

COUNT 1
ATTEMPTED SECURITIES FRAUD
a class A misdemeanor

Commencing on or about March 2007, in the State of Utah, County of Salt Lake, the defendant, in connection with the offer or sale of a security, directly or indirectly, to **Dewitt Charles Fortenberry**, attempted to make untrue statements of material facts or attempted to omit to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or attempted to engage in an act, practice, or course of business which operated or would operate as a fraud or deceit, in violation of Utah Code Ann. §§61-1-1 and 61-1-21. This violation is a class A misdemeanor under Utah Law.

COUNT 2
ATTEMPTED THEFT
a class A misdemeanor

Commencing on or about October/November 2007, the defendant attempted to obtain or exercise unauthorized control over the property of **Dewitt Charles Fortenberry**, with a purpose to deprive them thereof. The value of the property is or exceeds \$300.00 but is less than \$1,000.00. This is a violation of Utah Code Ann. § 76-6-404, a class A misdemeanor.

STATEMENT OF PROBABLE CAUSE

DAVID ALAN HEAPS, at all pertinent times, resided in Utah, and his last known address is 947 E. Creekhill Lane #20, Midvale, UT 84047.

RES Capitol, LLC registered with the Utah Division of Corporations on February 26, 2007. HEAPS is listed as a Member and Registered Agent. Todd Cole (T. Cole) and Scott Cole (S. Cole) are listed as Members. RES Capitol, LLC's status is delinquent as of March 21, 2008.

During March through April 2007, HEAPS offered an investor the opportunity to invest in real estate. In return for the investment, HEAPS provided the investor with a promissory note. A promissory note is a security as defined by Utah Code Annotated §61-1-13.

Prior to any investments, HEAPS did not provide the investor with the information ordinarily provided in a prospectus, including but not limited to: financial statements, descriptions of the backgrounds of the company officers and directors, a list of the risk factors relating to the investment, and a discussion of the company's business operations.

HEAPS did not disclose other material facts to the investor, including but not limited to: suitability factors for the investment; liquidity of the investment opportunity; if HEAPS would be compensated for selling the investment; if the promissory note HEAPS offered was a registered security or exempt from registration; or if HEAPS was licensed to sell securities. (HEAPS has held licenses in the past, but was not licensed at the time he offered the investment opportunity to Fortenberry.)

Second and Third District Court documents show HEAPS has been involved in numerous civil legal proceedings between 1997 and 2005, and in excess of \$47,400 in judgments were entered against HEAPS. Court documents also show HEAPS was convicted of class A and class B misdemeanor retail theft in 2002, and was charged with a third degree felony for issuing a bad check in 2004. HEAPS failed to disclose this information to the investor.

HEAPS filed for chapter 7 bankruptcy in 1988 and in 2001 (filings are still being made for the 2001 bankruptcy). HEAPS failed to disclose this information to the investor.

On or about April 2007, HEAPS received \$75,000 from Dewitt Charles Fortenberry. Subsequent to making the investment, the investor has been able to recover approximately \$10,000 in interest payments.

COUNT 1
ATTEMPTED SECURITIES FRAUD

HEAPS told Fortenberry he needed capital in order to invest in real estate and that HEAPS accepted investments from people, and the investments were usually paid back within six months. HEAPS said there was an investment minimum of \$75,000 and offered 14% interest over the six month term. HEAPS said Fortenberry's interest would be made through profits in flipping real estate. HEAPS offered Fortenberry a promissory note in return for an investment. HEAPS said the investment was not collateralized by a specific property, but HEAPS guaranteed the investment had no risk involved, since HEAPS would give Fortenberry a real estate

trust deed in order to pay back the investment if HEAPS defaulted on the promissory note.

Based on HEAPS'S representations, Fortenberry invested by wiring funds to HEAPS'S Washington Mutual Bank account: \$25,000 on or about April 19, 2007, and a \$50,000 on or about April 27, 2007. Fortenberry said he only authorized HEAPS to use the funds for real estate purchases.

In return for the investments, HEAPS sent Fortenberry a pre-signed \$75,000 promissory note by email, facsimile and mail. The note states HEAPS would repay Fortenberry's principal by October 10, 2008. Fortenberry said the 2008 was a typo.

Prior to the investment, HEAPS failed to provide Fortenberry with any disclosure documents. HEAPS also failed to provide some of the information listed previously.

After investing, Fortenberry received three or four monthly interest payments of \$1,750 from HEAPS. On or about December 16, 2007, Fortenberry sent a letter to HEAPS requesting the return of Fortenberry's \$75,000. Besides receiving the six interest payments (\$10,500), Fortenberry has been unsuccessful in getting back his \$75,000 in principal from HEAPS.

COUNT 2
ATTEMPTED THEFT

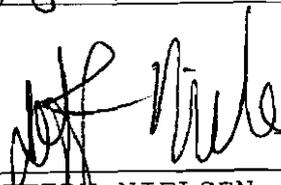
HEAPS represented to Fortenberry that he would use Fortenberry's investment funds for real estate purchases. In a conversation between Fortenberry and T. Cole on or about October or November 2007, T. Cole said he received \$5,000 of

Fortenberry's investment funds.

Also, in a conversation between Todd Jenson, an attorney retained by T. Cole, and your affiant, Jenson said S. Cole received approximately \$25,000 of Fortenberry's funds, while T. Cole received approximately \$5,000. Fortenberry only authorized his funds to be used for real estate purchases. Fortenberry did not authorize HEAPS to use investment funds for any other purpose.

HEAPS obtained money from Fortenberry and exercised unauthorized control of the money with the purpose to deprive him thereof.

DATED this 5th day of August, 2008.



JEFFERY NIELSEN, Affiant

SUBSCRIBED AND SWORN to before me
On this 5 day of August,
2008.



Judge, Third District Court



This CRIMINAL INFORMATION is based upon evidence from the following witnesses:

1. Dewitt Charles Fortenberry
2. Willie Hightower
3. Todd Jenson
4. And others.

AUTHORIZED FOR PRESENTMENT AND FILING this 4th day of August, 2008.

MARK L. SHURTLEFF
Utah Attorney General

By: Charlene Barlow
CHARLENE BARLOW
Assistant Attorney General

FILED DISTRICT COURT
Third Judicial District

AUG 05 2008

By X SALT LAKE COUNTY
Deputy Clerk

CHARLENE BARLOW - #0212
Assistant Attorney General
MARK L. SHURTLEFF, Bar No. 4666
Utah Attorney General
5272 South College Drive, #200
Murray, Utah 84123
Telephone: (801) 281-1221
Facsimile: (801) 281-1224
Attorneys for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH, :
 : Bail \$ 2500⁰⁰
Plaintiff, :
 :
vs. : **WARRANT OF ARREST**
 :
DAVID ALAN HEAPS, : Case No. 081905852
DOB: October 3, 1958 :
 : Judge _____
Defendant. :

THE STATE OF UTAH TO ANY PEACE OFFICER IN THE STATE OF UTAH,
G R E E T I N G S:

An Information, upon oath, having been this day made before me by Investigator Jeffery Nielsen, and it appearing from the Information, or affidavit filed with the Information, that there is probable cause to believe that the public offense of:

Attempted Securities Fraud, a class A misdemeanor, 1 count; and,

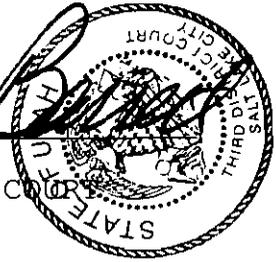
Attempted Theft, a class A misdemeanor, 1 count, has been committed, and that the defendant, DAVID ALAN HEAPS has committed these offenses,

YOU ARE THEREFORE COMMANDED to arrest the above named defendant forthwith and bring the defendant before this court, or before the nearest or most accessible magistrate for setting bail. If the defendant has fled justice, you shall pursue the defendant into any other county of this state and there arrest the defendant. The offenses listed above are felonies.

Bail is set in the amount of \$ 2500⁰⁰.

DATED this 5 day of August, 2008.

William T. B...
HONORABLE,
JUDGE, THIRD DISTRICT COURT



Defendant's Address:

947 East Creekhill Lane, #20
Midvale, UT

FILED DISTRICT COURT
Third Judicial District

AUG 05 2008

By XV SALT LAKE COUNTY
Deputy Clerk

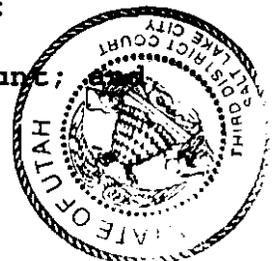
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G R E E T I N G S:

An Information, upon oath, having been this day made before
me by Investigator Jeffery Nielsen, and it appearing from the
Information, or affidavit filed with the Information, that there
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Attempted Securities Fraud, a class A misdemeanor, 1 count;

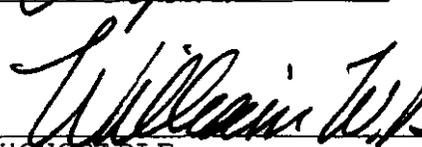


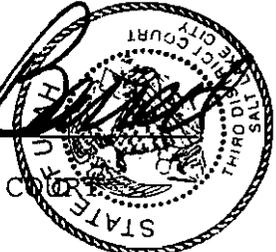
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YOU ARE THEREFORE COMMANDED to arrest the above named defendant forthwith and bring the defendant before this court, or before the nearest or most accessible magistrate for setting bail. If the defendant has fled justice, you shall pursue the defendant into any other county of this state and there arrest the defendant. The offenses listed above are felonies.

Bail is set in the amount of \$ 2500⁰⁰

DATED this 5 day of August, 2008.


HONORABLE,
JUDGE, THIRD DISTRICT COURT



Defendant's Address:

947 East Creekhill Lane, #20
Midvale, UT

CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL DOCUMENT FILED IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH.
DATE August 5, 2008

DEPUTY COURT CLERK