

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

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ARKANSAS SECURITIES DEPT.

IN THE MATTER OF
JOHN W. RUSTIN, JR.

Case No. S-08-021

REQUEST FOR CEASE AND DESIST ORDER

The staff of the Arkansas Securities Department (the Staff) has received information and has in its possession certain evidence which indicates that John W. Rustin and others unknown to the Staff connected with any of those persons and/or that entity have violated provisions of the Arkansas Securities Act (the Act), codified at Ark. Code Ann. §§ 23-42-101, *et seq.* (Repl. 2000).

ADMINISTRATIVE AUTHORITY

1. This matter is brought in connection with violations of sections of the Arkansas Securities Act, §§ 23-42-101, *et seq.* (Repl. 2000) (Act), and is therefore properly before the Arkansas Securities Commissioner (Commissioner) in accordance with Ark. Code Ann. § 23-42-209 (Repl. 2000).

RESPONDENT

2. John W. Rustin, Jr. is an individual who formerly lived in Richardson, Texas and later in Beaumont, California.

FACTS SUPPORTING CEASE AND DESIST ORDER

3. Rustin formed Global E Network, a limited liability company (LLC), 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, dba Femey, Femey, Inc., Femey International and Femey LifeStyles. Global E Network ceased to be an LLC on July 1, 2005, when its charter was forfeited.

4. Rustin formed Shea Global Xchange as an LLC, 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 LLC was short lived. Its charter was forfeited administratively on November 2, 2006.
5. 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 (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.

6. 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 ¶ 5. 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.

7. AR3, a resident of Sherwood, AR, 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, i.e., 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.
8. 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 ¶ 7. 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, 2009 AR2 wired Rustin, d/b/a/ 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.

9. 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, indeed, 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).
10. 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.
11. 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 ¶ 5.

12. 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.
13. 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, and they do not now know of Rustin’s whereabouts.
14. The records of the Arkansas Securities Department (Department) show no registration or proof of exemption of any security issued by Femey or SBX.
15. The records of the Department show no registration in any capacity for Rustin, Femey or SBX.

APPLICABLE LAW

16. Ark. Code Ann. § 23-42-102(15)(A)(i) (Supp. 2007) defines a security as a note.
17. Ark. Code Ann. § 23-42-105(15)(A)(vi) (Supp. 2007) defines a security as an evidence of indebtedness.
18. Ark. Code Ann. § 23-42-102(15)(A)(xi) (Supp. 2007) defines a security as an investment contract.

19. Ark. Code Ann. § 23-42-501 (Repl. 2000) provides that 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 or federal law.
20. Ark. Code Ann. § 23-42-102(2) (Repl. 2000) defines broker-dealer as any person engaged in the business of effecting transactions in securities for the account of others.
21. Ark. Code Ann. § 23-42-301(a) (Repl. 2000) provides that it is unlawful for any person to transact business in this state as a broker-dealer unless he is registered as such pursuant to the Act.
22. Ark. Code Ann. § 23-42-507(2) (Repl. 2000) provides that 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.

VIOLATIONS OF LAW

23. The investments made herein by all the investors, but particularly by AR1, AR4, and AR5, were investment contracts, a type of security listed at Ark. Code Ann. § 23-42-102(15)(A)(xi) (Supp. 2007). 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 set out in ¶¶ 5 - 10 and the representations made in the contracts signed by AR1, AR4, and AR5, set out in ¶ 11, this was the investment in the risk capital of a common enterprise in which Rustin, d/b/a 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.

24. The investments made by AR2, AR3, AR6 and LA1, all evidenced by promissory notes promising a return of 10% per annum, were also securities pursuant to Ark. Code Ann. § 23-42-102(15)(A)(i) and (vi), notes and evidences of indebtedness, respectively.
25. The facts set out above in ¶¶ 5 - 14 show that the respondent offered and sold unregistered securities in violation of Ark. Code Ann. § 23-42-501 (Repl. 2000).
26. The facts set out above in ¶¶ 5 - 15 show that Rustin acted as an unregistered broker-dealer in violation of Ark. Code Ann. § 23-42-301(a) (Repl. 2000).
27. The facts set out above in ¶¶ 5 and 6 show that the respondent committed securities fraud in violation of Ark. Code Ann. § 23-42-507(2) (Repl. 2000) by means of a material misstatement. Specifically, he told AR1, AR4 and AR5 that he had already had the money to invest, meaning he already had a contract in place, with the New York manufacturer of the shea butter products to be sold, when in reality the investment in and contract with that company was not complete. As noted in ¶ 9, Rustin later notified the investors that the investment in and contract with the manufacturer had not been accomplished.

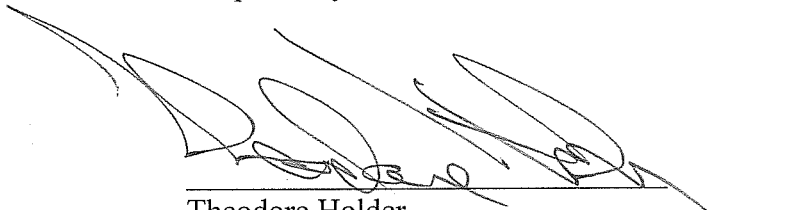
LEGAL AUTHORITY TO ISSUE CEASE AND DESIST ORDER

28. Ark. Code Ann. § 23-42-209(a)(1)(A) (Repl. 2000) provides that whenever it appears 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, he may summarily order the person to cease and desist from the act or practice.

WHEREFORE, the Staff respectfully requests that the Commissioner summarily issue a cease and desist order against John W. Rustin, Jr., as well as others whose identities are not yet known who are employed by or otherwise affiliated with him, ordering them to 1) 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 and 2) to immediately cease and desist from engaging in any fraudulent activity in connection with the offer or sale of any security in Arkansas.

Respectfully submitted,



Theodore Holder
ASSISTANT SECURITIES COMMISSIONER

Attorney for the Staff
Arkansas Securities Department