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Mail: P.O. BOX 13167
AUSTIN, TEXAS 78711-3167

Texas State Securities Board

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MEMBER

Phone: (512) 305-8300
Facsimile: (512) 305-8310

208 E. 10th Street, 5th Floor
Austin, Texas 78701-2407
www.ssb.state.tx.us

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IN THE MATTER OF
THELL G. PRUEITT DBA
FRESH START FUNDING GROUP;
DAVID K. HUGHES; ATM MARKETING, INC.;
PAUL R. MILLER; AND
ATM MANAGEMENT, INC.

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ORDER NO. ~~ENF-04-CDO-1572~~

TO: Thell G. Prueitt
DBA Fresh Start Funding Group
623 Gregg Drive
Spicewood, Texas 78669
and
P.O. Box 159
Spicewood, Texas 78669

David K. Hughes
3830 Windswept Drive
Montgomery, Texas 77356
and
P.O. Box 1282
Montgomery, Texas 77356-1282

ATM Management, Inc.
1500 S. Central Expressway
Suite 200
McKinney, Texas 75070

Paul R. Miller
1500 S. Central Expressway
Suite 200
McKinney, Texas 75070

ATM Marketing, Inc.
3830 Windswept Drive
Montgomery, Texas 77356
and
P.O. Box 1282
Montgomery, Texas 77356-1282

FINAL ORDER CONFIRMING EMERGENCY CEASE AND DESIST ORDER

STATEMENT OF THE CASE

On September 22, 2003, the Texas Securities Commissioner issued an Emergency Cease and Desist Order ("Emergency Order") pursuant to Section 23-2 of The Securities Act, TEX. REV. CIV. STAT. ANN. Art. 581-1 et seq. (Vernon 1964 & Supp. 2003) ("Texas Securities Act"), ordering that Thell G. Prueitt dba Fresh Start Funding Group ("Respondent Prueitt"), ATM Marketing, Inc. ("Respondent ATM Marketing"), David K. Hughes ("Respondent Hughes"), ATM Management, Inc. ("Respondent ATM Management"), and Paul R. Miller ("Respondent Miller") (collectively "Respondents") cease and desist from offering securities to Texas residents until the securities have been registered with the Securities Commissioner or an available exemption is utilized, and cease and desist from dealing in securities until Respondents are registered with the Securities Commissioner or an available exemption is available.

Respondents timely filed appeals and waived the requirement for a hearing within ten days of their appeal. Respondents requested a hearing before an Administrative Law Judge at the State Office of Administrative Hearings, for the purpose of determining whether to affirm, modify or set aside the Emergency Order. Notice of the hearing was issued on January 15, 2004, stating the time and place of the hearing, the legal authority and jurisdiction under which it was to be held, the particular sections of the statutes and rules involved, and the matters asserted. The hearing was set for February 17, 2004, but was continued to March 29, 2004, upon motion filed by Respondent Miller and Respondent ATM Management. The hearing was held before Judge Tommy L. Broyles, Administrative Law Judge ("ALJ") for the State Office of Administrative Hearings. After written briefs were filed, the record closed on May 18, 2004.

The State Securities Board Staff ("Staff") was represented at the hearing by Trenton O. Walsh, attorney. Joseph J. Hroch represented Respondent Miller and Respondent ATM Management; Thomas L. Hunt represented Respondent Hughes and Respondent ATM Marketing. Respondent Prueitt dba Fresh Start Funding Group appeared *pro se*.

On July 2, 2004, the ALJ issued the Proposal For Decision ("PFD") in this matter, containing findings of fact and conclusions of law. The PFD was properly served on all parties and all parties were given the opportunity to file exceptions, briefs, and replies, as provided by TEX. GOV'T CODE ANN. § 2001.062. Exceptions to the PFD were filed by Respondent Miller and Respondent ATM Management on or about July 23, 2004. These exceptions were also incorporated, adopted, and asserted by Respondent Hughes and Respondent ATM Marketing in their Exceptions to the PFD filed at the same time. The Staff filed its Reply to the Respondents' Exceptions to the PFD on August 6, 2004. On August 17, 2004, the ALJ recommended all exceptions be overruled and the Final Order be issued as proposed.

The Securities Commissioner, after review and due consideration of the PFD, adopts the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. An Emergency Cease and Desist Order was issued by the Securities Commissioner on September 22, 2003, to Thell G. Prueitt dba Fresh Start Funding Group; David K. Hughes; ATM Marketing, Inc.; Paul R. Miller; and ATM Management, Inc. (collectively referred to as "Respondents").
2. On or before October 17, 2003, Respondents filed requests for hearings.
3. Respondents agreed to waive the requirement to have a hearing within ten days of their requests.
4. A Notice of Hearing was mailed to each Respondent on January 15, 2004, stating the time and place of the hearing, the legal authority and jurisdiction under which it was to be held, the particular sections of the statutes and rules involved, and the matters asserted.
5. At the request of Respondent Miller and Respondent ATM Management, a continuance was granted from the initial hearing date.
6. On March 26, 2004, a telephone conference was held during which each party announced ready for trial, despite their failure to conduct discovery.
7. The evidentiary hearing convened on March 29, 2004, with Staff and all Respondents in attendance.
8. Staff and Respondents stipulated to the following:
 - a. Respondent Prueitt is an individual whose last known business addresses are 623 Gregg Drive, Spicewood, Texas 78669 and P. O. Box 159, Spicewood, Texas 78669;
 - b. Respondent ATM Marketing is a Texas corporation with the last known addresses of 3830 Windswept Drive, Montgomery, Texas 77356 and P. O. Box 1282, Montgomery, Texas 77356;
 - c. Respondent Hughes is an individual who is President of Respondent Marketing, and whose last known business addresses are the same as Respondent Marketing;

- d. Respondent ATM Management is a Texas corporation with the last known business address of 1500 S. Central Expressway, Suite 200, McKinney, Texas 75070;
 - e. Respondent Miller is an individual who is President of Respondent Management, and whose last known business address is the same as Respondent Management;
 - f. At all times relevant to the Emergency Order, Respondents were not registered with the Securities Commissioner as securities dealers, agents, investment advisers, or investment adviser representatives; and
 - g. Prior to a seminar in Spicewood, Texas, held by Respondent Prueitt on June 26, 2003, he was put on notice that the offer and/or sale of investment schemes involving coin-operated, customer-owned telephones and ATMs constituted the offer and/or sale of securities and such offer and/or sale of securities violated the Texas Securities Act.
9. On June 26, 2003, Respondent Prueitt held a seminar where he and Respondent Hughes provided information about an investment program involving the purchase of ATMs with a leaseback option (collectively referred to as the "ATM Program") from Respondent Management.
10. The terms of the ATM Program included purchasing one ATM and a location for the ATM for \$10,000 from Respondent Marketing and selecting the "ATM Equipment Leasing Program" option from Respondent Management, which was to generate a fixed monthly payment of \$100 per month or 12 percent annually for seven years, with an option for an additional three years.
11. The predominant marketing presentation at the seminar concerned the 12-percent return with no effort on the part of the investor.
12. At the conclusion of the seminar, attendees were provided a folder containing 26 pages of documents highlighting the ATM Equipment Lease Program and its officers and including three CDs that included additional marketing presentations from Respondent Hughes and Respondent Prueitt.
13. Audio resources were also made available on the internet by Respondent Prueitt and Respondent Hughes who described the terms of the ATM Program as the purchase of an ATM and a location for \$20,000 from Respondent Marketing and the selection of the "ATM Equipment Lease Program" option from Respondent Management, which was to generate a monthly payment of \$250 per month for ten years.

14. People invested money with Respondents for participation in the scheme, which included the purchase of ATMs, a location for the ATMs, and the leaseback program.
15. Horizontal commonality existed between investors because the income from one ATM was used to pay other investors' leaseback contracts.
16. Vertical commonality existed because the success of each investor was dependent upon the efforts and success of Respondents.
17. Respondents marketed the scheme to investors as a way to make a 12-percent return on their money by doing nothing other than picking up a check in the mail; Respondents were to do all the work in this scheme.
18. On documents prepared by Respondent Management, Respondent Marketing offered the scheme for sale and even took orders for the securities and forwarded them to Respondent Management.
19. The efforts of Respondent Marketing and Respondent Management were so interwoven that Respondent Marketing was effectively acting as a "pass through" for Respondent Management.
20. Consideration paid for the ATMs to Respondent Marketing was consideration paid to Respondent Management for the leaseback plan:
 - a. the same funds received by Respondent Management from ATM sales were used to pay the monthly lease payments;
 - b. money paid by later investors or contributors was used to pay returns to earlier investors;
 - c. Respondent Marketing did not maintain an independent stockpile of ATMs for sale to investors;
 - d. Respondent Marketing passed through the money for the purchase of the ATM businesses to Respondent Management at the time the purchase was complete;
 - e. Respondent Management stood to gain each time an ATM business was sold by Respondent Marketing;
 - f. Respondent Marketing was not promoting just the ATM businesses; rather, they promoted the ATM businesses in association with the leaseback arrangement;

- g. in its promotional materials, Respondent Marketing used the leaseback arrangement as its primary marketing tool for the sale of ATMs;
 - h. investors were enticed into purchasing the ATM businesses with promises of a 10-12 percent return on investment and that "all you have to do is receive your monthly revenue check";
 - i. but for the leaseback arrangement with Respondent Management, investors would not have purchased the ATM businesses;
 - j. the investors did not have any expertise or ability to manage the ATM businesses without Respondent Management; and
 - k. each and every investor entered into a lease agreement with Respondent Management to locate and install the ATMs, to train the manager of each location on how to operate it, and to put money into the machines and manage the operations of them.
21. Respondent Prueitt, Respondent Hughes, and Respondent Marketing were authorized to explain and offer for sale, ATMs, ATM locations, and Respondent Management's leaseback program, oftentimes taking the orders for the leaseback program and forwarding them to Respondent Management.
22. Respondent Management approved the marketing materials used by Respondent Prueitt, Respondent Hughes, and Respondent Marketing, as required by the Master Dealer Agreement.
23. Respondent Management prepared some of the marketing materials, such as the option order form and the materials detailing the background information on the principals of Respondent Management, Respondent Miller and Mr. Jack Matz.
24. Not even one investor recruited by Respondent Prueitt, Respondent Hughes, and Respondent Marketing bought an ATM and location without also signing up for Respondent Management's leaseback program.
25. At all times relevant to this proceeding, Respondent Prueitt, Respondent Hughes, and Respondent Marketing were agents for Respondent Miller and Respondent Management.
26. The ATM scheme offered by Respondents created securities in the form of an investment contract and an evidence of indebtedness.

27. At all times relevant to this proceeding, Respondents failed to have any securities registered with the Securities Commissioner by qualification, notification or coordination.
28. At all times relevant to this proceeding, Respondents failed to have a permit for the sale of securities in the State of Texas.
29. Through dozens of agents, Respondent Management's ATMs and leaseback program were offered to countless members of the public, most unknown to the issuer and many even unknown to the agents, such as Staff investigator, Letha Jones Sparks.
30. The ATM scheme was offered on the internet.
31. In the internet presentation, Respondent Hughes spoke of recruiting a group of lawyers, Canadians, and a VFW organization.
32. Respondent Hughes encouraged those listening to the internet program to recruit organizations to invest based on the promise of higher returns.
33. There is no indication of a familiar relationship between Respondent Management, or even its agents, and many of the people and organizations sought as investors.
34. Respondents' conduct, acts, and practices threaten immediate and irreparable harm to the public.

CONCLUSIONS OF LAW

1. The State Securities Board has jurisdiction over this matter pursuant to §§ 23-2 and 24 of the Texas Securities Act, TEX. REV. CIV. STAT. ANN. art. 581-1 *et seq.* (Vernon 1964 and Supp. 2004-2005) (the "Act").
2. The State Office of Administrative Hearings has jurisdiction over this matter pursuant to TEX. GOV'T CODE ANN. chapter 2003 (Vernon 2000 and Supp. 2004-2005).
3. Service of proper and timely notice of the hearing was effected upon Respondents pursuant to TEX. GOV'T CODE ANN. chapter 2001 (Vernon 2000 and Supp. 2004-2005) and 7 TEX. ADMIN. CODE §105.2.
4. Based on the above Findings of Fact, Respondents offered for sale securities as defined by §4.A of the Act.

5. Based on the above Findings of Fact, Respondents acted as dealers in securities or agents of dealers as defined by §§4.C and 4.D, respectively, of the Act.
6. Based on the above Findings of Fact and Conclusions of Law, Respondents offered for sale securities without registering the securities with the Securities Commissioner in violation of §7 of the Act.
7. Based on the above Findings of Fact and Conclusions of Law, Respondents offered for sale securities without being registered with the Securities Commissioner as dealers or agents in violation of §12 of the Act.
8. Based on the above Findings of Fact and Conclusions of Law, the Securities Commissioner had sufficient bases to issue the Emergency Cease and Desist Order pursuant to §23-2 of the Act.

IT IS THEREFOR ORDERED that the Emergency Cease and Desist Order issued against Respondents on September 22, 2003, SHALL REMAIN IN FULL FORCE AND EFFECT.

Signed this 22nd day of September, 2004.


DENISE VOIGT CRAWFORD
Securities Commissioner

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been sent to the Respondents by certified mail, return receipt requested, at their last known addresses on Page 1 of this Order, and to their representatives named below in this matter by certified mail, return receipt requested, and to the State Office of Administrative Hearings, on this the 22nd day of September, 2004.

Joseph J. Hroch
Spencer & Associates
4041 Richmond Avenue, 5th Floor
Houston, Texas 77027

Thomas L. Hunt
Thomas L. Hunt & Associates
5850 San Felipe, Suite 470
Houston, Texas 77057

Tommy L. Broyles
Administrative Law Judge
State Office of Administrative Hearings
300 West 15th Street, Suite 502
Austin, Texas 78701



David Weaver
General Counsel
State Securities Board