ("Respondent") is an individual who, at all times relevant, resided in Pima County, Arizona.

2. VICTORIA H. WESTERFIELD ("Respondent Spouse") was, at all times relevant, the spouse of Respondent. Respondent Spouse is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

3. At all times relevant, Respondent was acting for Respondent's own benefit and for the benefit or in furtherance of Respondent and Respondent Spouse's marital community.

4. Builder's Secret is an expired, Arizona registered trade name. At all times relevant, Respondent and Respondent Spouse were the agents/owners of and doing business as this trade name.

5. EXPERT INSTALL, INC. is an Arizona corporation that, at all times relevant, did business as MV Security (EXPERT INSTALL, INC. shall hereinafter be referred to as "MV SECURITY"). MV SECURITY is the holder of a dual (i.e., residential and commercial), "Shutters and Blinds" license (number ROC238572; classification K-05) issued by the Arizona Registrar of Contractors (the "ROC License").

6. Respondent is and was at all times relevant the vice president and shareholder of MV SECURITY. In these capacities, Respondent obtained and maintained the ROC License and opened and has signature authority over the bank account of MV SECURITY.

7. Respondent is a previously registered securities salesman (CRD#4234248) who, at all times relevant, was not affiliated with a registered securities dealer. Respondent was affiliated with World Group Securities, Inc. (formerly known as WMA Securities, Inc.) ("WMA"), an Arizona registered securities dealer, from July 17, 2000 until his termination on November 11, 2002 for "failure to remain active."

8. On several occasions in 2003 in Tucson, Arizona, Respondent met with an investor (the "Investor") regarding the Investor's investment portfolio. During these meetings, Respondent represented himself to be a financial planner associated with WMA.

9. At a meeting on September 23, 2003, Respondent discussed with the Investor and sold him an investment contract that Respondent called the "public offering" of Builder's Secret (the "Investment"). Respondent said that Builder's Secret "specialized in building materials."

10. The Investor told Respondent two or three times that the money he had to invest was his entire life's savings and that, since he was a student with limited income and had a child on the way, the money could not be risked in any way.

11. Respondent provided the Investor with a WMA form signed by Respondent entitled "New Account Application" containing a section entitled "Client Investment Objective" with boxes describing various levels of risk tolerance. Respondent marked the box entitled "Preservation of Capital," the lowest level of risk tolerance.

12. Respondent assured the Investor that the Investment was guaranteed because Builder's Secret held enough "liquid inventory" to "back their investors" and, if necessary, Builder's Secret could and would liquidate "inventory in stock" to pay the Investment principal and interest/return.

13. Respondent provided the Investor with a document entitled "Investment offering" containing a section entitled "Assurance" that stated, "All funds must be matched with liquid inventory at all times. Investors have assurance of full principle and interest..."

14. Respondent did not disclose specifically how the Investor's money would be used, but generally represented that it would be used by Builder's Secret to purchase building materials that could/would be used to secure the Investment.

15. Respondent neither filed a UCC financing statement with the Arizona Secretary of State nor added the Investor to the title of any property (inventory, building materials, or otherwise) to secure the Investment.

16. Respondent represented that, so long as the Investor kept the Investment in for the entire two-year term and did not withdraw it early, he would receive a 7% annual return.

17. Respondent did not disclose specifically how Builder's Secret would generate the guaranteed return on the Investment, but generally represented that it would be the result of the profitable operations of Builder's Secret.

18. At the direction of Respondent, the Investor paid $10,000 for the Investment with a check payable to MV SECURITY, not Builder's Secret, WMA, or Respondent. The Investor's money was deposited into the bank account of and spent by MV SECURITY.

19. Respondent represented that, even though the Investment could be renewed upon the expiration of the two-year term, the Investor could request and then would receive payment of the Investment principal and interest/return.

20. On or about December 2006, after the expiration of the 2-year term of the Investment, the Investor contacted Respondent and requested to receive the Investment principal and interest/return. Although Respondent promised to send it to the Investor via Federal Express, the Investor has not received any money to date.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. Respondent offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. Respondent violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

4. Respondent violated A.R.S. § 44-1842 by offering or selling securities while neither registered as a dealer or salesman nor exempt from registration.

5. Respondent violated A.R.S. § 44-1991 by (a) employing a device, scheme, or artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c) engaging in transactions, practices, or courses of business that operate or would operate as a fraud or deceit. The conduct includes, but is not limited to, the following:

a. Misrepresenting himself to be associated with WMA and using a WMA New Account Application in connection with the Investment when, at the time of the Investment, Respondent was terminated from WMA;

b. Misrepresenting to the Investor that Builder's Secret had/would have sufficient inventory and/or building materials to pay the Investment principal and interest/return;

c. Misrepresenting to the Investor that, upon the expiration of the two-year term of the Investment, he could request and would then receive payment of the Investment principal and interest/return; and,

d. Failing to provide the Investor with specific information about how his money would be used or how Builder's Secret would generate the guaranteed return on the Investment.

6. Respondent's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

7. Respondent's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032.

8. Respondent's conduct is grounds for administrative penalties under A.R.S. § 44-2036.

9. Respondent acted for the benefit of the marital community and, pursuant to A.R.S. §§ 25-214 and 25-215, this order of restitution and administrative penalties is a debt of the community.

III.

ORDER

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondent's consent to the entry of this Order, attached and incorporated by reference, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondent, and any of Respondent's agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act .

IT IS FURTHER ORDERED that Respondent complies with the attached Consent to Entry of Order.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondent MARK A. WESTERFIELD, individually, and the marital community of Respondent MARK A. WESTERFIELD, jointly and severally, shall pay restitution to the Commission in the amount of $10,000. Payment shall be made in full on the date of this Order. Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of purchase until paid in full. Interest in the amount of $5,413.70 has accrued from the date of purchase to the date of this Order. Payment shall be made to the "State of Arizona" to be placed in an interest-bearing account controlled by the Commission. The Commission shall disburse the funds on a pro-rata basis to investors shown on the records of the Commission. Any funds that the Commission determines it is unable to or cannot feasibly disburse shall be transferred to the general fund of the state of Arizona.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondent MARK A. WESTERFIELD, individually, and the marital community of Respondent MARK A. WESTERFIELD, jointly and severally, shall pay an administrative penalty in the amount of $5,000. If the restitution obligation specified above is paid in full on or before December 31, 2009, the administrative penalty will be reduced to $2,500. Payment shall be made to the "State of Arizona." Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of this Order until paid in full. The payment obligation for this administrative penalty shall be subordinate to any restitution obligation ordered herein and shall become immediately due and payable only after restitution payments have been paid in full or upon Respondent's default with respect to Respondent's restitution obligation.

For purposes of this Order, a bankruptcy filing by Respondent shall be an act of default. If Respondent does not comply with this Order, any outstanding balance may be deemed in default and shall be immediately due and payable.

IT IS FURTHER ORDERED, that if Respondent fails to comply with this order, the Commission may bring further legal proceedings against Respondent, including application to the superior court for an order of contempt.

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IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2009.

MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail sbernal@azcc.gov.

(asl)

CONSENT TO ENTRY OF ORDER

1. Respondent and Respondent Spouse admit the jurisdiction of the Commission over the subject matter of this proceeding. Respondent and Respondent Spouse acknowledge that they have been fully advised of their right to a hearing to present evidence and call witnesses and they knowingly and voluntarily waive any and all rights to a hearing before the Commission and all other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code. Respondent and Respondent Spouse acknowledge that this Order constitutes a valid final order of the Commission.

2. Respondent and Respondent Spouse knowingly and voluntarily waive any right under Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief resulting from the entry of this Order.

3. Respondent and Respondent Spouse acknowledge and agree that this Order is entered into freely and voluntarily and that no promise was made or coercion used to induce such entry.

4. Respondent and Respondent Spouse understand and acknowledge that they have a right to seek counsel regarding this Order and that they have had the opportunity to seek counsel prior to signing this Order. Respondent and Respondent Spouse acknowledge and agree that, despite the foregoing, they freely and voluntarily waives any and all right to consult or obtain counsel prior to signing this Order.

5. Respondent and Respondent Spouse neither admit nor deny the Findings of Fact and Conclusions of Law contained in this Order. Respondent and Respondent Spouse agree not to contest the validity of the Findings of Fact and Conclusions of Law contained in this Order in any present or future administrative proceeding before the Commission or any other state agency concerning the denial or issuance of any license or registration required by the state to engage in the practice of any business or profession.

6. By consenting to the entry of this Order, Respondent and Respondent Spouse agree not to take any action or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual basis. Respondent and Respondent Spouse will undertake steps necessary to assure that all of their agents and employees understand and comply with this agreement.

7. While this Order settles this administrative matter between Respondent, Respondent Spouse, and the Commission, it is understood by Respondent and Respondent Spouse that this Order does not preclude the Commission from instituting other administrative or civil proceedings based on violations that are not addressed by this Order.

8. Respondent and Respondent Spouse understand that this Order does not preclude the Commission from referring this matter to any governmental agency for administrative, civil, or criminal proceedings that may be related to the matters addressed by this Order.

9. Respondent and Respondent Spouse understand that this Order does not preclude any other agency or officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal proceedings that may be related to matters addressed by this Order.

10. Respondent agrees not to apply to the state of Arizona for registration as a securities dealer or salesman or for licensure as an investment adviser or investment adviser representative at any time in the future.

11. Respondent agrees not to exercise any control over any entity that offers or sells securities or provides investment advisory services within or from Arizona at any time in the future.

12. Respondent agrees not to sell any securities in or from Arizona without being properly registered in Arizona as a dealer or salesman, or exempt from such registration; Respondent will not sell any securities in or from Arizona unless the securities are registered in

Arizona or exempt from registration; and, Respondent will not transact business in Arizona as an investment adviser or an investment adviser representative unless properly licensed in Arizona or exempt from licensure.

13. Respondent and Respondent Spouse agree that they will continue to cooperate with the Securities Division by, including but not limited to, providing complete and accurate testimony at any hearing in this matter and cooperating with the state of Arizona in any related investigation or any other matters arising from the activities described in this Order.

14. Respondent and Respondent Spouse acknowledge that any restitution or penalties imposed by this Order are obligations of the Respondent as well as the marital community.

15. Respondent and Respondent Spouse consent to the entry of this Order and agree to be fully bound by its terms and conditions.

16. Respondent and Respondent Spouse acknowledge and understand that if they fail to comply with the provisions of the Order and this consent, the Commission may bring further legal proceedings against them, including application to the superior court for an order of contempt.

17. Respondent and Respondent Spouse understand that default shall render them liable to the Commission for its costs of collection and interest at the maximum legal rate.

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8. Respondent and Respondent Spouse agree and understand that, if they fail to make any payment as required in the Order, any outstanding balance shall be in default and shall be immediately due and payable without notice or demand. Respondent and Respondent Spouse agree and understand that acceptance of any partial or late payment by the Commission is not a waiver of default by the Commission.

MARK A. WESTERFIELD

STATE OF ~~ARIZONA~~ Oregon)
) ss
County of Clackamas)

SUBSCRIBED AND SWORN TO BEFORE me this 15th day of January 2009.

OFFICIAL SEAL
JUSTIN APA
NOTARY PUBLIC - OREGON
COMMISSION NO. 413333
MY COMMISSION EXPIRES JAN. 11, 2011

NOTARY PUBLIC

My commission expires:

JAN 11, 2011

VICTORIA H. WESTERFIELD

STATE OF ~~ARIZONA~~ Oregon)
) ss
County of Clackamas)

SUBSCRIBED AND SWORN TO BEFORE me this 15th day of January 2009.

NOTARY PUBLIC

My commission expires:

Jan 11, 2011

OFFICIAL SEAL
JUSTIN APA
NOTARY PUBLIC - OREGON
COMMISSION NO. 413333
MY COMMISSION EXPIRES JAN. 11, 2011