Division of Securities
Utah Department of Commerce
160 East 300 South
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Salt Lake City, UT 84114-6760
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BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF:	**STIPULATION AND CONSENT ORDER AS TO FRUITLAND DEVELOPMENT GROUP, LLC AND DERRICK S. BETTS**
FRUITLAND DEVELOPMENT GROUP, LLC	**Docket No. SD-09-0024**
DERRICK S. BETTS GREGORY K. HOWELL	**Docket No. SD-09-0025** Docket No. SD-09-0026
Respondents.	

The Utah Division of Securities (the Division), by and through its Director, Keith Woodwell, and Fruitland Development Group, LLC and Derrick S. Betts, hereby stipulate and agree as follows:

1. Fruitland Development Group, LLC (Fruitland) and Derrick S. Betts (Betts) were the subjects 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, the Division issued an Order to Show Cause against Respondents on April 15, 2009, alleging securities fraud. Criminal charges were also filed against Betts[1], in connection with the investigation.

3. Respondents waive any right to a hearing to challenge the Division's evidence and present evidence on their behalf. Respondents understand that by waiving a hearing that they are waiving the requirement that the Division prove the allegations against them by a preponderance of evidence, waiving their right to confront and cross-examine witnesses who may testify against them, to call witnesses in their own behalf, and any and all rights to appeal the findings, conclusions and sanctions set forth in this Stipulation and Consent Order.

4. Respondents acknowledge that this agreement does not affect any enforcement action that might be brought by a criminal prosecutor or any other local, state, or federal enforcement authority.

5. Respondents admit the jurisdiction of the Division over them and over the subject matter of this action.

I. THE DIVISION'S FINDINGS OF FACT

THE RESPONDENTS

1. Fruitland Development Group, LLC (Fruitland) was registered as a Utah limited liability company on November 3, 2006, but its entity status expired on March 2, 2009. Derrick

[1] *State of Utah v. Derrick S. Betts*, Case No. 091902209, Third Judicial District Court of Utah (2009). Betts was later convicted of two counts of securities fraud, a second degree felony on December 2, 2011.

S. Betts and Greg K. Howell were the managers of Fruitland at all relevant times.

2. Derrick S. Betts was a resident of the State of Utah at all relevant times.

GENERAL ALLEGATIONS

3. Between November 2006 and January 2007, Respondents solicited investments in Fruitland Development Group, LLC totaling $800,000 from at least five investors. One investor is from Florida, two are from California, and two are from Nevada.

4. Respondents told investors their money would be used to purchase a subdivision in Duchesne County, Utah, which would later be developed and sold.

5. Respondents told investors they would become a member of Fruitland and receive their principal investment within a few months, in addition to a return on their funds (as much as 100%) in anywhere from 60 days to two years.

6. Investors lost all of their money.

INVESTORS DM AND GM, HUSBAND AND WIFE

7. In late 2006, Howell told DM and GM (California residents) about an investment opportunity with an associate of his, Betts. Howell's initial conversations with DM and GM were via telephone.

8. Howell provided DM and GM with Betts' contact information.

9. DM contacted Betts via telephone to learn more about the investment opportunities.

10. Betts provided DM with the following information regarding the investment, via e-mail and telephone:

a. Betts was going to form a company, Fruitland Development Group, LLC, specifically for the development of the Hidden Meadow Subdivision;

b. Betts, Howell, and DM and GM would be members of Fruitland if DM and GM invested;

c. Many people were interested in purchasing lots in Hidden Meadow once they were developed;

d. The location of the property was very desirable;

e. If DM and GM invested $300,000, Betts would pay them interest of 12% per year, but if DM and GM invested $400,000 or more, Betts would return their principal in 60 days, and double their investment in one or two years.

11. On November 14, 2006, Howell sent, via facsimile, two documents to DM and GM, each entitled "Consent to LLC Manager." One document, dated November 13, 2006, states "In consideration of $200,000, [DM] will receive a four (4%) percent profits only interest in Fruitland . . ." The second document, dated November 14, 2006, states "In consideration of $300,000, Umpqua Bank Custodian FBO [DM] . . . will receive a six (6%) percent profits only interest in Fruitland. . . ." Both documents appear to have been signed by Betts and Howell.

12. On or about November 15, 2006, DM and GM invested with Respondents by sending, via

electronic wire transfer, $200,000 from their bank account to Springwater Capital, LLC's[2] account at Bank of the West in Salt Lake County, Utah. DM and GM sent their investment to Springwater Capital's account pursuant to instructions they received from Betts, via e-mail, on November 14, 2006.

13. On November 16, 2006, DM flew to Salt Lake City to view the Hidden Meadow Subdivision.

14. Howell picked up DM at the airport, then picked up Betts on the way to the property. DM walked around the property with Howell and Betts, and Betts described the property and the growth occurring in the area.

15. On November 17, 2006, DM sent an e-mail to Betts thanking him for showing him around the property. Betts responded the same day, "I very much enjoyed our time together. I look forward to a prosperous future together."

16. On November 17, 2006, DM invested a second time with Respondents by sending $300,000, via electronic wire transfer, to Springwater Capital's account at Bank of the West in Salt Lake County, Utah.

17. Approximately 60 days after making his second investment, DM began asking Betts and Howell to return his principal investment.

18. In April 2007, DM sent Betts an e-mail asking what happened to DM and GM's $500,000

[2] Springwater Capital, LLC is a Utah limited liability company, located in Utah County. Derrick Betts and Cory Williams are the managers of Springwater Capital.

investment.

19. On April 10, 2007, Betts responded via e-mail:

> The $500k that you put into the project was used as a deposit with the Sellers and was released to them based on our ability to acquire financing . . . What happened, that ended up messing everything up, was that our then partner, John Schofield, had lied to us . . . about the property. We got to the closing table, and learned that the current first lien holder was unwilling to subordinate to our new lender, causing the deal to fail. John Schofield had stated on several occasions that the 1st lien holder would subordinate and that he had spoken with him and verified that information. . . .
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> Obviously, these problems cause our funding to turn tail and run, and as a result, left us holding the bag . . . I am in the process of filing a $1.2M + lawsuit against Mr. Schofield and his Real Estate Brokerage, Caldwell Banker . . . this process will take a very long time . . . the bottom line is, that I should have been more careful about all the details. . . .

20. As of today's date, DM and GM have received no return of their principal or interest and Respondents currently owe them $500,000 in principal alone.[3]

21. Bank records reveal that by December 31, 2006, Betts had invested the majority of DM and GM's funds in a software development company called Alpha Bay Corporation.

INVESTOR IM

22. In October or November 2006, IM (a Florida resident) flew to Utah to meet with Howell and Betts about an investment in Fruitland.

23. Betts told IM that he and Howell intended to purchase the Hidden Meadow Subdivision

3 Betts has agreed to make restitution payments pursuant to his plea agreement in *State v. Betts*, Case No. 09102209,

located in Duchesne County, Utah, and needed $250,000.

24. Betts and Howell took IM on a tour of the property in Duchesne County, Utah.

25. Betts told IM her money would be held in escrow until the purchase closed, and if the purchase did not close, IM would get her money back.

26. Betts told IM her money would never be at risk and she would double her money in 60 to 90 days.

27. In November 2006, IM received the first page of a Real Estate Purchase Contract (REPC) for the Hidden Meadow Subdivision in Duchesne County, Utah. The buyer on the REPC was listed as Fruitland Development Group, and the offer was to purchase the property for $3,500,000 with a deposit of $250,000 in earnest money.

28. In November 2006, IM also received a document entitled "Addendum No. 3.c," which states "Earnest Money of $250,000 is fully refundable and returnable to Buyer. . . ."

29. The REPC and the Addendum were not signed or initialed.

30. On or about November 2, 2006, IM received a letter from Betts, via facsimile, with instructions to issue a check to Springwater Capital. Betts wrote:

> Fruitland Development Group LLC is the buyer of the property. Our proposal is to make you a 5% owner of the property until such time as you are repaid your ownership interest at a level of $300,000. It is anticipated that this payout will take 90 days to complete, but be prepared to have it take up to 120 days.

31. On or about November 6, 2006, IM mailed her investment check for $150,000, drawn on her

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Third Judicial District Court of Utah (2009).

business account, to Springwater Capital in Salt Lake County, Utah. IM's investment check was made payable to Springwater Capital, LLC.

32. Howell later told IM that Betts allowed IM's money to be released from escrow, and that it became unrecoverable when the purchase of the property fell apart.

33. As of today's date, IM has received no return of principal or interest, and the Respondents owe her $150,000 in principal alone.[4]

34. Bank records reveal that IM's check for $150,000 was deposited into Springwater Capital's account on November 17, 2006, and co-mingled with $500,000 from another investor, to increase the balance to $652,000.

35. By December 31, 2006, $645,000 of the money in Springwater Capital's account was used as follows:

    a. Three wire transfers made to Alpha Bay Corporation totaling $500,000;

    b. One wire transfer to Alliance Title for $25,000;

    c. Check #9901 for $20,000 was issued to GKH Real Estate Services, LLC, one of Howell's companies;

    d. One wire transfer to Equity Title Insurance Trust for $100,000.

INVESTORS PG AND ED, HUSBAND AND WIFE

36. In November 2006, Howell told PG and ED (Nevada residents) about an investment opportunity in Fruitland, via telephone.

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4 See footnote 3.

37. Howell told PG and ED he was the project manager of the investment opportunity and his associate, Betts, was the "detail and finance guy."

38. Howell said he had invested with Betts in the past.

39. During later telephone conversations with both Howell and Betts, Howell and Betts told PG and ED the following:

    a. Howell and Betts negotiated the purchase of property called the Hidden Meadow Subdivision, in the township of Fruitland, Duchesne County, Utah;

    b. An investment of $150,000 would double in 90 days;

    c. PG and ED would also receive 5% ownership in Howell's and Betts' company, Fruitland Development Group, LLC;

    d. If the purchase of the property failed to close, PG and ED would get their money back.

40. In November 2006, PG and ED invested $150,000 in Fruitland Development Group, by mailing two personal checks to Meridian Escrow in Salt Lake County, Utah. Both checks were made payable to Meridian Escrow.

41. On September 21, 2006, Howell and Betts gave PG and ED a document entitled "Hidden Meadow Pre-Sales Reservations," which indicated that many of the lots had been reserved.

42. On November 14, 2006, PG and ED drove to Utah to see the Hidden Meadow Subdivision in Duchesne County, Utah, and to meet Betts.

43. After viewing the property, PG and ED met Betts at a parking lot behind a car dealership

somewhere in Salt Lake County. Betts told PG and ED that everything was going well with their investment and their money was secure in an escrow account.

44. On or about December 12, 2006, PG received a telephone call from Betts.

45. Betts told PG he had negotiated a reduction in the price of the property. Betts said he therefore no longer needed PG and ED's money.

46. At PG's request to remain owners, Betts told PG that PG and ED could remain member owners in Fruitland by reinvesting their money.

47. Betts said Fruitland would use PG and ED's money to improve Fruitland's bottom line and make Fruitland's bank account look healthy.

48. PG and ED eventually received copies of their voided checks made payable to Meridian Escrow.

49. On or about December 18, 2006, PG and ED issued two replacement checks for $75,000 each, made payable to Fruitland Development Group, LLC. PG and ED mailed the checks to Betts in Utah.

50. On December 18, 2006, PG sent, via e-mail, a document entitled "Modification of Memorandum of Understanding" to Betts and Howell. The Modification agreement is dated November 17, 2006, and was eventually signed by both Betts and Howell.

51. The Modification agreement states that Fruitland "seeks to reallocate [PG's and ED's] capital contribution from earnest money to cash reserves, in the interest of maintaining a positive balance sheet to aid in obtaining favorable financing for the project."

52. The Modification agreement also states that Fruitland "agrees to use the reallocated $150,000 from [PG and ED] as cash on hand for FDC, for any expenditure which may be directly necessary for the furtherance of the Hidden Meadow development, applying a fiduciary standard of care . . ."

53. As of today's date, PG and ED have received no return of principal or interest, and the Respondents owe them $150,000 in principal alone.[5]

54. Bank records reveal that all of PG and ED's funds were transferred from Fruitland's account to Springwater Capital's account within days of the initial deposit.

55. Between January 11 and May 15, 2007, $137,450 was transferred from Springwater Capital's account to Axis Investment Group, LLC's[6] account, and then used to pay expenses related to other property located in Utah and California.

SECURITIES FRAUD

56. In connection with the offer and sale of a security, Respondents, directly or indirectly, made false statements, including, but not limited to, the following:

a. Betts told DM and GM that if they invested, they would get their initial investment

5 See footnote 3.

6 Axis Investment Group, LLC is a Utah limited liability company located in Wasatch County. Betts is the registered agent of Axis and Serena and Stacy Betts are its members. Axis was voluntarily dissolved in November 2008.

back within 60 days, and would double their money within one or two years;

b. Betts told DM that DM and GM's investment funds would be used as a deposit for the purchase of the Hidden Meadow Subdivision, when in fact, Betts used DM and GM's money primarily to invest in Alpha Bay Corporation and none of their funds were used for the acquisition of Hidden Meadow;

c. Betts told IM her investment funds would be held in escrow until the deal closed and that she would receive her money back if the deal failed to close, when in fact, IM's investment funds were co-mingled with DM and GM's funds and used primarily by Betts to invest in Alpha Bay Corporation;

d. Betts said IM would double her investment in 60 or 90 days;

e. Howell and Betts told PG and ED they would double their investment in 90 days;

f. Howell and Betts told PG and ED that there was no risk of losing their investment because it would be secured by real property;

g. Betts told PG and ED that their December 2006 investment of $150,000 would be used to improve Fruitland's bottom line and make Fruitland's account look healthy, when in fact, PG and ED's money was deposited into Fruitland's account then money was immediately transferred to Axis Investment Group, LLC;

57. In connection with the offer and sale of a security, Respondents, directly or indirectly, failed

to disclose material information, including, but not limited to, the following, which was necessary in order to make statements made not misleading:

a. Betts had several civil judgments, which had been satisfied;

b. Betts filed for Ch. 13 bankruptcy in 1998;

c. In October 2003, the Utah State Tax Commission filed a $3,587 tax lien against Betts, which has since been dismissed;

d. Some or all of the information typically provided in an offering circular or prospectus regarding Fruitland Investment Group, LLC, such as:

   i. Financial statements;

   ii. The track record of Fruitland to other investors;

   iii. The number of other investors;

   iv. The disposition of any investments received if the minimum capitalization were not achieved;

   v. Discussion of pertinent suitability factors for the investment;

   vi. Any conflicts of interest the issuer, the principals, or the agents may have with regard to the investment;

   vii. Agent commissions or compensation for selling the investment; and

   viii. Whether the investment is a registered security or exempt from

registration.

II. THE DIVISION'S CONCLUSIONS OF LAW

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

    a. The investment opportunities offered and sold by Respondents were investment contracts;

    b. Investment contracts are securities under § 61-1-13 of the Act;

    c. Respondents violated § 61-1-1 of the Act by making misstatements of material facts and by omitting to state material facts in connection with the offer and sale of a security.

III. REMEDIAL ACTIONS/SANCTIONS

59. Respondents Fruitland and Betts admit the Division's findings and conclusions and consent to the sanctions below being imposed by the Division.

60. Respondents Fruitland and Betts represent that any information they provided to the Division as part of the Division's investigation of this matter is accurate.

61. Respondents Fruitland and Betts agree to the imposition of a cease and desist order, prohibiting them from any conduct that violates the Act.

62. Respondent Betts agrees that he will be barred from (i) associating[7] with any broker-dealer

7 "Associating" includes, but is not limited to, acting as an agent of, receiving compensation directly or indirectly

or investment adviser licensed in Utah; (ii) acting as an agent for any issuer soliciting investor funds in Utah, and (iii) from being licensed in any capacity in the securities industry in Utah.

63. Respondents Fruitland and Betts agree 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.

64. Respondent Betts agrees to pay restitution if ordered in the criminal case, *State of Utah v. Derrick S. Betts*, Case No. 091902209, Third Judicial District Court of Utah (2009).

IV. FINAL RESOLUTION

65. Respondents acknowledge that this Stipulation and Consent Order, upon approval by the Securities Commission shall be the final compromise and settlement of this matter.

66. Respondents further acknowledge that if the Securities Commission does not accept the terms of the Stipulation and Consent Order, it shall be deemed null and void and without any force or effect whatsoever.

67. Respondents acknowledge that the Stipulation and Consent Order does not affect any civil or arbitration causes of action that third-parties may have against them arising in whole or in

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from, or engaging in any business on behalf of a broker-dealer, agent, investment adviser, or investment adviser representative licensed in Utah. "Associating" does not include any contact with a broker-dealer, agent, investment adviser, or investment adviser representative licensed in Utah incidental to any personal relationship or business not related to the sale or promotion of securities or the giving of investment advice in the State of Utah.

part from their actions, and that the Stipulation and Consent Order does not affect any criminal causes of action that may arise as a result of their conduct referenced herein.

68. 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.

Utah Division of Securities

Date: 8/21/12

By: Thomas A. Brady

Thomas A. Brady
Acting Director of Enforcement

Respondent Betts

Date: 8/15/2012

By:

Derrick S. Betts as manager of Fruitland and as individual.

Approved:

D. Scott Davis

D. Scott Davis
Assistant Attorney General
D.P.

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. Respondents Fruitland and Betts cease and desist from violating the Utah Uniform Securities Act.
3. Respondent Betts agrees to be barred from the securities industry in Utah.
4. Respondents Fruitland and Betts cooperate with the Division in any future investigations.
5. Respondent Betts agrees to pay restitution if ordered in the criminal case, *State of Utah v. Derrick S. Betts*, Case No. 091902209, Third Judicial District Court of Utah (2009).

BY THE UTAH SECURITIES COMMISSION:

DATED this 2am day of October, 2012.

Tim Bangerter

Jane Cameron

Erik Christiansen

Laura Polacheck

Brent Baker

Certificate of Mailing

I certify that on the 31st day of October, 2012, I mailed, by regular mail, a true and correct copy of the Stipulation and Consent Order to:

Fruitland Development Group, LLC
Derrick S. Betts
1860 Fieldstone Lane
Heber City, UT 84032

Julie Rice