

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

Case No. S-18-0099

Order No. S-18-0099-20-OR02

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ARKANSAS SECURITIES DEPT.

IN THE MATTER OF
FAYNE TRUCKING, LLC and
MAURICE FAYNE

CEASE AND DESIST ORDER

On March 9, 2020, the staff of the Arkansas Securities Department (Staff) filed its Request for a Cease and Desist Order (Request), stating that the Staff has information and certain evidence that indicates Fayne Trucking, LLC and Maurice Fayne have violated provisions of the Arkansas Securities Act (Act) codified at Ark. Code Ann. §§ 23-42-101 – 509. The Arkansas Securities Commissioner (Commissioner) has reviewed the Request and, based upon representations made therein, finds that:

FINDINGS OF FACT

1. The Request asserts the following representations of fact:
 - a. Fayne Trucking, LLC, is an Arkansas limited liability company formed on March 12, 2013. At the time of the events set out herein its primary office was located in Little Rock, Arkansas.
 - b. Maurice Fayne was a resident of Arkansas and the organizer, sole owner and manager of Fayne Trucking at the time of the events set out herein.
 - c. AR1 is a resident of central Arkansas involved in the trucking industry.
 - d. In August 2013 AR1 entered into an agreement to sell Fayne Trucking a truck for \$39,000, payable in 52 weekly payments of \$750 each. Fayne Trucking made only two

payments.

- e. AR1 worked with Fayne in an attempt to collect on the debt owed him. In negotiations to collect the debt owed AR1, Fayne represented to AR1 that Fayne Trucking was expanding and would soon be purchasing and operating another five or six trucks, which would increase Fayne Trucking's profitability.
- f. Fayne also represented that he had the backing of a number of wealthy investors who were prepared to infuse the capital needed for Fayne Trucking to purchase the additional five or six trucks.
- g. In reliance on Fayne's representations of better days to come with Fayne Trucking, AR1 began working with and investing in Fayne Trucking. These investments usually took the form of providing money to make payroll and to fund the normal repairs and upkeep necessary for a trucking business but also included a \$25,000 initial investment on August 16, 2013. All total, AR1 invested approximately \$83,055.06 in Fayne Trucking by the end of 2013.
- h. Purportedly in recognition of AR1's investments in Fayne Trucking, Fayne agreed to make AR1 a half owner of Fayne Trucking, a limited liability company which at the time was wholly owned and operated by Fayne as its managing member.
- i. It was not true that Fayne had procured the backing of a number of wealthy individuals to back this recently formed business or that Fayne Trucking was about to purchase another five or six trucks to support its expanding business.
- j. Fayne and Fayne Trucking did nothing to effect the sale of half of Fayne Trucking to AR1.

k. The records of the Arkansas Securities Department (Department) show no registrations or proofs of exemption for any securities being offered by Fayne Trucking, and the website of the United States Securities and Exchange Commission show no filing of a registration or a Form D in furtherance of an exemption from state registration requirements pursuant to Regulation D, Rule 506, promulgated under the Securities Act of 1933, 15 U.S.C. § 77a *et seq.* See 17 CFR § 230.506.

CONCLUSIONS OF LAW

OFFER OF SALE OF UNREGISTERED SECURITY *ARK. CODE ANN. § 23-42-501*

2. In accordance with Ark. Code Ann. § 23-42-102(17)(A)(xi) and Arkansas case law, an investment contract is the investment of money into the risk capital of a common enterprise or venture with the expectation of benefit or profit with no effective control over the venture. Fayne offered AR1 a 50% equity share in Fayne Trucking, which Fayne wholly owned and totally controlled. Fayne Trucking is a limited liability company, and equity in a limited liability company is represented by membership units. AR invested in the risk capital of common enterprise or venture in exchange for 50% of the equity in that enterprise. This investment therefore constituted an investment contract, which is a security.
3. An offer to sell a security is defined as “every attempt or offer to dispose of, or solicitation of an offer to buy, a security . . . for value.” Ark. Code Ann. § 23-42-102(15)(A)(ii). Fayne’s offer of 50% of Fayne Trucking was in return for the value of AR1’s monetary investments, which were in the form of paying for expenses of Fayne Trucking and in the form of a payments for investments. Whether in return for payment of expenses or for explicit

investment, Fayne exchanged equity in Fayne Trucking for value, which was an offer and sale of a security.

4. Because no membership units of Fayne Trucking were registered with the Department as securities in accordance with the Act, the offer of one-half of the equity of Fayne Trucking was the offer or sale of an unregistered security and a violation of Ark. Code Ann. § 23-42-501.

SECURITIES FRAUD

Ark. Code Ann. § 23-42-507

5. Fayne made two false representations on which AR1 based his decision to invest in Fayne Trucking. First was the assertion that Fayne Trucking was expanding and would soon be purchasing another five or six trucks, thus improving its profitability. Second was the assertion that Fayne had secured the backing of several wealthy individuals who were infusing Fayne Trucking with the capital necessary for purchasing more trucks. Both of these assertions would lead to the conclusion that the business of Fayne Trucking was increasing and that profits would be increasing as well. Because both of these assertions were false, they were material misstatements of fact and two instances of securities fraud in violation of Ark. Code Ann. § 23-42-507(2).

ORDER

IT IS THEREFORE ORDERED that Fayne Trucking, LLC and Maurice Fayne, as well as others whose identities are not yet known who are employed by or otherwise affiliated with Fayne Trucking, LLC or Fayne who receive actual notice of the order, CEASE AND DESIST from:

- 1) any actions in the state of Arkansas in connection with offering and selling securities until such time as any securities offered or sold are properly registered, shown to be exempt from registration pursuant to the Arkansas Securities Act or are shown to be covered securities under federal law, and
- 2) any actions constituting securities fraud.

A hearing on this Order shall be held if requested by any Respondent in writing within thirty days of the date of the entry of this Order, or if otherwise ordered by the Arkansas Securities Commissioner. Such request should be addressed to the Commissioner and submitted to the following address:

Arkansas Securities Commissioner
1 Commerce Way, Suite 402
Little Rock, Arkansas 72202

If no hearing is requested and none is ordered by the Commissioner, this Order will remain in effect until it is modified or vacated by the Commissioner. Ark. Code Ann. §23-42-209(a)(2)(B).

IT IS SO ORDERED.



B. Edmond Waters
Arkansas Securities Commissioner

MARCH 9th 2020

Date