BEFORE THE ARKANSAS SECURITIES COMMISSIONER

CASE NO. S-08-009

IN THE MATTER OF
FIRST NEVADA MARKETING, INC.,
STEVEN EDWARD GWIN **Order No. S-08-009-09-CD01**

CEASE AND DESIST ORDER

On February 20, 2009, the Staff of the Arkansas Securities Department (Staff) filed its Request for a Cease and Desist Order (Request), stating that it has information and certain evidence that indicates First Nevada Marketing, Inc., and Steven Edward Gwin have violated provisions of the Arkansas Securities Act (Act), codified at Ark. Code Ann. §§ 23-42-101 – 509. The Arkansas Securities Commissioner (Commissioner) has reviewed the Request, and based upon representations made therein, finds that:

FINDINGS OF FACT

1. The Request asserts the following representations of fact:

a. First Nevada Marketing, Inc. (1NV), was a Nevada corporation formed on December 23, 2002. On January 1, 2007, 1NV's status automatically went into default for failure to renew its filing fees. 1NV's last known address was 1304 East Republic Road, # 186, Springfield, Missouri 65804.

b. Steven Edward Gwin was a resident of the greater Springfield, Missouri, area whose last known address was 406 Castlegate Drive, Ozark, Missouri 65721.

   i. At the time 1NV's corporate status went into default, Gwin was listed as a director, president, secretary and treasurer.

ii. Gwin was at one time a licensed insurance agent in Missouri. His license expired in 2003.

iii. Gwin was licensed to sell insurance in Arkansas, but that license was revoked on December 9, 2003, for filing a false application for his insurance license, specifically for stating that he had no criminal convictions when he indeed had a prior criminal conviction.

iv. Gwin's prior criminal conviction is a conviction in the United States District Court for the Northern District of Ohio for conspiracy to defraud, a class D felony, for which Gwin was sentenced to twenty months imprisonment followed by three years of supervised release. Additionally, Gwin was ordered to "release his interest in $12,000 in bonds to the Probation Office" and "$18,000 seized by the Government [was] divided equally among the victims of the fraud–for a total of $30,000."

v. Gwin did business with Arkansas residents discussed herein using the business names, Capital Preservation Advisors, Inc., and Asset Management Group. The address for both was the address noted in Paragraph 1.a., above, which is a Mail Box It facility. Capital Preservation Advisors, Inc., was a Missouri corporation incorporated on March 9, 2004, and dissolved administratively for failure to pay franchise taxes on November 14, 2007.

vi. Gwin has never been registered pursuant to the Act in any capacity.

c. Gwin established business relationships with all but one of the Arkansas residents discussed herein as an insurance agent selling equity indexed annuities (EIAs). For most of these Arkansas residents, Gwin approached them about investing in 1NV years after they had purchased EIAs.

d. AR1, who had retired to northwest Arkansas with his wife, met Gwin at a free lunch seminar he hosted in Lowell in 2002. AR1 invested in an EIA with Gwin shortly after that meeting. AR1 understood 1NV to be short term investments–perhaps options trading–in the stock market, which was being done by Gwin's unnamed partner. AR1 invested $21,116.28 in 1NV in July 2005, receiving a promissory note guaranteeing 18 % interest. AR1 rolled that note over for another year, expecting it to be paid off in July 2007. The 1NV investment was set up as a self-directed IRA through Sterling Trust with Gwin as AR1's agent. As AR1's agent, Gwin directed Sterling Trust to invest the money AR1 had sent to Sterling in 1NV. Gwin then substituted a promissory note from 1NV for the money AR1 had invested. AR1 has received nothing and cannot find Gwin.

e. AR2, a husband and wife who had retired to northwest Arkansas, met Gwin in 2002 or 2003. They had taken great losses in the stock market in 2000 and 2001 and had been looking for something less risky in which to put their money when they met Gwin. AR2 invested in EIAs with Gwin shortly after meeting him. By 2004 or 2005, AR2 had been looking for investment vehicles other than EIAs when Gwin suggested 1NV. Gwin described 1NV's business, which was being performed by his unnamed partner, as investing in futures and currencies, buying and selling in "quick clicks," defined as buying and selling within 10 to 12 hours. Gwin promised AR2 10% per annum the first year, rising to 13% per annum the second year. AR2 invested their required minimum distributions (RMDs) from their EIAs into 1NV, investing a total of $44,611. The Internal Revenue Code requires owners of many tax deferred instruments such as individual retirement accounts (IRAs) to withdraw specified minimum amounts when they reach age 70 and one-half. These withdrawals are referred to as Required Minimum Distributions (RMDs). The 1NV investment was set up as a self-directed IRA through Sterling Trust with Gwin as AR2's agent. As AR2's agent, Gwin directed Sterling Trust to invest the money AR2 had sent to Sterling in 1NV. Gwin then substituted a promissory note from 1NV for the money AR2 had invested. The notes promised 18% or 12% interest per annum. Although AR2 were repaid some funds, none of the money repaid them came from any sort of investment, but was paid from the investments of other 1NV investors.

f. AR3 retired with her husband to northwest Arkansas in 1995. After losing money in the stock market with her retirement funds in 2001, AR3 was looking for a more secure and less volatile investment vehicle for her retirement funds. In 2003, AR3 saw Gwin's advertisement in a local newspaper for a seminar on EIAs and attended. She invested $70,000 in EIAs. Between 2003 and 2006, Gwin attempted to persuade AR3 to invest her RMDs into 1NV. Eventually, AR3 did invest a total of $13,944.00 into 1NV. Of this amount, $10,775 was used to set up a self-directed IRA through Sterling Trust with Gwin as AR3's agent. As AR3's agent, Gwin directed Sterling Trust to invest the money AR3 had sent to Sterling in 1NV. Gwin then substituted a promissory note from 1NV for the money AR3 had invested. AR3 invested $5,650 in August 2006 and $5,125 in February 2007. The 2007 investment was part of an RMD. AR3 invested the remaining $3,169 of the 2007 RMD directly with 1NV and received a promissory note for that amount. All the notes carried an interest rate of 8% per annum. AR3 has received nothing and cannot find Gwin.

g. AR4 retired and moved to northwest Arkansas in 1992. AR4 met Gwin in 2002 at a free lunch seminar in Bella Vista. AR4 purchased two EIAs, one for $10,000 and another for $33,000. Several years later, Gwin held an annual dinner with clients to go over their financial affairs. Gwin first mentioned 1NV at that time. AR4 understood 1NV to be a program or business that traded options on the stock market. Gwin told him it paid 18% per annum. In September 2006, AR4 invested $6,907.66. The 1NV investment was set up as a self-directed IRA through Sterling Trust with Gwin as AR4's agent. As AR4's agent, Gwin directed Sterling Trust to invest the money AR4 had sent to Sterling in 1NV. Gwin then substituted a promissory note from 1NV for the money AR4 had invested. Although AR4 received one year of interest in his Sterling account, none of the money repaid him came from any sort of investment, but was paid from the investments of other 1NV investors. AR4 has received nothing more from Gwin and does not know Gwin's whereabouts.

h. AR5, a retired resident of northwest Arkansas, met Gwin at a seminar Gwin hosted in AR5's church and then purchased an EIA from Gwin in May 2003. Before AR5 invested in 1NV, he received a written account of 1NV's business in the form of a letter from Gwin, which was carried on by Gwin's partner, Harold Thompson. According to this account, 1NV was in the business of making trades in some sort of market, possibly commodities or foreign exchange option contracts. Using 1NV's system, wins outnumbered loses by seven to one, the letter stated. As per this document, Thompson would use "volume indicators combined with price movement to ascertain the direction and then using a money management system to exit the trade, almost immediately, with a portion of the contracts (usually one-third). That creates a no lose situation . . . ." Averaging $4,000 to $5,000 per day in profits, Gwin stated in the letter that he wanted to start a fund, comprised only of "3-4 people, with influence, that are invested in the 'fund' for 8 months to a year, that will be able to honestly tell others they made great returns and are completely satisfied." In January 2006, AR5 invested $15,000 in 1NV. Of this amount, $5,770 was used to set up a self-directed IRA through Sterling Trust with Gwin as AR5's agent. As AR5's agent, Gwin directed Sterling Trust to invest the money AR5 had sent to Sterling in 1NV. Gwin then substituted a promissory note from 1NV for the money AR5 had invested. AR5 invested $9,230, the remainder of $15,000, directly with 1NV and received a promissory note for that amount. All the notes carried an interest rate of 10% per annum. AR5 has received nothing and cannot find Gwin.

i. AR6, another northwest Arkansas resident, was about to retire at age 62, when she asked a friend for a financial adviser to help her with her retirement nest egg. The friend recommended Gwin. Gwin sold AR6 an EIA in 2002 or 2003. As time passed, AR6 did not like the illiquid nature of the EIA caused by the surrender charges that penalized taking any more than 10% of the principal in any one year and was concerned that she was not making any more than 4% or 5% per annum. AR6 told Gwin about these concerns and Gwin recommended that AR6 invest in 1NV. With 1NV, Gwin told AR6 she could make 8% - 10% per annum and access her money at any time with no surrender charges. In April 2006, AR6 invested $5,000 in 1NV. The 1NV investment was set up as a self-directed IRA through Sterling Trust with Gwin as AR6's agent. As AR6's agent, Gwin directed Sterling Trust to invest the money AR6 had sent to Sterling in 1NV. Gwin then substituted a promissory note from 1NV for the money AR6 had invested. The note carried an interest rate of 18% per annum. AR6 has received nothing and cannot find Gwin.

j. AR7, a retired couple in northwest Arkansas, met Gwin at a free lunch or dinner seminar Gwin hosted in Rogers in 2003 or 2004. AR7 had not done well in some of their investments and were looking for something safer. AR7 liquidated $70,000 to $80,000 of those investments and purchased EIAs from Gwin at that time. Later, Gwin hosted an "annual" dinner for his clients in the Bella Vista area. At this dinner he touted a "new strategy," one that gave his clients some diversification from the EIAs they had all purchased from Gwin. AR7 did not listen closely to the details because they trusted Gwin. AR7 invested in 1NV simply because Gwin said it would be better than the EIAs AR7 owned. In April 2006, AR7 invested $10,000 in 1NV. AR7 received a promissory note back from 1NV for $10,000 promising 15% interest per annum. Sterling Trust was not involved in this transaction. AR7 have received nothing and do not know where Gwin is.

k. AR8 are a retired couple living in northwest Arkansas. AR8 met Gwin at a seminar hosted by Gwin in AR8's church between 2000 and 2002. Later, in 2006, AR8 were looking for a better interest rate than banks were paying. Gwin told them about 1NV–it was paying 8% per annum, he said. In December 2006, AR8 invested $20,000 in 1NV. AR8 received in return a promissory note for $20,000 promising 8% interest per annum. Sterling Trust was not involved in this transaction. AR8 have received nothing and do not know where Gwin is.

l. None of the money invested by these investors was used in any for profit enterprise but was used instead to further Gwin's illicit enterprise, 1NV, and converted to Gwin's personal use. Gwin used some of the money to further 1NV by doing things that would made 1NV seem legitimate, such as hosting free lunch and dinner seminars and making payments to some investors from other investors' funds, thus making the investors believe they had invested in a legitimate, for profit business and lulling them into a false sense of security. Gwin used most of the money for his own personal use.

m. In regard to the securities offered and sold herein, a search of the records of the Arkansas Securities Department shows 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.

n. Before investing, Gwin told none of the investors about his prior criminal conviction and none of the investors discussed herein knew about Gwin's prior criminal conviction, discussed in Paragraph 1.b.iv, above.

CONCLUSIONS OF LAW

2. The investments in 1NV were securities pursuant to two provisions of the Act. First, in accordance with Ark. Code Ann. § 23-42-102(15)(A)(xi), the investments were investment contracts because the Respondents solicited and the investors made the investment of money in a common enterprise upon the promise of profits made by the efforts of others. Second, because each investment was evidenced by a promissory note, the quintessential evidence of indebtedness, these investments were also securities as evidences of indebtedness in accordance with Ark. Code Ann. § 23-42-102(15)(A)(vi).

3. An issuer is any person who issues or proposes to issue any security. Ark. Code Ann. § 23-42-102(9). 1NV is the issuer of these securities. An agent is any individual other than a broker-dealer who represents an issuer in effecting or attempting to effect purchases or sales of securities. Ark. Code Ann. § 23-42-102(1)(A). It is unlawful for any person to transact business as an agent of the issuer without being registered pursuant to the Act. Ark. Code Ann. § 23-42-301(a). Gwin acted as an unregistered agent of 1NV in violation of the Act.

4. It is unlawful for any person to offer or sell any security which is not registered or which is not exempt from registration under the terms of the Act. Ark. Code Ann. § 23-42-501. The 1NV securities were neither registered nor exempt from registration under the Act. Accordingly, the Respondents offered and sold unregistered securities in violation of the Act.

5. It is unlawful for any person in connection with the offer or sale of any security, directly or indirectly, to make any untrue statement or omit to state a material fact necessary in order to make the statements made not misleading in light of the circumstances under which they are made. Ark. Code Ann. § 23-42-507(2). Gwin committed securities fraud in violation of Ark. Code Ann. § 23-42-507(2) when he made the following material omissions:

i. In failing to inform the investors of his criminal conviction for fraud, Gwin omitted a material fact that made misleading the implicit statement made to all investors that he was trustworthy.

ii. In failing to inform the investors that the money they invested in 1NV would not be used to generate the 8%, 10%, 12% or 18% promised in any way, including the ways explicitly specified in ¶¶ 1.d, 1.e, 1.g and 1.h and the implicit assertion made to all investors that the money would be invested in a for profit enterprise and not converted to Gwin's personal use.

ORDER

6. First Nevada Marketing, Inc., and Steven Edward Gwin shall immediately CEASE AND DESIST from any further actions in the state of Arkansas in connection with the offer or sale of securities until such time as securities in question and the persons and entities offering and selling the securities are all properly registered or shown to be exempt from registration pursuant to the Arkansas Securities Act.

7. First Nevada Marketing, Inc., and Steven Edward Gwin shall immediately CEASE AND DESIST from engaging in the herein detailed fraudulent activity in connection with the offer or sale of any security in Arkansas.

8. A hearing on this Order shall be held if requested by the Respondents in writing within thirty days of the date of the entry of this Order, or if otherwise ordered by the Commissioner. 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

9. If no hearing is requested and none is ordered by the Commissioner, this Order will remain in effect until it is modified or vacated by the Commissioner. Ark. Code Ann. § 23-42-209(a)(2) (Repl. 2000).

A. Heath Abshure

A. Heath Abshure
ARKANSAS SECURITIES COMMISSIONER

March 18, 2009
Date