

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:

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

Respondents

**STIPULATION AND CONSENT
ORDER**

**Docket No. SD-10-0057
Docket No. SD-10-0058**

The Utah Division of Securities (the Division), by and through its Director of Enforcement, Michael Hines, and Burns & Burns Associates, Inc. and Anthony James Burns, hereby stipulate and agree as follows:

1. Burns & Burns Associates, Inc. (B&B) and Anthony James Burns (Burns) 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, the Division issued an Order to Show Cause against

them on August 9, 2010, alleging securities fraud. Criminal charges were also filed against Burns in connection with the investigation.¹

3. On October 4, 2010, the case was stayed pending criminal prosecution. The parties have now agreed to resolve this matter by way of a stipulation and consent order.
4. Respondents are represented by Patrick J. Ascione and Tyna-Minet Anderson in this matter and are satisfied with the representation they have received.
5. Respondents admit the jurisdiction of the Division over them and over the subject matter of this action.
6. Respondents waive any right to a hearing to challenge the Division's evidence and present evidence on his behalf.
7. Respondents acknowledge 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.

I. THE DIVISION'S FINDINGS OF FACT

THE RESPONDENTS

8. 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,

¹*State of Utah v. Anthony James Burns*, Case No. 101905324, Third Judicial District Court of Utah (2010). Burns later pleaded guilty to two counts of securities fraud, a second degree felony, and ordered to pay \$83,600 in restitution on January 11, 2011. The plea was held in abeyance until January 11, 2014.

agent, investment advisor, or investment advisor representative in Utah. 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

9. 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.
10. Burns made material misstatements and omissions in connection with the offer and sale of securities to the investors below.
11. The investors lost \$83,600 in principal.

INVESTOR M.G.

12. 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.
13. During the conversations, Burns made the following representations:
 - a. Burns had a deal with an optometrist in Idaho who was trying to acquire ten lanes² 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:

²A 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.

- 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;
14. 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.
15. Based on Burns’ representations, M.G. invested \$35,000.
16. 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.

17. 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.

18. 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

19. 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.
20. 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.
21. To date, Burns still owes M.G. approximately \$32,000 in principal.

INVESTOR M.P.

22. On or about July 15, 2006, Burns told M.P. about the investment opportunity. The discussion occurred at a hospital in Mt. Pleasant, Utah.
23. 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.
24. 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;³
- h. Burns could cover the funding if needed, but he did not discuss how he would do it.

25. On or about July 26, 2006, Burns sent M.P. an e-mail with three documents attached: (1) a

³Burns worked with M.P. as a surgical technician.

copy of a lease agreement between B&B and Southern Idaho Vision Alliance, PLLC ⁴ 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.

26. On or about July 26, 2006, Burns and M.P. signed a copy of the *Assignment of Lease*.
27. Based on Burns' representations, M.P. invested \$30,000.
28. 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.
29. 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;

⁴Southern Idaho Vision Alliance, PLLC (SIVA) is a professional limited liability company, registered in Idaho on August 15, 2003.

- f. \$250 paid to Loriann Burns;
 - g. \$4,563.28 paid toward Burns' mortgage;
 - 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."
30. 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.
31. 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.
32. Between about September and November 2006, Burns paid M.P. three monthly payments of \$1,200.
33. In or about January 2007, Burns signed a promissory note for M.P. and paid him \$1,200.
34. To date, Burns still owes M.P. \$25,200 in principal.

INVESTOR B.W.

35. 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.

36. 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).⁵ 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;

⁵The real identity of Christine LeDeux is unknown. No one named Christine LeDeux, or any other variation or possible spelling of that name, is licensed as an optometrist or ophthalmologist in Idaho.

- 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.”
37. B.W. said he would consider investing \$30,000 for two lanes, but wanted to see the lease contract.
38. On or about July 19, 2006, Burns sent a copy of the lease agreement between B&B and LeDeux to B.W.
39. 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.
40. The assignment did not contain serial numbers for the equipment and references a lease between B&B and SIVA, not B&B and LeDeux.

41. Burns did not discuss why the lease mentions LeDeux, and the assignment mentions SIVA.
42. Based on Burns' representations, B.W. invested \$30,000.
43. 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.
44. 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.
45. Burns paid the monthly lease payments for September and October 2006 to B. W., but stopped making payments to B.W. after that.
46. 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.
47. To date, Burns still owes B.W. \$26,400 in principal.

SECURITIES FRAUD

48. 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.

49. 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.

II. THE DIVISION'S CONCLUSIONS OF LAW

- 50. Based on the Division's investigative findings, the Division concludes that:
 - a. The investment opportunities offered and sold by Respondents are securities under § 61-1-13 of the Act;
 - b. Respondents 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

- 51. Respondents admit the Division's findings and conclusions and consent to the sanctions below being imposed by the Division.

52. Respondents represent that any information they provided to the Division as part of the Division's investigation of this matter is accurate.
53. Respondents agree to the imposition of a cease and desist order, prohibiting them from any conduct that violates the Act.
54. Burns agrees that he will be barred from (i) associating with any broker-dealer or investment adviser licensed in Utah; and (ii) acting as an agent for any issuer soliciting investor funds in Utah.
55. Burns 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.

IV. FINAL RESOLUTION

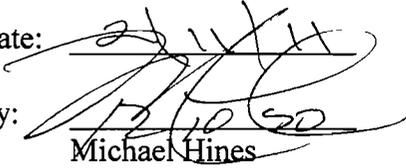
56. Respondents acknowledge that this Order, upon approval by the Securities Commission shall be the final compromise and settlement of this matter.
57. Respondents further acknowledge that if the Securities Commission does not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.
58. Respondents acknowledge that the Order does not affect any civil or arbitration causes of action that third-parties may have against them rising in whole or in part from their actions, and that the Order does not affect any criminal causes of action that may arise as a result of their conduct referenced herein.
59. 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:

By:


Michael Hines

Director of Enforcement

Respondent Burns

Date: _____

By: _____

Anthony James Burns

Approved:



Jeff Buckner

Assistant Attorney General

J.N.

Approved:

Patrick J. Ascione

Attorney for Respondents

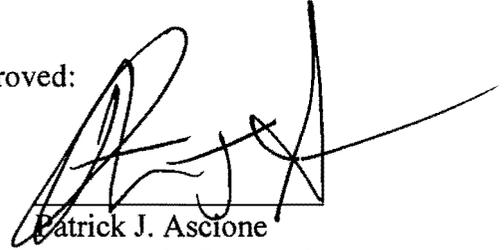
Approved:

Tyna-Minet Anderson

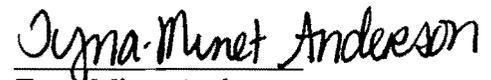
Attorney for Respondents

Jeff Buckner
Assistant Attorney General
J.N.

Approved:

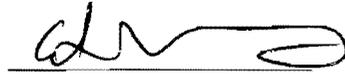

Patrick J. Ascione
Attorney for Respondents

Approved:


Tyna-Minet Anderson
Attorney for Respondents

Respondent Burns

Date: 1-25-11

By: 
Anthony James Burns

ORDER

IT IS HEREBY ORDERED THAT:

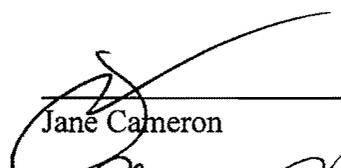
1. The Division has made a sufficient showing of Findings of Fact and Conclusions of Law to form a basis for this settlement.
2. Respondents cease and desist from violating the Utah Uniform Securities Act..
3. Anthony James Burns is barred from (i) associating with any broker-dealer or investment adviser licensed in Utah; and (ii) acting as an agent for any issuer soliciting investor funds in Utah.
4. Respondents cooperate with the Division in any future investigations.

BY THE UTAH SECURITIES COMMISSION:

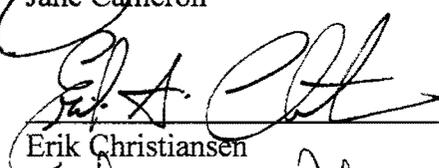
DATED this 17th day of March, 2011.



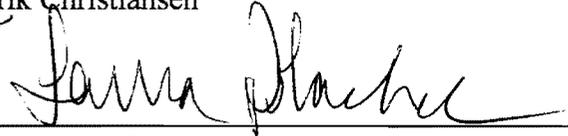
Tim Bangerter



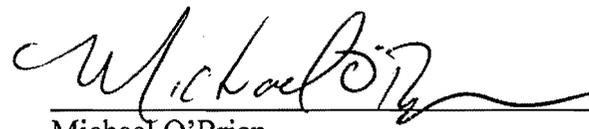
Jane Cameron



Erik Christiansen



Laura Polacheck


Michael O'Brien

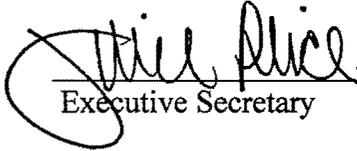
Certificate of Mailing

I certify that on the 21st day of MARCH, 2011, I mailed, by certified mail, a

true and correct copy of the Stipulation and Consent Order to:

Anthony James Burns
c/o Tyna-Minet Anderson
4692 North 300 West, Ste. 220
Provo, UT 84604

Certified Mailing # 700814100041012111



Executive Secretary