

**BEFORE THE ARKANSAS SECURITIES COMMISSIONER
CASE NO. S-13-0041**

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ARKANSAS SECURITIES DEPT.

IN THE MATTER OF:

**A.J.S., LLC
AND JOHN SCOTT VISE**

RESPONDENTS

REQUEST FOR CEASE AND DESIST ORDER

The Staff of the Arkansas Securities Department (“Staff”) has received information and has in its possession certain evidence indicating that A.J.S., LLC and John Scott Vise (collectively “Respondents”) have violated provisions of the Arkansas Securities Act (“Act”), Ark. Code Ann. §§ 23-42-101 through 23-42-509.

ADMINISTRATIVE AUTHORITY

1. This matter is brought in connection with violations of the Act and is therefore properly before the Arkansas Securities Commissioner (“Commissioner”) in accordance with Ark. Code Ann. § 23-42-209.

RESPONDENTS

2. A.J.S., LLC (“AJS”) is an Arkansas limited liability company with its principal place of business located at 250 San Carlos Point, Hot Springs, Arkansas 71913. AJS has never been registered with the Arkansas Securities Department (“Department”) in any capacity pursuant to the Act.

3. John Scott Vise (“Vise”) is an Arkansas resident currently living in Hot Springs, Arkansas. Vise serves as the managing member of AJS. Vise has never been registered with the Department in any capacity pursuant to the Act.

RELATED PARTIES

4. R. D. Myers Development, Inc. (“Myers Development”) is an Arkansas corporation with its principal place of business located at 154 Cornerstone, Suite B, Hot Springs, Arkansas 71913. Myers Development has never been registered with the Arkansas Securities Department (“Department”) in any capacity pursuant to the Act.

5. Rodney Myers (“Myers”) is an Arkansas resident currently living in Hot Springs, Arkansas. According to records on file with the Arkansas Secretary of State, Myers serves as the president and registered agent of Myers Development. Myers has never been registered with the Department in any capacity pursuant to the Act.

6. Myers Development and Myers previously were named Respondents to a Cease and Desist Order (Order No. S-11-0394-13-OR03) entered by the Arkansas Securities Commissioner on February 25, 2013, which ordered the parties to cease and desist from soliciting, offering, and/or selling securities in Arkansas unless the securities were properly registered pursuant to the Act, exempt from registration, or qualified as covered securities. As such, Myers Development and Myers are not named Respondents to this action.

FACTS SUPPORTING REQUEST FOR CEASE AND DESIST ORDER

7. Shady Heights Duplexes (“Shady Heights”) is a residential housing project in Hot Springs, Arkansas, being developed by Myers Development. Shady Heights is owned and operated by Shady Heights Duplexes, LLC (“SHD, LLC”), which was at one time equally owned by AJS and Myers Development.

8. As the managing member of AJS, Wise approached Arkansas Resident One (“AR1”) with an opportunity to invest in Shady Heights. Wise told AR1 that an investment in Shady Heights would yield an ownership interest in SHD, LLC, and a percentage of any income

derived from the business. However, AR1 would not receive any active management or decision-making responsibilities in Shady Heights as part of the investment.

9. After approaching AR1 with a general proposal, Vise authored and issued a Letter of Intent placing the specific terms of the investment in writing. Under the investment agreement, AR1 was to invest \$110,000.00 for a 25% total ownership interest in SHD, LLC. The total 25% ownership interest in SHD, LLC was to be derived from AJS and Myers Development each selling and assigning to AR1 a 12.5% ownership interest in the company. The Letter of Intent was made contingent on SHD, LLC acquiring 24 new duplexes on or before February 1, 2010. A copy of the Letter of Intent issued by Vise is attached hereto as Exhibit "A" and is incorporated herein by reference for all purposes.

10. Per the terms of the proposed investment, AR1 tendered to Vise a total of \$110,000.00 for investment in Shady Heights. On February 1, 2010, Vise executed an Assignment while acting as the operating/managing member of AJS which granted AR1 a 12.5% ownership interest in SHD, LLC. Also, on February 1, 2010, Myers executed an Assignment while acting as the President of Myers Development which granted AR1 a further 12.5% ownership interest in SHD, LLC. Copies of the Assignments issued by AJS and Myers Development have been attached hereto as composite Exhibit "B" and are incorporated herein by reference for all purposes.

11. With regard to the subject investment transaction 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 pursuant to federal law in connection with a covered security.

APPLICABLE LAW

12. 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 *Shultz v. Rector-Phillips-Morse, Inc.*, 261 Ark. 769, 777 (1977)).

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

14. 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 . . .”).

15. In *Grand Prairie Sav. and Loan Ass'n*, 298 Ark. at 545, the Arkansas Supreme Court noted that the Arkansas test for a security as established in *Smith* 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.

16. 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.

CONCLUSIONS OF LAW

17. The subject investment transaction whereby AR1 invested money and was set to receive an investment return based solely on the efforts of other parties is an investment contract under Ark. Code Ann. § 23-42-102(15)(A)(xi). Under the risk capital test set forth in *Smith and Howey*, the transaction was promoted, offered, and sold on the premise that the investor would receive an economic benefit in the form of an income stream derived from being a passive business investor. The investor 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 pay the return as advertised. The investor 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 transaction was modeled, promoted, offered, and sold as the type of investment that the Act is intended to govern, based on many of the same reasons set forth above. Therefore, under any applicable analysis, the subject transaction is classified as investment contracts pursuant to Ark. Code Ann. § 23-42-102(15)(A)(xi).

18. The security offered and sold by Vise and AJS was not registered with the Department, exempt from registration with the Department, or a covered security under federal

law. Therefore, Vise and AJS violated Ark. Code Ann. § 23-42-501 when they offered and sold a security to AR1.

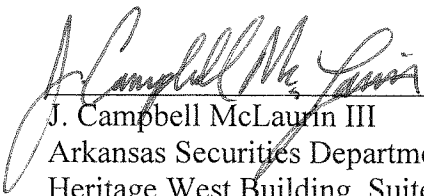
LEGAL AUTHORITY TO ISSUE CEASE AND DESIST ORDER

19. Ark. Code Ann. § 23-42-209(a)(1)(A) provides that whenever it appears to the Commissioner, upon sufficient grounds or evidence satisfactory to the Commissioner, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of the Act, or any rule or order under the Act, the Commissioner may summarily order the person to cease and desist from the act or practice.

PRAYER FOR RELIEF

WHEREFORE, the Staff respectfully requests that the Commissioner summarily order A.J.S., LLC and John Scott Vise to immediately cease and desist from offering and/or selling securities to residents of the state of Arkansas until such time as the securities in question and the entities and persons offering and selling the securities are all properly registered under the Arkansas Securities Act, and, for all other relief to which the Staff may be entitled.

Respectfully Submitted,



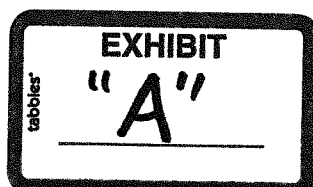
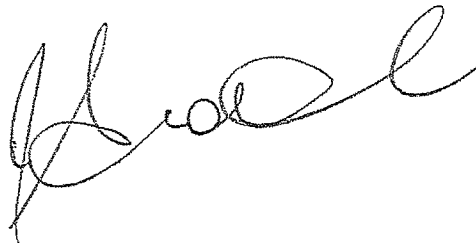
J. Campbell McLaurin III
Arkansas Securities Department
Heritage West Building, Suite 300
201 East Markham Street
Little Rock, Arkansas 72201
Attorney for the Staff

LETTER OF INTENT

Shady Heights Duplexes L.L.C. is owned by A.J.S. L.L.C. and Rodney D. Meyers Development Incorporated. 50% interest is owned by A.J.S. L.L.C. and 50% interest is owned by Rodney D. Meyers Development Incorporated. The A.J.S. L.L.C. is owned by A.J. Wagner and John Scott Vise. Rodney D. Meyers Development Incorporated is owned by Rodney D. Meyers. A.J.S. L.L.C. and Rodney D. Meyers Incorporated will each sell [REDACTED] [REDACTED] 12.5% interest totaling 25% interest in total ownership of the Shady Heights Duplexes L.L.C for \$110,000.00. The following provisions will be agreed upon by all parties herein

1. [REDACTED] to wire transfer to Rainbow Realty's escrow account the balance of the \$95,000.00 on 01/14/2010.
2. In the event Shady Heights Duplexes, LLC does not successfully purchase the 48 units (24 duplexes) on or before the 1st of February then the selling of the 25% interest will be null and void and Rainbow Realty will refund \$95,000.00 and John Scott Vise will refund \$15,000.00 directly back to [REDACTED].
3. Should the Shady Heights Duplexes, LLC successfully purchases the 48 units (24 duplexes) on or before the 1st of February then the purchase of the 25% interest will be completed with [REDACTED] interest not responsible for cash calls until development reaches stabilization.

Scott Vise



ASSIGNMENT

KNOW ALL PERSONS BY THESE PRESENTS:

THAT A.J.S., LLC, in consideration of the sum of TEN and No/100 DOLLARS, and other good and valuable consideration in hand paid by [REDACTED] receipt of which is hereby acknowledged, do hereby bargain, sell, transfer, assign, set over and deliver to the said [REDACTED], Grantee, his heirs and assigns, all of its right, title and interest in and to twelve and one-half percent (12.5%) of its fifty percent (50%) interest in SHADY HEIGHTS DUPLEXES, LLC, an Arkansas Limited Liability Company.

IN TESTIMONY WHEREOF, the name of the Grantor is hereunto affixed this 1 day of February, 2010.

A.J.S., LLC

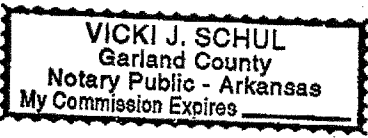
BY: [Signature]
JOHN SCOTT VISE, Operating/Managing
Member
STATE OF ARKANSAS

COUNTY OF GARLAND

ACKNOWLEDGMENT

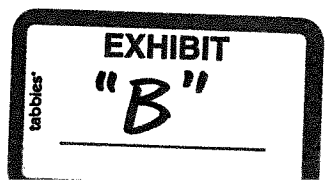
On this day personally appeared before the undersigned, a Notary Public within and for the County and State aforesaid, duly commissioned and acting, within and for the County and State aforesaid, appeared in person the within named JOHN SCOTT VISE, to me personally well known, who stated that he was the Managing Member of A.J.S., LLC, a limited liability company, and was duly authorized in that capacity to execute the foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public this 1 day of February, 2010.



[Signature]
NOTARY PUBLIC

My Commission Expires:
6-78-11



ASSIGNMENT

KNOW ALL PERSONS BY THESE PRESENTS:

THAT R.D. MYERS DEVELOPMENT, INC., in consideration of the sum of TEN and No/100 DOLLARS, and other good and valuable consideration in hand paid by [REDACTED] receipt of which is hereby acknowledged, do hereby bargain, sell, transfer, assign, set over and deliver to the said [REDACTED] Grantee, his heirs and assigns, all of its right, title and interest in and to twelve and one-half percent (12.5%) of its fifty percent (50%) interest in SHADY HEIGHTS DUPLEXES, LLC, an Arkansas Limited Liability Company.

IN TESTIMONY WHEREOF, the name of the Grantor is hereunto affixed this 1 day of February, 2010.

R.D. MYERS DEVELOPMENT, INC.

BY: [Signature]
RODNEY MYERS, PRESIDENT

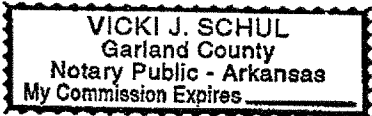
STATE OF ARKANSAS

ACKNOWLEDGMENT

COUNTY OF GARLAND

On this day personally appeared before the undersigned, a Notary Public within and for the County and State aforesaid, duly commissioned and acting, within and for the County and State aforesaid, appeared in person the within named RODNEY MYERS, to me personally well known, who stated that he was the President of R. D. MYERS DEVELOPMENT, INC. a corporation, and was duly authorized in that capacity to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public this 1 day of February, 2010.



[Signature]
NOTARY PUBLIC

My Commission Expires:

6-18-11