

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
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:

**BURNS & BURNS ASSOCIATES, INC.,
ANTHONY JAMES BURNS,**

Respondents.

ORDER TO SHOW CAUSE

Docket No.

Docket No.

0-10-0057
0-10-0058

It appears to the Director of the Utah Division of Securities (Director) that Burns & Burns Associates, Inc. and Anthony James Burns have engaged in acts and practices that violate the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, et seq. (Act). Those acts are more fully described herein. Based upon information discovered in the course of the Utah Division of Securities' (Division) investigation of this matter, the Director issues this Order to Show Cause in accordance with the provisions of § 61-1-20(1) of the Act.

STATEMENT OF JURISDICTION

1. Jurisdiction over Respondents and the subject matter is appropriate because the Division alleges that they violated § 61-1-1 (securities fraud) of the Act while engaged in the offer

and sale of securities in or from Utah.

STATEMENT OF FACTS

THE RESPONDENTS

2. Burns & Burns Associates, Inc. (B&B) is an expired Idaho corporation. Anthony J. Burns is the president of B&B and Loriann Burns is secretary and registered agent. B&B has never been licensed as a broker-dealer, agent, investment advisor, or investment advisor representative in Utah. Anthony J. Burns (Burns), at all relevant times, was a resident of Idaho. Burns has never been licensed as a broker-dealer, agent, investment advisor, or investment advisor representative in Utah.

GENERAL ALLEGATIONS

3. From approximately March 2006 to August 2006, Respondents offered and sold securities to investors, in or from Utah, and collected a total of \$95,000.
4. Burns made material misrepresentations and omissions in connection with the offer and sale of securities to the investors below.
5. The investors lost \$83,600 in principal.

INVESTOR M.G.

6. Between or about March and May 2006, Burns contacted M.G. about an investment opportunity. During that time, M.G. and Burns had multiple discussions about the investment at M.G.'s office in Tooele, Utah.
7. During the conversations, Burns made the following representations:

- a. Burns had a deal with an optometrist in Idaho who was trying to acquire ten lanes¹ of ophthalmic equipment for some clinics;
- b. Burns did not say who the optometrist was, but said she needed to lease the lanes because she did not have the capital to purchase the equipment herself;
- c. Burns had access to ten lanes and was raising funds to buy them for the purpose of leasing them to the optometrist;
- d. Investors would invest \$15,000 for each lane, but Burns would accept as much as the investors wanted to invest;
- e. The lanes would be used as collateral for the investment, but Burns did not discuss whose name would be on the title to the lanes;
- f. The optometrist would try to buy back all ten lanes by the end of the lease period;
- g. The investors would get their principal back once the optometrist purchased the lanes, however, Burns did not discuss what would occur if the optometrist was unable to purchase the lanes;
- h. The optometrist would make a lease payment of about \$400 per month per lane leased, and the lease money paid would be used to re-pay the investor;
- i. Burns said the deal would be an “excellent” investment and that he would be investing some of his own funds as well;

¹One lane is one exam room worth of ophthalmic equipment. A lane generally consists of a chair, stand, phoropter/refractor, foot lamp, and a projector/projection system.

8. M.G. expressed an interest in investing \$35,000 and Burns showed him a copy of the lease contract. Although M.G. had reviewed the lease prior to investing, he never received a copy for his records.
9. Based on Burns' representations, M.G. invested \$35,000.
10. On or about May 25, 2006, M.G. gave a \$15,000 check to Loriann Burns. The check was made payable to her. Burns deposited the \$15,000 into B&B's Wells Fargo Bank account about that same day, bringing the balance to \$15,028.97.
11. According to a source and use analysis of bank records, the \$15,000 were used by the Burnses as follows:
 - a. \$171.03 paid to Loriann Burns;
 - b. \$31.80 paid in bank fees;
 - c. \$2,000 paid to American Express;
 - d. \$1,500 transferred to Burns Properties, LLC;
 - e. \$4,500 transferred to Burns' personal account;
 - f. \$5,000 paid to Loriann Burns's brother;
 - g. \$321.69 paid to insurance companies;
 - h. \$20 paid to Tek Hut;
 - i. \$78.81 paid to Cable One; and
 - j. \$1,376.67 paid to wireless companies.
12. M. G. gave another \$20,000 check to Loriann Burns on July 20, 2006. That check was

made payable to B&B. Burns deposited the \$20,000 check about that same day as part of a \$27,500 deposit into B&B's Wells Fargo Bank, bringing the balance to \$26,430.51.

Both the \$15,000 and \$20,000 checks were to be used for the sole purpose of purchasing lanes of ophthalmic equipment

13. According to a source and use analysis of bank records, the \$27,000 deposit was used by the Burnses as follows:
 - a. \$1,069.49 used to cover negative balance;
 - b. \$66 paid in bank fees;
 - c. \$2,000 paid toward the Burnses' rent;
 - d. \$1,865.80 paid to credit card companies;
 - e. \$1,498.71 paid to an unrelated individual; and
 - f. \$21,000 paid to Wasatch Ophthalmic Instruments for a purchase of three lanes of ophthalmic equipment.
14. Between August 2006 and February 2007, M.G. received an interest payment of about \$3,000 from Burns on his investment. M.G. has not received any other payments to date.
15. To date, Burns still owes M.G. approximately \$32,000 in principal.

INVESTOR M.P.

16. On or about July 15, 2006, Burns told M.P. about the investment opportunity. The discussion occurred at a hospital in Mt. Pleasant, Utah.
17. During the next two weeks, M.P. and Burns had at least two more telephone conversations

about the investment while M.P. was at his office in Provo, Utah.

18. During these conversations, Burns made the following representations about the investment opportunity:
- a. He was working on a deal to lease ten lanes of ophthalmic equipment to an optometrist in Idaho because the optometrist could not purchase the equipment;
 - b. He would purchase the lanes with the funds raised for the purpose of leasing them to the optometrist and needed a minimum of \$15,000 for each lane;
 - c. Burns would provide descriptions and serial numbers of the lanes purchased by M.P.'s funds;
 - d. M.P. would earn \$600 each month for each lane purchased;
 - e. The term of the lease was to be for six to twelve months, and upon expiration of the lease, the optometrist would buy back the lanes;
 - f. M.P.'s principal would be re-paid once the optometrist received the financing, otherwise, M.P. would own the lanes he purchased;
 - g. M.P. "did not need to worry" about the deal because M.P.'s business relationship with Burns was worth ten times more than the value of M.P.'s investment and he would not do anything to jeopardize their business relationship;²
 - h. Burns could cover the funding if needed, but he did not discuss how he would do it.

²Burns worked with M.P. as a surgical technician.

19. On or about July 26, 2006, Burns sent M.P. an e-mail with three documents attached: (1) a copy of a lease agreement between B&B and Southern Idaho Vision Alliance, PLLC³ for ten lanes; (2) an exhibit list of the lanes; and (3) an *Assignment of Lease* that assigned M.P. all rights from the lease.
20. On or about July 26, 2006, Burns and M.P. signed a copy of the *Assignment of Lease*.
21. Based on Burns' representations, M.P. invested \$30,000.
22. On or about August 1, 2006, M.P. gave a \$30,000 personal check to Burns in Mt. Pleasant, Utah. The \$30,000 was deposited into B&B's Wells Fargo Bank account, bringing the balance to \$30,022.80.
23. According to a source and use analysis of bank records, the \$30,000 deposit was used by the Burnses as follows:
 - a. \$14.90 paid in bank fees;
 - b. \$430 paid to an unrelated individual;
 - c. \$1,447.30 paid to WA Federal Savings;
 - d. \$2,939.75 paid toward an installment loan account;
 - e. \$725.55 paid to Countrywide Mortgage;
 - f. \$250 paid to Loriann Burns;
 - g. \$4,563.28 paid toward Burns' mortgage;

³Southern Idaho Vision Alliance, PLLC (SIVA) is a professional limited liability company, registered in Idaho on August 15, 2003.

- h. \$5,575.16 paid to Visa;
 - i. \$11,868.56 paid to Salt Lake Schools Credit Union; and
 - j. \$2,185.50 paid to "SPA."
24. On or about August 26, 2006, Burns e-mailed a copy of the *Assignment of Lease* with serial numbers for the equipment assigned to M.P. and an address where the lanes were located. Some of the serial numbers matched the serial numbers on the invoice showing a payment to Wasatch Ophthalmic Instruments in ¶ 13(f) above.
25. A few weeks after investing, Burns provided a copy of a lease agreement to M.P. The lease named the optometrist as the lessee instead of SIVA.
26. Between about September and November 2006, Burns paid M.P. three monthly payments of \$1,200.
27. In or about January 2007, Burns signed a promissory note for M.P. and paid him \$1,200.
28. To date, Burns still owes M.P. \$25,200 in principal.

INVESTOR B.W.

29. On or before July 19, 2006, Burns telephoned B.W. about an investment while B.W. was at Yuba Reservoir in Utah. B.W. had known Burns for about ten years and had purchased ophthalmic equipment from B&B before. B.W. also had minor discussions with Burns about the investment over the telephone.
30. During the conversations, Burns made the following representations:
- a. He had come across a good deal and could finance it by himself, but wanted to get

his friends and associates involved as well;

- b. Burns was working on a deal with an optometrist in Idaho purportedly named Christine LeDeux (LeDeux).⁴ As part of this deal, B&B would lease ten lanes of ophthalmic equipment;
- c. The lease term was for six months with an option to extend for an additional six months;
- d. LeDeux was unable to purchase the lanes herself at the time, but would be able to purchase them at the end of the lease period if she obtained financing;
- e. Burns would use the funds invested to purchase the lanes and was looking for people to invest \$15,000 for each lane to be leased;
- f. LeDeux would pay \$600 per month per lane leased, and that money would be used to re-pay investors;
- g. Burns would provide the investors with a list of serial number for each lane leased;
- h. Investors would get their principal back once LeDeux purchased the lanes;
- i. Investors would own the lanes if the lease did not occur or if LeDeux was unable to purchase the equipment at the end of the lease;
- j. The investment was “a deal we can’t lose on.”

⁴The real identity of Christine LeDeux is unknown. No one named Christine LeDeux is licensed as an optometrist or ophthalmologist in Idaho.

31. B.W. said he would consider investing \$30,000 for two lanes, but wanted to see the lease contract.
32. On or about July 19, 2006, Burns sent a copy of the lease agreement between B&B and LeDeux to B.W.
33. On or about July 26, 2006, Burns sent a different copy of the lease agreement to B.W. along with an assignment of the lease, stating that B&B would assign B.W. all rights, title, interest in the lanes, and entitlement to the monthly payments due under the lease, as well as an exhibit list of the equipment included with each lane.
34. The assignment did not contain serial numbers for the equipment and references a lease between B&B and SIVA, not B&B and LeDeux.
35. Burns did not discuss why the lease mentions LeDeux, and the assignment mentions SIVA.
36. Based on Burns' representations, B.W. invested \$30,000.
37. On or about August 28, 2006, B.W. gave a \$30,000 check made payable to B&B to Loriann Burns. The \$30,000 was deposited into B&B's Wells Fargo Bank account, bringing the balance to \$45,740.50.
38. According to a source and use analysis of bank records, the \$30,000 deposited was used by the Burnses as follows:
 - a. \$17,050.98 paid to Middlekauff Ford; and
 - b. \$12,949.02 paid to Southern Idaho RV and Marine.

39. Burns paid the monthly lease payments for September and October 2006 to B. W., but stopped making payments to B.W. after that.
40. In or about December 2006, B.W. and other investors, through the attorney, received a promissory note from Burns, signed by both Burns and Loriann Burns, and B.W. received an additional payment from Burns.
41. To date, Burns still owes B.W. \$26,400 in principal.

CAUSES OF ACTION

COUNT I

Securities Fraud under § 61-1-1 of the Act

42. The Division incorporates and re-alleges paragraphs 1 through 41.
43. The investment opportunities offered and sold by Respondents are securities under § 61-1-13 of the Act.
44. In connection with the offer and sale of securities to investors, Respondents, directly or indirectly, made false statements, including, but not limited to the following:
 - a. To M.G.:
 - i. That Burns would use investment funds to purchase lanes for the lease, when in fact, Burns did not use all of M.G.'s funds to purchase the lanes as represented;
 - b. To M.P.:
 - i. That Burns would use investment funds to purchase the lanes for the lease, when in fact, Burns did not use any of M.P.'s funds to purchase the lanes;

- ii. That there was a lease document showing B&B would lease the lanes to SIVA, when in fact, there never was a lease deal involving SIVA;
 - c. To B.W.:
 - i. That Burns would use investment funds to purchase the lanes for the lease, when in fact, Burns did not use any of B.W. funds to purchase the lanes;
 - ii. That there was a lease document showing B&B would lease the lanes to Christine LeDeux, PLLC, when in fact, there is not any Christine LeDeux, PLLC, registered in Idaho or Utah;
 - iii. That there was an assignment document, which references a lease with SIVA, when in fact, there was never a lease deal with SIVA.
- 45. In connection with the offer and sale of securities to the investor, Respondents, directly or indirectly, failed to disclose material information, which was necessary in order to make representations made not misleading, including, but not limited to the following:
 - a. The amount of funds raised;
 - b. What would happen if Burns could not raise enough funds to purchase and lease all ten lanes to the optometrist;
 - c. How Burns would cover the funding;
 - d. How Burns would be compensated for offering the investment;
 - e. What would occur if the optometrist was unable to purchase the lanes;
 - f. Who would be on title to the lanes;

- g. Equipment serial numbers;
- h. Where the equipment would be held;
- i. That he had not used all previous investor funds to purchase lanes;
- j. That he did not use M.P.'s funds for the lanes;
- k. That some of the serial numbers provided on M.P.'s *Assignment of Lease* match serial numbers on the Wasatch Ophthalmic Instruments invoice that some of the M.G.'s money may have been used to purchase;
- l. Why the lease mentions LeDeux, while the assignment mentions SIVA;
- m. Some or all of the information typically provided in an offering circular or prospectus regarding B&B, such as:
 - i. Financial statements;
 - ii. Risk factors for the investors;
 - iii. Suitability factors for the investment;
 - iv. The number of other investors;
 - v. Whether the investment is a registered security or exempt from registration;and
 - vi. Whether Burns was licensed to sell securities.

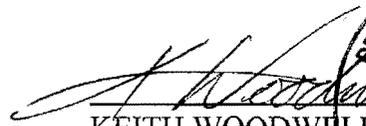
ORDER

The Director, pursuant to § 61-1-20 of the Act, hereby orders Respondents to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63G-4-202, -204 through -

208, and held before the Utah Division of Securities. The hearing will occur on Tuesday, October 5, 2010, at 9:00 a.m., at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2nd Floor, Salt Lake City, Utah. The purpose of the hearing is to establish a scheduling order and address any preliminary matters. If Respondents fail to file an answer and appear at the hearing, the Division of Securities may hold Respondents in default and impose a fine in accordance with Utah Code Ann. § 63G-4-209. In lieu of default, the Division may decide to proceed with the hearing under § 63G-4-208. At the hearing, Respondents may show cause, if any they have:

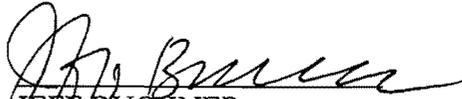
- a. Why Respondents should not be found to have engaged in the violations alleged by the Division in this Order to Show Cause;
- b. Why Respondents should not be ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1, or any other section of the Act; and
- c. Why Respondents should not be ordered to pay to the Division a fine amount to be determined by stipulation or by the presiding officer after a hearing in accordance with the provisions of Utah Admin. Rule R164-31-1, which may be reduced by restitution paid to the investor.

DATED this 9th day of August, 2010.


KEITH WOODWELL
Director, Utah Division of Securities



Approved:



JEFF BUCKNER

Assistant Attorney General

J.N.

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

**BURNS & BURNS ASSOCIATES, INC.,
ANTHONY JAMES BURNS,**

Respondents.

NOTICE OF AGENCY ACTION

Docket No.

Docket No.

10-10-0057
10-10-0058

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENTS:

You are hereby notified that agency action in the form of an adjudicative proceeding has been commenced against you by the Utah Division of Securities (Division). The adjudicative proceeding is to be formal and will be conducted according to statute and rule. See Utah Code Ann. §§ 63G-4-201 and 63G-4-204 through 209; see also Utah Admin. Code R151-46b-1, *et seq.* The legal authority under which this formal adjudicative proceeding is to be maintained is Utah Code Ann. § 61-1-20. You may be represented by counsel or you may represent yourself in this proceeding. Utah Admin. Code R151-46b-6.

You must file a written response with the Division within thirty (30) days of the mailing date of this Notice. Your response must be in writing and signed by you or your representative. Your response must include the file number and name of the adjudicative proceeding, your version of the

facts, a statement of what relief you seek, and a statement summarizing why the relief you seek should be granted. Utah Code Ann. § 63G-4-204(1). In addition, pursuant to Utah Code Ann. § 63G-4-204(3), the presiding officer requires that your response:

- (a) admit or deny the allegations in each numbered paragraph of the Order to Show Cause, including a detailed explanation for any response other than an unqualified admission. Allegations in the Order to Show Cause not specifically denied are deemed admitted;
- (b) identify any additional facts or documents which you assert are relevant in light of the allegations made; and
- (c) state in short and plain terms your defenses to each allegation in the Order to Show Cause, including affirmative defenses, that were applicable at the time of the conduct (including exemptions or exceptions contained within the Utah Uniform Securities Act).

Your response, and any future pleadings or filings that should be part of the official files in this matter, should be sent to the following:

Signed originals to:

Administrative Court Clerk
c/o Julie Price
Utah Division of Securities
160 E. 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
(801) 530-6600

A copy to:

Jeff Buckner
Assistant Attorney General
160 East 300 South, 5th Floor
Salt Lake City, UT 84114-0872
(801) 366-0310

An initial hearing in this matter has been set for October 5, 2010 at the Division of Securities, 2nd Floor, 160 East 300 South, Salt Lake City, Utah, at 9:00 A.M.

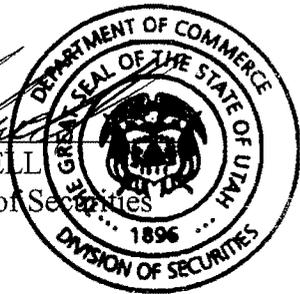
If you fail to file a response, as described above, or fail to appear at any hearing that is set, the presiding officer may enter a default order against you without any further notice. Utah Code Ann. § 63G-4-209; Utah Admin. Code R151-46b-10(11). After issuing the default order, the presiding officer may grant the relief sought against you in the Order to Show Cause, and will conduct any further proceedings necessary to complete the adjudicative proceeding without your participation and will determine all issues in the proceeding. Utah Code Ann. § 63G-4-209(4); Utah Admin. Code R151-46b-10(11)(b). In the alternative, the Division may proceed with a hearing under § 63G-4-208.

The Administrative Law Judge will be J. Steven Eklund, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6648. This adjudicative proceeding will be heard by Mr. Eklund and the Utah Securities Commission. You may appear and be heard and present evidence on your behalf at any such hearings.

You may attempt to negotiate a settlement of the matter without filing a response or proceeding to hearing. To do so, please contact the Utah Securities Division. Questions regarding the Order to Show Cause should be directed to the Division's attorney, Jeff Buckner, at (801) 366-0310.

Dated this 9th day of August, 2010.


KEITH WOODWELL
Director, Division of Securities



Certificate of Mailing

I certify that on the 11th day of August, 2010, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Order to Show Cause to:

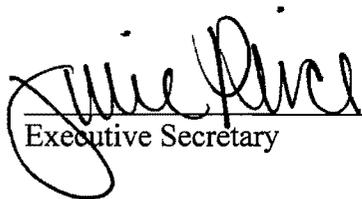
Burns & Burns Associates, Inc.

Anthony James Burns

512 Sunset Dr.

Trafford, PA, 15085

Certified Mail # 7009 0080 0000 0284 0105



Executive Secretary