

**ADMINISTRATIVE PROCEEDING  
BEFORE THE  
SECURITIES COMMISSIONER OF SOUTH CAROLINA**

**IN THE MATTER OF:**

**Tony M. Fulmer,**

**Respondent.**

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**ORDER TO CEASE AND DESIST  
File No. 14103**

**WHEREAS**, the Securities Division of the Office of the Attorney General of the State of South Carolina (the “Division”) has been authorized and directed by the Securities Commissioner of South Carolina (the “Securities Commissioner”) to administer the provisions of S.C. Code Ann. § 35-1-101, *et seq.*, the South Carolina Uniform Securities Act of 2005 (the “Act”); and

**WHEREAS**, the Division received information regarding alleged securities-related activities of Tony M. Fulmer (the “Respondent”), which, if true, would constitute violations of the Act; and

**WHEREAS**, based on the information received, the Division decided it was necessary and appropriate to open an investigation pursuant to S.C. Code Ann. § 35-1-602 to determine whether the Respondent had violated, was violating, or was about to violate the Act; and

**WHEREAS**, the Division has determined that evidence exists to support the following findings of fact and conclusions of law:

**I. JURISDICTION**

1. The Securities Commissioner has jurisdiction over this matter pursuant to S.C. Code Ann. § 35-1-601(a).

## **II. RESPONDENT**

2. The Respondent is a resident of Edgefield County, South Carolina, with a last known mailing address of 258 Old Plank Road, Johnson, South Carolina 29832.

## **III. FINDINGS OF FACT**

3. The Respondent was an employee of a contractor at the Savannah River Site, Aiken, South Carolina.

4. The Respondent also is the owner and operator of a business dealing in firearms, coins and precious metals, Aiken Silver & Gold, located at 1625 Whiskey Road, Aiken, South Carolina 29803.

5. About ten years ago, the Respondent began soliciting investments from among his customers and his coworkers. Such solicitations occurred in and from this State.

6. The Respondent typically offered a 12 percent annual return on funds invested with the Respondent, allegedly for the purpose of investment in the activities of the Respondent's business.

7. The Respondent represented to investors that the interest earned could be paid monthly, annually or "rolled over" into a new contract for another year.

8. Typically, the Respondent and his investors signed an "Investment Contract".

9. At least seven individuals are known to have invested with the Respondent.

10. In about October, 2014, the Respondent initiated a general solicitation program using a commercial internet site.

11. In October, 2014, a complaint was received by the Division that the Respondent had received funds from investors, was promising an unusually high rate of return, and had begun general solicitations.

12. In reality, the investment opportunity was a Ponzi scheme, in which new investor funds went primarily to pay interest to other investors and there was not enough money to repay the initial investment of the investors.

13. The Respondent is not now, nor has he ever been, registered to sell securities.

14. When interviewed, the Respondent admitted that he had lost investor funds in trading in precious metals and had also used investor funds to make payments on his children's private school tuition, to pay for his daughter's dance lessons, to make a \$1,200.00 down payment on an all-terrain vehicle (ATV) for his son, to make one or more mortgage payments, and for other personal bills and purchases.

15. The Respondent also admitted that he had used money from investors to pay prior investors.

16. Further, the Respondent admitted that he has not told investors that their principal has been depleted and that renewal contracts he offers and which show funds allegedly held in renewing investors' names are false.

#### **IV. CONCLUSIONS OF LAW**

17. The South Carolina Uniform Securities Act of 2005, S.C. Code Ann. § 35-1-101, *et seq.*, governs the offer and sale of securities in this State.

18. Pursuant to S.C. Code Ann. § 35-1-102(29), investment contracts, stock, and certificates of interest or participation in profit-sharing agreements, *inter alia*, constitute securities.

19. Pursuant to S.C. Code Ann. § 35-1-501, it is unlawful for a person in connection with the offer or sale of a security in this State: (1) to employ a scheme, device, or artifice to defraud; (2) to make an untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading; or (3) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

20. Pursuant to S.C. Code Ann. §35-1-604(a)(1), if the Securities Commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of the Act or a rule adopted or order issued under the Act or that a person has materially aided a violation of the Act or a rule adopted or order issued under the Act, the Securities Commissioner may issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with the Act.

21. Pursuant to S.C. Code Ann. § 35-1-604(b), an order issued under § 35-1-604(a) is effective on the date of issuance and must include a statement of any civil penalty or costs of investigation sought, a statement of the reasons for the order, and notice that, within fifteen (15) days after the receipt of a request in a record from a Respondent, the matter will be scheduled for a hearing.

22. The investment contracts offered by the Respondent constitute securities as defined by the Act.

23. In connection with his offer and sale of securities, the Respondent: (1) employed a scheme, device, or artifice to defraud; (2) made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading; and (3) engaged in an act, practice, or course of business that operated as a fraud or deceit upon another person.

24. The Respondent's offer and sale of the securities at issue occurred in and from this State.

25. It is in the public interest, for the protection of investors, and consistent with the purposes of the Act that the Respondent be ordered to cease and desist from engaging in the above enumerated practices which constitute violations of the Act and pay an appropriate civil penalty for his wrongdoing.

#### **V. CEASE AND DESIST ORDER**

**NOW THEREFORE**, pursuant to S.C. Code Ann. § 35-1-604(a)(1), it is hereby **ORDERED** that:

- a. The Respondent and every successor, affiliate, control person, agent, servant, and employee of the Respondent, and every entity owned, operated, or indirectly or directly controlled by or on behalf of the Respondent **CEASE AND DESIST** from transacting business in this State in violation of the Act, and, in particular, § 35-1-501 thereof; and

- b. The Respondent pay a civil penalty in the amount of \$20,000 if this Order becomes effective by operation of law, or, if the Respondent seeks a hearing and any legal authority resolves this matter, pay a civil penalty in an amount not to exceed \$10,000 for each violation of the Act by the Respondent, and the actual cost of the investigation or proceeding.

**IT IS FURTHER ORDERED** that, pursuant to S.C. Code Ann. § 35-1-604(a)(2) and (3), any exemption from registration with the Division that the Respondent may claim to rely upon under S.C. Code Ann. §§ 35-1-201(3)(C), (7), or (8); 35-1-202; 35-1-401(b)(1)(D) or (F); or 35-1-403(b)(1)(C), has been and is **PERMANENTLY REVOKED**.

#### **VI. REQUIREMENT OF ANSWER AND NOTICE OF OPPORTUNITY FOR HEARING**

The Respondent is hereby notified that he has the right to a hearing on the matters contained herein. To schedule such a hearing, the Respondent must file with the Securities Division, Post Office Box 11549, Rembert C. Dennis Building, Columbia, South Carolina, 29211-1549, attention: Thresechia Navarro, within thirty (30) days after the date of service of this Order to Cease and Desist, a written Answer specifically requesting a hearing. If the Respondent requests a hearing, the Division, within fifteen (15) days after receipt of a request in a record from the Respondent, will schedule the hearing for the Respondent.

In the written Answer, the Respondent, in addition to requesting a hearing, shall admit or deny each factual allegation in this Order, shall set forth specific facts on which the Respondent relies, and shall set forth concisely the matters of law and affirmative defenses upon which the Respondent relies. If the Respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state.

Failure by the Respondent to file a written request for a hearing in this matter within the thirty-day (30) period stated above shall be deemed a waiver by the Respondent of the right to such a hearing. Failure of the Respondent to file an Answer, including a request for a hearing, shall result in this Order, including the stated civil penalty and any assessed costs, becoming final as to the Respondent by operation of law.

This Order does not prevent the Division or any other law enforcement agency from seeking additional civil or criminal remedies as are available under the Act, including remedies related to the offers and sales of securities by the Respondent set forth above.

ENTERED, this the 10<sup>th</sup> day of December, 2014.

ALAN WILSON  
SECURITIES COMMISSIONER

By: Tracy Meyers  
TRACY A. MEYERS  
Deputy Securities Commissioner

STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
SECURITIES DIVISION

CERTIFICATE OF SERVICE AND  
AFFIDAVIT OF COMPLIANCE  
File Number 14103

I hereby certify that I served upon the individual/entity listed below a copy of the document indicated below and dated December 10, 2014, by serving a copy of said document upon the Securities Commissioner of the State of South Carolina and by placing a copy of said document in the United States mail, certified mail, return receipt requested, first class postage prepaid and addressed to:

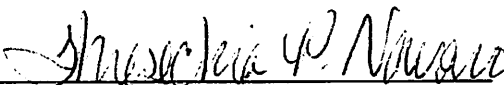
Mr. Tony M. Fulmer  
258 Old Plank Road  
Johnson, SC 29832

Document(s): Order to Cease and Desist

Mailed December 11, 2014 from Columbia, South Carolina.

I further hereby certify, swear and affirm that, service of the above-listed entity is in compliance with Section 35-1-611, Code of Laws of South Carolina.

By:

  
Thresechia P. Navarro  
South Carolina Attorney General's Office  
Securities Division  
Post Office Box 11549  
Columbia, SC 29211-1549  
(803) 734-4731

Subscribed and sworn to before me on  
this 11 day of December, 2014.

  
Notary Public for South Carolina

My commission expires: 7/2/18