

**BEFORE THE ARKANSAS SECURITIES COMMISSIONER
CASE NO. S-11-0394**

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ARKANSAS SECURITIES DEP

IN THE MATTER OF:

**R. D. MYERS DEVELOPMENT, INC.
AND RODNEY MYERS**

RESPONDENTS

REQUEST FOR CEASE AND DESIST ORDER

The Staff of the Arkansas Securities Department ("Staff") has received information and has in its possession certain evidence indicating that R. D. Myers Development, Inc. and Rodney Myers (collectively "Respondents") have violated provisions of the Arkansas Securities Act ("Act"), Ark. Code Ann. §§ 23-42-101 through 23-42-509.

ADMINISTRATIVE AUTHORITY

1. This matter is brought in connection with violations of the Act and is therefore properly before the Arkansas Securities Commissioner ("Commissioner") in accordance with Ark. Code Ann. § 23-42-209.

RESPONDENTS

2. R. D. Myers Development, Inc. ("Myers Development") is an Arkansas corporation with its principal place of business located at 154 Cornerstone, Suite B, Hot Springs, Arkansas 71913. Myers Development has never been registered with the Arkansas Securities Department ("Department") in any capacity pursuant to the Act.

3. Rodney Myers ("Myers") is an Arkansas resident currently living in Hot Springs, Arkansas. According to records on file with the Arkansas Secretary of State, Myers serves as the president and registered agent of Myers Development. Myers has never been registered with the Department in any capacity pursuant to the Act.

FACTS SUPPORTING REQUEST FOR CEASE AND DESIST ORDER

4. Myers is a real estate developer who claims over twenty-five years of experience in the industry. Myers formed Myers Development in 2005 as a company through which he could conduct his business operations.

5. Myers has a criminal history related to his past real estate development dealings. In 2005, Myers faced a twenty-two count federal indictment for defrauding the U.S. Department of Housing and Urban Development ("HUD") in the development of an apartment complex in Hot Springs, Arkansas. The indictment charged Myers with skimming, money laundering, concealment of assets, suborning perjury, and perjury in conjunction with what the federal government described as a scheme and artifice to defraud HUD and obtain money by means of false pretenses, representations, and promises. Myers eventually pleaded guilty to one count each of concealment of assets, money laundering, and perjury. Myers was sentenced to fifteen months in federal prison and three years of probation. He was also ordered to pay \$120,000.00 in restitution. One condition of Myers' probation prevented him from incurring any new debt without prior approval from his probation officer. A copy of the criminal judgment entered against Myers by the United States District Court for the Western District of Arkansas has been attached hereto as Exhibit "A" and is incorporated herein by reference for all purposes.

6. On January 15, 2010, Myers Development entered into a Partnership Agreement (the "Agreement") with AR1, an Arkansas limited liability company. The Agreement related to an under-construction residential housing project in Hot Springs, Arkansas being developed by Myers Development. Under the terms of the Agreement, AR1 was to invest \$50,000.00 with Myers Development. In exchange, Myers Development would pay AR1 a total of \$6,000.00 for each lot sold on the development until a total return of \$100,000.00 was paid on the initial

investment. Myers Development would also pay a 6 ½ percent return on the initial investment until such time as the \$100,000.00 return was paid in full, representing the interest payment due on a bank loan taken out by AR1 to capitalize the initial investment. Myers executed the Agreement on behalf of Myers Development but signed his wife's name in place of his own. A copy of the Agreement entered into between the Respondents and AR1 has been attached hereto as Exhibit "B" and is incorporated herein by reference for all purposes.

7. AR1 was induced into investing with Myers Development based on representations and promises made by Myers. AR2 and AR3 are husband and wife and are the sole members in AR1. Myers knew AR2 and AR3 through his dealings in an unrelated real estate development project. Myers solicited AR2 and AR3 on the premise that he was constructing a residential development and was in need of an infusion of capital to finish the housing units on several of the lots. Myers represented that he needed the additional capital to perform sundry tasks necessary to prepare the units for sale, including painting, wiring, and landscaping. In exchange for an infusion of capital, Myers promised AR2 and AR3 that he would double the amount of their principle investment plus make the interest payments on the loan they received to make the investment. Myers ensured that no effort would be required on the part of AR2 and AR3 to receive the promised return on their original investment.

8. During his negotiations with AR2 and AR3, Myers failed to disclose the material fact that he had been charged previously with twenty-two counts of criminal misconduct related to an alleged scheme to defraud HUD, and that he had subsequently pleaded guilty to charges of concealment of assets, money laundering, and perjury. Myers further failed to disclose the material fact that the terms of his probation barred him from incurring any new debt without prior approval of his probation officer. Instead, Myers signed his wife's name to the Agreement

in effort to avoid any legal ramifications for his dealings with AR1. Myers Development never disclosed Myers' criminal history to AR1 prior to the parties entering into the Agreement.

9. AR1 has not received any return on its principal investment. While Myers represented that AR1's investment under the Agreement was to be used in preparing housing units for sale, Myers converted the vast majority of the funds for his personal use. Among other things, Myers used AR1's investment funds to make large cash withdrawals and cover payments on various loan obligations.

10. With regard to the subject investment transaction described herein, a search of Department records by the Staff revealed no registration or proof of exemption in accordance with the Act and no notice filing pursuant to federal law in connection with a covered security.

APPLICABLE LAW

11. The Act was promulgated to protect investors and utilizes a broad and flexible definition of a security to determine which transactions fall under the Act's jurisdiction. *Carder v. Burrow*, 327 Ark. 545, 549 (1997). Whether the subject transactions constituted securities transactions under the Act depends not upon labels or titles, but upon consideration of all relevant facts. See *Grand Prairie Sav. And Loan Ass'n, Stuttgart v. Worthen Bank and Trust Co.*, 298 Ark. 542, 545 (1989) (quoting *Shultz v. Rector-Phillips-Morse, Inc.*, 261 Ark. 769, 777 (1977)).

12. Ark. Code Ann. § 23-42-102(15)(A)(xi) includes investment contracts under the Act's definition of a security.

13. A security in the form of an investment contract exists when a transaction is an investment in the risk capital of a venture with an expectation of benefits but with a lack of control on the part of the investor. See *Smith v. State*, 266 Ark. 861, 865 (Ark. App. 1979);

Carder, 327 Ark. at 549; see also *Securities and Exchange Comm'n v. W.J. Howey Co.*, 328 U.S. 293, 298-99 (1946) (“[A]n investment contract . . . means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party . . .”).

14. In *Grand Prairie Sav. and Loan Ass'n*, 298 Ark. at 545, the Arkansas Supreme Court noted that the Arkansas test for a security as established in *Smith* is substantially the same test used in the federal courts and set forth in *Howey*. However, in *Schultz*, the Arkansas Supreme Court rejected an express adoption of the *Howey* test in favor of a more flexible case-by-case analysis. The Court held that the definition of a security under the Act should not be given narrow construction (as in *Howey*) but that “it is better to determine in each instance from a review of all the facts, whether an investment scheme or plan constitutes an investment contract . . . within the scope of the statute.” *Schultz*, 261 Ark. at 781.

15. Ark. Code Ann. § 23-42-102(9) defines an issuer as any person who issues any security.

16. Ark. Code Ann. § 23-402-301(a) provides that it is unlawful for any person to transact business as an agent of an issuer of securities without first being registered as such pursuant to the Act.

17. Ark. Code Ann. § 23-42-501 provides that it is unlawful for any person to offer or sell any security unless it is registered, exempt, or a covered security.

18. Ark. Code Ann. § 23-42-507(2) makes it unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

CONCLUSIONS OF LAW

19. The subject investment transaction whereby AR1 invested money and was set to receive an investment return based solely on the efforts of Myers Development is an investment contract under Ark. Code Ann. § 23-42-102(15)(A)(xi). Under the risk capital test set forth in *Smith and Howey*, the transaction was promoted, offered, and sold on the premise that the investor would receive an economic benefit in the form of a return of double the amount of the original investment. The investor contributed to the risk capital of the venture. The money invested was always subject to the risk that the Respondents would not fulfill promises and pay the return as advertised. The investor had no control over the collection process necessary to generate returns on the investment. There is no other set of laws or regulations which offer protection to investors other than the applicable securities laws. When considering all relevant facts under *Schultz and Grand Prairie Sav. and Loan Ass'n*, the transaction was modeled, promoted, offered, and sold as the type of investment that the Act is intended to govern, based on many of the same reasons set forth above. Therefore, under any applicable analysis, the subject transaction is classified as investment contracts pursuant to Ark. Code Ann. § 23-42-102(15)(A)(xi).

20. The security offered and sold by Myers Development and Myers was not registered with the Department, exempt from registration with the Department, or a covered security under federal law. Therefore, Myers Development and Myers violated Ark. Code Ann. § 23-42-501 when they offered and sold a security to AR1.

21. Myers Development is defined as an issuer pursuant to Ark. Code Ann. § 23-42-201(9). The facts set out above demonstrate that Myers represented Myers Development in

effecting or attempting to effect the purchase or sale of a security to AR1. Therefore, Myers acted as an unregistered agent of an issuer in violation of Ark. Code Ann. §23-42-301(a).

22. Myers Development and Myers committed securities fraud in violation of Ark. Code Ann. § 23-42-507(2) by omitting to inform AR1 that Myers had been charged previously with twenty-two counts of criminal misconduct related to an alleged scheme to defraud HUD, and that he had subsequently pleaded guilty to charges of concealment of assets, money laundering, and perjury. Myers further violated Ark. Code Ann. § 23-42-507(2) by representing to AR2 and AR3 that their investment in Myers Development would be used to finish and prepare housing units in a residential real estate development for sale, when in fact the majority of AR1's principal investment was used for various and improper personal purposes.

LEGAL AUTHORITY TO ISSUE CEASE AND DESIST ORDER

23. Ark. Code Ann. § 23-42-209(a)(1)(A) provides that whenever it appears to the Commissioner, upon sufficient grounds or evidence satisfactory to the Commissioner, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of the Act, or any rule or order under the Act, the Commissioner may summarily order the person to cease and desist from the act or practice.

PRAYER FOR RELIEF

WHEREFORE, the Staff respectfully requests that the Commissioner summarily order R. D. Myers Development, Inc. and Rodney Myers to immediately cease and desist from offering and/or selling securities to residents of the State of Arkansas until such time as the securities in question and the entities and persons offering and selling the securities are all properly registered under the Arkansas Securities Act; and that the Commissioner will summarily order R. D. Myers Development, Inc. and Rodney Myers to immediately cease and desist from committing fraud or

deceit in connection with the offer or sale of any securities in the State of Arkansas; and, for all other relief to which the Staff may be entitled.

Respectfully Submitted,



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201 East Markham Street
Little Rock, Arkansas 72201
Attorney for the Staff

UNITED STATES DISTRICT COURT

WESTERN

District of

ARKANSAS

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

RODNEY DWAIN MYERS

Case Number: 6:04CR60007-001

USM Number: 07313-010

Q. Byrum Hurst, Jr.

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) Two (2), Fifteen (15) and Twenty-One (21) of the Indictment on January 10, 2005

pleaded nolo contendere to count(s) _____
which was accepted by the court.

was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 152(1)	Concealment of Assets	04/13/2000	2
18 U.S.C. § 1957	Unlawful Monetary Transactions (Money Laundering)	02/22/1999	15
18 U.S.C. § 1621	Perjury	11/15/1999	21

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed within the statutory range and the U.S. Sentencing Guidelines were considered as advisory.

The defendant has been found not guilty on count(s) _____

X Counts One (1), Three (3) through Fourteen (14), Sixteen (16) through Twenty (20), and Twenty-Two (22) are dismissed on motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

September 6, 2005

Date of Imposition of Judgment

/S/ Robert T. Dawson

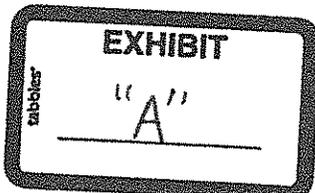
Signature of Judge

Honorable Robert T. Dawson, United States District Judge

Name and Title of Judge

September 8, 2005

Date



DEFENDANT: RODNEY DWAIN MYERS
CASE NUMBER: 6:04CR60007-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: fifteen (15) months on each count, terms to run concurrently.

The court makes the following recommendations to the Bureau of Prisons:

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____ .

as notified by the United States Marshal.

X The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

X before 1 p.m. on December 6, 2005 .

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____ , with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: RODNEY DWAIN MYERS
CASE NUMBER: 6:04CR60007-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : three (3) years on each count, terms to run concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: RODNEY DWAIN MYERS
CASE NUMBER: 6:04CR60007-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not incur any new debt nor establish any bank or credit accounts unless receiving prior approval from the U.S. Probation Officer, and will make any information concerning his financial status available to the probation officer upon request.
2. The defendant shall submit his person, residence, place of employment, and vehicle to a search conducted by the United States Probation Office at a reasonable time and in a reasonable manner based upon reasonable suspicion of evidence of violation of any condition of supervised release. The defendant shall warn any other residents that their premises may be subject to search pursuant to this condition. Failure to submit to a search may be grounds for revocation.
3. The defendant shall not engage in or participate in any joint or individual projects with HUD in any way without the prior approval of the probation officer.

DEFENDANT: RODNEY DWAIN MYERS
 CASE NUMBER: 6:04CR60007-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 300.00	\$ - 0 -	\$ 120,000.00

- The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Bank of America c/o U.S. Department of Housing & Urban Development P. O. Box 2773031 Atlanta, GA 30384-7303		\$119,250.00	
Jason and Angel Liberg 351 E. Civic Center Drive Apt. #2016 Gilbert, AZ 85296		\$750.00	

TOTALS	\$ _____ 0	\$ _____ 120,000.00
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- Restitution amount ordered pursuant to plea agreement \$ _____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
 - the interest requirement is waived for the fine restitution.
 - the interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: RODNEY DWAIN MYERS
CASE NUMBER: 6:04CR60007-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A Lump sum payment of \$ 300.00 due immediately, balance due
 - not later than _____, or
 - X in accordance C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

If not paid immediately, any unpaid financial penalty imposed shall be paid during the period of incarceration at a rate of not less than \$500.00 quarterly, or 10% of the defendant's quarterly earnings, whichever is greater. After incarceration, any unpaid financial penalty shall become a special condition of supervised release and may be paid in monthly installments of not less than 10% of the defendant's net monthly household income, but in no case less than \$1,000.00 per month, with the entire balance to be paid in full one month prior to the termination of supervised release.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

[REDACTED]
100 Park Dr. #514
Maumelle, AR 72113

R.D. Myers Development, Inc.
P.O. Box 22522
Hot Springs, AR 71903

Partnership Agreement

1. Description of Property. The property used in this agreement is shown on Exhibit "A".
2. Investment. The investment is \$50,000, of which the initial investment of \$20,000 was deposited on September 30, 2009 with the balance deposited on January 15, 2010. The [REDACTED] are to receive \$6,000 per each lot that is closed and built on until an amount equal to \$100,000 is paid. The owner agrees to pay 6 1/2% return until the initial investment is paid in full.

[REDACTED] LEECE PROPERTIES, LLC

[REDACTED] *Sherry L. Leece*

RD MYERS DEVELOPMENT, INC.

J. Myers

