

Division of Securities
Utah Department of Commerce
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF:

KEITH RICHARD ANDERSON,

Respondent.

**STIPULATION AND CONSENT
ORDER**

Docket No. SD -08-0020

The Utah Division of Securities (the Division), by and through its Director of Enforcement, Michael Hines, and Keith Richard Anderson, hereby stipulate and agree as follows:

1. Keith Richard Anderson (Anderson) was the subject of an investigation conducted by the Division into allegations that he violated certain provisions of the Utah Uniform Securities Act (the Act), Utah Code Ann. § 61-1-1, *et seq.*, as amended.
2. Anderson is represented by Attorney Jerome H. Mooney of the law firm Weston, Garrou & Mooney in this matter, and is satisfied with the representation he has received.
3. In connection with that investigation, the Division issued an Order to Show Cause against them on February 20, 2008, alleging securities fraud. Criminal charges were also filed

against Anderson in connection with the investigation.¹

4. Anderson, although neither admitting nor denying any of the allegations, waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.
5. Anderson acknowledges that this stipulation and consent order does not affect any enforcement action that might be brought by a criminal prosecutor or any other local, state, or federal enforcement authority.
6. Anderson admits the jurisdiction of the Division over him and over the subject matter of this action.

I. THE DIVISION'S FINDINGS OF FACT

THE RESPONDENT

7. Anderson resided in Utah County, Utah at all relevant times.

GENERAL ALLEGATIONS

8. In May 2000, in Utah County, investors DR and HR, husband and wife, met with Anderson to discuss investment opportunities in some business ventures with which Anderson was associated. DR and HR told Anderson they were looking for safe investments because DR was on permanent disability and their investment funds were their retirement funds.

¹*State of Utah v. Keith Richard Anderson*, Case No. 081100167, Fourth Judicial District Court of Utah (2008). Anderson later entered into a plea in abeyance to two counts of securities fraud, second degree felonies, and as a condition thereof agreed to pay \$246,000 in restitution on November 17, 2009.

THE AIRSWITCH INVESTMENT

9. Anderson told DR and HR about an investment in AirSwitch Corporation (AirSwitch).² Anderson told DR and HR they could purchase stock and stock options in AirSwitch.
10. Anderson told DR and HR the investment in AirSwitch was safe because Anderson would personally guarantee their investment, and that with the purchase of stock options, DR and HR would receive their principal investment in two years, plus a return of 8%.
11. On or about May 10, 2000, DR and HR invested \$126,000 in AirSwitch by giving Anderson a personal check made payable to Anderson.
12. In return, DR and HR received a Stock Option Purchase Agreement from Anderson (Option Agreement). The Option Agreement stated that, in the event of Anderson's failure to perform on any of the listed items, Anderson promised to pay DR and HR their principal investment plus a return of 8% in two years.
13. AirSwitch failed to perform as outlined in the Option Agreement, and Anderson failed to repay DR and HR their principal or return.
14. In or about February 2003, DR and HR contacted Anderson regarding the past-due payments. On February 25, 2003, Anderson agreed to convert the AirSwitch investment into a personal loan to Anderson which would be secured by a promissory note in the amount of

²AirSwitch Corporation, created as a telecommunications business, was registered as a Utah corporation on May 20, 1998, but its corporate status expired on August 19, 2002. Keith Richard Anderson (Anderson) was the president and director of AirSwitch.

\$130,000.

15. Anderson told DR and HR that he would pay them a return of 100% (\$260,000) within two years.
16. DR and HR agreed to Anderson's new terms, and Anderson issued them a promissory note with the above-mentioned terms.
17. Anderson again failed to pay DR and HR their principal and interest.

THE WILDRAIL INVESTMENT

18. In January 2003, in Utah County, Anderson told DR and HR that, WildRail Motor Sports LLC,³ had 20,000 customer orders to purchase go-carts, but the company needed additional funds to build them.
19. Anderson asked DR and HR to loan Anderson \$100,000 which would be used to build the go-carts. Anderson told DR and HR he would pay them their principal plus a return of 100% of their investment in one year.
20. On January 31, 2003, DR and HR paid \$100,000 to Anderson, via a wire transfer to Anderson's bank account.
21. In return, DR and HR received a promissory note from Anderson, promising to pay them

³WildRail Motor Sports LLC, was in the business of building and selling motorized go-cart type vehicles, and was registered as a Utah limited liability company on August 1, 2003, but its corporate status expired in 2006. Anderson was the registered agent for WildRail, and one of two managers. The other manager of WildRail was a Charles Brown.

the principal sum plus a return of 100% within one year.

22. In February, 2003, based on the same representations from Anderson, DR and HR paid another \$20,000 to Anderson.
23. In return, DR and HR received a second promissory note from Anderson, promising to pay them their principal plus a return of 100% in one year.
24. After their promissory notes matured, DR and HR received no return of principal or interest from Anderson, despite several written and oral requests.
25. DR and HR are still owed a total of \$246,000 from Anderson in principal alone.⁴

SECURITIES FRAUD

26. In connection with the offer and sale of a security to DR and HR for the AirSwitch investment, Anderson directly or indirectly, made false statements, including but not limited to, the following:
 - a. An investment in AirSwitch was safe; and
 - b. Anderson would pay the investors their principal plus a return of 8% in two years.
27. In connection with the offer and sale of a security to DR and HR for the AirSwitch investment, Anderson, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make representations made not misleading:
 - a. That Anderson filed for bankruptcy in 1996;

⁴ Less sums that have been paid in connection with the Utah County case referenced in footnote 1 above.

- b. Some or all of the information typically provided in an offering circular or prospectus regarding AirSwitch, such as:
- i. The business and operating history for AirSwitch;
 - ii. Identities of the principals for AirSwitch, along with their experience in the area of telecommunications;
 - iii. Financial statements for AirSwitch;
 - iv. The market for AirSwitch's product(s);
 - v. The nature of the competition for the product(s);
 - vi. The current capitalization for AirSwitch;
 - vii. The track record of AirSwitch to investors;
 - viii. Risk factors for investors;
 - ix. The number of other investors;
 - x. The minimum capitalization needed to participate in the investment;
 - xi. The disposition of any investments received if the minimum capitalization were not achieved;
 - xii. The liquidity of the investment;
 - xiii. Discussion of pertinent suitability factors for the investment;
 - xiv. The proposed use of the investment proceeds;
 - xv. Any conflicts of interest the issuer, the principals, or the agents may have

with regard to the investment;

- xvi. Agent commissions or compensation for selling the investment;
- xvii. Whether the investment is a registered security or exempt from registration;
and
- xviii. Whether the person selling the investment is licensed.

SECURITIES FRAUD

- 28. In connection with the offer and sale of a security to DR and HR for the WildRail investment, Anderson directly or indirectly, made false statements, including but not limited to, the following:
 - a. WildRail had 20,000 customer orders to purchase go-carts from WildRail; and
 - b. Anderson would pay the investors their principal plus a return of 100% within one year of their investment.

- 29. In connection with the offer and sale of a security to DR and HR for the WildRail investment, Anderson, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make representations made not misleading:
 - a. That Anderson filed for bankruptcy in 1996;
 - b. Some or all of the information typically provided in an offering circular or prospectus regarding WildRail, such as:

- i. The business and operating history for WildRail;
- ii. Identities of the principals for WildRail, along with their experience with building and marketing go-carts;
- iii. Financial statements for WildRail;
- iv. The market for WildRail's product;
- v. The nature of the competition for the product;
- vi. The current capitalization for WildRail;
- vii. The track record of WildRail to investors;
- viii. Risk factors for investors;
- ix. The number of other investors;
- x. The minimum capitalization needed to participate in the investment;
- xi. The disposition of any investments received if the minimum capitalization were not achieved;
- xii. The liquidity of the investment;
- xiii. Discussion of pertinent suitability factors for the investment;
- xiv. The proposed use of the investment proceeds;
- xv. Any conflicts of interest the issuer, the principals, or the agents may have

with regard to the investment;

- xvi. Agent commissions or compensation for selling the investment;
- xvii. Whether the investment is a registered security or exempt from registration;
and
- xviii. Whether the person selling the investment is licensed.

II. THE DIVISION'S CONCLUSIONS OF LAW

- 30. Based on the Division's investigative findings, the Division concludes that:
 - a. The investment opportunities offered and sold by Anderson are securities under § 61-1-13 of the Act;
 - b. Anderson violated § 61-1-1(2) of the Act by misstating and omitting to state material facts in connection with the offer and sale of a security.

III. REMEDIAL ACTIONS/SANCTIONS

- 31. Anderson neither admits nor denies the Division's findings and conclusions and consents to the sanctions below being imposed by the Division.
- 32. Anderson represents that any information he provided to the Division as part of the Division's investigation of this matter is accurate.
- 33. Anderson agrees to the imposition of a cease and desist order, prohibiting him from any

conduct that violates the Act.

34. Pursuant to Utah Code Ann. § 61-1-6(1)(d) and in consideration of the guidelines set forth in UTAH ADMIN. CODE Rule R164-31-1, the Division imposes a fine of \$10,000 with the following provisions:

a. The \$10,000 fine will be held in abeyance contingent on no securities laws violations from the entry of this Order and November 17, 2012.

b. If Anderson materially violates any of the terms of this Stipulation and Consent Order within the abeyance period following the entry of the Order, after notice and opportunity to be heard before an administrative officer, the entire fine shall become immediately due;

c. Anderson agrees to cooperate with the Division, the State of Utah, and the Federal Government in any future investigations and/or prosecutions relevant to the matter herein.

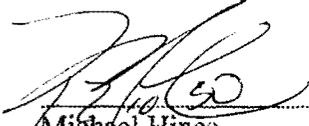
35. Anderson agrees to pay restitution as required in the criminal case, *State of Utah v. Keith Richard Anderson*, Case No. 081100167, Fourth Judicial District Court of Utah (2009).

IV. FINAL RESOLUTION

36. Anderson acknowledges that this Order, upon approval by the Securities Commission shall

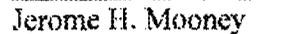
be the final compromise and settlement of this matter.

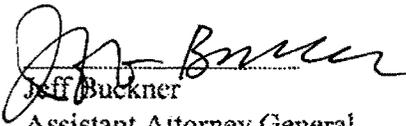
37. Anderson further acknowledges that if the Securities Commission does not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.
38. Anderson acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him rising in whole or in part from his actions, and that the Order does not affect any criminal causes of action that may arise as a result of his conduct referenced herein.
39. The Stipulation and Consent Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect the Order in any way.

By: 
Michael Hines
Director of Enforcement

Approved:

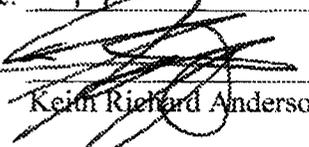
Approved:


Jerome H. Mooney
Attorney for Respondent


Jeff Buckner
Assistant Attorney General
D.H.

Respondent Anderson

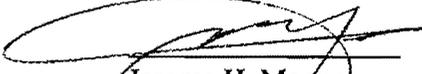
Date: 8/8/11

By: 
Keith Richard Anderson

By: 
Michael Hines
Director of Enforcement

Approved:

Approved:


Jerome H. Mooney
Attorney for Respondent

Jeff Buckner
Assistant Attorney General
D.H.

Respondent Anderson

Date: _____

By: _____
Keith Richard Anderson

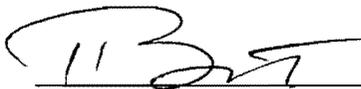
ORDER

IT IS HEREBY ORDERED THAT:

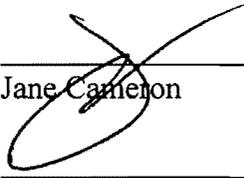
1. The Division has made a sufficient showing of Findings of Fact and Conclusions of Law to form a basis for this settlement.
2. Anderson ceases and desists from violating the Utah Uniform Securities Act.
3. Anderson is fined \$10,000 payable to the Division.
4. The \$10,000 fine will be held in abeyance contingent on no securities laws violations from the entry of this Order and November 17, 2012.
5. Anderson cooperates with the Division in any future investigations.
6. Anderson agrees to pay restitution as ordered in the criminal case, *State of Utah v. Keith Richard Anderson*, Case No. 081100167, Fourth Judicial District Court of Utah (2009).

BY THE UTAH SECURITIES COMMISSION:

DATED this 27 day of October, 2011.



Tim Bangerter

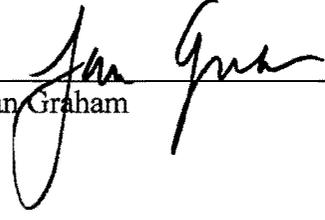


Jane Cameron

Erik Christiansen



Laura Polacheck


Jan Graham

Certificate of Mailing

I certify that on the 11th day of October, 2011, I mailed, by certified mail, a true and correct copy of the Stipulation and Consent Order to:

Keith Richard Anderson
c/o Attorney Jerome H. Mooney
50 West Broadway, #1000
Salt Lake City, UT 84101

Certified Mailing # 7007 0220 0001 0000 0570



Executive Secretary