

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

CASE NO. S-11-0230

ORDER NO. S-11-0230-11-OR02

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ARKANSAS SECURITIES DEPT.

IN THE MATTER OF:

**HERITAGE PACIFIC FINANCIAL, LLC;
HPAC 18, LLC; AND CHRIS GANTER**

RESPONDENTS

CEASE AND DESIST ORDER

On December 6, 2011, The Staff of the Arkansas Securities Department (“Staff”) filed its Request for Cease and Desist Order. In its Request the Staff states that it has information and certain evidence indicating that Heritage Pacific Financial, LLC; HPAC 18, LLC; and Chris Ganter (collectively “Respondents”) have violated provisions of the Arkansas Securities Act (“Act”), Ark. Code Ann. §§ 23-42-101 through 23-42-509. The Arkansas Securities Commissioner (“Commissioner”) has reviewed the Request and based upon the representations made therein finds that:

FINDINGS OF FACT

The Request contains the following representations of fact:

1. Heritage Pacific Financial, LLC (“HPF”) is a limited liability company organized and existing under the laws of Texas. The Certificate of Formation for HPF was filed with the Office of the Texas Secretary of State on March 26, 2009, and lists its main business address as 2200 K Avenue, # 100, Plano, Texas 75074. HPF has never been registered with the Arkansas Securities Department (“Department”) in any capacity pursuant to the Act.

2. HPAC 18, LLC (“HPAC”) is a limited liability company organized and existing under the laws of Texas. The Certificate of Formation for HPAC was filed with the Office of the Texas Secretary of State on November 25, 2009, and lists its main business address as 2200 K

Avenue, Suite 200, Plano, Texas 75074. HPAC has never been registered with the Department in any capacity pursuant to the Act.

3. Chris Ganter (“Ganter”) is the managing member and chief executive officer for both HPF and HPAC. Ganter has never been registered with the Department in any capacity pursuant to the Act.

4. HPF and HPAC purchase delinquent second-lien debt from the primary market then package and sell the debt to individual investors. The companies take the debt package purchased by one investor, pool it together with the debt portfolios of other investors, collect the monies owed on the individual debts contained in the pool, and then distribute the collections to the individual investors in the pool on a pro rata basis. These companies collectively have a website located at <http://www.hpdebtexchange.com> where the entire purchase, sale, and collection operation is described in detail and referred to as “HP Debt Exchange.” The marketing material on the website home page generally describes the operation and provides the following:

HP Debt buying gets your money off the sidelines and working for you again.

Right now, billions of dollars of non-performing consumer loans are available for purchase below face value. HP Debt buys these distressed loans. Then we collect on them. Thanks to unique current market conditions and our experience with real estate collections, we’re able to take advantage of the debt opportunity for our client partners.

5. The “HP Debt Exchange” website promises the opportunity for large returns to potential investors. Particularly, the site claims to offer investors “the returns of a lifetime” while characterizing the investment as a “brief, low-risk opportunity.” Copies of the referenced pages on the website are attached as composite Exhibit “A” to the Request.

6. The Respondents structure the loan sale and servicing transactions with investors by way of two written agreements. The investor signs a "Mortgage Loan Sale Agreement" ("sale agreement") with HPAC which states the purchase price for the loan package and identifies the specific loans being purchased by the investor. In conjunction with the sale agreement, the investor simultaneously signs a "Management & Servicing Agreement" ("servicing agreement") with HPF which incorporates the loan package identified in the sale agreement. Under the servicing agreement, the loans purchased through the sale agreement are bundled into a "portfolio" and placed into an "HPAC Collection Pool" ("pool"), together with the portfolios of other investors. HPF services the collection of payments owed on the debts in each pool then makes pro rata distributions to the investors in that pool, while retaining a percentage of the collections as profit.

7. The return for each investor is dependent solely upon the efforts of the Respondents. The terms of the servicing agreement dictate that the Respondents will have sole discretion over collections, with the "Management & Servicing" section of the agreement providing as follows:

Client agrees that Servicer will manage the collection process on behalf of Client. Servicer, in its sole discretion, will determine which combination of internal and external collection resources to employ. Client acknowledges and agrees that Servicer shall make decisions, manage, service and collect, on Client's Portfolio as part of the HPAC Collection Pool, based on the best interest of the HPAC Collection Pool and not as to the individual interest of any debt portfolio comprising the HPAC Collection Pool.

8. On or about September 13, 2010, Respondents sold Arkansas Resident One ("AR1") a package of second-lien debt for \$50,000.00. AR1 entered into a sale agreement with HPAC, which was executed by Ganter in his capacity as chief executive officer for the company. As part of the sale transaction, AR1 simultaneously entered into a servicing agreement with HPF,

whereby the loans purchased in the sale agreement were placed in a pool with the portfolios of other investors. Ganter signed the servicing agreement as chief executive officer on behalf of HPF. Copies of the sale agreement and servicing agreement entered into between the Respondents and AR1 are attached as composite Exhibit "B" to the Request.

9. On or about September 13, 2010, Respondents sold Arkansas Resident Two ("AR2") a package of second-lien debt for \$50,000.00. AR2 entered into a sale agreement with HPAC, which was executed by Ganter in his capacity as chief executive officer for the company. As part of the sale transaction, AR2 simultaneously entered into a servicing agreement with HPF, whereby the loans purchased in the sale agreement were placed in a pool together with the portfolios of other investors. Ganter signed the servicing agreement as chief executive officer on behalf of HPF. AR2 was unable to locate the signed servicing agreement but informed the Staff that the servicing agreement entered into was identical in nature to that entered into by AR1. A copy of the sale agreement entered into between the Respondents and AR2 is attached as Exhibit "C" to the Request.

10. On or about September 13, 2010, Respondents sold Arkansas Resident Three ("AR3") a package of second-lien debt for \$50,000.00. AR3 entered into a sale agreement with HPAC, which was executed by Ganter in his capacity as chief executive officer for the company. As part of the sale transaction, AR3 simultaneously entered into a servicing agreement with HPF, whereby the loans purchased in the sale agreement were placed in a pool together with the portfolios of other investors. Ganter signed the servicing agreement as chief executive officer on behalf of HPF. Copies of the sale agreement and servicing agreement entered into between the Respondents and AR3 are attached as composite Exhibit "D" to the Request.

11. On or about September 13, 2010, Respondents sold Arkansas Resident Four (“AR4”) a package of second-lien debt for \$50,000.00. AR4 entered into a sale agreement with HPAC, which was executed by Ganter in his capacity as chief executive officer for the company. As part of the sale transaction, AR4 simultaneously entered into a servicing agreement with HPF, whereby the loans purchased in the Sale Agreement were placed in a pool together with the debts purchased by other investors. Ganter signed the servicing agreement as chief executive officer on behalf of HPF. While AR4 was unable to retrieve a copy of the servicing agreement, AR4 sent an e-mail to the Staff confirming that the servicing agreement entered into was the same as that entered into by AR3. A copy of the sale agreement entered into between the Respondents and AR4, as well as a copy of the e-mail from AR4 confirming the existence of a servicing agreement, are attached as composite Exhibit “E” to the Request.

12. With regard to the subject transactions described herein, a search of Department records by the Staff revealed no registration or proof of exemption in accordance with the Act and no notice filing in accordance with federal law in connection with a covered security.

CONCLUSIONS OF LAW

13. The Act was promulgated to protect investors and utilizes a broad and flexible definition of a security to determine which transactions fall under the Act’s jurisdiction. *Carder v. Burrow*, 327 Ark. 545, 549 (1997). Whether the subject transactions constituted securities transactions under the Act depends not upon labels or titles, but upon consideration of all relevant facts. *See Grand Prairie Sav. and Loan Ass’n, Stuttgart v. Worthen Bank and Trust Co.*, 298 Ark. 542, 545 (1989) (quoting *Schultz v. Rector-Phillips-Morse, Inc.*, 261 Ark. 769, 777 (1977)).

14. Ark. Code Ann. § 23-42-102(15)(A)(xi) includes investment contracts under the Act's definition of a security.

15. A security in the form of an investment contract exists when a transaction is an investment in the risk capital of a venture with an expectation of benefits but with a lack of control on the part of the investor. *See Smith v. State*, 266 Ark. 861, 865 (Ark. App. 1979); *Carder*, 327 Ark. at 549; *see also Securities and Exchange Comm'n v. W.J. Howey Co.*, 328 U.S. 293, 298-99 (1946) (“[A]n investment contract . . . means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party”); *Grand Prairie Sav. and Loan Ass'n*, 298 Ark. at 545 (noting that the test used in *Smith* is substantially the same as the *Howey* test used in the federal courts).

16. In *Grand Prairie Sav. and Loan Ass'n*, 298 Ark. at 545, the Arkansas Supreme Court noted that the Arkansas test for a security is substantially the same test used in the federal courts and set forth in *Howey*. However, in *Schultz*, the Arkansas Supreme Court rejected an express adoption of the *Howey* test in favor of a more flexible case-by-case analysis. The Court held that the definition of a security under the Act should not be given narrow construction (as in *Howey*) but that “it is better to determine in each instance from a review of all the facts, whether an investment scheme or plan constitutes an investment contract . . . within the scope of the statute.” *Schultz*, 261 Ark. at 781.

17. Ark. Code Ann. § 23-42-102(9) defines issuer as any person who issues any security.

18. Ark. Code Ann. § 23-402-301(a) provides that it is unlawful for any person to transact business as an agent of an issuer of securities without first being registered as such pursuant to the Act.

19. Ark. Code Ann. § 23-42-501 provides that it is unlawful for any person to offer or sell any security unless it is registered, exempt, or a covered security.

20. The subject sale and servicing transactions whereby loan portfolios were sold to investors then placed into collection pools with the portfolios of other investors are investment contracts under Ark. Code Ann. § 23-42-102(15)(A)(xi). Under the risk capital test set forth in *Smith*, the sale transactions were advertised, offered, and sold on the premise that investors would receive economic benefits in the form of large returns on their principal investment. The investors contributed to the risk capital of the venture. The money invested was always subject to the risk that the Respondents would not fulfill promises and investors would not receive the return advertised. The investors had no control over the collection process necessary to generate returns on the investment. There is no other set of laws or regulations which offer protection to investors other than the applicable securities laws. When considering all relevant facts under *Schultz* and *Grand Prairie Sav. and Loan Ass'n*, the transactions were packaged, advertised, marketed, and sold as the types of investments that the Act is intended to govern, for many of the same reasons set forth above. Therefore, the subject transactions are investment contracts under Ark. Code Ann. § 23-42-102(15)(A)(xi).

21. None of the securities sold by HPF, HPAC, and Ganter to AR1 through AR4 were registered with the Department, exempt from registration with the Department, or a covered security. Therefore, HPF, HPAC, and Ganter violated Ark. Code Ann. § 23-42-501 when they were involved in sales of securities to AR1 through AR4.

22. HPAC and HPF are both defined as an issuer by Ark. Code Ann. § 23-42-102(9). The facts set out above demonstrate that Ganter represented HPAC and HPF in effecting or attempting to effect purchases or sales of securities to AR1 through AR4. Therefore, Ganter acted as an unregistered agent of an issuer in violation of Ark. Code Ann. § 23-42-301(a).

ORDER

23. Respondents shall immediately cease and desist from further violations of Ark. Code Ann. § 23-42-501, by ceasing to solicit, offer, and/or sell securities in Arkansas unless the securities are properly registered pursuant to the Act, exempt from such registration, or a covered security.

24. Respondent Ganter shall immediately cease and desist from further violations of Ark. Code Ann. § 23-42-301 and refrain from acting as an agent of the issuer until such time as he is properly registered or shown to be exempt from registration pursuant to the Act.

25. A hearing on this Cease and Desist Order shall be held if requested by the Respondents in writing within thirty days of the date of the entry of this Cease and Desist Order or if otherwise ordered by the Commissioner. Ark. Code Ann. § 23-42-209(a)(2)(A). Such request should be addressed to the Commissioner and submitted to the following address:

Arkansas Securities Commissioner
201 East Markham, Suite 300
Little Rock, Arkansas 72201

26. If no hearing is requested and none is ordered by the Commissioner, this Cease and Desist Order will remain in effect until it is modified or vacated by the Commissioner. Ark. Code Ann. § 23-42-209(a)(2)(B)

Dated this 7th day of December, 2011.

A handwritten signature in cursive script, reading "A. Heath Abshure". The signature is written in black ink and is positioned above a horizontal line.

A. Heath Abshure
Arkansas Securities Commissioner