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: RES CAPITOL, LLC DAVID ALAN HEAPS Respondents.	STIPULATION AND CONSENT ORDER Docket No. SD-08-0052 Docket No. SD-08-0053

The Utah Division of Securities (the Division), by and through its Director of Enforcement, Michael Hines, and RES Capitol, LLC and David Alan Heaps, hereby stipulate and agree as follows:

1. RES Capitol, LLC and David Alan Heaps were the subject of an investigation conducted by the Division into allegations that they violated certain provisions of the Utah Uniform Securities Act (the Act), Utah Code Ann. § 61-1-1, *et seq.*, as amended.

2. In connection with that investigation, on April 17, 2008, the Division issued an Order to Show Cause to RES Capitol and Heaps alleging that they both committed securities fraud in connection with the offer and sale of a security in or from Utah.

3. RES Capitol, LLC, David Alan Heaps, and the Division have agreed to settle this matter by way of this Stipulation and Consent Order (Consent Order).

4. RES Capitol, LLC and David Alan Heaps are represented by attorney R. Todd Jensen and are satisfied with the representation they have received.

5. RES Capitol, LLC and David Alan Heaps admit the jurisdiction of the Division over them and over the subject matter of this action.

6. RES Capitol, LLC and David Alan Heaps waive any right to a hearing to challenge the Division's evidence and present evidence on their behalf.

THE DIVISION'S INVESTIGATIVE FINDINGS

From January to April 2008 the Division conducted an investigation into this matter which revealed:

7. RES Capitol, LLC (RES Capitol) is a Utah limited liability company. RES Capitol was registered on February 25, 2007, but its entity status is currently "delinquent." David Alan Heaps is the registered agent of RES Capitol, and one of three members. The other two members of RES Capitol are Scott Cole (S. Cole) and Todd Cole (T. Cole).

8. David Alan Heaps (Heaps) is a resident of Salt Lake County, Utah.

9. In early April 2007, Heaps offered an investment opportunity in real estate to DF, a Texas resident. The offer was made at a meeting in Dallas, Texas and during several subsequent telephone calls with DF to and from Utah. DF was introduced to Heaps by a friend who had invested with Heaps.

10. While in Texas, Heaps showed DF the business plan for RES Capitol and told DF the following:

    a. Heaps taught individuals how to invest in real estate;

    b. Heaps needed capital to invest in real estate;

    c. Heaps accepted investment funds and typically paid the money back within six months;

    d. The minimum investment was $75,000;

    e. An investor would receive interest of 14% over six months;

    f. DF would earn interest through profits Heaps made from "flipping" real estate;

    g. The investment carried no risk because Heaps would give DF a trust deed on real estate purchased.

11. Heaps failed to tell DF that, in Utah, Heaps had unpaid civil judgments against him, that he filed for bankruptcy in 1998 and 2001, that he had misdemeanor convictions for retail theft in 2002, and that he was charged with issuing a bad check in 2004, a third degree felony.

12. In early April 2007, DF contacted the other two members of RES Capitol, S. Cole and T. Cole, in West Virginia, to discuss the investment opportunity. S. Cole and T. Cole told DF they assisted Heaps with finding real estate, that Heaps did not "cut corners," and "goes by the book" when it comes to business and real estate transactions. S. Cole and T. Cole assured DF the real estate investment was safe, and that DF would receive a deed of trust on the property.

13. On or about April 19, 2007, DF invested $25,000 with Heaps and RES Capitol via wire transfer to Heaps' bank account at Washington Mutual.

14. On or about April 27, 2007, DF invested another $50,000 with Heaps and RES Capitol via wire transfer to Heaps' bank account at Washington Mutual.

15. In return for DF's investments, Heaps sent DF a promissory note for $75,000, via e-mail and regular mail, promising to pay back DF's principal and interest in six months. The note also states that RES Capitol "has the right to pre-pay this note before the 6 months." Heaps appears to have signed the note.

16. In addition to the promissory note, Heaps gave DF copies of RES Capitol's Articles of Organization, business name registration, and its application for an Employer Identification Number.

17. After investing, DF received three or four monthly interest payments of $1,750 from Heaps.

18. When the monthly interest payments stopped, DF tried to contact Heaps via telephone, but was unsuccessful.

19. DF called T. Cole and T. Cole apologized for the missed payment. T. Cole told DF that T. Cole would help DF get paid from the investment.

20. T. Cole paid DF approximately $6,000 in interest payments in October and November 2007.

21. Sometime in October or November 2007, DF asked T. Cole what happened to DF's investment. T. Cole said he had received $5,000 of DF's funds, and would find out what happened the rest.

22. On or about December 16, 2007, DF mailed a letter to Heaps, requesting the return of DF's $75,000 investment.

23. DF received no response from Heaps.

Misrepresentations and Omissions

24. In connection with the offer and sale of a security to DF, RES Capitol and Heaps, directly or indirectly, made false statements, including, but not limited to, the following:

    a. The minimum investment was $75,000; and

    b. The investment carried no risk because DF would receive a trust deed on real estate purchased.

25. In connection with the offer and sale of a security to DF, RES Capitol and Heaps, 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. Heaps had unpaid civil judgments against him;

b. Heaps filed bankruptcy in 1988 and 2001;

c. Heaps had misdemeanor convictions for retail theft in 2002;

d. Heaps was charged with a third degree felony for issuing a bad check in 2004 (as of today's date there is a warrant for Heaps' arrest relating to this charge);

e. Some or all of the information typically provided in an offering circular or prospectus regarding RES Capitol, such as:

i. The business and operating history for RES Capitol;

ii. Financial statements for RES Capitol;

iii. The liquidity of the investment;

iv. Discussion of pertinent suitability factors for the investment;

v. Agent commissions or compensation for selling the investment;

vi. Whether the investment is a registered security or exempt from registration; and

vii. Whether the person selling the investment is licensed.

THE DIVISION'S CONCLUSIONS

26. Based on the Division's investigative findings, the Division concludes that:

    a. The promissory note offered and sold by RES Capitol and Heaps to DL is a security under § 61-1-13 of the Act;

    b. RES Capitol and Heaps violated § 61-1-1 of the Act by making misrepresentations of material fact and omitting to state material facts in connection with the offer and sale of securities.

27. RES Capitol and Heaps admit the substance of the Division's investigative conclusions and consent to the Division entering an Order:

    a. Requiring RES Capitol, LLC and David Alan Heaps to cease and desist from engaging in any further conduct in violation of the Utah Securities Act.

    b. Requiring RES Capitol, LLC and David Alan Heaps to pay no fine so long as they do the following: (1) pay full restitution to the victim by June 30, 2008, and (2) violate no provision of the Act for a period of three years from the execution date of the Consent Order.

    c. If RES Capitol, LLC and/or David Allan Heaps fail to comply in any respect with the Stipulation and Consent Order, the Division Director may issue an order imposing a fine against RES Capitol and/or Heaps, jointly and severally, or individually, in an amount not to exceed $10,000. That order may be issued upon

ex-parte motion of the Division, supported by an affidavit verifying such failure to comply with the agreement, and the order shall require the payment of the fine within one month following the date of entry of the order.

28. RES Capitol and Heaps acknowledge that this Consent Order, upon approval by the Division Director, shall be the final compromise and settlement of this matter. RES Capitol and Heaps further acknowledge that if the Division Director does not accept the terms of the Consent Order, it shall be deemed null and void and without any force or effect whatsoever.

29. RES Capitol and Heaps acknowledge that the Consent Order does not affect any civil or arbitration causes of action that third parties may have against RES Capitol and Heaps arising in whole or in part from their actions, and that the Consent Order does not affect any criminal cause of action that a prosecutor might bring.

30. This 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 this Consent Order in any way.

31. RES Capitol and Heaps represent that any information they have provided to the Division is accurate and complete to the best of their knowledge, and if the Division finds

otherwise, RES Capitol and Heaps acknowledge that this Consent Order will be deemed null and void and without any force or effect whatsoever.

32. Violation of this Consent Order is a third degree felony pursuant to § 61-1-21(1) of the Act.

33. RES Capitol and Heaps have read this Consent Order, understand its contents, and enter into this Consent Order voluntarily.

Utah Division of Securities

Date: 6/3/09

By: _____
Michael Hines
Director of Enforcement

Respondent RES Capitol

Date: Apr 3, 2008

By: _____
David Alan Heaps

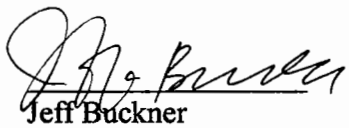
Its: _____

Respondent Heaps

Date: Apr 3, 2008

By: _____
David Alan Heaps

Approved:



Jeff Buckner
Assistant Attorney General

Todd Jenson
Attorney for Respondents

ORDER

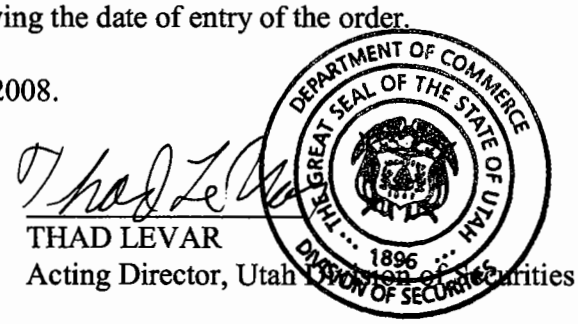
Pursuant to the terms of the Stipulation and Consent Order defined above, the Director of the Utah Division of Securities hereby orders that:

a. RES Capitol, LLC and David Alan Heaps CEASE and DESIST from engaging in any further conduct in violation of the Utah Securities Act.

b. RES Capitol, LLC and David Alan Heaps to pay no fine so long as they do the following: (1) pay full restitution to the victim by June 30, 2008, and (2) violate no provision of the Act for a period of three years from the execution date of the Consent Order.

c. If RES Capitol, LLC and/or David Alan Heaps fail to comply in any respect with the Stipulation and Consent Order, the Division Director may issue an order imposing a fine against RES Capitol, LLC and/or David Alan Heaps, jointly and severally, or individually, in an amount not to exceed $10,000. That order may be issued upon ex-parte motion of the Division, supported by an affidavit verifying such failure to comply with the agreement, and the order shall require the payment of the fine within one month following the date of entry of the order.

DATED this 5TH day of June, 2008.



THAD LEVAR
Acting Director, Utah Division of Securities

Certificate of Mailing

I certify that on the 11TH day of JUNE, 2008, I mailed, by certified mail, a true and correct copy of the Stipulation and Consent Order to:

R. Todd Jensen, Attorney for Respondents
1010 N. 500 E. #100
North Salt Lake City, UT 84054

Certified Mailing # 7004 1160 0003 0196 7746

PAM RADZINSKI
Executive Secretary