

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

Case No. S-08-021

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ARKANSAS SECURITIES DEP

**IN THE MATTER OF
JOHN W. RUSTIN, JR.**

No. S-08-021-09-CD01

CEASE AND DESIST ORDER

On June 1, 2009, the staff of the Arkansas Securities Department ("Staff") filed its Request for a Cease and Desist Order, as amended by an Amended Request for Cease and Desist Order filed on June 4, 2009 (collectively, the "Request"). In its Request, the Staff states that it has information and certain evidence indicating that John W. Rustin, Jr., has 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 Staff's request contains the following representations of fact:
 - a. John W. Rustin, Jr., is an individual who formerly lived in Richardson, Texas and later in Beaumont, California.
 - b. Rustin formed Global E Network, a limited liability company, filing the articles of organization and other items necessary with the Texas Secretary of State on July 29, 2003. Rustin was listed as the managing member with a Richardson, Texas address. He did business using the name Global E Network, doing business as Femey, Femey, Inc., Femey International, and Femey LifeStyles. Global E Network ceased to be a limited liability company on July 1, 2005, when its charter was forfeited.

- c. Rustin formed Shea Global Xchange as a limited liability company, filing the articles of organization and other items necessary with the Texas Secretary of State on September 21, 2006. Rustin was listed as both the managing member with a Wiley, Texas address, and the registered agent for service with a Dallas, Texas address. This limited liability company was short lived. Its charter was forfeited administratively on November 2, 2006.
- d. AR1, a resident of Camden, Arkansas, and AR4, a resident of El Dorado, Arkansas, were introduced to Rustin through a friend of AR1's who was a resident of Texas. On or about August 17, 2006, AR1 and AR4 spoke to Rustin on a conference telephone call. Rustin told them that he was starting a multilevel marketing ("MLM") business selling products made from shea butter called Femey or Femey LifeStyles (collectively, "Femey"). The manufacturer of the products was another company based in New York, Rustin said, with which Femey was negotiating a contract to supply the products. Rustin said he needed people to market the products and run the company. Rustin said he already had the money to get the products produced, which AR1 and AR4 took to mean that a contract with the producer was in place, but he was selling what he called founder's shares in the company for \$5,000 each. Founders would be like board members, Rustin said, making decisions for the company and sharing in the profits of the company as equity owners. The New York manufacturer of the products already had several thousand distributors, all of whom would be "under them," an MLM term meaning they would get a percentage of those distributors'

sales. In addition, founders would get several types of bonuses. First, each founder would get a payment of \$50,000 once the company had 1,000 distributors. Because the company would acquire more than 1,000 distributors who were then with the New York manufacturer, this bonus would be virtually immediate. The written contract signed by AR1 and AR4 both said this bonus was conditioned also on sales of \$500,000, but Rustin did not include this condition in his oral statements. Second, the founders would receive 6% of the fees paid by distributors for initial training and marketing. Third, the founders would receive 8% of the fees paid by distributors for live regional training events. Rustin assured AR1 and AR4 that they could be either active, meaning actively involved in trying to market and sell the shea butter products, or passive, meaning only serving on an advisory board and simply collecting profits and bonuses. On August 17, 2006, AR1 and AR4 each invested \$5,000 for a founder's position each.

- e. AR5, a resident of Magnolia, Arkansas, and a friend of AR1, was told about Femey by AR1. He spoke to Rustin on a conference telephone call on or about August 18, 2006, on which AR1 was included. AR5 was told everything that AR1 and AR4 was told and is set forth above in Paragraph 1.d. AR5's recollection of the telephone call was essentially identical to that of AR1 and AR4, but AR5 remembered Rustin saying that the New York manufacturer had 3,000 distributors in place, a percentage of whose sales would be paid to the founders. He also remembers being told that founders would make lots of money

traveling around the country to board meetings. On August 18, 2006, AR5 invested \$5,000 for one founder's position.

- f. AR3, a resident of Sherwood, Arkansas, was introduced to Rustin through the same friend from Texas who introduced AR1 and AR4 to Rustin. In mid-August 2006, AR3 spoke to Rustin on a conference telephone call about Femey. As it was explained to AR3, Femey was about to invest in the New York manufacturer of shea butter products. Rustin said that the New York manufacturer would keep its retail stores in New York, but the distribution rights to sell the products would be bought and distributed by Femey, a MLM company. Rustin said he was selling founders' positions in Femey. Founders would make money in downline sales of distributors making retail sales of these products, Rustin said, but he also guaranteed them 10% on their investment per annum. Rustin said that one could make money being passive because one would be at the top of a downline sales stream, meaning one would be paid a percentage of the sales made by a group of distributors known as a downline. In fact, Rustin said, the potential was there to make "five digits" a month on a downline. Rustin assured AR 3 that he, Rustin, had done this type of business many times, and there was no risk to AR3. Later, on or about August 21, 2006, Rustin hosted a sales or marketing meeting in Texarkana, Arkansas, which was attended by ten to fifteen people. Among the attendees was AR3. He was impressed by a woman represented to be Rustin's mother, who made a sales presentation with a very Christian flavor. At the conclusion of this meeting, AR3 purchased two founder's positions, one for

himself and one for AR6, AR3's brother who lived in Mississippi, investing a total of \$10,000.

- g. AR2, a resident of Crossett, Arkansas, and the father of AR3 and AR6, learned of Femey from his sons, particularly AR3. AR2 was told everything his sons were told and is set out in Paragraph 1.f. AR2 also participated in a conference telephone call with Rustin and his two sons. In this call Rustin confirmed what had been said to the sons earlier and also said that each founder's position owner would have health insurance. Based on that information, on August 29, 2006, AR2 wired Rustin, doing business as Femey, \$15,000, representing a second founder's position for each of his sons, AR2 and AR6, and a founder's position for a friend, LA1, a resident of Louisiana. LA1 later repaid AR2 for the \$5,000. On the same day, AR2 wired Rustin, d/b/a Femey, another \$15,000, representing one founder's position each for himself and his two sons.
- h. Rustin informed all the investors discussed above that he would fly them all to New York in September 2006 to view the manufacturing facility in question. This trip took place, and all the investors discussed above attended. They toured an existing plant that manufactured shea butter products, which included a retail store that sold the products produced there. By late October 2006, Rustin informed the investors that the investment in and contract with the New York manufacturing company had not worked out. At that point, Rustin informed the investors that the company's name had changed to Shea Global Xchange, LLC (SBX).

- i. All the investors opted to be and/or considered themselves to be passive investors. Although Rustin made a distinction between active and passive investors, there was not a clear way to make an election to be one or the other.
- j. The investments of AR1, AR4, and AR5 were all evidenced by the same contract. Comprising two pages, this contract did not include everything Rustin had said but incorporated what he had said with this language: “As a follow-up to our previous conversations regarding your affiliation with our company we would like to offer you the following for joining the Company.” The contract went on to mention the three bonuses touted to these three investors, which are set out in Paragraph 1.f.
- k. The investments of AR2, AR3, AR6, and LA1 were evidenced by promissory notes sent to them after their investments were made. Each note was dated August 24, 2007, even though the investments were made in August 2006. Although the language could be clearer, the notes promise each investor 10% per annum.
- l. In February 2007, AR1 met with Rustin in Houston, Texas, where he found out that SBX had been renamed or dissolved and its business was now the sales of African coffee in coffee shops. No investor received any returns on their investments or any health insurance, and they do not now know of Rustin’s whereabouts.
- m. The records of the Arkansas Securities Department (“Department”) show no registration or proof of exemption of any security issued by Femey or SBX.

- n. The records of the Department show no registration in any capacity for Rustin, Femey or SBX.

CONCLUSIONS OF LAW

2. The investments made herein by all the investors, but particularly by AR1, AR4, and AR5, were investment contracts, which is a type of security. Ark. Code Ann. § 23-42-102(15)(A)(xi). An investment contract is the investment of money into the risk capital of a common enterprise or venture with the expectation of benefit or profit with no effective control over the venture. According to the statements made by Rustin and the representations made in the contracts signed by AR1, AR4, and AR5, these were investments in the risk capital of a common enterprise in which Rustin, doing business as either Femey or SBX, was using the money invested in order to make a profit. As Rustin told all the investors, they could be totally passive in the business and simply make money on the efforts of others, specifically Rustin and “downline” distributors who would actually be selling the products to the public.

3. The investments made by AR2, AR3, AR6, and LA1, all evidenced by promissory notes promising a return of 10% per annum, were notes and evidences of indebtedness, which are also types of securities. Ark. Code Ann. § 23-42-102(15)(A)(i) and (vi).

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 securities sold by Rustin were neither registered nor exempt from registration. Accordingly, Rustin offered and sold unregistered securities in violation of Ark. Code Ann. § 23-42-501.

5. It is unlawful for any person in connection with the offer or sale of a security, directly or indirectly, to make any untrue statement of fact or to omit to state a material fact

necessary in order to make the statements made no mislead. Ark. Code Ann. § 23-42-507(2). The facts set out above show that Rustin committed securities fraud in violation of Ark. Code Ann. § 23-42-507(2) by means of material misstatements. Specifically, Rustin told AR3 that there was no risk involved in this investment. Rustin told AR2 and his two sons, AR3 and AR6 that their investments would include health insurance. These statements were materially misleading as there was in fact risk in this investment and the investments did not include health insurance. As is noted above, none of the investors have received any return on his or her investment and no investor received any health insurance.

6. 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. Ark. Code Ann. § 23-42-209. The conduct, acts, and practices of Rustin threaten immediate and irreparable public harm. Based on the Findings of Fact and Conclusions of Law, this Cease and Order is in the public interest and is appropriate pursuant to Ark. Code Ann. § 23-42-209.

ORDER

7. John W. Rustin, Jr., 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 are all properly registered or shown to be exempt from registration pursuant to the Arkansas Securities Act.

8. John W. Rustin, Jr., shall immediately CEASE AND DESIST from engaging in the fraudulent activity as set forth herein in connection with the offer or sale of any security in Arkansas.

9. A hearing on this Cease and Desist Order shall be held if requested by John W. Rustin, Jr., in writing within thirty days of the date of the entry of this Cease and Desist 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

10. 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).



A. Heath Abshure
Arkansas Securities Commissioner

June 9, 2009
Date